



## **CRIMINAL BAR ASSOCIATION RESPONSE TO BSB CONSULTATION PAPER ON PROPOSED NEW SYSTEM FOR CPD**

The Criminal Bar Association ('CBA') represents about 3,600 employed and self employed members of the Bar who prosecute and defend the most serious cases across the whole of England and Wales. It is the largest specialist bar association. The high international reputation enjoyed by our criminal justice system owes a great deal to the professionalism, commitment and ethical standards of our practitioners. The technical knowledge, skill and quality of advocacy guarantee the delivery of justice in our courts; ensuring on our part that all persons enjoy a fair trial and that the adversarial system, which is at the heart of criminal justice, is maintained.

The CBA welcomes the opportunity to respond to the Bar Standards Board's consultation paper on the proposed new system for CPD.

Q1. Do you think that the fundamental approach to CPD requirements should continue to be based on a system defined by the number of hours of CPD undertaken annually?

RESPONSE: The CBA offers qualified support to the proposals to update and revise the present system; it is difficult to see how a CPD system can function if it is not based on the accrual of time spent on professional development. Analysis of other similar professional bodies suggests that a time based system is a universal feature.

We agree that the number of verifiable hours should remain at not more than 12 but observe that the case for regulating private research and increasing the minimum number of hours by 12 has not been made out. The number of required hours should only be increased if the need for the increase is identified and articulated. There is nothing in the consultation paper which establishes any evidential basis for such a need: without it any increase would be arbitrary and unjustified.

We reject the suggestion that Criminal Practitioners are at a loss as to how to accrue the necessary CPD points; the reality is that there is a vast array of approved CPD activities available to the Bar. Increasing the minimum number of hours is offering a solution to a problem that does not exist and the inclusion of 'private study' seems to offer a sop in return for the suggested increase in hours.

Q2. Do you agree with the proposed new approach for CPD that will, as a single but five-fold strategy simplify enforcement of the CPD Regulations?

RESPONSE:

- (1) Increase the range of approved CPD activities: We endorse the recognition of the value of 'private study' and welcome the suggestion that well deserved trust should be placed in the integrity and good faith of our practitioners. We also concur that barristers should be

allowed greater scope in selecting the CPD programme most appropriate for their practice and that some of the formal restrictions placed on the accrual of hours should be removed. However, the increase of hours through 'private research' and 'better' system of record keeping will simply amount to an additional (and pointless) exercise of requiring our members to log research that they already undertake as a matter of course and as an essential part of the job.

- (2) Increase in number of approved CPD hours: Criminal practitioners undertake many hundreds of hours of 'private research' in any given year as they are confronted with novel legal problems (both evidential and procedural) on a regular basis and are expected to keep up to date with current case law; we suggest that this is the very reason why CPD hours should not increase. The suggested 12 hour increase would represent a very small proportion of the time spent on researching cases on a day to day basis; many criminal practitioners could fulfil the extra requirement in the preparation of a single case which would defeat the purpose of continuing education.

Alternatively, the additional 12 hours could be made up by reading Criminal Law Review once a month (something which would take more than an hour if read cover to cover); most practitioners regularly dip into a variety of current publications to update their knowledge (and spend rather longer than an hour doing it).

This private research is presently carried out by our members in their own time and without supervision by their regulator. The proposal to regulate and certificate this voluntary exercise is difficult to reconcile with the suggestion of increased trust in the integrity and good faith of the individual practitioner; it is a proposal which may be met with dissatisfaction and resentment by an already disgruntled profession.

- (3) Raise the standard of record keeping: The current system places an onus on barristers to submit their completed records accurately and on time. Whilst all of our members would easily be able to fulfil the increased CPD hours, the revised system will require busy practitioners to devise an acceptable system to log unverifiable time spent in private research, thereby unnecessarily adding to the administrative burden of CPD compliance.

- (4) Simplify the system of reporting: subject to (3) above, we strongly support the simplification of reporting.

- (5) Simplify enforcement of CPD Regulations: we support the simplification of enforcement of the regulations.

Q3. Do you agree that with the more flexible definition of CPD (report para.117) the required number of hours should be increased from 12 to 24 hours per annum?

RESPONSE: No, for the reasons given at (2) above we oppose any increase in the required number of hours; in fact, this proposal will change and improve nothing; all it amounts to is the regulation of private study already undertaken by our members which may undermine the sense of professional trust and responsibility at the Bar.

Q4. Do you think that (if more hours are required) acceptable activities should include private study, relevant professional and personal skills and a wider range of training activities than is currently accepted?

RESPONSE: Yes.

Q5. Do you agree that there should be no compulsory CPD topics for established practitioners, but a balance of activities should be undertaken?

RESPONSE: Yes. 'There should be no one size fits all' topics for CPD; the criminal practitioner is best placed to decide which areas are most relevant and useful to his/her practice.

Q6. Do you agree that the current system of applying for extensions of time should be continued?

RESPONSE: Yes, although there may be some merit in a limited Singapore type 'carry back/carry forward scheme' to reduce waiver/extension applications in appropriate cases.

Q7. Do you agree that there should be no waivers of CPD requirements for barristers who wish to retain their practising certificates?

RESPONSE: Yes.

Q8. Has the system of accreditation of CPD providers and courses by the BSB outlived its usefulness, indicating that it should be replaced by the proposed system of barristers recording their own 'verifiable' and 'non-verifiable' activities?

RESPONSE: No, at present barristers can check which activities are accredited through the BSB and 'verifiable' activities can be monitored in the same way.

Q9. Would a new system based on barrister's *Declaration* on application for the renewal of the practising certificate, together with the retention by the barrister of a *Portfolio* recording CPD activities (for monitoring and sampling purposes) be an effective means of ensuring CPD compliance?

RESPONSE: Yes, subject to 3 above; but we do not accept that the submission of a *Portfolio* is a necessary or effective guarantee of the quality of CPD that is being undertaken.

Q10. Should the New Practitioners Programme be retained substantially in its present form but based on an annual return as opposed to over a three year period?

RESPONSE: Yes.

Q11. Should the Forensic Accounting Course be retained substantially in its present form (but with some improvements to content and delivery)?

RESPONSE: The Forensic Accounting Course is seriously wasted on very junior practitioners undertaking the NPP and if it is felt to be a necessary part of a barrister training it could and should be deferred. However, the rationale for making a special case of accounts analysis rather than medical or some other form of expert analysis has not been made out and there is a strong argument for its abolition. The present course is costly and is not appreciated by the majority of the attendees who see it as irrelevant to their level and/or type of practice. If the course is to remain the provision of the course for free, as looked into by a least one circuit in 2007, should be further seriously explored. There would be many forensic accountants who would be willing to offer the course in this way given the opportunity it would present to market their firm.

Q12. Do you have any other comments on any of the recommendations or the proposed new system as detailed in Chapter XVI of the Report or in the draft Handbook?

RESPONSE: No.

**Patricia Lynch QC**  
**Sophie Shotton**  
**Max Hardy**  
**Monica Stevenson**