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Solicitors' CPD: time to change from regulatory stick to regulatory carrot?

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Summary
The legal professions are agreed on the need for some form of continuing professional development ("CPD") after qualification. What is less clear is the intention of such frameworks and in contrast to other forms of more diffuse learning in the workplace. I will explore two areas of tension in the current solicitors' CPD system which will bear attention before any of these three related objectives can be achieved:

- Between a didactic form of delivery focussing on technical updating of knowledge of law and procedure and more "difficult" participative CPD activity;

- Between accountability, regulation and personal development as drivers behind the CPD scheme dear to different stakeholders.

The paper will conclude that, whilst the paradigm shift apparent in the regulators and the professional body is to be welcomed, a change of culture in the profession as a whole is required. This requires CPD, in partnership with other forms of learning, to be viewed in terms of outputs and benefits: the carrots of the title. It is not only a negligence-avoiding maintenance of a static level of competence but a mechanism to

address the change which will inevitably result from the full implementation of the Legal Services Act 2007.

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Introduction

The legal professions are agreed on the need for some form of continuing professional development ("CPD") after qualification. What is less clear is the intention of such frameworks and the role of the different stakeholders within them. With a focus on the majority case of solicitors, this paper will explore CPD activity by reference to its various stakeholders, including the regulator concerned to protect the public interest. Whilst not absent from earlier discussion here (Eccleston, 1994; Saunders, 1996; ACLEC, 1997; Hales, 1998) and elsewhere (Ogden, 1985; Nelson, 1993; Roper, 1997 and 1999), the issue of CPD reached the attention of the Solicitors' Regulation Authority in England and Wales in 2007 (now in SRA, 2010a) on taking over responsibility for a CPD scheme in place since 1985. The SRA, not unnaturally frames its current proposals in terms of establishing and maintaining competence (SRA, 2010c, Annex C, draft *Code of Conduct*, Chapter 7, outcome 6 "you train individuals working in the firm to *maintain a level of competence* appropriate to their work and level of responsibility", my italics. See also SRA, 2010b). The Law Society has gone further: "there is a potential role for the professional body in encouraging solicitors to aspire to levels of professionalism that significantly *exceed* those set by the statutory regulator" (Hunt, 2009, p 88, my italics).

More recently, as ultimate regulator, the Legal Services Board has announced (LSB, November 2010) a root and branch investigation into legal education which will include "the

degree to which continual professional development is ensuring lawyers are capable of adapting to changed practices". The Bar Standards Board is conducting a review of CPD as I write and ILEX Professional Standards updated its CPD regulations earlier this year.

In this article I, first, describe the existing and proposed CPD systems for solicitors and place them into the context of CPD schemes as a class. Second, I examine the function of CPD as a concept in the context of a number of competing tensions inherent within it. The article concludes that, whilst the paradigm shift apparent in the regulators and the professional body is to be welcomed, a change of culture in the solicitors' profession as a whole is required to render CPD fully effective, particularly in making the link between classroom activity and improved or maintained competence in practice.

Continuing Learning and CPD

A distinction should be made at the outset between a) the continuing learning described by Houle (1980) as an ongoing process of learning and b) participation in a CPD scheme. Sense a) may be more closely linked to informal learning on the job by practice or observation (for a list of different types of such informal learning, see Cheetham and Chivers, 2001), where the impetus is more easily assumed to derive from the individual and where some learning may be acquired tacitly through quantity of experience and repetition. Rogers (2003) usefully distinguishes in this context between "task-conscious" activity, which prioritises the (fee-earning) task and sees learning as a "by product" (Eraut, 2004) and "learning-conscious" activity, prioritising learning. Whatever else it may be, in the solicitors' context, CPD is "learning-conscious" activity.

The Solicitors' CPD Scheme

Historically there was some confusion within the legal profession (Saunders, 1996; ACLEC, 1997; Hales, 1998) about the appropriate extent or objectives of a CPD scheme. Roper, writing in Australia, points out the quantitative importance of the CPD context in comparison with the pre-qualification period on which most discussion is focussed but recognises a lack of coherent theoretical underpinning:

> [b]ut, after [qualification] … there are another 40 years or so of working life awaiting the new lawyer … So we can contrast the framework which supports to the first 20 years or so [of life] with that supporting the remaining 40 years…
> There is considerable development of theory in a number of areas related to CPD, ... What is lacking, so far as CPD for lawyers is concerned, is the bringing together of these various elements in some cohesive and useful way to provide a conceptual framework. (Roper, 1997, p 172, see also Roper, 1999)

Nor is this confusion confined to lawyers: reviewing attitudes to CPD across a number of professions, Friedman *et al* conclude

> using CPD to measure competence requires very different activities than using CPD for personal development. … However, if the current ambiguities of CPD are to be resolved so that, … in a number of years CPD is considered in a similar light to initial qualifications a clearer and

> more consistent approach needs to be taken by UK professional associations as a whole. (Friedman *et al* 2001, p175)

This, I suggest, is the first of the many tensions and competing objectives that can be discerned in CPD schemes in general and the SRA scheme in its 1990-2009 iterations (SRA, 2000; 2010a) in particular: whether a CPD structure is envisaged by its creators as outward-looking and regulatory (the "sanctions" model) (Madden and Mitchell, 1993) or inward-looking and personal (the "benefits model"). It is also possible within the discourse of ambiguity identified by Friedman *et al*, for an organisation such as the Law Society, or now, the SRA, to espouse one model but in fact to implement something closer to the other. In fact, as I suggest below, the solicitors' scheme is in a liminal phase, apparently in transition from one to the other. The draft 2011 Training Regulations (SRA, 2010b) mark a shift in emphasis towards the benefits model, whilst retaining the sanctions elements of the existing model.

Input: Hourages and CPD Activities

Initial committees cited by ACLEC in its *Second Report* (1997) envisaged no more than a mechanism for technical updating (*op. cit.* p 13) or compulsory courses for the "older members of the profession"; ACLEC itself preferring an approach closer to the lifelong learning described above. From 1 November 2001, however, as a result of the Training Regulations 1990 (SRA, 2000) all solicitors and registered European lawyers practising in England and Wales must undertake 16 hours of CPD in a year, *pro rata* for part-time staff (SRA, 2000, 2010a). This is at the lower end of the time commitment spectrum, Madden and Mitchell, (*op. cit.*) finding, in their survey of 20 professional organisations (of the 65% who prescribed a number of hours) a median of 30 and modes of 20 and 30. A survey by the Professional Associations Research Network ("PARN") in 2004 of 80 professional associations found that 13 of them measured input by hours, with a mean of 30.5 and mode of 30 (Friedman *et al*, 2004, p 2). The SRA figure is, however, consistent with the prescribed minima for other legal professions.[1] At least 25 per cent must be satisfied by attending accredited courses (SRA, 2010a, p 4). The remainder may include writing books or articles, coaching and mentoring (this is not uncommon: Friedman and Phillips, 2004), reading journals or viewing videotapes (SRA, 2010a, p 7). From 2007, the CPD scheme fell within the overall quality assurance remit of the SRA, the relevant part of whose strategy articulated at that point, was to "set standards for … continuing professional development so as to maintain and enhance the competence, performance and ethical conduct of solicitors and uphold the rule of law" (SRA, 2007b, p 4), in principle, therefore, in Friedman *et al*'s terms, to "[use] CPD to measure competence". The SRA identified almost immediately, as one of a number of matters to be addressed, "the small number of CPD hours required each year" (*ibid*. p 12). Nevertheless, even in the 2010 draft, which takes, as we shall see, a much more consciously outcomes-focused approach, a minimum number of hours; in fact the *same* minimum number of hours, is prescribed (SRA, 2010b).

[1] Association of Costs Lawyers: 7-12 hours a year, depending on grade; Bar Standards Board : 12 hours a year after the first 3 years (45 hours including some mandatory content must be achieved in the first three years); ILEX Professional Standards: 8-16 hours a year, depending on grade; Institute of Paralegals: 12 hours a year; IPReg: 16 hours a year.

Input: Flexibility as to Content

Provided the individual complies with the minimum requirement, it is for the solicitor him- or herself to decide in which CPD activities to participate, although a short "Management Course Part 1" is mandatory during the first three years as are parts of the Professional Skills Course for those who have not already completed it (SRA, 2010a, p 13). More recently, any member of the profession with supervisory responsibilities has been required to undertake a minimum period of appropriate learning activity (at present self-determined by the individual and with no obligation to demonstrate any particular competence as a result): *Solicitors' Code of Conduct 2007*, rule 5 (SRA, 2007d). With the SRA's move towards "outcomes-focused regulation" proposed for implementation in late 2011, however, this latter prescription seems to have shifted. There is no trace of it in the new draft SRA Handbook and Code of Conduct on which the SRA has consulted as part of its Architecture of Change project (SRA, 2010c); presumably because, in the new paradigm, provided (at least) competence *is* achieved, the SRA does not see it as part of its remit to prescribe *how* it is achieved. This places a burden on the profession and the individual professional which is not yet, I suggest below, fully explored or supported.

We are, therefore, in a transitional stage, such that the profession's ostensible definition of CPD at present remains one of "input":

> "continuing professional development" means a course, lecture, seminar or other programme or method of study (whether requiring attendance or not) that is relevant to the needs and professional standards of solicitors and complies with guidance issued from time to time by the SRA. (SRA (2010a, p 5)[2]

Nevertheless, it retains a considerable degree of flexibility for the individual whilst excluding, for example, research carried out on a fee-earning basis for a particular client, even though such learning on a task-conscious basis in the workplace may in fact be more valuable to the individual's personal development than sterile attendance at an irrelevant lecture.

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[2] Compare definitions used by other legal professions:

- Association of Costs Lawyers (2002): "a course, lecture, seminar, or other programme or method of study (whether requiring attendance or not) that is relevant to the needs of professional standards of Law Costs Draftsmen."
- Bar Standards Board (2010): "CPD is work undertaken over and above the normal commitments of barristers with a view to such work developing their skills, knowledge and professional standards in areas relevant to their present or proposed area of practice, and in order to keep themselves up to date and maintain the highest standards of professional practice."
- ILEX Professional Standards (2011): "The systematic maintenance, improvement and extension of the professional and legal skills, and personal qualities, necessary for the execution of professional and legal duties, and compliance with the standards required by IPS of ILEX members throughout their working life."
- Institute of Paralegals (undated): "any … activities that clearly assist with your development as a legal professional".
- IPReg (2010): "CPD is work undertaken over and above the normal work and professional commitments of practitioners with a view to such work developing their skills, knowledge and professional standards in areas relevant to their area of practice as registered patent and trade mark attorneys, and in order to keep themselves up to date and to maintain the highest standards of professional practice".

That said, the shift to an more output based approach is evidenced in the draft Training Regulations 2011 (SRA, 2010b), which follow the model of the proposed outcomes-focussed regulatory framework as a whole by identifying principles (in particular, here that "you must … provide a proper standard of service to your clients; … comply with your legal and regulatory obligations; … run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles"), such that:

> [t]he desired outcome which applies to these regulations is that solicitors and RELs maintain competence through relevant ongoing training. (SRA (2010b, p 2)

CPD is here defined as "the training requirement(s) set by us to ensure solicitors and RELs maintain competence" (*ibid.*), which seems to combine elements of input and sanction ("the training requirements") with those of output and benefit ("maintain competence").

After qualification, there is no need (and therefore no necessary impetus or expectation of funding) for the individual to achieve any further qualifications or – except as required by his or her employer – to demonstrate any higher competences beyond what might soon be represented by the day one outcomes marking the point of qualification (SRA, 2007a), provided that "competence" in day to day activity is at least "maintained". The suggestion of "solicitors' practice diplomas" amounting to 25 per cent of a Masters degree for those wishing to pursue specialisms (Eccleston, 1994) has not been implemented to date, although additional single level accreditations for membership of specialist panels do exist (SRA, 2007c). In its investigation in 2007, the SRA took a more sophisticated approach to post-qualification development recognising a number of post qualification phases, albeit in very broad terms defined hierarchically in terms of status rather than competence:

> - Achieving specialist status;
> - Setting up practice on own account or setting up a new practice (as its head) with others;
> - Supervisor status in an accredited training establishment;
> - Head of Legal Practice/Head of Finance and Administration in an existing firm …
>
> SRA (2007b, p 9)

Whilst not explicitly re-defining CPD, it also set out (*ibid*, p 11,) a series of expectations for the post-qualification period which bears comparison with the self-awareness and development aspects of the work-based learning (SRA, 2008) and day one outcomes but betrayed an assumption that there would be (measurable) output, at least in terms of minimum competence. It was recognised that one needed to keep up to date but there is also a degree of emphasis on being able to, for example, manage a practice (SRA, 2007b, pp 9, 11). Particularly for early career solicitors, the need to "acquire expertise … develop the capacity to organise and manage … keep up with changes in the law" (*ibid*, p 11) were explicitly added to a new overall and outward-facing objective of sustaining the rule of law and perpetuating ethical behaviour for all practitioners. No attempt was made at this stage to clarify how one might achieve these outcomes (*ibid*, p 5) and the overall tenor is one of being "prescriptive only where necessary" (*ibid*, p 8).

In the most recent iteration, whilst CPD activity must "be at an appropriate level and contribute to your general professional skill and knowledge" (SRA, 2010b, p 13), it is also notable that formal CPD activity would now only "count" if it had "written aims and objectives" (SRA, 2010b, p 10). This version differs from the others in being explicitly outcomes-focussed, that outcome being articulated in terms of "maintain[ing] competence through relevant ongoing training" (*ibid*, p 2). Provided the minimum is achieved in terms of both hourage and competence, the CPD requirement is satisfied.

Input: Delivery

Much provision of CPD activity is in-house, particularly in the larger firms, which have the luxury of professional support lawyers, training officers and sometimes training departments (see Eales-White, 2002 for an example). Nelson, investigating participation in CPD activity by young lawyers in New South Wales (1993), found "in-house staff development" to be placed third in preferred learning style after "ask someone else" and "look it up yourself", with "non participatory" and by implication externally delivered, lectures in fourth place.

Delivery otherwise may be by specialist groups of solicitors or others (such as the Association of Personal Injury Lawyers); academic providers (such as NLS or the College) or by commercial providers (such as CLT). Lawyers can be demanding clients in their expectations of external delivery (Tobin, 1987; Greenebaum, 1992).

The type of CPD offered is market-led and the archetype is the talk and chalk model of the updating lecture on a technical area identified by Cruickshank:

> [t]he primary method for delivering continuing legal education is still the "talking head". From a panel, experts speak to their written papers in sequence. Audiences of up to 200 have little input except for a handful of questions at the conclusion of each panel. In some courses, this goes on for two days, seven hours each day … Nevertheless, lawyers attend these courses in large numbers, give them good evaluations … and are satisfied with one or two practical insights that can be applied on the job. But the course format may be what lawyers are used to, not necessarily what they want or need. (Cruickshank in Webb and Maughan, 1996, p 227)

As, whatever its other limitations, the solicitors' scheme *permits* activity other than such "talks",[3] this default concept will be described as "CPD updating".

Research on CPD provision within the domestic solicitors' profession is limited. An informative study carried out in the Republic of Ireland (McGuire, *et al*, 2002a, p 1012) concluded, at least when the respondents are "firms" (and therefore presumably actually senior or training personnel within those firms rather than individual lawyers) – and despite

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[3] The idea that CPD = "talks" is deeply embedded. In other, unpublished research, I asked young solicitors what first came to their mind when I used the phrase "CPD":

A "Um, well you know, it's just training.
Q OK. Any particular kind of training?
A Yeah, talks."
1 year PQE,

"… also you can get videos and just watch a video but that, at the end of the day, that's a talk, it's still a talk. I mean any training really is going to be a talk isn't it, someone talking at you?"
2 ½ years' PQE.

the archetype described above - that the espoused priorities for CPD are administration skills; communication skills; time management skills; customer service skills and legal research skills. In fact, the same writers identify "conceptual knowledge" imparted by CPD updating as typical only of the "student" stage of career progression, prior to traineeship or qualification (and the "process knowledge" acquired by mentoring and coaching within the workplace still at the lower level of the post qualification stages) (McGuire, *et al*, 2002b). There may be a considerable amount of work to be done by the SRA, the profession and those who supply CPD to it, to convince individuals that "maintaining competence", in the current draft extends to more than keeping up to date on law and procedure.

Input: Sanctions and Monitoring

PARN (2001, p 8) approved the fact that maintenance of the solicitors' annual practising certificate is conditional on completion of the prescribed amount of CPD. In practice, however, this amounts to the solicitor ticking a box on a form and relies on the integrity of the individual. Central records are no longer held: the solicitor is required to keep his or her own record, which may be called in for inspection. Anecdotes of solicitors at the end of the CPD "year" sitting at the back of the room reading the newspaper during lectures on specialist subjects entirely irrelevant to them in order to make up sufficient hours are common. And, consequently, the system as it currently operates does not promote the objective of flushing out the inadequate and the negligent.

The disciplinary bodies regulating solicitors are empowered to strike off, impose conditions on the practising certificate and levy fines. Very occasionally, such conditions include attendance at a course (on, say the accounts rules) or a prohibition on taking on a trainee solicitor, where competence has been found to be deficient. The "danger that [CPD participation] could become a tick box exercise bearing little relationship to real development needs" and "the difficulty of monitoring whether CPD is properly carried out" were identified as issues to be addressed by the SRA (2007b, p 12) at an early stage. The link that remains to be established, I suggest, is causal: between the CPD (or lack of it) and the maintenance of competence; whether sanctioned by the SRA or, more pragmatically, by other interested parties, such as the firm's insurer.

Output: Planning What Is To Be Learned and Application of What Has Been Learned.

The currently operating definition (SRA, 2010a) contains no obligation to do anything other than the input of reading, viewing or attendance. The SRA's 2007 attitude (2007b) gave greater importance to the output, particularly in the bottom-line sense of maintaining "standards of service". The 2009 iteration and entirely explicitly, the draft 2011 training regulations, maintain this trajectory. Responsibility is, however, placed on the individual (SRA, 2010a, p 17; 2010b, p 13) for his or her own professional development. It remains to be seen how this statement of responsibility squares with the proposed outcome in the draft replacement *Code of Conduct*, chapter 7, that "you train individuals working in the firm to maintain a level of competence appropriate to their work and level of responsibility" (SRA, 2010c) although it is clearly possible to achieve it by means of informal learning which, however valuable,[4] would not count for CPD purposes.

[4] From the same unpublished research study: "That kind of thing, I think is much more valuable but that's just general learning, isn't it? Why, that should mean, if you got CPD points you'd get 1700 hours by the end of the year! You know, that's just general work but I think that's taken as read by the Law Society, presumably, that's

Unlike the educationalists (Eraut, 1994; Winter, 1996) the SRA – not unexpectedly, given the political climate and the remit of that body – renders the aspirational aspects (extending scope) of post-qualification learning subservient to the bottom-line meaning of competence (maintaining quality and avoiding negligence):

> [i]t is arguable that a commitment to professional development is essential if a solicitor is to comply with the core duty to provide a good standard of service and the requirement not to take on work unless competent to do so. (SRA, 2007b, p 12)

Nevertheless, the SRA's *Guide to the Solicitors Regulation Authority's CPD Scheme* (2010a, p 10), seeks to assist individuals with guidance in identification of training needs and career development with a number of templates and exemplars[5] and in this less formal context, does envisage that, individuals might wish to expand their range by, for example "advancing in your current legal field; moving into a different legal field" and so on.

However, whilst the available exemplar of training records contains a "comments" section, there is nothing about it which requires the individual to make the link back to the planned learning objective or otherwise to identify what had been learned. Even in the completed exemplar, the comments are descriptive of the activity involved rather than records of or reflections on its application in practice. Further work needs to be done, I suggest, whether by the SRA or by providers of CPD to the profession, to help individuals evaluate and articulate the impact of their CPD activities – and individuals are often confident that CPD activity has benefitted them in some way (Phillips *et a*l, 2005, p 75, see also Goodall *et al*, 2005) - beyond mere satisfaction questionnaires:

> Obviously, [satisfaction questionnaires] allow one to gauge whether participants consider the event to have been enjoyable and successful, but this method does not engage with issues such as gains in knowledge, or changes in practice expected from professional development … (Muijis and Lindsay, 2008, p 196)

Placing the Solicitors' Scheme in the Context of CPD Schemes as a Class

The original solicitors' scheme demonstrated "best practice" in a survey of 196 professional organisations and has been used as a benchmark by other organisations setting up CPD schemes (PARN, *op. cit.*). That best practice was, however, defined entirely in terms of logistics (website, accreditation of courses, record forms, planning forms). The scheme is unusual of those studied in being both mandatory and – at least in theory – subject to sanction (refusal of the annual practising certificate).

The input-focused 2000 definition of solicitors' CPD can be contrasted with the output-oriented definition offered by PARN in synthesis of a number of suggestions offered by writers and professional associations:

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what everyone's doing. Then everyone's [doing] it so what you think about that, what really does CPD add …?" 2 ½ years PQE

[5] Slightly mysteriously, in Friedman *et al*, 2009, p 39, the SRA is noted as having reflection templates and helplines and advice "currently provided by another professional body". The same table suggests that the measurement of CPD is by outputs alone.

> CPD is any process or activity of a planned nature that provides added value to the capability of the professional through the increase in knowledge, skills and personal qualities necessary for the execution of professional and technical duties, often termed competence. It is a lifelong tool that benefits the professional, client, employer, professional association and society as a whole and is particularly relevant during periods of rapid technological and occupational change. (PARN, 1998-2000, p 5)

Madden and Mitchell's working definition adopts a similar approach to stakeholders, whilst including an aspirational element: "

> the maintenance *and enhancement* of the knowledge, expertise and competence of professionals throughout their careers according to a plan formulated with regard to the needs of the professional, the employer, the profession and society. (1993, p 12, my emphasis)

The significant difference between PARN's definition and that for solicitors is its emphasis on outputs ("learning") as opposed to inputs; on attributes other than technical knowledge and updating; on benefits to a spectrum of stakeholders including but not confined to the individual and, most importantly, on lifelong learning and recognition of change which might lead to enhancement over and above mere maintenance of competence. The SRA identified this "focus on process and time spent on CPD activities rather than outcomes" as an issue to be addressed in the initial stages of its investigation (SRA, 2007b, p 12). Its formulation at that point of the purposes of post-qualification development is clearly influenced by the current political environment, to focus on, in the words of the white paper that introduced what is now the Legal Services Act 2007, "putting consumers first" (DCA, 2005). It did, however, cover a wide range of topics as well as introducing a focus on management of the legal services business and education for the management role that was not required prior to the introduction of *Solicitors Code of Conduct 2007*, rule 5 (SRA, 2007d). These topics can be aligned with the three functions of CPD identified by Madden and Mitchell (*op. cit*., p 12):

a) updating so as to ensure continuing competence ("keep up with changes in the law, procedure and management issues");
b) aspirational preparation for new responsibilities ("develop the capacity to organise and manage appropriate to the level of responsibility in the business entity"; "accommodate practitioners who wish to change the direction of their careers …") and
c) improving personal and professional effectiveness beyond updating ("acquire expertise in specialist areas of practice"; "sustain the commitment to the rule of law, administration of justice and ethical foundations of the profession")

although the additional aspect of Madden and Mitchell's formula - insofar as it might involve intrinsic interest or personal satisfaction or development - is not present. The 2009 iteration (SRA, 2010a), as we have seen, invites individuals to plan aspirationally to, for example, "[set] up on your own" but rather takes routine updating as said. The outcomes-focused model in the draft 2011 iteration (SRA, 2010b), concentrating on the maintenance of minimum competence, tends, I suggest, to revert back to function a) above.

Whilst the draft 2011 iteration, more closely than the 2009 version, ties CPD into minimum competence in provision of client services, as aspirational activity is by no means forbidden, there remains an inherent potential for conflict between the different stakeholders and between subjective personal development ("moving into a different legal field … setting up on your own" 2010a, p 10) and objective demands for minimum competence:

> … CPD promises to deliver strategies of learning that will be of benefit to individuals, foster personal development, and produce professionals who are flexible, self-reflective and empowered to take control of their own learning. This emphasis on the personal, however, could conflict with concepts of CPD as a means of training professionals to fulfil specific work roles and as a guarantee of individual, professional competence. (Friedman and Phillips, 2004, p 362)

The solicitors' framework, in contrast and perhaps even more so in its draft 2011 iteration, continues to prioritise external minimum competence over internal personal development: "the responsibility of individual solicitors and practice managers to ensure that their training and development needs are met in a way that enables them to provide a quality service in the areas in which they operate" (SRA, 2007b, p 7); "[t]he desired outcome … is that solicitors … maintain competence through relevant ongoing training" (SRA, 2010b, p2) Friedman and Phillips' solution to this conflict is to substitute "a continuous process of learning by reflection" (Friedman and Phillips, *op. cit.* p 374) for *ad hoc* and discontinuous default CPD updating. The strategy of reflection as a learning process is embedded within the day one and draft work-based learning outcomes and finds a place in the LPC and the link between this strategy and the post-qualification period could usefully be made explicit.

Whilst the SRA recognises a need to focus on outcomes, it has as yet as offered no mechanism for promoting the "arguably" essential achievement of those outcomes, even in terms of minimum competence. Given its desire not to be prescriptive as regulator, it may elect not to do so, albeit that possible strategies, as techniques which can be assessed and therefore as outcomes in themselves, appear in the draft work-based learning outcomes and at the LPC stage. Such techniques will, I suggest, become critical, at least in circumstances where it becomes necessary for a regulated individual or entity to prove that competence has at least been maintained.

The SRA does not at present propose any form of profession-wide testing of competence post-qualification such as the medical re-licensing scheme: "[a] suite of schemes covering all specialisms is not proportionate, desirable or achievable" (SRA, 2007b, p 1). In fact, the internal appraisal systems of individual firms may be far more likely to be influential in both choice of CPD activity and application of CPD-acquired learning for the individual practitioner. The lack of a profession-wide mentoring system or portfolio supporting post-qualification learning (except in limited areas, such as higher rights training) may also tend to divorce CPD activity from practice and, therefore, from implementation in practice.

Three themes, therefore, emerge from a comparison of the solicitors' scheme with others:

a) it remains to a large extent a sanctions model, compelling some degree of participation without necessarily requiring the individual to make a link between input and output;

b) its provision is generally didactic and focussed on technical updating (or at least may be perceived to be such);
c) stakeholders are less than clearly identified, even in the more specific recent SRA model which, if taking a fully client-centred approach, might for example, go as far as demanding compulsory education on client service skills (a recommendation that might be deduced from McGuire *et al*'s results, *op. cit*.) for the entirety of the profession post-qualification (the draft work-based learning outcomes, by comparison, focus on client relations and communication to the exclusion of much else).

This question of stakeholders – the client, the individual, the individual's senior or junior colleagues, the employer, the SRA, the rule of law – bears further consideration.

Tensions Between Accountability, Regulation and Personal Development

For an occupational group that aspires to be a profession, a CPD scheme might be seen as a necessary component of such status. Madden and Mitchell, indeed, identified different styles of CPD in older and in aspirant professional groups (1993, p 26). Whether or not legal practice is "professional" is almost never discussed (an exception being Sherr, (2001:1)) such that solicitors hardly need a CPD scheme to join the club of professional bodies (although under the Legal Services Act 2007, they might need one to maintain that position). The "sanctions" model characteristic of older professions historically applied to solicitors contrasts with the "benefits model" frequently adopted by those groups whose professional status is tender, and which focuses more on the output than on the input.

Madden and Mitchell (1993, p 11) identify a number of reasons why a "policy and structure" for continuing education might be adopted, incorporating objectives both for the individual and for his or her employer (improving economic competitiveness; redressing skills shortages and increasing transferable skills; continuous updating of skills and retraining for new roles) as well as the client-focussed bottom-line objectives that preoccupy the SRA. The discrepancy between CPD at the micro-level of the individual's personal development and interests and the macro-level of the public-facing profession as a whole and its need to demonstrate minimum competence is not confined to solicitors:

> [i]t appears that while maintenance of technical knowledge and skills assumes paramount importance in the defining the function of CPD for the members, CPD is seen by the professional body as a means of demonstrating that it is monitoring the continuing professional standards of the members. (Madden and Mitchell, 1993, p 19)

Indeed, bodies adopting the "sanctions model"

> are united in having instigated a CPD policy in order to demonstrate standards of professional competence … The effectiveness of CPD practice and provision is measured in terms of compliance with CPD requirements, since the desired outcome is compliance. (Madden and Mitchell, 1993, p 27)

an approach which conflates "learning" (as result or process) with "teaching", a meaning gently described as "inappropriate" by Illeris (2002, p 15).

Cervero (2001) considering CPD in the U.S.A. between 1981 and 2000, recognises this trend of treating CPD as an accountability mechanism, driven in part by professional malpractice claims (a similar political impetus to that of the SRA) and identifies a "struggle between the learning and the political economic agendas" (*ibid*, p 27), part of that economic agenda being the ease and economy of delivering the updating-type lecture. Watkins suggests that balancing of the role and objectives of the various stakeholders is necessary, but that such balancing might effectively address the needs of the client-stakeholder:

> [c]ompulsory CPD raises some issues which must be approached with sensitivity. Established members may feel patronized and potential members may be deterred by a too stringent approach to CPD. … This new emphasis on mentoring and the stakeholder approach suggests CPD is increasingly being viewed essentially as a partnership between the professional, the employer and the professional association – a partnership which is informed by, and takes into account, the needs and requirements of the client. (Watkins, 1999, p 73)

The conscientious individual might, of course, be assumed to exhibit a self-directed responsibility towards at least maintaining the quality of his or her existing practice, despite the ostensible priority within the existing scheme of compliance stick over personal development carrot. The ability to ""develop strategies to enhance professional performance" and to "identify areas where skills and knowledge can be improved, and plan and effect those improvements" now appear in the day one and work-based learning outcomes supplying an element linking input with output. This link is still missing from the SRA's CPD statement which, in its 2009 iteration, prioritised input over output and in its draft 2011 iteration, prescribes both input and output in terms of maintained competence without necessarily making it clear how the hourages of input lead to achievement of the desired output. Mandatory CPD does at least, even if by stick rather than by carrot, force the recalcitrant horse to the educational water, with the possibility that despite everything, there might be an output (see also Ogden, 1985; Ratclif and Killingbeck, 1992):

> [t]he argument is that in every profession there is a residuum – preferably a small one – of members whose practice fails to come up to standard. It is largely for their sake that defensive measures have to be taken. Thus "formal courses don't really meet the needs of lively members of the profession, but they help to ensure minimum standards". (Becher, 1996, p 53)

A question not asked is, whether and perhaps particularly in the case of the reluctant or recalcitrant, the existence of a CPD framework can be seen by the individual as absolving him- or herself from any obligation to see the workplace *outside* the CPD classroom as a place for learning. Even though such learning does not "count" for CPD purposes, it can, of course, be a significant factor in the maintenance of competence which is the SRA's current desired outcome.

Didactic Updating: Tensions Between Improving the Knowledge-Base and Improving Practice

Cervero puts the dilemma raised, in my view, by the need for CPD to satisfy bottom-line political and accountability requirements whilst ostensibly being a mechanism for personal development, very clearly:

> *Issue 1: continuing education for what? The struggle between updating professionals' knowledge versus improving professional practice.*
> The most fundamental issue that must continually be addressed is: "What is the problem for which continuing education is the answer? If the picture painted at the beginning of this article is the answer, [a didactic, updating lecture] then it is clear that the problem has been conceived as "keeping professionals up to date on the profession's knowledge base". In fact, keeping professionals up to date is as close to a unifying aim as continuing education has ... (Cervero,2001, p 25)

I have shown above that the archetype for solicitors is precisely that CPD updating lecture. Whilst I am conscious of an element of special pleading, the need to remain up to date is particularly significant for lawyers, whose body of technical knowledge is subject, literally, to daily change; a need reflected both in the SRA formulation ("keep up with changes …") and treated as so fundamental in the draft work-based learning outcomes ("keep up to date with changes in law and practice") that it is conceptualised as falling outside the category of "self-awareness and development". This is by no means uncommon, of the 65 respondents to this aspect of PARN's 2004 survey (Friedman, *et al*, 2004, p 30), most organisations admitted to focussing a higher percentage of CPD resource on "the professional domain" as contrasted with "generic skills". Nevertheless, one might ask whether not just CPD but CPD updating in particular, whilst in one sense relieving a need, in fact impedes personal development in other aspects. So, for example, Aspland considers that such CPD activity may create an

> expectation of dependency upon prescribed technical answers to situations rather than a tolerance of ambiguity and the development of adaptability and autonomy. … the traditional-style provision of CPD purveys "expert" skills and principles to be learned and applied. Both of these tend to encourage students to accept "right" ideas passively and uncritically. (Aspland, in Woodward, 1996, p 138)

To the technician lawyer – and possibly therefore to a large constituency of the newly-qualified, for example, - this may feel efficient and fulfilling. It is obvious, easy and can provide immediate satisfaction. The material is "cumulative" (entirely situation specific) or "assimilative" (an extension or enhancement of what is already known). The focus on updating could itself, positively inhibit more introspective engagement with experience

> [t]his continual focus on the new rather than on renewal promotes new knowledge which comes from outside rather than new knowledge arising from the distillation of personal experience; thus indirectly discouraging learning from experience and CPD activities which attempt to reorganise and share the accumulated experience of problems and cases. (Eraut, 1994, p 12)

Taking CPD beyond acceptable straightforward updating (which in the legal context assumes that new laws will be introduced periodically) carries with it the danger that initial, perhaps fondly held and hardly-won, conceptions and practices might be found to be wanting

> [t]he single most defining characteristic of resisted learning, however, is its supplantive nature, in that the material replaces or threatens knowledge or skills which have already been acquired … the greater the emotional investment in beliefs or practices, the greater the disturbance caused by efforts to change them. (Atherton, 1999, p 77)

Stakeholders: Tensions Between Competing Demands

The tension between the individual and the consumer-client is pervasive in current discussions of the solicitors' scheme. Whilst the draft work-based learning outcomes and the SRA (February 2007a, p 12), placed responsibility for *identifying* developmental needs on the individual; responsibility for satisfying them was "placed on managers and supervisors" (*ibid*). By 2009, however, "the responsibility for meeting the CPD requirements and for personal development as a solicitor rightly falls on the individual and not the firm" (SRA, 2010a, p 9). It is, nevertheless, for the managers of regulated firms to "train individuals working in the firm to maintain a level of competence appropriate to their work and level of responsibility" (SRA, 2010c). In the initial stages of their career, the two objectives might tend to co-incide, as the individual identifies with the employer. The employer, through those managers, may also (but is not obliged to) pay for the courses and make time available for attendance and it would be unreasonable not to expect constraints to be present. Some employers will require individuals or groups of individuals to undertake CPD activities seen as beneficial to the firm; internal lectures may be mandatory and so on. An individual seeking permission to undertake CPD activity beyond the norm, or which is particularly expensive, may be refused. As might a junior solicitor, despite, on an individual level following the SRA's advice to think about, for example, advancing in your current legal field" or "moving into a different legal field" (SRA, 2010, p 10). It is easy to see the potential for differences of opinion about what might constitute "maintained competence" between employee and employer. So, Carter, (in Woodward, *op. cit.*, p 84) found tensions between corporate interest and benefit, departmental interest and benefit and individual self-interest and benefit in CPD. Such tensions include the possibility of employers refusing to support such activity on the ground the individual would leave. Consequently Carter suggests (*ibid*, p 87) that companies are "not yet managing CPD satisfactorily at postgraduate level" and (*ibid*, p 89) demonstrate a "mismatch in perceptions which leads employers to view with suspicion staff who are obviously aspirational and wish to enhance their career prospects through continuing education and development outside the company". Woodward, in the same volume (*ibid*, pp 5-6) suggests that, where there is tension between the common modern aspiration of employers to the status of a "learning organisation" geared towards competitive advantage and the "individual commitment" to personalised learning of any individual within the organisation; the employer will necessarily prevail, partly because of the overwhelming quantity of learning that is, in Eraut's terms, a "by-product" (2004) of work itself rather than of CPD activity

> experiential learning, gained in the working environment has primacy over off-line activities. Individual commitment to CPD cannot therefore hope to equal the potential impact of organization commitment. …

> Hence, though individual commitment is certainly not without value (least of all to the individual), investment in learning organizations, with both systems and cultures which offer employees continuous incremental and diverse learning opportunities, must – from the perspective of learning theory – have greater impact. (Woodward, 1996, p 6)

Conclusion

The most significant aspect of the existing solicitors' scheme for the purposes of this study is that it exists at all. Whilst its messages have been mixed and the link between hourages and output of minimum maintained competence has been delegated to the individual and the firm; it does at least perform two positive functions: a) allowing for employer-sanctioned ostensible educational activity on an ongoing basis, b) a message that participation is part of one's professional obligations (as necessary but not, perhaps, sufficient for development). Its flexibility, I suggest, assumes the possession of strategies for learning without necessarily actively promoting them (at least post qualification) whilst, on the other hand, the didactic nature of much provision may be seen as impeding self-directed development and the individual as stakeholder in the process may have a limited bargaining position in relation to choice of activity. The paradigm shift apparent in the regulator and the professional body is to be welcomed, a change of culture in the profession as a whole is required. This requires CPD, in partnership with other forms of learning, to be viewed in terms of outputs and benefits and the links between input and output: the carrots of the title. It is not only a negligence-avoiding maintenance of a static level of competence but a mechanism to address the change which will inevitably result from the full implementation of the Legal Services Act 2007 where, more than ever, "public dependency and trust" in the profession requires to be "continuously negotiated" (Fournier, 1999). It will behove those of us in HEIs who deliver CPD to the profession to assist our colleagues by helping them to make the critical link between input and output; by focussing continually on the output and working with students in more advanced forms of course evaluation (see Goodall *et al*, 2005; Muijis and Lindsay, 2007; Friedman, *et al*, 2009), if that is what it takes.

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