

The Lord Chancellor's
Advisory Committee
on Legal Education and Conduct

[TITLE PAGE]

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Membership of the Committee, before and after April 1997, is set out at Appendix A. The policy and recommendations in this report were agreed by the Committee as constituted up to 31 March 1997.

**THE LORD CHANCELLOR'S ADVISORY COMMITTEE ON
LEGAL EDUCATION AND CONDUCT**

**CONTINUING PROFESSIONAL DEVELOPMENT FOR
SOLICITORS AND BARRISTERS:**

A Second Report on Legal Education and Training

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Masculine pronouns are used at certain points in this text, not to refer exclusively to the male gender, but generically, in order to avoid awkwardness of style.

ACKNOWLEDGEMENTS

The Committee wishes to express its appreciation for the assistance it has received from a very large number of individuals and organisations. Contributions have been made in numerous ways.

The *First Report on Legal Education and Training* acknowledged those who were involved in the processes leading up to its publication in April 1996. The Committee's decision to consider further the subject of continuing professional development (CPD) led to the setting up of a Consultative Panel, providing a forum to draw on the views of experts prior to the drafting of a consultative paper. Members of the panel included Ms Fiona Boyle (University of Northumbria), Stephen Broom (Central Law Training), Dr Alexandrina le Clezio (Linklaters & Paine), Ms Sue Eccleston (Law Society), Ms A Halpern (Norton Rose), Nick Lavender (Young Bar), Ms Cathryn Morris (Masons), Keith Northrop (Bar Council), Professor Martin Partington (University of Bristol), Peter Smith (Norton Rose M5 Group), Richard Southwell QC (Bar Council), John Stanford (Inns of Court School of Law), Professor William Twining (University College London), Ms Lucy Winskell and Paul Verlander (Young Solicitors' Group). The consultation paper, issued in July 1996, was the subject of a consultative conference in the following October at which Professor Joanna Shapland, Director of the Institute for the Study of the Legal Profession, University of Sheffield, and Victor Rubino, Executive Director of the Practising Law Institute in New York, were keynote speakers.

The organisations and individuals who submitted written responses to our consultation paper are listed in Appendix B. Other oral and written evidence has been received by the Committee during its normal business meetings. It is not practical to identify everybody concerned. The Committee offers its thanks to them as well as the contributors identified above.

In its work prior to the publication of the *First Report on Legal Education and Training*, the Committee undertook a visiting programme to universities and colleges, firms and chambers, both in the United Kingdom and abroad. Visits abroad included a study visit to New York in November 1995. The Committee wishes to express again its appreciation to the schools of law it visited, and to the New York Legal Aid Society, the office of the Manhattan District Attorney, the Practising Law Institute and the law firms of Winthrop, Stimson, Putnam & Roberts, Davis, Polk & Wardwell, and Skadden, Arps, Slate, Meagher & Flom. The Committee also met for discussion with Dean James P White, Consultant on Legal Education to the American Bar Association, and with Bob MacCrate, Norman Redlich and Professor Curtis Berger who were members of the Task Force which produced the MacCrate Report. The Committee extends its thanks to all who contributed to the study visit. Our understanding of the position of CPD in other jurisdictions has been helped also by the work of Dr Julian Lonbay who provided for us a survey report on the position in the EU member states and in Australia, on which we have drawn extensively in the preparation of Appendix E.

Since the publication of its *First Report*, the Committee has continued to receive extensive additional assistance including a wide range of opportunities for discussion and to observe CPD in practice. For this assistance we wish to thank the Law Society, the Bar Council, the Inns of Court, the Legal Education and Training Group, the Norton Rose M5 Group, Allen and Overy, Eversheds, Herbert Smith, and the College of Law including Legal Network Television.

We also wish to thank the Secretary of the Advisory Committee and his staff for their support and assistance.

EXECUTIVE SUMMARY

1. The report completes the Advisory Committee's review of the education and training of solicitors and barristers. The Committee's *First Report on Legal Education and Training* contains its analysis and recommendations on the initial and vocational stages.
2. Practical experience is a major factor in the professional development of lawyers. But the Committee believes that professional competence is never achieved once and for all so as to preclude the need for further training. In the present report, "continuing professional development" ("CPD") means regular, structured educational activity designed to supplement the practitioner's experience by enhancing any aspect of his professional competence at all the different stages of his career. The ongoing aspect of CPD brings it within the scope of "lifelong learning" as currently supported by Government and the European Union.

The Current Position

3. The Law Society instituted a compulsory scheme of CPD in 1985 and has steadily extended it so that, from November 1998, the scheme will include all solicitors. The General Council of the Bar has no formal scheme for established barristers. In October 1997, the Council intends to bring into operation a scheme of mandatory CPD for barristers in their first three years of fully qualified independent practice.

The Need for CPD

4. The Committee believes that the public interest requires a greater commitment by the legal profession as a whole to adequate levels of CPD as a means of maintaining and enhancing standards of legal services. In the approach to the 21st century, competition will continue to bring about profound changes in the profession including much greater specialisation. Beyond the threshold of initial qualification, lawyers will need CPD not only to equip them for specialisation itself, but also to help them maintain and develop the broader knowledge, skills, ethical understanding, values, and flexibility which they will need, and which specialisation might otherwise erode. Lawyers will also need CPD to acquire knowledge and skills in areas such as information technology, practice management and client relationships. The primary concern must be to safeguard the public interest. But lawyers themselves should equally expect to benefit from the maintenance and enhancement of their knowledge and skills through CPD.

Formal Schemes

5. Some lawyers already undertake more CPD than any formal scheme is likely to require. But the profession as a whole is only beginning to realise the potential benefits of CPD. Some practitioners still feel that initial qualification and subsequent experience are enough to equip them throughout their careers. Others remain unconvinced that the available CPD is sufficiently relevant, affordable, of suitable quality and worth their time away from fee-earning work. Market forces alone will not overcome these real or perceived obstacles to

full acceptance of CPD, chiefly because of the pressure on practitioners to meet the short-term objectives of their current caseload in the interests of their existing clients. **Adequate participation in CPD across the entire profession therefore requires the sustained intervention of the Law Society and the Bar Council. The Committee believes this can be done most effectively through the framework of formal comprehensive schemes organised and centrally administered by the professional bodies.**

6. Formal schemes should secure the participation of a very high proportion of the profession. They should carry the professional body's expectation that every participant should undertake a minimum amount of CPD. A compulsory scheme can require such participation. Under appropriate conditions, similar results can be achieved by voluntary schemes from which the practitioner is at least formally free to opt out.

Advantages of formal schemes

7. The Committee believes that within the framework of a formal scheme, the professional body is best placed:
 - to promote research and to develop and implement effective policies (including policies on common training) to ensure that good quality CPD will be available at reasonable cost across the wide range that the profession requires;
 - to motivate practitioners more effectively by encouraging or requiring them to assess their CPD needs, to plan their CPD on a regular basis and to evaluate the results;
 - to seek the co-operation of firms and chambers in removing any obstacles to the undertaking of sufficient CPD;
 - to accredit providers and to monitor courses effectively so as to ensure at least minimum standards - especially if the scheme is compulsory;
 - to require accredited providers to describe to potential customers with sufficient clarity the aims, content and level of each of the activities they offer;
 - to consider further development of the role of the universities as providers of CPD;
 - by all these means, to encourage a change in attitudes whereby practitioners will seek an appropriate level of CPD, exceeding the requirements of the scheme.

Prescription

8. Both formal and voluntary schemes should state clearly that which will count as CPD for the purposes of compliance. For the first three years of practice, in which CPD needs

remain relatively homogeneous, it may be appropriate to prescribe a greater proportion of subjects. Much greater flexibility is required thereafter to ensure that practitioners are permitted to undertake relevant CPD. **A proper system of appraisal and planning is essential if this flexibility is to be contained within a credible scheme. Professional bodies should also retain power to prescribe matters of exceptional importance. Professional ethics may well be one such matter. This subject should be prescribed for the first three years of practice and, as an interim measure, recommended to established solicitors and barristers in guidance issued by the professional bodies. It would be desirable for the results to be monitored with a view to making the subject compulsory if the guidance is not followed by the generality of practitioners.**

9. **To enhance clarity within a flexible scheme, the professional bodies should also seek to develop statements of the desired outcomes of CPD both for the first three years of practice and also, especially, for CPD in relation to particular stages of the practitioner's subsequent career.**

Compulsion

10. Compulsion is one of the most controversial aspects of formal CPD schemes. Since CPD is directly concerned with the maintenance and enhancement of standards of legal services in the interests of the client and the wider public, the Committee sees no objection in principle to CPD being made compulsory throughout the practitioner's career. Compulsion may also be more effective in the legal profession than a formal voluntary scheme. Compulsion requires not only the practitioner, but also others in a position to influence him, to accept that the practitioner must be permitted to take the necessary time away from fee-earning work.
11. The Committee does not underestimate the potential practical disadvantages of compulsion including resentment, the scramble to fulfil the requirements of the scheme towards the end of the accounting period, the "compliance culture" and the difficulty of choosing and enforcing an appropriate sanction. But the practical advantages of compulsion should outweigh the difficulties so long as the professional body is seen to be effectively addressing the need to ensure that sufficient CPD is available to every practitioner which is relevant, affordable and of good quality. The experience of the Law Society shows that initial resentment can be overcome and that solicitors are anxious to comply with the scheme even though the Society has not yet invoked its ultimate sanction of withdrawal of the right to practice.

The Law Society

12. The forthcoming extension of the Law Society's scheme to all solicitors is another important step forward, demonstrating the Society's continuing commitment and leadership in this field. The Society's response to the Committee's consultation described its active engagement with the remaining problems of concern that some CPD remains insufficiently relevant, over-priced, of variable quality or insufficiently available in some geographical areas; and criticism of the Society's system of accreditation and monitoring of standards.

13. **The Committee believes it may be appropriate for the Law Society to require the practitioner to complete a training plan. As to quality of provision, the Committee would be concerned at any diminution of the effort of the Law Society to establish and maintain acceptable standards through authorisation of course providers and monitoring of courses. The effort to maintain and improve standards by these means is an important aspect of the professional body's responsibility, especially within a compulsory scheme.**

The Bar Council

14. Although the Bar is at a very different stage, the New Practitioners Programme represents an important and welcome step forward. But the Bar should not on that account delay further consideration of a formal scheme for established barristers.
15. In its response to the Committee's consultation, the Bar Council expressed the view that CPD for established barristers is a matter for the individual practitioner and not the profession. The Council referred to reasons why compulsory CPD is either less important or more difficult for the Bar to achieve than others. The Committee's views are as follows:

(1) The nature of the Bar as a referral profession

Although the Bar is a referral profession, competition, scrutiny and accountability are not unique to the Bar. The Committee does not believe that market forces alone can adequately maintain, still less improve, standards of legal services through CPD.

(2) Compulsion is not justified for established barristers because they are fully competent after three years' practice

Professional competence is never achieved once and for all. Moreover, this does not address the option of a formal voluntary scheme.

(3) Working practices

If compulsory CPD is necessary in the public interest, the public is unlikely to be convinced that the self-employment of barristers, the nature of chambers or the ethos of the Bar represent insuperable barriers. The Committee believes the Bar could adapt without undue difficulty to the requirements of a formal scheme of CPD.

(4) Existing educational resources of the Bar

The Bar is able to bear the educational burden of providing CPD. Although a numerically small profession with diverse activities, the Bar's educational resources are impressive. These resources would operate most productively within the framework of a formal scheme.

(5) Cost

Cost is a particular problem for a profession which is numerically small but very diverse in its activities. But the problem of cost is not unique to the Bar. The Committee does not believe that the costs to the practitioner or the professional body of an appropriate and not over elaborate scheme should be prohibitive.

16. **The Bar Council should consider a staged extension of its formal scheme to include established barristers. The arguments for compulsory CPD throughout the barrister's career also merit the Bar Council's further consideration. As a preliminary step, the Bar Council should prepare a general policy statement on the continuing professional development of all practising barristers.**

INTRODUCTION

1. Over the last twenty years, continuing professional development has become an increasingly important area of change for the legal profession. Amongst the professions generally, the Law Society took an early lead, instituting a compulsory scheme in 1985 and subsequently extending it in stages so that, from November 1998, the scheme is to include all solicitors. The Bar Council has not yet set up a formal scheme for established barristers; but there has been significant development of opportunities through the work of the Inns, specialist Bar Associations and the Circuits for barristers to seek further training on their own initiative. In June 1995 the General Council of the Bar took the decision to introduce a scheme of mandatory continuing education for barristers in their first three years of qualified practice. The Bar Council intends to bring the scheme into operation from October 1997 for barristers entering independent practice.
2. The two branches of the profession are therefore at very different stages; but the Bar Council's scheme for new independent practitioners and the extension of the Law Society's scheme to all solicitors are both important steps forward towards the overall aim which this report is intended to promote. Monitoring of the immediate effects of these steps will yield important pointers to the further development of the arrangements for which the Law Society and Bar Council take central responsibility, as well as clarifying the need for short-term adjustments. At this point, the Committee believes it is appropriate to offer its own independent analysis of the major issues.

Purpose and structure of the report

3. This report is intended to encourage the legal profession to accept planned and structured continuing professional development as a natural and positive element throughout the professional life of every practising solicitor and barrister. Chapter 1 of the report defines CPD, discusses its purpose, and explains why CPD should become an important part of the profession's response to the impending demands of the 21st century. Chapter 2 considers first the obstacles currently in the way of the full development of CPD in the legal profession. These include varying degrees of scepticism within the profession about the importance of CPD, as well as practical difficulties including the problems of relevance, cost, quality and time away from work. The Chapter then examines in general terms the importance of intervention by the Law Society and the Bar Council; the advantages of formal, comprehensive schemes of CPD; the arguments for and against making CPD compulsory; and the extent to which it may be desirable and feasible to define or prescribe what should count as CPD for the purposes of a formal scheme.
4. Chapter 3 considers some desirable developments which, in the Committee's view, could more easily be taken forward in the context of a formal scheme of CPD designed to include all practitioners. In the light of the previous chapters, Chapter 4 focuses more narrowly on the current positions of the Law Society and the Bar Council.

Origin of the report

5. In April 1996 the Advisory Committee published its "*First Report on Legal Education and Training*" dealing in detail with the education and training of solicitors and barristers up to the point of initial certification. That Report also indicated the great importance that the Committee attaches to the continuing professional development of solicitors and barristers. The Committee wished to undertake further consultation before issuing this supplementary report.

The Committee's remit

6. Together with the *First Report*, this supplementary report proceeds from the Committee's statutory remit¹ to:
- (a) keep under review the education and training of those who offer to provide legal services;
 - (b) consider the need for continuing education and training for such persons and the form it should take; and
 - (c) consider the steps which professional and other bodies should take to ensure that their members benefit from such continuing education and training.
7. The Committee must "give such advice as it thinks appropriate with a view to ensuring that the education and training of those who offer to provide legal services is relevant to the needs of legal practice and to the efficient delivery of legal services to the public."² These duties extend "to all stages of legal education and training" and to "all those who offer to provide legal services", not only barristers and solicitors. The performance of all these functions falls within the Committee's general duty³ of assisting in the maintenance and development of standards in the education, training and conduct of those offering legal services.

The Committee's work

8. In June 1996, a Consultative Panel was set up to help the Committee in its consideration of CPD. In July the Committee issued a further consultation paper, which was the subject of the Committee's Fifth Consultative Conference in October 1996. A full report of the Conference was published in November 1996. The Committee received 66 responses to its consultation paper. A list of the organisations and individuals who submitted responses appears at Appendix B to this report. A summary of the responses to the consultation paper will be found at Appendix C. Since issuing the consultation paper the Committee has also benefited from a programme of visits supplementing those made by members during

¹ In paragraph 1(1) of Schedule 2 to the Courts and Legal Services Act 1990.

² Schedule 2, paragraph 1(2) (emphasis added).

³ Section 20(1) of the 1990 Act.

the preparation of the *First Report*. These included attendance at in-house residential events conducted by City firms and consortia, moot court activity conducted by the Inns of Court and discussions with numerous providers of training.

Recent developments

9. The introduction to the *First Report* noted the increasing pace of change in legal education, an outline of which is to be found in Appendix C to that Report. The Report took the view that current pressures for change were unlikely to diminish and unlikely to permit any real pause for consolidation and evaluation. Since the publication of the *First Report*, there have been further significant developments. The Bar Council and the Law Society jointly hosted a Discussion Forum in November 1996 on the future of law degrees. Arising from that, the professional bodies approached the law schools for their views on the law curriculum, as a step towards the review of the Joint Announcement on Qualifying Law Degrees which is expected in 1998.
10. In July 1996 the Bar Council authorised a number of institutions in addition to the Inns of Court School of Law to offer the Bar Vocational Course from September 1997. The Law Society's review of the Legal Practice Course concluded in the autumn. The professional bodies subsequently established a joint working party to consider common vocational training. This is a central recommendation of the *First Report*, but one which the professional bodies prefer to consider in the light of the experience that will be gained from BVC being run alongside the LPC in some institutions.
11. During the preparation of this supplementary report, both the Law Society and the Bar Council came forward with significant proposals concerning continuing professional development. The Law Society undertook a consultative review of its Code of Compliance, and has prepared an application to the Lord Chancellor for approval of the revised guidance. The Bar Council applied to the Lord Chancellor for approval of its compulsory scheme for new independent practitioners.⁴

Accredited specialisation

12. This report does not deal with the question of the potential for creating specialisation schemes. The Committee is very much aware of the connection between this important and controversial subject and the wider issues of CPD with which the present report is concerned. The Committee has a specific duty⁵ to consider whether specialisation schemes should be established and to keep existing specialisation schemes under review. The Committee intends to carry out this duty. Where an authorised or representative body introduces new arrangements for specialisation, independently of any existing work of the Committee, the Committee will also wish to consider the CPD implications of any such changes. However, the Committee believes that the question of specialisation schemes should be considered as an issue in its own right; and that it would not be appropriate to treat it as falling within the scope of a general report on CPD.

⁴ A summary of changes affecting continuing education and training since 1971, and a description of the arrangements of the Law Society and the Bar Council as at March 1997 are set out in Appendix D.

⁵ Schedule 2, paragraph 6.

1.

THE NEED FOR CPD

- 1.1 Proposals for systematic CPD in the legal profession now have a considerable and impressive history. In 1971 the Ormrod Committee believed the time had come for the whole problem of continuing training to receive "urgent consideration by all concerned with the future of the legal profession". It envisaged preparation by others of detailed schemes. By October 1979, the Royal Commission on Legal Services chaired by Sir Henry Benson (as he then was) had concluded that:

"The admitted difficulties should not be allowed to obscure the principle that persons practising a profession need to keep abreast of changes and that it is the function of the governing body of a profession to ensure that every member is properly equipped with up-to-date and comprehensive knowledge, both in his own interest and those of his clients and of the profession. This is particularly true in a profession which deals with a complex and rapidly-changing subject matter."

- 1.2 In evidence to the Royal Commission the Law Society had said:

"The Law Society regards continuing education as a most important tool with which to improve the standards and the competence of the profession and to enable it to meet the changing demands of society in the future and sees the provision of a comprehensive system of continuing education as one of its most urgent tasks."

- 1.3 By contrast, the Senate of the Inns of Court and the Bar had written to the Royal Commission saying that:

"The Senate believe that post-qualification education and training is essentially a matter for the practitioner concerned and not one for which a compulsory policy is desirable. It is the intention to make accessible information on the courses which are available."

- 1.4 The Royal Commission took the view that the Senate's statement did not go far enough. It agreed with the view of the Law Society that a comprehensive system should be developed.

- 1.5 In 1988 the Committee on the Future of the Legal Profession chaired by Lady Marre concluded that: "although market forces will affect the success or failure of the practitioner and enlightened self-interest may persuade the sensible practitioner to undergo continued education voluntarily, an additional degree of selective compulsory courses for the older members of the profession would be desirable."

- 1.6 By 1989, the General Council of the Bar had adopted a view different from that expressed by the Senate to the Royal Commission. On 25 January of that year it approved proposals published by the Chairman and Vice-Chairman of the Professional Standards Committee

for:

- "(1) the immediate implementation of an advanced advocacy course for young barristers; and
- (2) the development of courses in substantive law for all members of the Bar; and
- (3) the immediate implementation of a compulsory course on European Community and European Human Rights law and procedure for young members of the Bar (and other members of the Bar at a later date)."

The authors of the proposals had stated that:

"It is in our view no longer acceptable for a specialist profession to make no provision for systematic study:-

- (a) of any fields of law in which practitioners may find themselves without having had any previous opportunity for such study; or
- (b) of more specialised areas of the fields of law in which practitioners find themselves; or
- (c) by way of bringing practitioners up to date with changes in the fields of law in which they practice."

The proposals were based on the view that opposition to compulsory courses in substantive law took insufficient account of what the public was entitled to expect of specialist practitioners, many of whom were remunerated from public funds.

- 1.7 In this period, the Lord Chancellor's views were also repeatedly made clear. The White Paper on Legal Services published in July 1989 stated that "the [advisory] committee will consider what the professional bodies and relevant institutions might need to do to ensure that their members undertake appropriate courses of continuing education, and will offer advice accordingly". The Lord Chancellor further emphasised his view on the need for systematic and relevant continuing education in his speech opening the Bar Conference in 1990.
- 1.8 The more positive approach of the Bar Council was taken further in two reports of a working party on continuing education and training, the first of which was chaired by Mr Justice Potter and the second, jointly by him and Richard Southwell QC. The second of these reports (the "Potter/Southwell" Report) contained specific proposals for a general programme of continuing training which would require a barrister, after his or her first three years in practice, to undertake a sufficient period of further training and education each year.
- 1.9 The response of the Bar Council to our consultation of July 1996 stands in very clear

contrast to the proposals just mentioned. Essentially, the response reverts, with regard to barristers beyond three years of practice, to the position taken by the Senate which was rejected by the Royal Commission eighteen years ago. Chapter 4 of this report considers further the analysis and recommendations of the Potter/Southwell Report for a general programme, and the contrasting position set out in the Bar Council's response to our consultation. Below, we set out our own view on the growing importance of continuing professional development within the legal profession.

CPD in the approach to the 21st century

- 1.10 The Committee's *First Report on Legal Education and Training* took the view that profound changes in legal practice, driven mainly by competition, must be expected to continue and accelerate as the profession approaches the 21st century. New providers will increasingly compete with lawyers for legal work. Lawyers will also have to compete with each other and against non-lawyers for work falling outside the traditional spheres of legal practice. In some types of work, competition is already becoming increasingly global.
- 1.11 Chapter 1 of the *First Report* analysed the pressures that have already emerged for the profession to improve the quality and management of legal services while maintaining and developing its wider role within a modern democratic society. In particular, the view was expressed that the power of both commercial and other institutional purchasers will continue to drive the profession towards ever greater specialisation. In response, education and training up to the point of initial certification will need to provide both greater depth of learning in areas of basic legal knowledge and skills, and a solid grounding in common professional values. The present report maintains the view expressed in the *First Report* that education and training for specialisation should be a function of CPD. But practitioners will need to retain sufficient flexibility to change specialism from time to time and, in the Committee's view, it will also become increasingly important for CPD to mitigate the narrowing effect of specialisation.
- 1.12 The analysis in the *First Report* of the impending changes to legal practice and the challenges they will generate for the legal profession was widely accepted. So far, however that consensus may not have followed through to a clear understanding across the legal profession of the part CPD should play in the response to these challenges.

Definition and Purpose of CPD

Definition

- 1.13 In this report, continuing professional development ("CPD") means regular, structured educational activity designed to supplement the practitioner's experience by enhancing any aspect of his professional competence at all the different stages of his career. CPD in this sense is closely related to practice because it is important that CPD should add, by means of suitably structured activity, an element of reflection designed to clarify and enhance the effect of practical experience.

Purpose of CPD

- 1.14 The Committee's consultation paper on this subject, published in July 1996, adopted the view expressed in the Ormrod Report of 1971 that:

"Legal education should not attempt to equip the lawyer at qualification with a comprehensive knowledge of every subject he may encounter in practice; instead, it should concentrate on providing him with the best possible introduction so as to enable him, with the help of *experience* and *continuing education after qualification*, to become a fully equipped member of the profession."⁶

- 1.15 Initial qualification, which is a compulsory requirement for entry into the profession, seeks to ensure that the new practitioner has the basic, essential knowledge and skills to start in practice. Initial qualification cannot equip him to deal with subsequent developments in the law. It cannot equip him with everything he will need or find useful, such as knowledge of information technology, practice management techniques, and client relationships. Nor can it deal with specialisation or with developments in the broader aspects of legal knowledge and ethics. CPD is aimed at all these areas. Within the continuum of legal education, the purpose of CPD is to maintain and develop standards of legal services by continuing the inculcation and enhancement of the skills and knowledge that, together with experience, make up the competence of the legal practitioner. This aim includes support for the maintenance and development of specialist knowledge and skills. It also includes mitigating the potential negative effects of specialisation by maintaining and enhancing the practitioner's broader outlook, knowledge and skills. The principal beneficiaries of this further training should be the consumers of legal services and the wider public. But, within an increasingly competitive market, the practitioner himself should equally expect to benefit from the maintenance and enhancement of his knowledge and skills through CPD.
- 1.16 Beyond the specific skills and knowledge which are of direct use to the client, the Committee believes that CPD also shares in the wider purposes of liberal education. At the initial stage, this element is secured by the teaching of that stage as a liberal degree. But the wider aspects of the purpose of legal education also remain relevant to the reflective practitioner throughout his career.

Lifelong learning

- 1.17 In the Committee's view, there is no point at which "once and for all" a practitioner can be regarded as no longer in need of CPD. The ongoing aspect of CPD also brings it within the scope of the wider concept of "lifelong learning" as currently promoted by Government and by the European Community.⁷ As the Committee understands it, this concept includes

⁶ *Report of the Committee on Legal Education*, Cmnd. 4595, HMSO 1971 p.94 (emphasis added).

⁷ See: The Official Journal of the European Communities, No C7/6, January 1997 on a strategy for lifelong learning, and *lifetime learning - a policy framework*, published by the Department for Education and Employment, 1996.

personal as well as professional development, and informal as well as formal learning. It also denotes policies designed to enhance competitiveness, combat unemployment, achieve wider participation and stimulate innovation. Such policies can include making funds available for activity aimed at supporting lifelong learning. The popularity of lifelong learning reflects the need for individuals to take responsibility for their own personal and professional development; the emergence of an information society; the development of new knowledge and skills; and changes in the world of work (including reorganisation of working time, new patterns of work-related learning and increased labour-market flexibility). The Law Society has explicitly embraced the concept of lifelong learning as central to its own view of CPD, so that:

"The compulsory scheme is merely one means to the eventual objective of an appreciation of and commitment to lifelong learning".

Conclusion

- 1.18 The potential benefits of CPD are only beginning to be realised by the profession as a whole. Primarily in the interests of the public through the maintenance and improvement of standards of legal services, the profession needs to develop a more positive commitment to CPD, throughout the practitioner's career, as an important part of the profession's response to the challenges of the 21st century.

2.

FORMAL SCHEMES

- 2.1 Some lawyers already undertake more CPD than any formal scheme is likely to require. However, the profession as a whole is unlikely fully to accept CPD until all practitioners have reasonably easy access to courses which are relevant, affordable, of suitable quality, and worth the practitioner's time away from fee-earning work. These conditions will have to be met for lawyers working in a wide diversity of settings, including practices of very different size and means. They will also have to be met across an enormously wide and constantly developing range of knowledge and skills.
- 2.2 Responses to the Committee's consultation confirmed that substantial progress remains to be made with regard to each of these conditions. The Committee believes that there remains in the profession a significant degree of scepticism about the importance of CPD, and that this scepticism itself constitutes an important obstacle to change. To some extent, the scepticism may reflect a continuing reluctance among some lawyers to accept that initial qualification and subsequent experience are not enough to equip the practitioner throughout his career. But it seems likely that in many more cases the practitioner remains as yet unconvinced that the available CPD fulfils the requirements to which we have referred.

The role of the professional body

- 2.3 The aim identified in this report therefore requires a genuine shift in attitudes towards acceptance of CPD as a worthwhile, albeit non-fee earning activity. Bearing in mind the actual conditions under which many lawyers practise, the Committee does not believe that such a change can be brought about across the entire profession by market forces alone. Many barristers and solicitors work under considerable pressure to meet the short-term objectives of their current caseload in the interests of their existing clients. In many instances, pressure may also be applied by others in the practitioner's firm or chambers. Without the countervailing external influence of a centrally organised, formal scheme, many practitioners will not undertake the CPD they need, to the detriment of the public interest in the maintenance of standards. The Committee believes that adequate participation in CPD across the entire profession cannot be achieved without the determined and sustained intervention of the Law Society and the Bar Council.
- 2.4 Market forces call for a further comment. In this context, market forces include growing pressure from, among others, large commercial clients and institutional purchasers such as the Legal Aid Board. For example, the Board has already adopted some of the Law Society's Practice Management Standards as mandatory elements of its own franchise specification. And some clients already look for evidence of similar quality standards when instructing lawyers. From the point of view both of the public and the profession as a whole, it seems to the Committee far better for the professional bodies to set proper and credible standards of their own or, after proper consideration, to endorse certain other appropriate standards, than for the profession to have to acquiesce piecemeal in

requirements imposed by others without at least the mediation and co-operation of their professional bodies.

Characteristics of Formal Schemes

- 2.5 It is important to be clear on what is meant by a formal, comprehensive scheme of CPD. There are several characteristics which the Committee believes are basic to this concept.
- 2.6 First, what the Committee has in mind is a formal set of arrangements organised, and to some extent administered, by the professional body itself. Secondly, an important aspect of the decision whether or not to institute a scheme is the need to ensure actual participation by a very high proportion of the profession. This is the sense in which we refer to a "comprehensive" scheme. Thirdly, a scheme must carry the professional body's expectation that every participant should undertake a minimum amount of CPD activity, and that each participant's achievement of that minimum should be accredited. The minimum expectation may be expressed in terms of hours or in some other acceptable way. Fourthly, a formal scheme must be either voluntary, so that the practitioner is free to opt into or out of the scheme, or compulsory so that its requirements are backed by professional sanctions. A compulsory scheme can require the participation of the entire profession. In appropriate conditions, a very high proportion of practitioners may feel obliged in practice to comply with a formal scheme (such as that of the Royal College of Physicians) which is not formally compulsory.⁸
- 2.7 Fifthly, within either a voluntary or a compulsory scheme, the professional body must define, however widely, that which will count as CPD for the purposes of the scheme. Finally, both voluntary and compulsory schemes also imply some credible form of compliance monitoring.⁹

Advantages of formal schemes

- 2.8 The expectation set up by a scheme is naturally accompanied by an obligation on the professional body to do all it can to ensure that the prescribed minimum hours can be well spent. For this purpose, the professional body has to create an effective relationship with the practitioner, and also with his firm or chambers. The professional body will also need to consider whether to engage in some form of accreditation and monitoring of providers.

⁸ An update to the Continuing Medical Education programme of the Royal Colleges of Physicians of the United Kingdom, published in May 1996, reported that "two clinicians only have written to decline participation".

⁹ It is important to distinguish the idea of a voluntary scheme in the sense just outlined, from the situation in which the professional body has not set up a scheme at all, even though it may be very active in lesser ways of encouraging practitioners to undertake CPD on their own initiative. A summary of compulsory and voluntary schemes operating in a range of other professions is set out in Appendix F.

- 2.9 The decision to institute a formal scheme of CPD therefore involves a significant commitment of financial and other resources. Even a voluntary scheme will impose a burden on the professional body to formulate, promulgate and monitor the formal requirements of the scheme and to accredit or certificate the practitioner's compliance. Some of the requirements may need to be directed to the firm or chambers. Beyond formal guidance, the professional body will also need to provide informal guidance and information. Accreditation of providers and monitoring of the CPD they provide is potentially a very significant burden in itself. Once the scheme is set up, it will need resources for it to be both maintained and, where possible, improved. These costs need to be carefully weighed against the benefits CPD can be expected to bring.
- 2.10 In the Committee's view, the great advantage of a formal scheme is that it creates a framework within which the professional body can most effectively deploy its unique power and discharge its unique responsibility to encourage and motivate practitioners, firms and chambers to seek the benefits of CPD. Within this framework the professional body should be best placed to promote research, and to develop and implement effective policies to ensure that good quality CPD will be available at reasonable cost across the entire necessary range. Such policies may include wider considerations such as the extent to which there should be common training¹⁰ across the branches of the profession, and the extent to which different considerations ought to apply, across the profession, to different stages of a practitioner's career. A formal scheme should also provide a more coherent framework for applying the results of research and development of improved standards of CPD, and better ways of delivering it.¹¹ Further, the existence of a formal scheme should also help the professional body to foster a corresponding acceptance, and expectation, in the firm or chambers, that the practitioner should engage in an optimum level of relevant CPD; and to remove any remaining obstacles in the firm or chambers to the development of that expectation.
- 2.11 A further, important advantage of a formal scheme is the emphasis it can place on motivating the practitioner to seek relevant CPD by encouraging or requiring him to assess his own CPD needs, especially with the help of a colleague; to plan his CPD activity on a regular basis; and to evaluate the results. The Committee has been impressed by examples of this process already in action in some solicitors' firms. Neither in solicitors' firms nor in chambers does the Committee believe that such arrangements should be impossible to administer. It should be possible for appraisal and planning to be monitored as either a voluntary or compulsory element of a formal scheme without creating an excessive bureaucratic burden on firms, chambers or the professional body.¹²

¹⁰ This possibility is discussed in more detail in Chapter 3 of this report.

¹¹ Chapter 3 discusses the potential benefits of an institute, which could be set up for this purpose, under the joint auspices of the Bar Council and the Law Society.

¹² Paragraphs 4.8 and 4.30 of this Report invite the Law Society to take further its existing commitment to this approach by reconsidering its current view that the appraisal and planning process should remain voluntary.

2.12 In the first instance, a scheme of CPD must no doubt be judged by its ability to ensure that the prescribed hours can be well spent. If this is achieved, even if the required hours are modest, the resulting advantages are likely to be more far reaching. The framework required for achieving the more limited aim, and the work carried out within it, should become a powerful means of promoting CPD more widely and encouraging the profession to make full use of it.

Accreditation of providers and monitoring of courses

2.13 In the case of the Law Society's scheme, the majority of those who commented on this aspect in response to our consultation paper recognised the importance of some form of accreditation of providers by the professional body. Many also supported monitoring by the professional body of external provision. Within any formal scheme of CPD for either branch of the legal profession, the Committee believes it is of great importance for the professional body to accredit providers and to monitor courses so as to ensure at least minimum standards. This applies even more strongly in a compulsory scheme, so as to ensure that the practitioner can derive real value from the activity which the scheme compels him to undertake. The Committee believes that accredited providers should be required to describe to potential customers with sufficient clarity the aims, content and level of each of the activities they offer.

Compulsion

2.14 One of the most controversial aspects of formal CPD schemes is the issue of compulsion.

2.15 It should be clear that the question of compulsion only arises once it is accepted:

- (1) that the profession needs to move to a greater commitment to CPD in the sense indicated in this report;
- (2) that such a move is unlikely to come about in a satisfactory way without the committed and sustained intervention of the professional bodies; and
- (3) that this intervention should take the form of a formal scheme in which the undertaking by participants of a minimum amount of CPD, of a sort recognised under the scheme, is formally accredited.

2.16 Paragraphs 1.18 and 2.3 contain the Committee's affirmative conclusions on the first and second of these propositions. On the third, the benefits to be derived from a formal scheme are discussed in paragraphs 2.8 - 2.12. A formal scheme will cost money, but the Committee believes that the costs should be carefully assessed before they are assumed to outweigh the benefits that a formal scheme should bring.

Voluntary and compulsory schemes: the issues

2.17 The principal issues relating directly to the question of compulsion are:

- (1) whether compulsory CPD is objectionable in principle, either inherently, or because of any conditions fundamental to either branch of the profession, or in relation to practitioners who have progressed beyond their initial years of practice;
- (2) whether or not compulsion is likely to achieve more, in the context of the legal profession, than voluntary arrangements including a formal voluntary scheme;
- (3) whether any practical disadvantages, including extra cost, outweigh the likely benefits of compulsion.

We shall consider these three issues in turn.

Whether compulsion is objectionable in principle

2.18 It is certainly arguable that professional bodies are not justified in imposing, under threat of professional sanctions, requirements which are not for the benefit of the client or the wider public. In the Committee's view, however, CPD is a necessary supplement to experience for the purpose of maintaining as well as enhancing the knowledge and skills that make up the practitioner's competence. Moreover, it is a mistake to regard competence as a quality that is acquired once and for all at *any* particular point in the practitioner's career. For this reason, the Committee regards CPD as directly concerned with the maintenance and enhancement of standards of legal services; and therefore sees no objection in principle to CPD being made compulsory throughout the practitioner's career.¹³ We do not see it as a flaw in this argument that competence cannot be compelled. Initial qualifications cannot guarantee competence; but they can certainly enhance the chances of it, and are for that reason made compulsory. In the case of CPD, what can reasonably be compelled in the public interest is a minimum of activity designed to supplement practical experience in maintaining competence as well as enhancing it.

Whether compulsion will achieve more

2.19 Whether a formal voluntary scheme is better suited than a compulsory one to a particular profession, or branch of a profession must largely depend on its particular nature and circumstances. It may be relevant to note, for example, that the structure of the legal profession is very different from that of the medical profession, which has a highly structured system of higher qualifications and exclusive specialisms.¹⁴ Other practical

¹³ This conclusion is plainly contrary to the view expressed in the Bar Council's response to our consultation paper that, beyond the initial years, compulsion cannot be justified. That view is examined in paragraphs 4.10 - 4.26 of this report.

¹⁴ The Ormrod report also noted that important differences flowed from the fact that the medical profession had become, in effect, a "salaried profession". As we have said, for the purposes of this report, we treat the current structure of the legal profession as given. But these differences only emphasize the need for formal CPD in a profession structured as loosely as the legal profession. We also bear in mind that the development of the hierarchy and exclusive specialisms within the medical profession has not prevented its professional

differences include, for example, the access of hospital doctors to the considerable "in-house" facilities of the hospital itself. An important aspect of this question is the attitude of members of the profession to CPD. A compulsory scheme can bring about participation by all practitioners. Paragraph 2.6 above notes that conditions in the medical profession appear to have achieved this result, in large measure, in the case of the formally non-compulsory scheme recently introduced by, for example, the Royal College of Physicians. But given the contrasting attitudes still to be found in the legal profession, and given the structure of this profession, it is at least open to question whether a comparable proportion of barristers and solicitors would subscribe to any purely voluntary scheme calling for a significant commitment to CPD.

- 2.20 There is a further important factor, relating to attitudes within the profession. It must be borne in mind that compulsion requires not only the practitioner himself, but also others in a position to influence him, to accept that he must be permitted to take the necessary time away from his fee-earning work.¹⁵ The Committee believes this to be a major consideration under current conditions in the legal profession even though, like many of the other advantages of compulsion, it might be expected to weaken as the profession moves to a more positive acceptance of the need to devote sufficient time to CPD.

Whether practical disadvantages outweigh the benefits of compulsion

- 2.21 The practical disadvantages relate principally to the difficulty of ensuring that sufficient CPD is available to every practitioner which is relevant, of good quality and affordable. They also relate to his willingness and ability to undertake it. So long as this difficulty is not effectively addressed, the following disadvantages must also be expected to continue:
- (1) resentment;
 - (2) the arguably inevitable scramble to fulfil the requirements of the scheme towards the end of the accounting period;
 - (3) the risk that the compulsory minimum will be perceived as an acceptable maximum;
 - (4) the risk, taking account of all the disadvantages already listed, that compulsion will lead to a "compliance culture" which is completely at variance with the underlying aims of the scheme;

bodies from expecting, in addition, very significant programmes of CPD not necessarily related to the pursuit of higher qualifications. Moreover, in the absence of such a hierarchy, CPD as such becomes even more important as a means of ensuring the maintenance and enhancement of standards, and of maintaining public confidence in those standards.

¹⁵ The Committee recognises that compulsion cannot, by itself, obviate the risk that the practitioner may be prevented from undertaking the particular CPD activity he would prefer.

- (5) the difficulty of choosing and enforcing an appropriate sanction.
- 2.22 It is obviously arguable that these drawbacks risk creating a vicious circle that could well defeat the purpose of the scheme which compulsion is intended to support. In the Committee's view, however, if the professional body takes vigorous steps towards enhancing the availability of relevant, affordable and high quality CPD, compulsion should instead contribute powerfully to a virtuous circle, in which the practitioner becomes motivated, through compliance with the compulsory minimum, to seek the greater amount of relevant CPD which can serve his actual needs. Having been compelled to dip his toe into the water, the practitioner is relieved, perhaps surprised, to find that the experience is agreeable and beneficial. That should be an important underlying objective of all compulsory CPD schemes.
- 2.23 The Committee does not underestimate the potential problem of resentment, bearing in mind particularly the robust individualism of many lawyers. But lawyers also pride themselves on their ability to look at a problem objectively. The Committee believes that this ability will overcome initial resentment, so long as the CPD that practitioners are compelled to undertake is relevant, affordable and worthwhile. Despite initial resentment amongst solicitors, it is notable that the response to the Committee's consultation strongly supported compulsory CPD for solicitors.
- 2.24 The scramble to fulfil requirements towards the end of the accounting period may be difficult to eradicate, but should be significantly diminished by planning, of the sort discussed in Chapter 3 of this report. The risk of a compliance culture should also be avoidable, provided the profession can be convinced that the professional body is working effectively to ensure the success of the scheme and its wider purpose.
- 2.25 Compulsion requires sanctions. Both the Bar's proposed arrangements for new practitioners and the Law Society's scheme ultimately rely on the major sanction of withdrawal of the right to practice. So far, the Law Society has not directly applied that sanction, but its power to do so has formed the background against which practitioners have been urged to comply. Overall, it appears that the vast majority of solicitors within the scheme have proved anxious to comply, whether or not the drastic existing sanction is likely to be applied. It may also be possible to devise lesser sanctions. For example, a practitioner's failure to comply with CPD requirements might be taken into account where sanctions are imposed for other breaches of discipline. In practice, the Committee does not believe that sanctions present a major problem.
- 2.26 In theory, an alternative to compulsion would be the provision of incentives such as, for example, reduction of insurance premiums. The Committee does not believe that such incentives can be an effective substitute for compulsion.

Prescription

- 2.27 Any credible scheme of CPD, whether voluntary or compulsory, must define the activity which will count towards compliance. The public needs to be convinced that the professional body regards the activity undertaken as genuine CPD. Practitioners need to

know that the activity they propose to undertake will count. In a compulsory scheme, the additional principle applies that sanctions can only be attached where those liable to them can establish that which they are compelled to do. A formal scheme should prescribe, viz. state clearly, that which will count as CPD for the purposes of compliance.

- 2.28 At one edge of the spectrum, such a statement could be highly prescriptive, laying down, in detail, the content of that which the practitioner would be expected to learn. At the other extreme, the terms of the statement could be so broad as to include almost any educational activity. In practice, a balance needs to be struck which will permit the practitioner to undertake activity relevant to his practice, while assuring the public that the activity constitutes genuine CPD.
- 2.29 Both professional bodies have recognised that the case for prescription is stronger in relation to the first three years of practice. In effect, this is a period of extended induction in which the CPD needs of practitioners remain relatively homogeneous. Beyond that period, the flexibility which is necessary to cater for the widely differing needs of experienced practitioners must preclude any substantial element of positive prescription. But it would seem desirable for the professional body to retain power to prescribe matters of general and exceptional importance such as ethics and, currently, the law of the European Union. The professional body may also wish to retain power to exclude specific activities which, in its view, ought not to count towards compliance.
- 2.30 Accreditation of providers itself constitutes a limited and indirect degree of control over the range of activities which will count for the purposes of compliance, since the professional body will only accredit providers who, in its judgement, will deliver CPD which is potentially relevant. On the other hand, the Committee accepts that the need for open-endedness and flexibility precludes any requirement that, for example, compliance should be exclusively through attendance at accredited courses.¹⁶
- 2.31 In the Committee's view, the key to achieving the necessary flexibility within a credible scheme is the individual appraisal and planning process already discussed in this report. The credibility of the scheme would be further enhanced if the professional body were able, at random, to examine the appraisal of need, the practitioner's plan and, perhaps, the practitioner's own evaluation of the results of his CPD activity.
- 2.32 Within the range of CPD which counts for the purpose of compliance, it is also open to the professional body to influence the practitioner's choices without actually prescribing the activity. However, beyond simply advertising its view of the importance of particular activities, the experience of the Law Society suggests to the Committee that more formal attempts by the professional body to influence choices can lead to undesirable complexity.

¹⁶ The Law Society requires at least 25% of the compulsory minimum hours to be spent at courses run by accredited providers. Under the Society's current proposals, the remaining 75% may be spent on a range of other activities including courses run by providers not accredited by the Society. The practitioner remains under an obligation to ensure that the CPD activity he undertakes is relevant to his practice.

In particular, the Committee agrees with the Law Society's proposal to delete from its scheme the current provisions whereby a solicitor may gain additional CPD credit for participation in priority areas identified by the Society.

Professional ethics

- 2.33 One particular area in which prescription could meet a real need is that of professional ethics. Chapter 1 of the Committee's *First Report* described the ethical challenge currently facing the profession, as a result of profound organisational changes, increasing competition and instability in the market for legal services, and a growing sense of insecurity amongst many legal practitioners. It must also be borne in mind that developments do occur in this field. Practitioners have to face new and difficult dilemmas. In view of the importance of this subject, the Committee believes that the professional bodies should prescribe CPD in professional ethics as a specific requirement during the first three years of practice. Thereafter, as an initial step, the Committee believes that the professional bodies should issue guidance recommending that practitioners include professional ethics within their CPD activities. It would be desirable for the professional bodies to monitor the results of such guidance. If relatively few practitioners follow the guidance,¹⁷ the professional bodies should consider making CPD in professional ethics compulsory.

Outcomes

- 2.34 In the Committee's view, it would also be helpful if the professional bodies were to consider whether an "outcomes approach" could further enhance flexibility within a credible scheme. In its *First Report*, the Committee explained its preference for such an approach to the requirements of earlier stages of legal education, rather than over-prescription of content. In principle, the Committee believes the same approach may well be desirable for CPD. The first three years of practice represent a recognisable stage, and the Committee believes it would be helpful for the professional bodies to develop outcome statements, viz., statements of what the scheme is seeking to achieve, for this period. This will be in addition to any prescribed detail of the content of the required CPD. The importance of clear statements of outcome increases as the detail of prescribed content diminishes.
- 2.35 Beyond that period, the Committee believes there is considerable scope for research and policy development under the joint auspices of the professional bodies on the questions whether and how CPD could best be tailored to meet the different needs of practitioners at different stages of their careers.¹⁸ Work of this sort could well lead to the formulation of

¹⁷ This has been the experience in the USA, where discrete courses on ethics have not attracted significant enrolments except where they meet prescribed elements of State schemes of continuing legal education. See the MacCrate Report: *Legal Education and Professional Development, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, American Bar Association 1992. A summary of schemes in the USA is set out in Appendix E which also reviews arrangements for CPD in the legal profession in the member States of the European Union and in Australia.

¹⁸ Particular stages beyond the first three years of practice, which might usefully be considered

outcomes which CPD could be designed to help the practitioner achieve at each stage.¹⁹ If the professional bodies were to issue such statements, they could be incorporated into accredited provision and voluntarily adopted by individual practitioners. The Committee believes that such statements could greatly improve the effect of the individual planning process already described, even if the evaluation of outcomes were to remain a matter purely for the practitioner himself, with or without the benefit of an assessment made by the course provider.

- 2.36 In principle, it might be possible to take this approach further. For example, the statements of outcomes could be applied in schemes operated by firms and chambers which would not only assess the needs of each practitioner (especially at particular stages of his career) and ensure that appropriate CPD was planned and undertaken, but would also rely on the provider for an assessment of the outcome in each case. Such a system would depend on very effective quality control of providers by the professional body. Alternatively, the assessment might be made by the firm or chambers itself. The obvious difficulties of this approach need to be considered further; and the Committee believes it would be premature, at this stage, to recommend this additional step.

Conclusions and Recommendations

- 2.37 If the legal profession is to realise the full benefits of CPD, there needs to be determined and sustained intervention by the professional bodies, preferably through formal comprehensive schemes which should provide a powerful framework for promoting research and development as well as motivating practitioners to meet and exceed the requirements of the schemes. Formal schemes should provide for individual appraisal of CPD needs, planning and record-keeping; and for random monitoring of compliance with these provisions. The professional bodies should accredit and monitor CPD provision as effectively as possible to improve the supply of relevant, affordable and worthwhile CPD and to help maintain and improve standards. The financial and administrative costs of formal schemes are substantial, but should not be prohibitive in either branch of the profession.
- 2.38 At this stage, compulsory schemes may be more suitable to the needs of the legal profession than voluntary schemes. In principle, compulsion is justified because of the public interest in the maintenance and improvement of standards of legal services. The

from the point of view of possible outcome statements are, for example, return to practice after an extended absence, or the points at which a barrister first becomes authorised by his Inn as a pupil master, or takes Silk, or undertakes responsibility as a member of the chambers committee, or as head of chambers. A wider range of stages may need to be researched in the case of the solicitors' branch of the profession.

¹⁹ The Law Society has commissioned a research study on CPD and senior solicitors. Research at the Bar by Professor Joanna Shapland et al has considered continuing education for the young Bar. Generally, there is not an extensive body of published research on CPD in the legal profession in England and Wales.

professional bodies can help to overcome the practical difficulties, including potential resentment, by demonstrating sufficient commitment to improving the supply of good quality, affordable CPD for all practitioners.

- 2.39 The scope of formal schemes needs to be defined sufficiently to enable the practitioner to undertake relevant activity while assuring the public that the activity constitutes genuine CPD. For the first three years of practice there is relatively greater scope for prescription of content, since the needs of practitioners remain relatively homogeneous. For established practitioners, it is desirable for the professional body to retain power to prescribe matters of general and exceptional importance. The professional body may also wish to retain power to exclude specific activities which, in its view, ought not to count towards compliance. CPD in professional ethics should be compulsory during the first three years of practice. Thereafter, as an interim measure, the professional bodies should recommend that established practitioners include professional ethics in their CPD activities. If relatively few practitioners follow such guidance, the professional bodies should consider making CPD in professional ethics compulsory.
- 2.40 For lawyers in their first three years of practice, the professional bodies should develop outcome statements for CPD in addition to any prescribed detail of the content of the required CPD. The professional bodies should also consider work towards the formulation of outcomes which CPD could be designed to help the practitioner achieve at each stage of his career, even if the evaluation of these outcomes were to remain a matter for the practitioner himself.

3.

FURTHER DEVELOPMENT

- 3.1 This Chapter considers some desirable developments which, in the Committee's view, could more easily be taken forward by the professional bodies and others in the context of a formal scheme of CPD.

Common education and training

- 3.2 Chapter 5 of our *First Report on Legal Education and Training* sets out the Committee's views on the importance of common education and training at the initial and vocational stages. The Committee set out four distinct advantages of common education:

- (1) Students would not be forced to make premature career choices between different branches of the profession;
- (2) It might assist in making savings in the cost of legal education and training because there is an undoubted area of overlap between the knowledge and skills required for different branches;
- (3) It would improve mutual understanding between the different branches, implying a better working relationship and service to the client;
- (4) It would help to develop those common ethical and professional standards needed in increasingly diverse legal professions.

- 3.3 All but the first of these advantages seem to the Committee to be as relevant to CPD as to the earlier stages of legal education; and they would remain so whether or not our proposals on the earlier stages come to fruition. It seems equally clear that some of the reservations within the professional bodies about the role of common education before the point of initial certification relate to competition for space in the curriculum and concern to avoid dilution at the earliest stage of professional formation. These reservations do not apply to CPD.

- 3.4 The advantages and importance of common education and training are becoming increasingly widely accepted. To the extent that solicitors and barristers are participating in the same CPD activities, some of these benefits are already being realised. But there is considerable scope for the professional bodies to explore their further development.

- 3.5 At the vocational stage, mutual understanding between intending barristers and solicitors, and the development of common ethical and professional standards can only be begun. They can surely be developed far more concretely with increased experience of practice.

- 3.6 The Committee believes that exploration of the potential for common CPD could be an important aspect of the work of the new Institute of Professional Legal Studies proposed

below to be set up under the auspices of the Law Society and the Bar Council. This work could also include consideration of the scope for joint training of lawyers with other professionals who work within the legal system.

Further research and development of CPD: A new Institute of Professional Legal Studies

- 3.7 In relation to several organisational and substantive aspects of CPD, this report has suggested that there is scope and a need for further consideration. Much of the responsibility for this must ultimately rest with the professional bodies. But the Committee believes that a great deal could be done, under the joint auspices of the Law Society and the Bar Council, by a small central body whose primary function would be research and development on all aspects of CPD, and which would feed the results of its work back into the profession both directly and, where appropriate, through the professional bodies and their formal schemes.
- 3.8 Several of the responses to our consultation paper on CPD supported the idea of a new Institute, although not all of these emphasised the same aspects of its possible role. The Committee envisages that the new Institute could concentrate on tasks generated by the need to ensure a sufficient supply of CPD at standards appropriate to meet the requirements of the professional bodies' formal schemes. For example, the professional bodies could apply the work of the new Institute in developing and formulating such standards to the accreditation and monitoring of providers. Such work could also include the formulation of outcome statements for CPD at the various stages of the practitioner's career.
- 3.9 With the new Institute's main tasks so clearly focused on the needs of the formal schemes of CPD, some degree of overlap between the new Institute and existing bodies such as the Institute of Advanced Legal Studies and the new National Centre for Legal Education at the University of Warwick could well prove beneficial. The Committee does not envisage that the proposed new Institute would itself need to become a provider of CPD in order to fulfil its main functions. However, the new Institute would need to work closely with the professional bodies and with groups of practitioners and providers to identify areas for research and to help to develop (and if possible to pilot) innovative approaches to CPD. It would also be for the professional bodies to consider whether the new Institute should play any direct part in the accreditation of providers and the approval and monitoring of courses. In the Committee's view, it would be important for the functions of the Institute to remain well-focused and not over-elaborate; and for it to avoid unnecessary expense.

The universities as providers of CPD

- 3.10 Some practitioners already undertake, as part of their continuing professional development, post-graduate courses relevant to their needs. Some universities have also begun to explore ways of adapting their courses to cater for increasing demand for courses better adapted to the needs of practitioners.²⁰ The Committee's *First Report* adopted an

²⁰ Existing provision includes, for example, the long-established and extensive LLM programmes offered by the University of London, as well as other postgraduate courses

integrated approach to legal education, in which academic and professional viewpoints are seen as complementary and interdependent. The Committee believes that the universities could make a much more significant contribution to the needs of the profession by adapting and developing courses which would enable practitioners to meet and to exceed the requirements of the professional bodies' formal schemes. This contribution would complement that of long-established specialist providers such as the College of Law and the Inns of Court School of Law. It would be for the professional bodies to consider whether the new Institute proposed in this report could usefully facilitate co-operation between the universities and the professional bodies to further this development.

Conclusions and Recommendations

- 3.11 Formal schemes of CPD should enable the profession to realise the practical and wider benefits of common training at the CPD level across the two branches of the profession.
- 3.12 The Law Society and the Bar Council should consider setting up a new Institute of Professional Legal Studies to carry out research and development on all aspects of CPD and, in particular, to help develop standards for CPD provision and outcome statements for CPD at the various stages of a practitioner's career.
- 3.13 The universities should consider further how best to adapt the content and organisation of their courses to meet the needs of the practising profession.

requiring full-time or part-time evening attendance. In addition, the LLM in Advanced Litigation at Nottingham School of Law and the LLM at the University of Bristol have frequently been cited as courses which combine the use of weekends for teaching with distance learning and, in the latter case, with the accumulation of certificated credits towards the final masters' degree.

4.

THE PRESENT ARRANGEMENTS OF THE LAW SOCIETY AND THE BAR COUNCIL

- 4.1 This Chapter considers the current positions of the Law Society and the Bar Council as reflected in their existing and proposed arrangements for CPD and also in their response to our consultation.

The Law Society

Staged extensions

- 4.2 The Law Society's current arrangements demonstrate a clear and positive approach to the need for CPD and for active and sustained intervention by the professional body to promote greater commitment to CPD within the profession. The Law Society's current arrangements also demonstrate continued commitment to the maintenance and improvement over time of a comprehensive scheme, despite its practical difficulties and its cost. When it began in 1985, the scheme applied only to new solicitors, and only to their first three years of practice. In 1987 the Society extended it to cover all solicitors admitted after 1st August 1987, and to the whole working life of the practitioner. In 1994 the Society further extended the scheme to include all solicitors admitted from 1st November 1982. In November 1998, the Society intends to take the further significant step of extending its scheme to all solicitors.
- 4.3 Finally, the Society's current arrangements also reflect its continued commitment to compulsory CPD throughout the practitioner's career. This demonstrates the Society's continued belief that compulsion is justified under current conditions, that the practical benefits of compulsion outweigh its disadvantages, and that these disadvantages can be effectively addressed. On this question, the responses to the Committee's consultation were striking in that, despite clearly recognising all these problems, they overwhelmingly supported compulsory CPD for solicitors.
- 4.4 In the Committee's view, an important test of the success of a compulsory scheme must be the extent to which it motivates practitioners to exceed the compulsory minimum. In turn, we believe this must largely depend on the professional body's continued progress towards ensuring the availability of appropriate CPD and the ability of the practitioner to identify and undertake it. The very justification for a compulsory scheme therefore remains dependent on such continued progress. In this connection, the Committee acknowledges the considerable effort continuously maintained by the Law Society. Particular recent examples include the increased flexibility and simplicity of the scheme under the Society's current proposals, including the specification of new categories of CPD designed to accommodate the needs of senior practitioners to whom the scheme will apply from November 1998.

Some problem areas

- 4.5 Nevertheless, and as one would expect, problems undoubtedly remain. The responses to the Committee's consultation confirmed continuing concern that some CPD remains insufficiently relevant, overpriced, of variable quality, or insufficiently available in some geographical areas. There was also criticism of the system of accreditation and monitoring of standards.
- 4.6 The Law Society's response to our consultation paper offered detailed thoughts on all these issues. As to relevance, the Law Society emphasised flexibility and the importance of personal training plans rather than prescription; and that course providers should make clear the aims and objectives of their courses. On affordability, the Society pointed out that it cannot control fees, but pointed also to its encouragement of in-house courses, its accreditation of courses run at modest cost by special interest groups and local Law Societies; and its development of a training guide for local Law Societies. On geographical inequality of access, the Law Society referred to its encouragement of in-house provision and consortia; its approval, for their use, of videos and associated material and its flexibility in considering distance learning courses.
- 4.7 On quality and the monitoring and accreditation of CPD provision, the Law Society pointed to recent changes to its system for authorising course providers including the adoption of new course quality standards. The Society also mentioned the results of surveys it had carried out on the standards of courses in which the respondents had showed "a broad level of satisfaction". The Society's response acknowledged that there is support for the Society to continue the authorisation of course providers; but warned that the Society "is keeping this under review as it would not be appropriate for this to become an overburdensome procedure given the costs that would inevitably be incurred. There is a balance between establishing a minimum threshold which providers must satisfy and leaving the matter to the market".

Compulsory planning

- 4.8 In general, the Committee agrees with the Law Society's emphasis on flexibility and individual planning as opposed to prescription. With regard to planning, the Committee agrees that it is important for the practitioner to analyse his training needs, to plan appropriate CPD to meet those needs, and to evaluate the activity after it has been undertaken. The Law Society's scheme already requires the practitioner to maintain a training record. The Committee believes it may also be appropriate for the Law Society to require the practitioner to complete a training plan.²¹ In principle, such a requirement would not seem more difficult to monitor, or necessarily to entail any more bureaucracy than the requirement to maintain a training record. It should not be necessary for all such training plans to be submitted to the Law Society, or for their format to be prescribed, any more than that of the training record.

²¹ The Legal Aid Board's franchise specification already makes appraisal and planning compulsory.

Improving quality control

- 4.9 As to quality, the Committee would be concerned at any diminution of the effort of the Law Society to maintain acceptable standards through authorisation of course providers and monitoring of courses. The Committee believes that the effort to maintain and improve standards by these means is an important aspect of the professional body's responsibility, especially within a compulsory scheme.

The Bar Council

- 4.10 The preface to the Bar Council's response to our consultation explains that the response reflects "the on-going and evolving debate within the Bar on continuing professional development"; and that "the Bar's thinking on many important issues is still evolving". The Committee welcomes this acknowledgement and hopes that the present report will be a helpful contribution to that debate.
- 4.11 The Bar Council's response emphasised certain features of the Bar and its working practices from which it is suggested that CPD, in the sense indicated in this report, is either less important for the Bar than for other professions, or more difficult for the Bar to achieve. The Committee has carefully considered these factors and the underlying reasoning. The Committee recognises the difficulties and does not seek to minimise them. Nevertheless, the Committee believes they can be overcome and hopes the Bar Council will reconsider its current views on the need for a formal scheme of CPD for established barristers. The Committee also believes that the arguments for compulsory CPD throughout the barrister's career merit the Bar Council's further consideration.

A referral profession

- 4.12 The Bar Council's response to our consultation emphasised that the independent Bar remains largely a "referral profession"; and that the work of an independent barrister is:
- "scrutinised by an independent professional, whether by the judge in front of whom the barrister appears or the instructing solicitor or other professional accessor whom the barrister advises either orally in Conference or in a written Opinion. Barristers are also on public display to the members of the Bar against whom they appear and to the solicitors who instruct them as well those opposing parties. The solicitor or other professional has the opportunity in every piece of work to compare the performance of the particular barrister with the quality of performance of other barristers who may instruct. The Bar is therefore a highly competitive profession. The nature of the practice of a barrister itself stimulates the individual barristers to ensure that they maintain an appropriate standard of knowledge in the areas of their practice and a competent performance standard commensurate with their practice level."
- 4.13 The Committee does not find the conclusion convincing. Competition, scrutiny and accountability are by no means unique to the Bar. They are becoming ever more intense in

other professions which are currently adopting comprehensive schemes of CPD. For the reasons given earlier in this report,²² the Committee does not believe that market forces alone can adequately maintain, still less improve, standards of legal services through CPD.

The need for systematic CPD

- 4.14 In addition to the features discussed above, the Bar Council's response to our consultation stressed the distinction between the first three years of practice and the practitioner's subsequent career. Compulsion is justified only in order to guarantee competence, a barrister is fully competent after three years' practice, and compulsion cannot be justified thereafter. After the initial years of practice, CPD becomes a matter for the practitioner alone, and ceases to be a matter for the profession. This line of reasoning is coupled with an emphasis on CPD as "part of the daily routine of every barrister".
- 4.15 This approach stands in sharp contrast to the conclusions and proposals of the Potter/Southwell Report for a general programme of compulsory continuing training for established barristers. The Report specifically rejected the view that further training and education throughout the barrister's career is not necessary because "every barrister educates himself or herself every day while in practice". The Report pointed out the training that some chambers are already beginning to undertake; that the growth of specialisation in other professions "has not been entirely matched by the Bar"; that responses within the Bar to successive reports on the subject have become more positive; and to the fact that:

"EC law has remained largely the province of specialist EC practitioners, instead of becoming, as it should be, part of the armoury of every practising barrister".

The Report recommended that:

"Every barrister, after his or her first three years in practice, should be required to undertake a sufficient period of further training and education each year. Successful members of other professions expect to spend at least one week a year on continuing training. We consider that the Bar should aim for at least this level, ie about 25 hours each year. We consider that it should be a professional requirement for each barrister to devote this length of time to planned training and education. Each barrister would prepare his or her own plan. Each barrister would be free to choose from the courses, seminars and lectures available and recognised by the Bar as of an acceptably high standard. The [Director of Education and Training] would have the task of approving and monitoring courses. ..."

- 4.16 The Committee is not persuaded by the reasoning of the Bar Council's response as set out in paragraph 4.14 above. The Bar Council's response pays insufficient regard to the need for CPD in the sense indicated in this report - and, in particular, to the practitioner's continuing need to supplement his experience with an appropriate amount of structured

²² Paragraph 2.3.

activity. Secondly, the Bar Council's response misses the point that the established practitioner's need for CPD concerns the maintenance, as well as the enhancement, of professional standards, primarily for the benefit of the client and the wider public. In this connection, we have explained our view that competence is never attained "once and for all" at any particular point.

- 4.17 Thirdly, the Bar's response does not address the option of a comprehensive voluntary scheme. Fourthly, neither in this argument, nor more generally, does the Bar Council's response address the point that a properly administered compulsory scheme can help to encourage the practitioner to exceed the compulsory minimum.

Working practices

- 4.18 The Bar Council's response to our consultation pointed out that, within chambers, barristers remain self-employed. The response described a set of chambers as:

"Essentially a collection of individuals who come together to share administrative resources and administration expenses. Despite the fact that typically there will be a mix of senior and junior barristers, the hierarchical working structure of a large firm of solicitors or accountants is not reflected in a set of chambers and would be counter to the ethos of the Bar."

- 4.19 By contrast, the Potter/Southwell Report did not suggest that any insuperable difficulty should flow from the self-employment of barristers, the nature of chambers or the ethos of the Bar. In general terms it concluded that:

"Systematic continuing training and education will enable barristers to plan and develop their careers more successfully, as well as to meet current perceptions of the standards generally to be expected of the profession."

Evidently, the Working Party saw nothing in the working practices or ethos of the Bar that should conflict with its specific proposals that:

"Barristers will be required to keep, with their practice records, details of their plans for continuing training and how and when those plans had been fulfilled. It is anticipated that spot checks, on a proportion of the Bar, would be made each year to ensure that the recommended commitment has been met. This would encourage barristers to meet their commitments and would assist the [Director of Continuing Education and Training for the Bar] in deciding what courses will be needed."

- 4.20 In the Committee's view, the prior questions must be whether systematic and, perhaps, compulsory CPD is necessary for established barristers. If it is necessary, the public is unlikely to be convinced that the self-employment of barristers, the nature of chambers, or the ethos of the Bar represent insuperable barriers. Despite these features, the Bar needs, like other professions, to show that it can require its members to accept measures which are necessary to maintain and improve standards of service to the public. Once the case for systematic CPD has been made out in these terms, the Committee believes that the

maintenance and improvement of standards in the public interest must be an overriding consideration.

- 4.21 The Committee also believes that, in practice, the requirements of a scheme could be accommodated without damage to the working practices or ethos of the Bar. Many chambers have already begun to adapt to the changing demands of modern practice. The Committee believes that chambers can reasonably be expected, for example, to run schemes in which each tenant can assess his CPD needs with the help of a colleague and plan the appropriate CPD activity. Nor should it be difficult for heads of chambers to certify the compliance of each tenant with a comprehensive scheme administered centrally by the Bar Council.²³

Educational resources

- 4.22 The Committee recognises that the size of the Bar must affect its approach to the burdens of systematic and compulsory CPD. The Bar is a relatively small profession. Of around 9,000 barristers in independent practice, approximately 6,000 practise from chambers in London and 3,000 from chambers in the provinces.²⁴ Although numerically small, the Bar covers a diverse range of specialised law and practice in addition to its speciality in advocacy. The Potter/Southwell Report took a positive view of the Bar's ability to shoulder the burdens of CPD. It pointed to several resources within the Bar, including chambers themselves, as well as the Inns, the many specialist Bar Associations and the Circuits, from whom the Working Party had received positive responses to its own consultation on CPD. The Bar Council's response to our consultation also recognised these extensive existing educational resources, rightly stressing, especially, the educational role of the Inns. Annexed to Appendix C to this report is the response of Gray's Inn to our consultation, which sets out in a most helpful way the considerable contribution which the Inns believe they can and should make to continuing professional development.
- 4.23 The educational resources of the Bar are impressive. In the Committee's view, they would be most productive once operating within the framework of a formal, comprehensive scheme for which the Bar Council had taken overall responsibility.

The financial burden

- 4.24 In relation to the cost of CPD, the Bar Council noted that the Bar is a small profession and that:

"In the case of independent practitioners, the cost of CPD must be met by the individual barristers themselves: there is no communal profit fund from which the cost to new practitioners can be subsidised. The cost of CPD for solicitors is often

²³ The Committee notes that proposals are on foot for heads of chambers to bear some comparable responsibility regarding monitoring of pupillages.

²⁴ Appendix G sets out further selected statistics on the profession.

met by their firms, which enables the costs to be borne by those who generate the profits for the advantage of the others. The structure of the Bar does not permit this."

The response added that:

"It must be stressed that administrative costs are seen as a central issue in the Bar's approach to continuing professional development. One key priority is the provision of high quality and relevant courses at minimal to low cost to the attendee. The burden of debt on students is increasing at an alarming rate and the first three years in practice will be the first opportunity for most of them to begin to repay their loans.

As far as central costs are concerned, it must be noted that, while the mandatory scheme as presently envisaged is manageable because at its peak the Bar Council will be processing the records of over 1500 new practitioners, any extension of a scheme beyond the first three years of practice would place a heavy load upon the Bar Council's administrative structure and financial resources."

- 4.25 The cost of systematic CPD was also considered by the Potter/Southwell Report which recommended that the costs of participating in the Young Tenants and General Programmes must be paid by the participants. However, differing from the subsequent view of the Bar Council, the Report anticipated that, as part of their commitment to continuing training, individual sets of chambers would provide financial assistance to their members, particularly to their Young Tenant Members, so as to enable them to bear the cost of continuing training more easily. On the Report's proposals, "it would be one of the Director of Continuing Education and Training's tasks to ensure that the Programmes were cost-effective and that, by competition between providers, costs were kept as low as practicable."
- 4.26 The Committee recognises that cost is a particular problem for a profession which is numerically small but very diverse in its activities. But cost should not be permitted to become an easy place of refuge. The problem of cost is not unique to the Bar. There are many firms of solicitors for whom the costs of compliance with the Law Society's scheme are very significant. Within any comprehensive scheme, an important part of the professional body's task must be continuously to explore ways of ensuring the availability of relevant, good quality CPD at reasonable cost. Nor should the central costs of a scheme for established barristers be prohibitive if the Bar Council were to set the requirements of the scheme with these costs in mind. For example, the central costs of compliance monitoring might well be less if heads of chambers were to certify compliance than if all records had to be kept centrally. And an appropriate scheme for established barristers would not necessarily generate costs corresponding to all the elements of the highly prescriptive New Practitioners Programme.

Sanctions

- 4.27 Paragraph 2.25 of this report sets out the Committee's view on sanctions within a

compulsory scheme. The Committee sees no reason why barristers should be any less anxious than solicitors to comply with a scheme under which non-compliance could ultimately result in withdrawal of the right to practice. The Potter/Southwell Report noted that the Institute of Chartered Accountants is empowered to withdraw the right to practice from accountants who do not comply with their continuing training obligations and that, in the medical profession, financial sanctions are used. The Bar Council may also wish to consider the suggestion in Chapter 2 of this report that non-compliance with CPD requirements might be considered relevant in disciplinary proceedings for other offences. As in the case of the Law Society, the Committee does not believe that the need for sanctions represents an insuperable obstacle to compulsory CPD for established barristers.

A formal scheme for established barristers

- 4.28 For the reasons discussed above, the Committee believes that the Bar Council should consider a staged extension of its formal scheme to include established barristers. As in the case of the Law Society's scheme, a formal scheme for established barristers should not closely prescribe content. However, the Bar Council should consider developing appropriate outcome statements for CPD at various stages of the barrister's career, and should retain power to prescribe, for example, ethics and perhaps other areas where it may become important for the profession as a whole to familiarise itself with new developments.
- 4.29 A formal scheme should involve proper assessment of the CPD needs of each practitioner and planning of his CPD activity. This process would be enhanced by the use of outcome statements, even if the evaluation of the outcomes in each case were to remain a matter purely for the barrister himself. As a preliminary step, the Bar Council could most helpfully, in the Committee's view, prepare and issue a general policy statement on the continuing professional development of all practising barristers. It would be of great benefit to practitioners if such a statement were to set out clearly, perhaps in the form of targets, the Bar Council's expectations concerning their continuing professional development.

Conclusions and Recommendations

- 4.30 The Law Society's compulsory scheme has already brought real and substantial benefits to the solicitors' branch of the profession. The Law Society appears very much committed to further progress. The Committee believes it is important that the Law Society should continue its efforts to overcome the remaining problems and that this effort should include effective monitoring of CPD provision as well as accreditation of providers. The Committee also invites the Law Society to reconsider the case for making individual appraisal and planning compulsory.
- 4.31 The Committee invites the Bar Council to reconsider its current views on the need for a formal scheme of CPD for established barristers. The arguments for compulsory CPD throughout the barrister's career also merit the Bar Council's further consideration. Neither the working practices nor the ethos of the Bar nor the cost to the practitioner or to the professional body itself should present insuperable difficulties once it is accepted that systematic CPD for established barristers would be in the public interest. The maintenance

and improvement of standards through CPD cannot be left to market forces alone, even in the case of a referral profession.

- 4.32 The Committee is not persuaded that CPD after the initial years of practice becomes a matter for the practitioner alone and ceases to be a matter for the profession. The public interest in the maintenance and improvement of standards of legal services requires active and sustained intervention by the professional body to ensure the profession's progress towards adequate CPD. For these reasons, the Committee believes that the Bar Council should consider a staged extension of its formal scheme to include established barristers. To assist in that consideration, the Committee believes that the Bar Council should establish a timetable within which the New Practitioners' Programme could be evaluated. As a preliminary step, the Bar Council should prepare and issue a general policy statement on the continuing professional development of all practising barristers.

**THE LORD CHANCELLOR'S ADVISORY COMMITTEE ON
LEGAL EDUCATION AND CONDUCT (1991-1997)**

Membership

1. The members of the Advisory Committee are appointed under section 19 of the Courts and Legal Services Act 1990, which came into force on 1 April 1991. The Act provides that the Committee's Chairman must be a Lord of Appeal in Ordinary or a judge of the Supreme Court, and that the rest of the members must include: a judge who is or has been a Circuit judge; two practising barristers; two practising solicitors; and two people with experience in the teaching of law. In appointing the remaining 9 members, who are not to be lawyers, the Lord Chancellor is to have regard to the desirability of appointing people with knowledge or experience of:
 - the provision of legal services;
 - civil or criminal proceedings and the working of the courts;
 - the maintenance of professional standards among barristers or solicitors;
 - social conditions;
 - consumer affairs;
 - commercial affairs; or
 - the maintenance of professional standards in professions other than the legal profession.
2. The membership of the Committee up to April 1996 was set out in the *First Report on Legal Education and Training*.
3. The Chairman of the Committee is the Right Honourable the Lord Nicholls of Birkenhead, who was appointed from 1 May 1996. From April 1996 Professor Peter Scott became Vice-Chairman.
4. The membership of the Committee in March 1997 was:

The Right Honourable The Lord Nicholls of Birkenhead (Chairman)	Lord of Appeal in Ordinary
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Professor Peter Scott (Vice-Chair)	Pro-Vice-Chancellor and Professor of Education, University of Leeds; Vice-Chancellor Designate of Kingston University
Lee Bridges	Principal Research Fellow, University of Warwick
Professor Richard Card	Head of School of Law and Professor of Law, De Montfort University, Leicester
His Honour Judge Jeremy Connor	Appointed as a Circuit Judge in March 1996; Metropolitan Stipendiary Magistrate since 1971; served on the Judicial Studies Board 1990-94; a member of the Executive Committee of the Central Council of Probation for England and Wales 1982-89
Eric Hammond OBE	Member of the Employment Appeal Tribunal; General Secretary, Electrical, Electronic, Telecommunication and Plumbing Union, 1984- 92
Professor Bob Hepple QC	Master of Clare College, and Professor of Law in the University of Cambridge
Dr Neville Hunnings	Editor, Common Market Law Reports, 1964-94. Author of several books and contributor to many journals on European law
Ian McNeil JP	Chartered Accountant in practice. President of Institute of Chartered Accountants, 1991-92; magistrate and former Chairman, Hove bench
Charles Plant	Solicitor, Partner with City of London Solicitors Herbert Smith
Usha Prashar CBE	Civil Service Commissioner; Director, National Council for Voluntary Organisations, 1986-91
Nicholas Purnell QC	Barrister; Chairman of the Criminal Bar Association, 1990-91
Graham Smith CBE	Her Majesty's Chief Inspector of Probation
David Steel QC	Barrister, called (Inner Temple) 1966. Head of Chambers, 4 Essex Court, QC 1981. Chairman

Commercial Bar Association 1989-91

David Ward

Solicitor; President of the Law Society 1989-90

David Wilkins

Educational Consultant; former Chief Inspector of Schools, Nottingham.

5. The late Mary Tuck CBE was a member of the Committee from April 1994 until her sad death in October 1996. Mary Tuck had served as the Head of Home Office Research and Planning Unit 1984-90; a former National Chair, Victim Support; a member of the Parole Board.
6. On 1 April 1997 the Committee's membership changed with seven members being newly appointed for three years (and with one vacancy remaining to be filled). The membership of the Committee in April 1997 was:

The Right Honourable
The Lord Nicholls
of Birkenhead
(Chairman)

Professor Peter Scott
(Vice-Chairman)

Lee Bridges

Lady Brittan

Deputy Chairman, Human Fertilisation and Embryology Authority. Deputy Chairman, Equal Opportunities Commission 1994-1996. Magistrate and Deputy Chairman of the City of London Bench

His Honour
Judge Jeremy Connor

Charles Elly

Solicitor, admitted to the roll 1966. Former President of the Law Society. Recorder

Professor Bob Hepple QC

Dr Neville Hunnings

Dr John Mayberry

Consultant physician, Leicester General Hospital NHS Trust. Extensive experience in promoting medical service standards and health education

Ian McNeil JP

Anne Owers	Director, JUSTICE. Chair, Trustees of Refugee Legal Centre. General Secretary, Joint Council for the Welfare of Immigrants 1986-1992
Charles Plant	
Professor Avrom Sherr	Woolf Professor of Legal Education, Institute of Advanced Legal Studies. Extensive research into legal education and the provision of legal services
Ranjit Sondhi	Senior Lecturer, Westhill College. Founder Director, Asian Resource Centre, Birmingham. Former Deputy Chairman, Commission for Racial Equality
David Steel QC	
Rosemary Thomson	Previously Chairman, Council of the Magistrates' Association. Extensive experience of work in the criminal justice system and the magistracy.

Secretariat

7. Members of the Committee's secretariat on 1 April 1997 were:

Mr I T Zackon	(Secretary)
Ms H B De Lyon	
Mr R L Jones	
Ms E M Welfare	
Ms S Weight	
Ms J Patterson	
Miss L Gray	
Ms H S Patel	

**LIST OF RESPONDENTS TO THE CONSULTATION PAPER ON
CONTINUING PROFESSIONAL DEVELOPMENT**

THE BAR (8)

Commercial Bar Association
Criminal Bar Association
The Council of the Inns of Court
The General Council of the Bar
The Honourable Society of Gray's Inn
The Middle Temple
Fountain Court Chambers
Littleton Chambers

THE LAW SOCIETIES AND PRACTITIONERS (34)

The Law Society
Barnsley Law Society
Birmingham Law Society
Blackburn Incorporated Law Association
Bournemouth Law Society
Bristol Law Society
Carlisle and District Law Society
City of London Law Society
City of Westminster Law Society
Devon & Exeter Incorporated Law Society
Durham & North Yorkshire Law Society
Holborn Law Society
Liverpool Law Society
Newcastle upon Tyne Incorporated Law Society
Norfolk and Norwich Incorporated Law Society
Surrey Law Society
Group for Solicitors with Disabilities
Legal Education and Training Group
Society of Blind Lawyers
Solicitors Family Law Association
Trainee Solicitors' Group
The Young Solicitors' Group
The Institute of Legal Executives
Allen & Overy (Solicitors)
BT Group Legal Services
Clifford Chance (Solicitors)

Hammond Suddards (Solicitors)
Herbert Smith (Solicitors)
Lovell White Durrant (Solicitors)
Norton Rose (Solicitors)
Penningtons (Solicitors)
Simmons and Simmons (Solicitors)
Slaughter and May (Solicitors)
Vaudreys (Solicitors)

THE JUDICIARY (4)

His Honour Judge Gower QC
The Honourable Mr Justice Johnson
The Right Honourable Lord Justice Staughton
Metropolitan Stipendiary Magistrates' Legal Education Working Group

GOVERNMENT AND OTHER BODIES (3)

Crown Prosecution Service
Government Legal Service
Department for Education and Employment

ACADEMIC ORGANISATIONS AND INDIVIDUALS (17)

College of Law
Department of Professional Legal Studies, De Montfort University
Inns of Court School of Law
Manchester Metropolitan University School of Law
Oxford Institute of Legal Practice
Faculty of Law, University of Oxford
SLS Legal Publications (NI), The Queen's University, Belfast
Law Faculty, Southampton Institute
Faculty of Law, University of the West of England
Association of Law Teachers
Committee of Heads of University Law Schools
Society of Public Teachers of Law
Professor R A Becher (University of Sussex)
Professor P H Kenny (University of Northumbria)
Professor David Miers (University of Wales, Cardiff)
Professor William Twining (University College London)
Julian Webb (University of the West of England)

**SUMMARY OF RESPONSES TO THE CONSULTATION PAPER ON
CONTINUING PROFESSIONAL DEVELOPMENT**

The Advisory Committee issued a consultation paper on continuing professional development in July 1996 inviting responses by the end of the year. A list of 66 respondents is set out in Appendix B. The responses were considered by the Committee in the five broad groups reflected in that appendix.

The following summary draws into a single document and condenses the five analyses of responses to the questions raised by the Committee's consultation paper.

QUESTION 1: Should there be any prescription at all? If so, for whom?

QUESTION 2: Should there be a more prescriptive approach to the content of CPD with, for example, a minimum percentage time requirement for management development, or other prescribed areas of activity?

QUESTION 3: Should there be a more prescriptive approach applied at selected stages of career development, beyond the first three years of practice, specifying for example the three areas identified previously by the Advisory Committee:

- professional ethics;
- practice management;
- specialist legal knowledge?

A Compulsory Scheme

The Law Society saw the compulsory involvement of all solicitors as an important means of moving to a culture of training and development, and lifelong learning. Only two responses, one from within the profession and the other from the academic organisations, were opposed to compulsory schemes in principle.

Responses from the Bar considered that the first three years of practice after qualification should be the limit of compulsion and prescription. Beyond that it was suggested that encouragement and voluntary approaches were more appropriate. A similar response was made by one academic organisation.

Several respondents expressed a preference for the principle of voluntary participation in CPD but acknowledged a pragmatic need for the professional bodies to lay down formal requirements.

One respondent suggested that the need for a compulsory scheme should be considered by asking

the simple question as to whether lawyers know the law, a survey of key figures and organisations to obtain evidence, and if a compulsory scheme proved necessary, a sanction of refusal of professional indemnity in the event of breach. Other respondents supported treating CPD compliance as a condition for obtaining a Licence to Practice (with references to the advantage of tax-deductible fees covering administration costs and contributions to CPD provision).

Prescription of Content

The Law Society considered prescription beyond its existing scheme to be inappropriate, viewing it as too complex and self defeating, with the possible exception of training on becoming responsible for management/supervision of an office. Three local societies set out their own models of prescribed content, all others opposing prescription. Two of these acknowledged professional ethics as having particular importance.

One firm supported prescription of black letter law, management development and other skills. Two practitioner groups supported the prescriptive formulation expressed in Question 3. There was other acknowledgement of the relevance of the subject areas identified but a general opposition to prescription. Apart from these, and a response by one practitioner group which argued that professional diversity should limit prescription to a small percentage of time, all other responses by practitioner groups and firms opposed prescription, preferring guidance. If prescription had to be imposed there was a substantial acceptance of ethics by these respondents (and for some, training related to a specific task or stage - eg Rule 13 or Investment Business). In general, however, prescription was described as intrusive, counterproductive and impossible to get right. Encouragement and broad practice statements, acknowledging, for example, the need for ethics to be reinforced regularly were seen as a better approach.

Academic respondents were almost unanimously opposed to prescription of scheme content, described by one as "yesterday's idea". The diversity of solicitors' career profiles suggested to them that reliance should be placed on general and flexible guidance within which professional ethics could be stressed as a priority consideration. Responses from individuals included two views that the professional bodies should regulate content to include ethics, management skills and client care. Having different prescriptive approaches at defined career stages was seen as inappropriate and raising problems of verification. A general view was that the greater the prescription, the poorer the fit with need, increasing the risk of scheme disrepute due to perceived irrelevance.

QUESTION 4: Are there means of securing the voluntary participation of the profession in perceived priority areas of training and development other than the example provided by the Law Society's scheme based on allowing enhanced attributable hours?

The Bar Council referred to the extensive involvement of the senior Bar in the preparation and delivery of the New Practitioners' Programme, and the scope for other barristers to attend courses within the programme.

While one CPD provider thought the Law Society enhanced hours scheme worked effectively, three providers expressed doubts about the priorities selected and thought the mechanism undermined the importance of a vision of CPD which went beyond the minimum hours

requirement. The possibility of securing reduced insurance premiums was raised by two providers as a potentially more effective inducement if priorities were those endorsed by the profession's insurers.

The Law Society indicated that the mechanism of enhancing hours was under review. In its absence it saw encouragement as the only means available to influence participation. Two local societies supported enhanced hours; one raised the scope for reduced costs of indemnity insurances; another doubted if they could reflect priorities meaningfully, while the system was seen as giving a "bonus" to those working in prioritised areas.

Among practitioners there was wide support for the enhancement of hours of those involved in design and delivery of training courses. Otherwise the majority of respondents preferred promotional effort and encouragement of participation rather than prescription. There was frequently expressed interest in possible influence through insurance premiums.

QUESTION 5: Should a scheme of compulsory CPD extend to all members of the Bar?

The Bar Council responded that it would be considering an extension of its proposed New Practitioners' Programme to those at the Employed Bar, but did not see a wider scheme of compulsory CPD as appropriate. The risk of failure to maintain professional standing in a referral market was seen as a sufficient pressure without the costs of maintaining a compulsory scheme.

The majority of academic respondents supported the extension. Of the others, one simply disagreed while another thought it appropriate to observe the new Bar scheme new practitioners first.

One local law society was opposed to such an extension while seven societies, some other practitioner groups and three firms supported it.

Other respondents wished to express no view, considering it to be a matter for the Bar.

QUESTION 6: Can monitoring and accreditation of CPD provision be improved? If so, how? Or, is it better left to market mechanisms?

The Bar viewed it as inappropriate to leave matters to the market, stressing the need for provision to be monitored and accredited. The Inns of Court were perceived as established centres of excellence, while other provision by Bar Associations and Circuits was part of a positive internal network.

Academic responses included the importance of providing assured quality to underpin CPD schemes, acknowledging the roles of professional bodies and the scope for extended roles for local law societies and circuit administrations. Arrangements for educational judgements, rather than administrative judgements, were stressed, as was the role of HE as a provider of high quality.

The Law Society raised the difficult balance between authorisation through central controls and

reliance on the market. A similar ambiguity was reflected in the overall responses by local societies. Other practitioners either supported existing arrangements by the Law Society, or suggested voluntary kitemarking of providers by professional bodies as an influence in a free market. The possibility of issuing a "Which"-type consumer review was supported.

QUESTION 7: Are schemes of compulsion appropriately directed solely to the individual practitioner? Would it be more effective for professional bodies to formulate compulsory arrangements which also address firms and chambers?

Responses from the Bar did not envisage that arrangements could be made to obligate or penalise chambers - leaving obligations inevitably with individuals.

Generally academic responses were consistent that compulsory arrangements should address individuals, as professionals. Two respondents thought it appropriate to move to direct firms.

The Law Society referred to the support it was giving to encourage firms to engage with IIP, Legal Aid Board franchising, and ISO 9000, all of which affected practice arrangements in different ways without professional body intervention. It recognised that the development of the individual was aided by the development of the firm. Local law societies were unanimous that compulsion should continue to focus on the individual, some acknowledging the facilitating and monitoring role of the firm. Other practitioner groups and firms were equally clear that the focus should remain on the individual, in some cases agreeing that this need not prevent an elective regime should firms wish to be involved. Nor did it preclude developments around practice management.

QUESTION 8: How can a wider vision of CPD as an integral aspect of professional life be promoted successfully if the focus of those involved shifts to the mechanics of administering a threshold level of involvement?

Priority was expressed for the avoidance of a compliance culture, active encouragement, including critical self-assessment, and the promotion of CPD as an integral part of professional life.

Academic responses referred to the time needed to develop a training culture, to move away from a position where CPD was seen crudely as a cost, the need for persuasive argument, the need to demonstrate value for money and good quality. One provider thought the question unfair in that their general experience was positive, practitioners seeing CPD involvement as an opportunity rather than a chore. Other responses included the view that those who tried to opt out would simply not survive professionally, life-long learning/learning for capability would develop best through recognition of the full range of learning methods, and that scheme procedures must be realistic.

The Law Society saw the use of quality awards, such as IIP, as a means of affecting the working environment, helping to achieve a culture shift and influence the view of CPD by individuals. Local societies suggested that the avoidance of additional prescription was essential, and sorting out practical problems about provision would assist. They thought the culture would shift when all solicitors were in the scheme, and, additionally, the implementation of practice management standards would help achieve a wider vision.

Other practitioners stressed improving quality, deregulation, and the retention of required hours of CPD by individuals as key concerns.

QUESTION 9: How could some or all of these problems (course provision) be addressed effectively while avoiding unacceptable administrative or bureaucratic costs?

The Bar Council perceived an advantage through low-cost delivery of the New Practitioners' Programme and other activities by the involvement of the practising Bar, the arrangements within the Circuits, and the work of the Inns. The manageable numbers involved in the NPP allowed centralised monitoring of participation and provision.

Four academic respondents proposed the establishment of a small national Institute to assist with improvements. Two opposed the idea of a national Institute, stressing the importance of working locally, including through local law societies and circuits in cooperation with local law schools. More televised provision was also suggested. One provider thought geographical difficulties had been overstated, but expressed concerns about potential equal opportunity problems raised by overemphasis on evening/weekend provision. It was suggested that many problems would be reduced by more effective communication about each course syllabus, aims, objectives, and target audience.

The Law Society referred to its guidance on course standards and their evaluation, and distance learning arrangements. Local societies referred to their role in conjunction with local providers. Generally it was submitted that improvements would be market-driven, reinforced by the impact of the 1998 scheme extension.

Responses from other practitioners ranged from support for market mechanisms, with local law societies and consortia as key instruments of improvement as influential purchasers (as well as their provider role), to reliance on the professional bodies to monitor and control providers.

There was wide endorsement of improved arrangements to make course objectives and planned learning outcomes explicit.

QUESTION 10: Are there other examples of experience in other jurisdictions from which we might learn and benefit?

Examples offered included:

- a) extensive contacts abroad by the Bar Council to help develop its advocacy training and related activities.

- b) links made successfully between the CPD scheme in Australia and premiums for professional indemnity.
- c) the Practice Management Course undertaken by new partners in Scotland.
- d) the Practising Law Institute, the success of which had to be considered in the context of a jurisdiction which had no "articles".
- e) the evidence given by Victor Rubino that the main beneficiaries of mandatory CLE in the USA had been the providers, and the need to distinguish between CLE and CPD.
- f) the potential benefit of an Institute of Professional Legal Studies.

QUESTION 11: Are there examples of effective models in other professions, or in other areas of industrial and commercial activity?

No detailed examples were provided but helpful references were made to the introduction of Personal Development Plans by the Engineering Council and to features of schemes operated by the medical and pharmaceutical professions, chartered surveyors, chartered accountants, the Institute of Personnel and Development, and valuers and auctioneers.

QUESTION 12: Are there other examples of activities which in your view represent strong models of CPD practice, other than undertaking formal courses, by attendance or otherwise?

Numerous examples were offered by respondents. These included informal discussion groups in chambers, coaching and mentoring schemes, preparation of responses to government (and other similar) consultations, preparation of articles, books and contributions to CPD programmes, appraisal, non-legal training in matters such as business skills and client care.

CPD providers generally suggested that arrangements should be very open, if possible reducing definitional problems for schemes. Examples included contributions to mooting activity at local law schools, IT/PC based work which did not involve face-to-face activity, design and delivery of training, experience in a different role (eg as a Justice of the Peace, Recorder or local authority councillor), pro bono work, and clinical legal education. Positive references were made also to work-based programmes including part-time Masters degree courses. Providers questioned the recognition of televised provision and reading schemes. They thought also that care needed to be taken if considering recognition of transfer by lawyers between areas of practice as CPD. On the other hand, secondments, including "postings" to clients, and the provision of training to non-solicitors (eg police station accreditation schemes) were seen as providing positive learning experiences.

Local law societies raised their wish to see non-legal subjects recognised, including IT and stress-management. Televised provision was rated very highly by three societies. PC packages and e-

mail tutorials were raised by practitioners, as were in-house know-how discussion groups.

In general there was support for activity which is substantial and participatory.

Two respondents raised questions about the possibility of looking to outcomes rather than the length of time or mode of involvement. Techniques such as self-appraisal, and learning logs or portfolios were suggested as possible assessment tools.

QUESTION 13: Does the implementation of effective schemes for the management of CPD need to be reinforced by professional bodies laying down formal requirements on practice management?

Such requirements were seen as inappropriate and unsuited to the Bar which preferred the promotion of best practice while not excluding the possibility of a voluntary scheme for the kite-marking of chambers.

No academic organisation supported such reinforcement. The continuing responsibility on the individual professional was stressed, as was the desirability of this being discharged in a supportive, planned environment. Voluntary de facto movement into "quality" models would assist.

The Law Society considered more prescription counterproductive, preferring to rely on existing practice management standards and the promotion of quality awards. Local law societies were almost unanimously against such reinforcement, describing it as unnecessarily bureaucratic and costly for the profession. Other practitioners preferred the promotion of best practice, in a number of instances responding that the approach raised by the question was a confusion of issues.

Support for formal requirements was expressed by one group of solicitor practitioners, and by three individual respondents.

QUESTION 14: Would it be sufficient to require every practitioner to retain for submission a copy of her/his (annual) individual training plan (endorsed by the responsible partner or member of chambers) against which an individual training record might be reviewed under the professional body's monitoring arrangements?

The Bar Council's arrangements will provide a centralised record for all barristers following its New Practitioners' Programme. Beyond that it was not seen as appropriate to the structure of the Bar and chambers.

The Law Society reported that it encouraged planning but viewed insistence on an individual plan as unnecessarily bureaucratic if it had to be submitted to the Law Society. The Society believed

firms used plans in their appraisal procedures.

Local societies provided mixed responses ranging from the majority which viewed the suggestion as impractical and burdensome to four societies which supported it subject to simple monitoring arrangements.

Other practitioners, including firms, saw potential benefit, though this was expressed in the context of an elective rather than mandatory arrangement. The possibility of waiting to see the implementation of the extension of the Law Society scheme was put forward as important. Another cautionary note suggested that such a scheme could not be established confidently with only light monitoring in view of the pressures on firms which could lead to a form of local collusion corrupting the scheme's effectiveness.

Academic responses were also very mixed. The benefits of plans to an individual, to an organisation, and to other parties working with practitioners who have plans, were raised. On the other hand the sufficiency of having a plan was questioned, and concerns were expressed about the rigidities implied, particularly if annuality was assumed.

QUESTION 15: Would a focus on practice management combined with accreditation through quality systems provide a way to move away from prescribed hours requirements?

The Bar Council did not consider the idea appropriate given the structure of the Bar and chambers.

The Law Society saw accreditation through quality awards as a matter for voluntary participation. Three local societies offered qualified support for the idea - a majority considered it unworkable and an unacceptable interference with the market.

Practitioner groups rejected the idea, considering prescribed hours to be essential. The need for "quality and hours" was put forward, with no relaxation on prescription of hours until the whole profession demonstrated that it was routinely exceeding the minimum requirement. There was strong support expressed by the GLS and CPS for Investors in People, seeing scope to relax hours requirements where the award was maintained.

Firms expressed some reluctance to move away from prescribed hours, in some cases expressing doubts about the merits and durability of quality systems. One firm suggested the onus being on the individual to have a training plan for firms to "sign-off" regardless of IIP status.

A substantial majority of academic respondents stated that prescribed hours would remain essential. A few responses referred to the possibility of moving from prescribed hours, retaining an obligation to maintain a CPD portfolio.

QUESTION 16: What continuing CPD requirements are appropriate for practitioners to retain recognition within schemes of specialisation?

The question was seen as limited since it did not address the issue of requirements to secure

recognition in the first place.

The Bar Council responded that it did not subscribe to the principle of schemes of specialisation.

Of the academic responses two envisaged regulated access to the title of specialist through special courses and publicly recognised diplomas. Accreditation of new or developed skills was seen as useful. Four responses envisaged flexible arrangements, without centralised control.

The wide variety of needs between practice areas were explained by the Law Society as frustrating any single pattern of arrangements. Reference was made to the possibility of extending recent work on developing standards for legal practice as a means of assessing training needs in different practice areas.

The majority of responses from practitioners favoured arrangements determined by relevant Panels covering practice areas. One considered it appropriate for a minimum of 50% of CPD hours to be allocated to the specialist subject, while another suggested a system of points to cover formal learning and a portfolio of experience. Another contemplated a scheme of test papers, related to the practice area and adjusted according to years of practice. Opposition was expressed to any scheme of specialisation for commercial practice.

QUESTION 17: How could arrangements be made to achieve effective coordination between CPD requirements with respect to specialisation and any new requirements arising from the Legal Aid Board in respect of franchising?

Responses revealed wide uncertainty about the nature and extent of contact between the Legal Aid Board and the professional bodies. A local law society and other practitioner groups were particularly concerned to be assured of effective coordination to avoid the imposition of extra layers of requirements on legal-aid practices. The Law Society referred to its dialogue with the Board.

Exceptionally, three responses raised the possibility of LAB accredited training courses being designed with formal assessment.

One respondent saw no need to consider the matter as it remained a matter for the individual solicitor whether to pursue any scheme of specialisation or franchise.

QUESTION 18: Should there be any prescribed element in the compulsory CPD hours of solicitor advocates, following the extension of the Law Society scheme from 1998, to provide further training in the skills of advocacy?

The balance of views overall, and in each of the groups which responded, was clearly against any prescription applying to solicitor advocates. Those who contemplated prescription pointed out that it would be reasonable to suggest that requirements on solicitor advocates should be the same as for barristers.

Consideration of some prescription was supported by one local law society which expressed

concern that advocates in small to medium firms might not be practising their advocacy rights sufficiently often.

QUESTION 19: Is there scope for the development of joint training in advocacy and related skills, accessing resources through both the Law Society and the Bar Council?

Respondents to the question were supportive in principle though some practical difficulties about the availability of flexible capacity were raised. The Committee was asked to bear in mind the potential role of law schools in advocacy training. The parallel teaching of advocacy on the Legal Practice Course and the Bar Vocational Course was seen as a good example of potential joint activity, providing a foundation for joint training at other stages. It was noted also that some chambers are accredited by the Law Society as providers of CPD for solicitors. Two groups of practitioners suggested that an Institute of Professional Legal Studies would provide a helpful way to develop initiatives in joint activity.

The scope to work with other professional bodies was also seen as important, and there was frequently expressed interest in accessing their course provision.

QUESTION 20: Are there other issues which you believe should be considered by the Advisory Committee in its review of CPD?

A considerable variety of issues was raised by respondents. A recurring theme was the need for research into CPD, including cost-benefit analysis. The development of measures of the value added by CPD was suggested as a powerful means of reinforcing its significance for the profession.

The Bar Council reported that it intends to review the position of the Employed Bar in relation to its proposed scheme for mandatory CPD. The position of employed barristers beyond their third year of practice was raised by firms as potentially anomalous when all solicitors are covered by the Law Society scheme.

The role of HE and law schools was raised as worthy of greater attention than had been given to it by the Consultation Paper, along with clarity about any boundaries to be drawn between continuing legal education and CPD.

Cost considerations were referred to as essential considerations. Questions were raised about when and how CPD would be considered for others working in legal and quasi-legal fields -not least in view of the number of unqualified staff who undertook extensive responsible tasks including representation of solicitors in judicial proceedings in chambers.

Equal opportunity concerns were identified by a number of respondents, including the need to consider the adequacy of facilities to provide appropriately for those with disabilities. The position of women practitioners was also raised for consideration.

Issues raised by firms included the need to address vitally important concerns about new technology, and about major professional challenges of international and perhaps multi-disciplinary

practice.

Interest was expressed in attending future conferences organised by the Committee, in some cases expressed critically in response to what was perceived as an unrepresentative attendance list for the fifth consultative conference held in October 1996.

**GRAY'S INN RESPONSE TO THE
ACLEC CONSULTATION PAPER
ON CONTINUING PROFESSIONAL DEVELOPMENT**

INTRODUCTION

- 1 Gray's Inn welcomes the Consultation Paper and supports the Bar Council's response to it. This paper concentrates on the particular contribution which the Inns of Court can and should make to continuing professional development. The Inns are ideally placed to provide the Bar with the highest standards of instruction, encouragement and ethics. In so doing the Inns recognise their responsibility to the public as well as to the profession.
- 2 The Inns of Court were founded as educational establishments. They have charitable status for their educational activities and today, perhaps more than ever, they actively pursue their responsibility for the instruction, encouragement and ethical training of their young members. Their premises are made available for educational events provided to the Bar. The membership of the Inns comprises every student Barrister, every Barrister and every Judge (appointed from the Bar). This membership provides the Inns with a substantial reservoir of dedicated talent at all levels of experience.
- 3 The Inns are in an ideal position to continue to play a significant part in the continuing professional development of the Bar. Gray's Inn pioneered the pupillage advocacy courses which have become a compulsory element of pupillage training. As long ago as March 1992 representatives of ACLEC attended and commented very supportively on what was then the second year of the Gray's two day advocacy course and trial exercise attended by 120 pupils, 2 Members of the House of Lords, 5 Members of the Court of Appeal and 18 other Judges. That course, which is now part of a four stage syllabus of structured advocacy training, has been improved and enlarged. We are now similarly committed to leading the way in the design and provision of the advocacy element of the young tenants programme.
- 4 All the Inns have established Education Departments with administrative staff experienced in designing and providing courses for the Bar in co-operation with members of the Bar and the judiciary. Gray's Inn has a dedicated Education and Training Department, with a staff of 5 and its own reception area and offices, which administers the educational activities of the Inn. Gray's Inn has also invested in three dedicated advocacy teaching rooms with videoing facilities. This illustrates the importance which the Inn places on its role as a provider of further training and education for the Bar.
- 5 The Inns appreciate the distinction between continuing education and continuing practice development and support ACLEC in the importance of practice development to embrace a

much wider scope of knowledge and skills learning than would be indicated by the term continuing education. The standards of legal education of those entering the legal profession is now probably generally higher than it has ever been. The need to organise and use legal knowledge in an effective, efficient and proper way has never been greater.

- 6 The teaching of the skills which enable barristers to make effective, efficient and proper use of their legal knowledge is best provided within their Inn of Court by experienced and trained teachers whose particular loyalty to an Inn and interest in the education, encouragement and behaviour of its members make them able, willing and fitted to do so. That teaching, particularly of advocacy skills, should continue to be the primary responsibility of the four Inns of Court and should continue to be monitored by the Inter Inn Advocacy Committee under the supervision of the Advocacy Studies Board. The programmes which have been established in all the Inns for training pupils on the threshold of the profession should now be developed and extended into continuing professional development.

THE YOUNG TENANTS PROGRAMME

- 7 We turn to consider the contribution which Gray's Inn can make to the provision of the compulsory Young Tenants Programme.

ADVOCACY TRAINING

- 8 The Inns are in an ideal position to provide the advocacy section of the young tenants programme for four important reasons:
 - a the courses which the Inns have established for pupils provide important and unique experience for teaching advocacy on the young tenants programme;
 - b the Inns, and they alone, have available to them the manpower resources of the judiciary and the Bar to provide the trainers on these courses. Gray's Inn already has 100 fully trained advocacy teachers, many of whom provide not less than 40 hours of teaching every year;
 - c the Inns have adapted their premises for the teaching of advocacy and have premises designed and dedicated for this purpose;
 - d the Inns each have an education department whose administrative staff are skilled in the provision of advocacy courses.

THE "PRESCRIPTIVES":

ETHICS AND CASE PREPARATION AND PROCEDURE

- 9 Advocacy is the art of persuasion. Proper preparation is a pre-requisite to persuasion. Ethics is its foundation stone. The Inns' pupillage advocacy courses include sessions on preparation. Ethics is a pervasive and fundamental element of the Inns' pupillage advocacy courses. The Inns' pupillage advocacy courses provide the pupil with a foundation in these skills upon which they can begin to build in practice. They will then bring that early experience in practice to structured teaching sessions on preparation and ethics within the young tenants programme which will further develop the young tenants skills of preparation and understanding of the ethics of the profession.
- 10 Young practitioners enjoy a real and practical advantage through the Inns' courses being taught by those who have greater experience in these areas both from the viewpoint of practising at the Bar and also from the viewpoint of the judiciary. The Inns have the particular and unique advantage of being able to call on their members to provide such teaching and to require those members to be properly trained in teaching methods for the purposes of teaching on Inns' Courses. We believe that the Inns can make an important contribution to the teaching of these prescriptives within the young tenants compulsory programme.
- 11 The Specialist Bar Association are also in a position to provide, and should provide, courses within "the Case Preparation and Procedure" prescriptive involving courses concentrating on procedural and evidential law to complement the Inns' skills courses within this prescriptive.

THE "PRESCRIPTIVES" :

ACCOUNTS AND SUBSTANTIVE TRAINING

- 12 Accounts and Substantive Training are the two other prescribed elements in the young tenants programme. We believe that accounts courses should be provided by accountants. The specialist bar associations are in a better position to provide relevant courses on substantive training which embraces both substantive law and substantive areas relevant to practice.

BEYOND THE YOUNG TENANTS PROGRAMME

- 13 Historically the Inns have been centres for continuing education of the Bar. The Bench of the Inn is not only drawn from the English Bar but includes amongst its Honorary Benchers persons of eminence from other jurisdictions and disciplines. This places the Inns in a privileged position to be able to call on distinguished speakers from other jurisdictions and from other walks of life to contribute to the educational events provided by the Inns.
- 14 Examples of current Honorary Benchers of Gray's Inn are: Sir Robert Carswell, Chief Justice of Northern Ireland; Kenneth Clarke QC, MP Chancellor of the Exchequer; Professor David Edward, Justice of the Court of Justice of the European Commission; Mr Justice Michael Hardie Boys. Governor-General of New Zealand; Professor Dr Roman Herzog, President of the Federal Republic of Germany; Senor Don Gil Carlos Rodriguez

Iglesias, President of the Court of Justice of the European Communities; Madame Noëlle Lenoir of the Conseil Constitutionnel; Justice Sandra Day O'Connor of the Supreme Court of the United States; Professor Sir Meurig Thomas, Master of Peterhouse.

- 15 Recently Gray's Inn has made a particular contribution to the provision of seminars and lectures available to the Bar generally and of interest to the more senior practitioners in particular. In 1996 the President of Germany spoke in Hall on the German Constitution and on 10th July 1996 Professor Gerald Uelman (Member of Defence Team representing O J Simpson) and Lord Justice Kennedy gave a talk in Hall on their perspectives of the O J Simpson trial. On 24th October the French Minister of Justice, Monsieur Toubon, visited Gray's Inn with a delegation representing the Ecole de Formation des Barreaux in Paris. This was immediately followed by a second visit by Professor Jean-Jaques Israel, the head of the EFB, who attended an advocacy training session at the Inn and has subsequently advanced detailed proposals for joint pupil/stagiaire training. On 12th November, the Rt Hon the Earl Russell, Professor of British History, King's College, London spoke in Hall.
- 16 There are plans for further such lecture evenings involving EC and French law presented by distinguished members of the EC court and the French Bar.
- 17 On Tuesday evenings in term there is a talk in Hall on a topic of interest. For example this year there were talks by Lord Hope of Craighead on the Scottish non proven verdict; John Roberts Q.C. on racial discrimination; Ms Kate Marcus on the work of the Law Centres; Mr George Staple on the work of the Serious Fraud Office; Professor James Crawford on the relevance of international law to young barristers, and Mr Stewart Black on advocacy before Stipendiary Magistrates. Gray's Inn plans to continue and expand its contribution to this important facet of legal education.
- 18 The Inns play a large part in practice development for the Bar.

THE WOOLF REPORT

- 19 The Inns are in a unique position to assist with the training which will be required if the Woolf proposals are implemented. Success of the reform of the English legal system requires co-operation between the judiciary and the Bar. The Inns are the only institution which has as its members the representatives of both. It is the Inns which can provide the opportunities for joint training (Judiciary and Bar) which will create the co-operation necessary for the successful implementation of the proposals. Gray's Inn is presently considering the contribution which it will make to this for its members.

18 December 1996

AN OUTLINE OF DEVELOPMENTS IN POST-QUALIFICATION LEGAL EDUCATION AND TRAINING SINCE THE REPORT OF THE COMMITTEE ON LEGAL EDUCATION (ORMROD, 1971)

The Report of the Committee on Legal Education under the chairmanship of The Hon Mr Justice Ormrod (as he then was) was published in March 1971 (Cmnd 4595). The report included an extensive historical survey, placing legal education in a contemporary perspective. Both the Report of the Royal Commission on Legal Services (Cmnd 7648) published in October 1979 (the Benson Report), and the Report of the Committee on the Future of the Legal Profession (1988) under the chairmanship of Lady Marre noted subsequent amendments. This appendix summarises changes affecting continuing education and training since 1971, and concludes by describing the existing and proposed arrangements of the Law Society and the General Council of the Bar as at the end of March 1997.

The Ormrod Committee (1971)

The Committee highlighted the contrast between the medical and the legal profession, pointing out the highly structured career path in medicine, progress being dependent upon the possession of higher qualifications, providing a very strong incentive for postgraduate training. The legal profession was seen as having no inducement to undertake continuing training other than "the rather indefinite objective of providing better service to the public".

The Report observed that there was an evident but sporadic, uncoordinated demand for continuing training. The College of Law was recognised as a major provider, while university law departments were getting good responses for short course programmes. A range of other public and commercial providers were referred to, while the role of research was seen as potentially very significant for the legal profession.

Making what the Committee saw as preliminary and tentative suggestions, the Report set out five broad fields of activity: courses in judicial studies, refresher courses, courses in new legislation, specialist courses and inter-disciplinary courses. Of these, interdisciplinary study was seen as virtually untouched.

It was proposed that the organisation and stimulation of continuing training, and the development of schemes of training would be best delivered by setting up a small, dynamic central body - an Institute of Professional Legal Studies - funded jointly through the Inns of Court and the Law Society. The Committee was concerned that the pursuit of higher qualifications and specialist diplomas should not subordinate experience through any schemes for continuing training.

In its general consideration of legal education, the Ormrod Committee concluded that "the area of greatest potential growth is that of continuing education after qualification, both in the early years and throughout the professional career".

The Benson Report (1979)

The Report discussed why training after qualification was seen as desirable, referring to:

- the need to supplement initial training by providing "topping-up" courses after qualification;
- the need to refresh knowledge in areas not dealt with frequently in day-to-day work;
- the need to be brought up to date with changes in law;
- systematic instruction for those engaged in specialised fields.

Reviewing the provision of training the Report charted the expansion of activity by the College of Law, which had appointed a specialist Director of Continuing Education and more than doubled its output of training courses between 1972 and 1976. It acknowledged the work of the Law Society which had set up a working party dealing with continuing education under the five main heads identified by the Ormrod Report. The working party recommended that some topping-up courses should be compulsory (communication, running a practice, and revenue law).

In respect of the Bar, the Report noted the intention of the Senate of the Inns of Court and the Bar to discuss with the Law Society the possibility of post-qualification courses for lawyers of both branches.

The Report considered the question of compulsory post-qualification education. For the period immediately after qualification, the Report took the view that the Senate should introduce a system of additional compulsory education and training on the lines of the Law Society's topping-up courses.

The Report recognised that there were difficulties in developing an effective compulsory system for established practitioners, but expressed the view that these should not be allowed to obscure the principle that persons practising a profession need to keep abreast of changes and that it is the function of the governing body of the profession to ensure that every member is properly equipped with up-to-date and comprehensive knowledge, both in his own interest and those of his clients and of the profession.

Since policies for continuing education and training were still in the process of formulation, the Report found that it would be premature to propose obligatory education and training for established practitioners forthwith. However, it agreed with the view of the Law Society that a comprehensive system should be developed; and it proposed that both branches of the profession should study the possibility of making the issue of a practising certificate or of maintaining authority to practise conditional upon appropriate post-qualification education.

The Law Society's development of its scheme of continuing education and training continued. This led from August 1985 to the introduction of a requirement on solicitors in the first three years after admission to attend a system of continuing education and training. The scheme was phased in. It

included some compulsory half-day courses - office management and communication skills in the first year; standards of professional conduct and ethics in the second year; and handling professional responsibility in the third year.

The Marre Report (1988)

The Marre Committee envisaged that schemes of continuing education and training should have four elements:

- additional information for new entrants
- information about developments and changes in the law
- acquisition of skills to use new technology
- acquisition of specialist skills

The Law Society's new scheme was endorsed with a recommendation that it should be expanded to overcome its modest scope and the limited time available for skills training. The Committee also noted with encouragement the significant development of in-house training to which many solicitors had access.

The Committee recorded that there was no formal scheme of continuing education for barristers after pupillage. It noted also that the Council of Legal Education and the General Council of the Bar provided a wide range of lectures and seminars over a wide range of topics of interest to practitioners. The Committee commented that there was in prospect the development of a five-day course in practical advocacy (including an element on professional conduct and communication) to follow the pupillage year. It was expected that higher level courses for barristers, including examination assessment, would be developed also, including the right for barristers to advertise this accreditation. The Marre Report supported the direction of developments at the Bar.

On the question of compulsion, the Marre Committee's view was that although market forces would affect the success or failure of the practitioner and enlightened self-interest might persuade sensible practitioners to be involved voluntarily, "an additional degree of selective compulsory courses for the older members of the profession would be desirable".

Subsequent Developments

A. The Courts and Legal Services Act 1990

The Act followed a Green Paper on "The Work and Organisation of the Legal Profession" (Cmnd 570) of January 1989, and a White paper "Legal Services: A Framework for the Future" (Cmnd 740) of July 1989.

The Green Paper set out the Government's view that practitioners had to be able to show their clients that they possessed the necessary competence to perform the particular service sought from them, and that it was not of itself sufficient for practitioners to belong to a particular branch of the legal profession. It noted that there were reviews of training arrangements in progress including consideration by the Law Society of an extension of its compulsory scheme of post-qualification training. The Green Paper described possible arrangements for post-qualification advocacy training

and envisaged other areas of continuing education being developed by the proposed new Advisory Committee on Legal Education and Conduct.

The subsequent White Paper elaborated proposals for the structure and role of the proposed Lord Chancellor's Advisory Committee on Legal Education and Conduct. In doing so it referred in general terms to provision of advice on education and training at the academic, vocational and post-vocational stages; it referred separately to advice on the requirements and arrangements for the provision of practical training and continuing training, particularly in advocacy. In its further development of a possible work programme for the Committee, the White Paper referred to the pace of change in law, innovative forms of delivery of legal services and new business management techniques as a context in which the Committee would advise on what professional bodies might need to do to ensure that their members undertook appropriate courses.

The 1990 Act established the present Lord Chancellor's Advisory Committee on Legal Education and Conduct in its current statutory form. The former Advisory Committee had been established as a result of recommendations by the Ormrod Report, and had been the subject of proposals for change by both the Benson and Marre reports.

B. The Law Society

By the time the Act was passed, the Law Society had extended its original scheme (1985). In 1987 the scheme had been extended to all solicitors admitted after 1 August 1987. The Law Society had also decided to undertake its own wider review of legal education, reporting in 1989. The review recommended that the compulsory courses operating in the first two years after admission should be incorporated within articulated service prior to qualification, and that the courses should be both lengthened and supplemented. It was recommended also that the scheme for continuing education should be extended to cover all solicitors - an extension to be phased, in recognition of the time needed to develop a supply of suitable quality courses.

The review was overtaken by further consideration in the light of Law Society consultation on "Training Tomorrow's Solicitors" and a parallel review of continuing education. Articles were to be replaced by a training contract within which a new Professional Skills Course would replace existing courses during articles and some courses for newly qualified solicitors. The consultation found support for the extension of compulsory continuing education.

In 1992 the compulsory scheme was extended, to apply from 1 November 1994 to all solicitors admitted on or after 1 November 1982, and from 1 November 1998 to apply all solicitors. The Law Society's current Training Regulations are set out at the end of this appendix, along with the current Code of Compliance. The Code was subject to extensive consultation by the Law Society during 1996. As a result the Law Society prepared an application to the Lord Chancellor to amend the Code and, in accordance with Schedule 4 procedures (of the Courts and Legal Services Act 1990), has requested the Advisory Committee's advice prior to making the application.

Prescribed elements within the first three years of CPD after admission have included a Professional Development Course (a one-day course during the first year), and the Best Practice Course (during the third year). The Professional Development Course will cease to be compulsory after 31 December 1997 in view of the coverage provided by the Professional Skills Course during the

training contract. An outline of the Best Practice Course is set out following the Code of Compliance in Annex 1.

C. The General Council of the Bar

In December 1990 the General Council of the Bar published the First Report of the Working Party on Continuing Education and Training, chaired by the Hon Mr Justice Potter. It reviewed the findings of the Ormrod, Benson and Marre Reports. It supplemented them with recommendations from the Fraud Trials Committee Report of 1986, chaired by Lord Roskill, which stated that action was required by the Bar in post-qualification training, and from a Joint Working Party of the Bar Council and the Council of Legal Education, chaired by Richard Southwell QC. This recommended in 1987 the establishment of further advocacy training for new tenants and other high quality courses in substantive law, possible developments which were commented upon by the Marre Committee. The First Report noted also that in January 1989 the General Council of the Bar approved proposals for continuing training at the Bar, including, for young barristers, advanced advocacy training and a compulsory course on European Community law and European Human Rights law, and, for all barristers, the development of courses in substantive law.

The recommendations of the Working Party included the appointment of a Director of Continuing Education and Training with appropriate support staff and facilities, the establishment of a Young Tenants' Programme for the first three years of practice, and a General Programme of continuing training for all barristers. The Report envisaged the introduction of arrangements for the issuing annually of practising certificates subject to barristers complying with continuing training obligations.

The Second Report of the Working Party on Continuing Education and Training was published in 1991. It developed further the proposals for the Young Tenants' Programme and the General Programme, with an aim of 25 hours of continuing education and training being undertaken each year according to individual plans, within which teaching others would be recognised activity. It was envisaged that the Young Tenants' Programme would eventually become compulsory (though not at the outset), demonstrating to the public the seriousness of the Bar in its view of continuing training of barristers in the public interest. The Report recommended compulsory continuing education and training for all barristers once developed pupillage programmes and Young Tenants' Programmes were firmly in place and compulsory. In 1993 the Council of Legal Education set up a sub-committee of the Board of Studies under the chairmanship of David Jeffreys QC with a remit to investigate and recommend a scheme of education for young tenants. This led to proposals on which subsequent developments were based.

In addition to the development of advocacy training, and training opportunities through the work of the Inns, specialist Bar Associations and Circuits, the General Council of the Bar decided in June 1995 to introduce a scheme of mandatory continuing education for barristers in their first three years of practice. Following its initial introduction on a voluntary basis, the Bar has made an application to the Lord Chancellor, under Schedule 4 procedures, to amend its Rules making the New Practitioners' Programme a compulsory requirement on all barristers who begin independent practice on or after 1 October 1997. Prior to making the application, the Bar Council requested the advice of the Advisory Committee, in accordance with statutory procedures. The Bar's proposed arrangements for the compulsory programme are set out in Annex 2. The Bar Council has

indicated that it is considering how to include the Employed Bar in the scheme.

**EXTRACT FROM THE LAW SOCIETY'S TRAINING REGULATIONS 1990
(as amended)**

Part VI - Continuing Professional Development (CPD)

35. This Part shall apply:-
- (a) on 1st November 1992 to solicitors admitted after 1st August 1987;
 - (b) on 1st November 1994 to solicitors admitted on or after 1st November 1982;
 - (c) on 1st November 1998 to all solicitors.
36. A solicitor must in the first three years following admission attend such continuing professional development courses as the Society may prescribe.
37. A solicitor who has been admitted after this Part has come into force must undertake one hour of continuing professional development for each whole month in legal practice or employment between admission and the next 1st day of November.
38. (1) A solicitor must in each of the first three complete years in legal practice or employment commencing with the 1st day of November immediately following admission undertake 16 hours of continuing professional development.
- (2) A solicitor must in each subsequent three year period undertake 48 hours of continuing professional development.
39. Solicitors admitted on or before 2nd November 1989 must undertake 48 hours of continuing professional development in each successive three year period the first of which commences as follows:
- (a) on 1st November 1992 for solicitors admitted on or after 2nd August 1987 and on or before 2nd November 1989;
 - (b) on 1st November 1994 for solicitors admitted on or after 1st November 1982 and on or before 1st August 1987;
 - (c) on 1st November 1998 for solicitors admitted on or before 31st October 1982.

40. A solicitor must keep a record of such continuing professional development undertaken to comply with these regulations and produce the record to the Society on demand.
41. A solicitor who has undertaken continuing professional development between the expiry of articles or a training contract and the date of admission shall be credited with the relevant number of hours for the purpose of Regulations 37 and 38 provided that at the time of undertaking the continuing professional development an application for admission in accordance with admission regulations current at that time had been lodged with the Society and a record kept in accordance with Regulation 40.
42. If a solicitor does not work for any period in legal practice or employment in England and Wales the application of this Part is suspended for that period.
43. If a solicitor works part-time in legal practice or employment the requirements under this Part are reduced on the basis that in each year one hour of continuing professional development must be undertaken for every two hours per week worked.

Code of Practice for Compliance with the Continuing Professional Development Obligations

Solicitors are reminded of their responsibility under Practice Rule 1. Failure to keep up to date with developments in law and practice relating to their work could compromise or impair their proper standard of work contrary to paragraph (e) of that Rule.

Over and above that general professional responsibility there are compulsory requirements for continuing professional development (CPD) which are set out in the Training Regulations 1990. Details of how these requirements may be satisfied are set out below:

1. To obtain the maximum advantage from CPD activities should be relevant to the current or foreseeable future needs of the solicitor or the firm. Solicitors and those with training responsibilities in their firms or organisations, are encouraged to review their professional development periodically using the training record supplied by the Law Society. Care should be taken that solicitors retain the flexibility, through possession of a range of skills, to move to different areas of work where necessary to meet clients' changing needs.
2. At least 25% of the requirement to undertake CPD will be undertaken by participation in courses offered by providers authorised by the Society requiring attendance for one hour or more. "Attendance" means attendance at the complete course. "Course" includes face-to-face sessions forming part of a course otherwise delivered by an authorised distance learning provider.
3. Up to 25% of the requirement may be undertaken by writing law books or articles in legal

journals, by legal research which is of use beyond the particular case and results in the production of a precedent, practice note or other form of written guidance, or by production of a dissertation counting towards a qualification recognised by the Law Society, or by undertaking courses offered by an authorised provider delivered by audio/visual means.

4. Up to 50% of the requirement may be fulfilled by undertaking distance learning courses offered by authorised providers where there is provision for the answering of enquiries or for discussion. This proportion may be increased to up to 75% where the distance learning course requires participants' work to be assessed or 100% where the course involves both examination and the production of a dissertation and is delivered by correspondence, video and audio cassettes, television or radio broadcasts and computer based learning programmes.
5. It is important to appreciate that solicitors most often get into difficulty because of lapses in case or office management and poor communication with clients rather than through ignorance of law or procedure. The Society therefore recommends that at least 25% of the requirement should be fulfilled by undertaking training in practical skills such as communication and other aspects of management. Such training is particularly important before solicitors take on managerial responsibilities.
6. To count towards compliance the activity should be at an appropriate level and contribute to a solicitor's general professional skill and knowledge and not merely advance a particular fee earning matter.
7. In-house training is valuable in that it can be more easily made relevant to the needs of the solicitor or the firm. Account should be taken of the importance of contact with practitioners from other firms thereby increasing awareness of different approaches to similar problems. This is best achieved by attendance at external courses and conferences but may also be achieved by a firm or group of firms inviting outsiders to attend internal training events.
8. The preparation or delivery of a training course is a very effective means of learning. Solicitors involved in the delivery of any course forming part of the process of qualification or post admission training may count two hours of CPD for each hour in which they are involved on the first occasion the course runs. If the course is repeated only the time involved in presenting the course may be counted. Where a solicitor is involved in preparation (whether or not they are involved in the presentation of the course) the solicitor may count the actual time spent in the preparation up to 25% of the requirement to undertake CPD.
9. For the development of practical skills, courses requiring delegates' active participation, for example through workshops, role-plays etc will be more effective than more traditional lecture based courses. Solicitors attending such courses, when noting their training record, may add 25% to the actual time of the course. No specific application to the Society by either the solicitor or the provider of the course is required.

10. Solicitors should take note of those areas of law and practice which the Society indicates are of particular current importance. Statements will appear in the Law Society Gazette from time to time indicating any additional credit which may be given to undertaking CPD in these areas.
11. Under Regulation 42 of the Training Regulations 1990 the CPD requirement is suspended for the length of time a solicitor is not in legal practice or employment. The dates of and reasons for the suspension should be noted on the Training Record.

On return to legal employment the solicitor will be required to undertake 2 hours of CPD for every complete month from the date of return to the following 31st October up to a total of 16 hours for that CPD year. Where a solicitor has been admitted for three or more complete years a new three year period will start from the 1st November following his/her return to legal practice or employment.

12. The requirement to undertake CPD is automatically adjusted pro-rata where a solicitor is working part-time on the basis that one hour per annum of CPD should be undertaken for every two hours per week worked. No specific application to the Society is required but the dates of and reasons for the variation should be noted on the Training Record.

THE BEST PRACTICE COURSE

Introduction

This course is based on the Law Society's Best Practice kit and is attended by solicitors during their third complete CPD year following admission. All solicitors who attend the course will be given a copy of the Best Practice kit. Providers of the course must be authorised by the Society.

Solicitors who have transferred from the Bar or other jurisdictions may apply for an exemption from attending the Best Practice course on the basis that they are able to demonstrate having significant experience of management issues as they arise in practice.

Course Content

Module 1 - Foundation	Introduction to management in a legal practice. Practice purpose and objectives. Understanding your role.
Module 2 - Marketing	Client care. Beating the competition. Winning new business.
Module 3 - People and Communication	Personal accountability. Managing performance. Relations with colleagues. Communication skills.

Module 4 - Finance Introduction to practice finance.
How practice finance affects the assistant solicitor.

Module 5 - Business Planning The importance of forward planning.
Outline of the purpose and development of a business plan.

Course Objectives

The objective of the course is to lay the foundation of management skills and understanding on which assistant solicitors can build in the future.

By the end of the course delegates should be able to:

Appreciate the importance of improving their management skills to the success of their future careers.

Understand the nature of the strategic decisions being taken by their employers.

Identify the actions they need to take to support the strategic objectives and day to day operation of their firm.

Understand the competitive nature of the market-place and practise the range of skills necessary to win and keep clients.

Know how to get the best out of support staff and maintain good relations with colleagues and partners.

**RULES OF THE CONTINUING EDUCATION SCHEME
TO BE ADOPTED BY THE GENERAL COUNCIL OF THE BAR
(subject to approval by the Lord Chancellor and designated judges)**

Application

1. These Rules apply to all barristers who commence independent practice on or after the 1st October 1997.

The Mandatory Continuing Education Requirements

2. (I) The practising barrister to whom these Rules apply shall complete a minimum number of 42 hours of approved continuing education within a period of three years the commencement of which shall be determined as follows:-
 - (a) for those commencing practice between 1st October and 31st December - the three-year period shall run from the following 1st January;
 - (b) for those commencing practice between 1st January and 31st March - the three-year period will run from the following 1st April;
 - (c) for those commencing practice between 1st April and 30th June - the three-year period will run from the following 1st July;
 - (d) for those commencing practice between 1st July and 30th September -the three-year period will run from the following 1st October;
- (II) The Bar Council may, by resolution, specify the nature, content and format of courses and other activities which must be undertaken in order to satisfy these Requirements, and these Requirements may be varied to take account of the nature of the instructions barristers may receive within practice.
- (III) The Bar Council may, by resolution, increase the minimum number of hours following consultation with the Inns, Circuits and other providers as appropriate.

Approved Courses

3. For the purposes of these Rules continuing education training courses and/or providers shall be approved by the Bar Council according to criteria which the Bar Council shall from time to time determine, set down and publish.
4. The Bar Council shall maintain a register of courses approved for the purposes of these Rules ("approved courses") which shall contain the following information in relation to

each course entered thereon:

- (a) the title of the course;
- (b) the name of the course provider;
- (c) the date or dates on which the course is being held;
- (d) the duration of the course;
- (e) the subject matter of the course;
- (f) the number of hours that the course represents;
- (g) whether the course is one in advocacy, case preparation and procedure, or ethics.

Failure to comply with the Mandatory Continuing Education Requirement

- 5. Where a practising barrister to whom these Rules apply fails to comply with the Mandatory Continuing Education Requirement his/her Practising Certificate shall be suspended until such time as the said requirement has been met.
- 6. Notwithstanding Paragraph 5 above, a practising barrister to whom these Rules apply may apply to the Bar Council for an extension of the time within which they must comply with the said requirement. Such a request must be upon the grounds of mitigating circumstances and shall be supported as appropriate by all relevant documentary evidence. Where notified to the Bar Council, periods within which the barrister does not practise shall be added by way of extension to the three-year period contained within the Mandatory Continuing Education Requirement.
- 7. As they may apply to an individual practising barrister, the Bar Council shall have the power to waive any or all of the requirements of these Rules in whole or in part or to extend any or all of the time limits provided for by these Rules.

Refusal of Practising Certificates

- 8. The suspension of a Practising Certificate may be revoked by the Bar Council, or by a Disciplinary Tribunal before whom charges of professional misconduct under paragraph 301(a)(ii) or 402.3 of the Code of Conduct have been preferred.

Note:

The proposed Rule 2 (II) provides for a resolution by the Bar Council to specify the nature context and format of qualifying activities. Proposals have included training in substantive law, 18 hours on case preparation and procedures, 6 hours on advocacy and 4 hours on ethics. Training in accounts

has also been raised. The first resolution by the Bar Council was expected by May 1997.

CONTINUING PROFESSIONAL DEVELOPMENT IN SELECTED COUNTRIES

This appendix reviews CPD for lawyers in the Member State of the European Union (EU), Australia and the United States of America. Where CPD is mandatory the regime is briefly described.

1. European Union Member States

In the EU only solicitors from Scotland and England and Wales and *advocaten* from the Netherlands are subject to a mandatory CPD regime. The Scottish and Dutch provisions are described below. With a few exceptions the matter has not been considered significantly in the other Member States. The main exceptions, where action might be taken on mandatory CPD in the shorter term, are Ireland and Denmark, both of which, influenced by developments in neighbouring countries (the UK and Norway respectively), are currently considering mandatory CPD. In all the countries under consideration CPD activities are available generally and as an element in an accredited specialist regime.

Austria: There is no compulsory CPD for lawyers in Austria. The period of initial training is the longest in Europe and there has been no desire to pursue the idea of post-admission training. The reform of legal training is being discussed. There is a wide range of optional post-admission training opportunities provided by the *Anwaltsakademie*.

Belgium: There is no compulsory CPD for lawyers in Belgium. There is no formal debate about introducing it.

Denmark: There is no compulsory CPD in Denmark, which in January 1997 introduced mandatory training courses (comprising 36 days of courses over the first two years of the *stage*) for the *advocatfulmaetig*. Serious discussion about introducing mandatory CPD started in November 1996, taking into account the Norwegian Bar's experiment started in 1994. The Bar provides CPD activities through the *Advokatsamfund*, and the *Danmarks Jurist og Okonomforbund* is also involved in providing courses.

Finland: There is no compulsory CPD for lawyers in Finland. Consideration has been given to introducing it but there is no plan. The Bar Association recommends at least 3 days annually. Lack of CPD by any lawyer is taken into consideration in any disciplinary proceedings.

France: Compulsory CPD was debated in 1996 by the *Conseil National des Barreaux* (CNB) which has the authority to organise post-admission education, but which, so far, has not done so. The main providers of CPD in France are the *Ecoles de Formation Professionnelle des Barreaux*. All such post-admission training is undertaken on a voluntary basis.

Since the early 1990's all *avocats* must pay 250FF a year towards CPD. This money contributes to

a national fund for the liberal professions (i.e. not just lawyers). The national fund then redistributes the funds received to, *inter alia*, the *Ecoles de Formation Professionnelle des Barreaux* to help fund professional training. Each *avocat* is entitled to apply for a re-imbursment of his or her costs (fees etc) relating to further professional training undertaken at a Bar school, university or recognised private provider. Levels of reimbursement are affected by the incidence of claims.

There has been discussion of prescribed involvement in CPD as a form of proof of competence in areas of specialisation which have been recognised since 1993. Any such change would require legislation. The matter has not been decided yet and short term change appears unlikely.

Germany: There is no compulsory CPD for lawyers in Germany. There is a general obligation to maintain legal knowledge and skills in the *Bundesrechtsanwaltsordnung* but there are no enforcement mechanisms at present. The profession has been concentrating on revising the code of professional ethics which was approved by the Minister of Justice and came into force in March 1997. There are areas of specialisation (*Fachanwalt*) in family law and criminal law, with training requirements. After qualifying, *Fachanwalt* are obliged to undertake CPD for a minimum 10 hours per year. Specialist status can be removed by the *Rechtsanwaltskammer*.

Both the Bar and the *Deutscher Anwaltsverein* (DAV), a voluntary organisation of lawyers, have training bodies which provide CPD courses. The proposals (made by the Bar) for mandatory CPD have not proceeded and have been opposed by the DAV. No action is expected in the near future.

Greece: There is no compulsory CPD in Greece, nor is there substantial discussion about introducing it.

Ireland: There is no compulsory CPD for lawyers (barristers or solicitors) in Ireland. There are no formal proposals under consideration.

A scheme to require new solicitors to undertake training before entering sole practice is being introduced by the Law Society.

Italy: There is no compulsory CPD for lawyers in Italy. There are no plans to introduce a mandatory scheme.

Luxembourg : There is no compulsory CPD for lawyers in Luxembourg. There is discussion about introducing such training for newly qualified *avocats*. This is at the early *avant-projet* stage.

The Netherlands:

Advocaten

All *advocaten* must be members of the *Orde van Advocaten*. This is the body that regulates and disciplines Dutch lawyers (*advocaten*). By 1994 the *Orde van Advocaten* (Dutch Bar) was of one

mind to introduce mandatory CPD in the Netherlands. The motivation was maintenance of quality and the confidence and trust of both the general public and clients. It was also thought that it might reduce the number of complaints and negligence actions against *advocaten*. The introduction of compulsory CPD was subject to a review after two years (i.e. in 1998) as the Government, which had to approve the reform, was concerned about possible market-inhibiting effects of compulsory CPD.

The CPD Regime

The Rules were introduced in 1994 but came into effect from January 1996.

Duration: The Dutch rules required that in 1996 each *advocat* had to gain 8 points. In 1997 12 points, and, from 1998, 16 points a year must be accumulated.

Points: One point is awarded with every one hour of training undertaken (not including breaks - latecomers receive no points). Double points are awarded for those giving CPD lectures in accredited educational institutions. Points are also available for those publishing articles in legal journals. Surplus points in any one year can be carried over.

Accreditation of Education providers: This is done by the *Orde* based, *inter alia*, on sufficient experience of the provider, accessibility (during working hours), provision of appropriate materials, suitable lecturers and evaluation of courses (by attendees). Over 100 providers have been recognised including law firms themselves.

Content: Legal courses qualify but the Bar also wished to encourage training in professional skills and office management. A list of all courses is regularly published in the Bar journal.

Costs: These are normally borne by the *advocaten* attending the courses. But in 1994 over 1,000 lawyers (mainly those dealing with legal aid) were able to attend free courses. The subsidy was maintained during 1995 at 75% of the fees and in 1997 at 50% subsidy until the fund runs out.

Enforcement: *Advocaten* must maintain a record of their points. Course providers issue certificates to *advocaten* attending their courses. Course providers must also maintain records of attendance for three years. The *Orde* carries out random spot checks on 5% of lawyers subject to the new obligation. The local Bar Councils will deal with any failure to comply with the CPD regulation.

Portugal: In Portugal there is no compulsory training post-admission but the issue is under consideration. The Lisbon Bar has recently tightened up its *stage*-level training, and has introduced a systematic scheme of courses for lawyers to be undertaken voluntarily.

Spain: Spain is trying to introduce professional training for intending *abogados* before they join a *colegio*. The law reform needed to achieve this is currently under scrutiny. In this context, consideration of mandatory post-admission training is unrealistic. Most *colegios* have links with special law schools (e.g. university-based or private *Escuela de Pratica Juridica*) which provide

post-admission training on a voluntary basis. In Madrid one must have at least 150 credits (of such training) in order to undertake any legal aid work. (All Bars require at least 3 years' inscription before undertaking any legal aid work.) The *colegios* also provide some training on a voluntary basis.

Sweden: There is no compulsory post-admission training for lawyers in Sweden. The matter has been discussed but there is no plan to introduce it.

The UK

Northern Ireland: There is no compulsory CPD training for lawyers (barristers or solicitors) in Northern Ireland. The matter is not under active consideration.

Scotland:

Advocates There is no compulsory CPD for Scottish advocates. The Faculty of Advocates holds regular seminars and courses which many advocates attend. Approximately one third of advocates have attended a week-long specialised course in advocacy provided by the Faculty. There are no plans to introduce compulsory CPD in the near future, although all those admitted to the Faculty since 1995 have undergone compulsory specialised advocacy skills training.

Solicitors There is a regime of compulsory CPD for Scottish solicitors that commenced in 1993 after a lengthy period of consideration, research and consultation. The CPD regime was phased in and since November 1996 has applied to all solicitors with practising certificates. The scheme is not highly prescriptive.

Duration: Each solicitor is obliged to undertake at least 20 hours CPD a year. CPD hours are not transferable between years, without express authority from the Law Society of Scotland.

Content: The twenty hours can be made up in a variety of ways depending on where one practises. Those practising within Scotland or England and Wales must undertake at least 15 hours Group Study and up to five hours Private Study. Group Study means study "relevant to a solicitor's practice" in a group of three or more for more than half an hour in a verifiable form. This can include participation in tutorials, seminars, workshops courses etc. Fellow "students" need not necessarily be lawyers. Private Study means working with less than three others or by oneself and includes following distance course, reading legal works and so on. Those that write books or articles (that are published) on legal topics can count 10 hours towards their CPD requirement for that year. Those practising elsewhere are allowed to undertake 20 hours Private Study.

The CPD must be "relevant to a solicitor's practice". This is determined "reasonably" by solicitors themselves. The Law Society does not accredit course or training providers. CPD can include relevant management or skills based topics, or other subjects as long as a good case is made out for it.

At least five hours (of which a minimum of three hours must be in Group Study) must be

spent on management and professional development skills, examples of which are given in guidelines issued by the Law Society of Scotland.

To progress to principal, solicitors are required to attend a prescribed 1½ day practice management course.

Enforcement: Each solicitor keeps a record card which is returned to the Law Society each year. 5% of record cards are scrutinised and the contents verified in detail to make sure that there is full compliance. In a case of a failure to comply the solicitor is allowed a period of time to catch up. In cases of default the Law Society may refer the matter to the Complaints Department for consideration as professional misconduct.

2. Australia

There are eight jurisdictions within Australia. Of these only New South Wales (NSW) requires general mandatory CPD. In the other jurisdictions CPD is voluntary and there is extensive provision of courses. Tasmania has introduced an incentive scheme to encourage CPD without making it mandatory. Five jurisdictions have official "accredited specialist" regimes in some of which participants must maintain their speciality, *inter alia*, by mandatory CPD.

New South Wales (NSW): The Law Society decided in 1984 to require solicitors to undertake CPD. In 1986 the NSW Mandatory Continuing Legal Education (MCLE) Board was established with the power to accredit providers and a mandatory scheme was introduced from 1987. The system was reformed in 1992 when a self-assessment system was introduced.

Duration: Each solicitor must acquire 10 CLE units each year in order to continue to practice.

Units: One unit equals one hour of education/training (i.e. participation in an educational programme, lecture, seminar, work group etc.). These activities "must be of significant intellectual or practical content and must deal primarily with matters directly related to the practice of law" (which includes legal knowledge and skills, professional responsibility, practice management and development). They must also relate to the solicitor's immediate or long-term professional needs.

Private study counts half a unit for every hour of considering legal video or audio tapes (which have been designed for the purpose of updating legal knowledge). Individual study counts at a rate of half a unit an hour of study (as recorded by the lawyer concerned). These modes are subject to a maximum of 5 units.

A full unit (per hour) is allowed for presenting oral or written material within a course of continuing education (with up to five hours of preparation also counting).

Units are also available for published legal writing, or other approved publication.

Enforcement: Solicitors must indicate they have complied with the requirement on

applying for a practising certificate. A random audit of applications is checked. In cases of non-conformity with no good explanation a practising certificate may not be renewed (or might be suspended).

Practice Management: The scheme requires a practice management course to be undertaken before the take-up of partnership, sole practice or becoming the solicitor on the record for a corporation or government department.

Accredited Specialists: There are approximately 1,100 accredited specialist solicitors in NSW in 12 recognised specialist areas. Once accredited the specialist must undertake an additional 10 hours CLE in the specialist area.

Victoria: In Victoria there is no mandatory CPD, and there are no plans to introduce it.

There is an accredited specialist scheme now covering 11 practice areas. Participation in the scheme is voluntary. Those who become specialists must undertake CPD in that speciality area.

Queensland: In Queensland there is no mandatory CPD. It has been considered, and further discussion is expected during 1997.

There is an accredited specialist scheme. Those who utilise the system must undertake at least ten hours CPD in that speciality (currently only in family law) and practise "substantially" in that field.

There is also a mandatory Practice Management course established in 1988 which must be taken before one can receive a principal's practising certificate.

Australian Capital Territory (ACT): In ACT there is neither mandatory CPD nor any specialist accreditation scheme.

Northern Territory: There is no plan to introduce compulsory CPD in the near future.

South Australia: In South Australia compulsory CPD and accredited specialist regimes are being actively discussed but there are no definite plans for imminent introduction of either.

Tasmania: There is no compulsory CPD or accredited specialist regime in operation in Tasmania. However there is an incentive scheme. Any practice in which 100% of the members have completed 5 CLE points get 5% off their professional indemnity insurance premium. An estimated 65% of lawyers qualify for the discount. There are approximately 600 lawyers in Tasmania. The solicitor must get the prior approval of the Law Society for the CLE activity. A one-day course gains up to 2 points.

Western Australia: There is no general scheme of compulsory CPD, nor are there any plans for its introduction. There is an accredited specialist regime for family lawyers. Those accredited must undertake at least 10 hours CPD run by the Law Society to maintain their accreditation.

3. The United States of America

(a) States with no mandatory CLE requirement

Alaska	-
Connecticut	Proposal rejected June 1995
District of Columbia	All new admittees within 12 months after admission must complete a course on the DC Rules of Professional Conduct and on DC Practice
Hawaii	-
Illinois	-
Maine	Rules state that every attorney should endeavour to complete twelve (12) hours annually with one (1) hour covering professional responsibility
Massachusetts	-
Michigan	Under consideration
Nebraska	-
New Jersey	Mandatory CLE applies to attorneys certified by the Supreme Court as civil and/or criminal trial specialists
New York	A scheme is being drafted for consideration to include 12 hours MCLE annually
South Dakota	-
Guam	-
Northern Mariana Islands	Under consideration
Puerto Rico	Final draft scheme to be considered by Supreme Court in Spring 1997
Virgin Islands	-

(b) States with mandatory CLE requirement

Alabama	12 hours per calendar year
Arizona	15 hours every year including 2 hours of professional responsibility including ethics, professionalism, malpractice prevention, substance abuse, attorney fees, client development, law office economics
Arkansas	12 hours per year, which includes one hour of ethics
California	36 hours per 3 years; ethics or law practice management: 8 hours/3 years, of which at least 4 hours include ethics; substance abuse/emotional distress: 1 hour; elimination of bias: 1 hour
Colorado	45 hours required over a 3-year period, including 7 hours of legal ethics and professionalism. Newly admitted must attend the Colorado Bar Association's Seminar on Professionalism in the first compliance period
Delaware	30 hours over a 2-year period. Ethics: 3 hours per 2 years. Professionalism: 2-6 hours per 2 years
Florida	30 hours over a 3-year period, including 2 hours of legal ethics
Georgia	12 hours per year, including 1 hour of legal ethics, 1 hour of professionalism, and if trial attorney, 3 hours of trial practice; plus a mandatory bridge-the-gap course included in the 12 hour requirement in first full year of practice
Idaho	30 hours during a 3-year period, including 2 hours ethics. Practical skills seminar required within 12 months of admittance
Indiana	36 hours over a 3-year period with a minimum of 6 hours per year. Three hours of 36 shall be professional responsibility
Iowa	15 hours per calendar year; 2 hours of legal ethics every 2 years
Kansas	12 hours annually, including 2 hours of legal ethics each year
Kentucky	15 hours per year, including 2 hours of ethics
Louisiana	15 hours per calendar year, including 1 hour of ethics
Maryland	Beginning with the July 1991 Maryland Bar Examination, successful applicants on the Bar examination shall complete a course on legal professionalism as a condition precedent to Bar admission
Minnesota	Over a 3-year period, 45 hours. Program sponsor required to cover ethics.
Mississippi	12 hours per year
Missouri	15 hours per year including 3 hours of professionalism, legal

	judicial ethics or malpractice prevention every 3 years; new admittees - 3 hours in 12 months; all other 3 hours of such courses every 3 years
Montana	A minimum of 15 hours per year
Nevada	10 hours per calendar year; 2 hours of ethics. Those in first year of admission must take bridge-the-gap course
New Hampshire	12 hours per year; 2 hours of ethics
New Mexico	15 hours per year, including 1 hour of legal ethics. All members newly admitted to the practice of law must obtain 10 hours of practical skills during the first two compliance reporting years
North Carolina	12 hours per calendar year. At least 2 hours must be devoted to professional responsibility (legal ethics and professional liability); 9 hours practical skills each of first 3 years of practice; special 3-hour block ethics requirement once every 3 years
North Dakota	45 hours over a 3-year period, of which 3 hours must be ethics course work
Ohio	24 hours every 2-year reporting period. At least 2 of the 24 credit hours shall relate to legal ethics and professional responsibility and shall include at least 30 minutes of instruction on substance abuse, including causes, prevention, detection and treatment alternatives
Oklahoma	A minimum of 12 hours per calendar year, including 1 hour of legal ethics
Oregon	45 hours over a 3-year period, including 6 hours of legal ethics; new admittees - 15 hours, including 10 hours of practical skills and 2 hours of ethics
Pennsylvania	12 hours per year, including 1 hour of ethics
Rhode Island	10 hours each reporting year; 2 hours must be ethics
South Carolina	14 hours annually; at least 2 hours annually on legal ethics/professional responsibility
Tennessee	12 hours each calendar year plus 3 hours ethics
Texas	15 hours each year including 3 hours of legal ethics
Utah	27 hours over a 2-year period, including 3 hours of legal ethics
Vermont	20 hours over a 2-year period, including 2 hours of legal ethics
Virginia	12 hours per year, including 2 hours ethics
Washington	A minimum of 45 hours every 3 years of which 6 hours must be devoted to ethics. New admittees are exempt during the year admitted and for the following full calendar year

West Virginia	24 hours every 2 years. At least 3 of these hours must be in legal ethics or office management
Wisconsin	30 hours during a 2-year period, including 3 hours of legal ethics
Wyoming	15 hours each calendar year

Source: *Comprehensive Guide to Bar Admission Requirements*
1996/97. American Bar Association and National Conference of Bar Examiners.

Advisory Committee survey.

APPENDIX F

SELECTED STATISTICS ON THE PROFESSION

Table 1: Solicitors on Roll at 31 July 1996

Solicitors	Men	Women	Total
With practising certificates	46,681	21,356	68,037
Without practising certificates	11,578	7,466	19,044
Total on Roll	58,259	28,822	87,081

Annual Statistical Report 1996, The Law Society

Table 2: Solicitors holding practising certificates 1966 to 1996

Year	Practising solicitors	% Change	Solicitors in Private Practice	% Change
1966	21,672	19.3	18,823	n/a
1976	31,250	44.2	26,992	43.4
1986	47,830	53.1	41,483	53.7
1996	68,037	42.2	55,673	34.2

Annual Statistical Report 1996, The Law Society

Table 3: Experience of solicitors with practising certificates by number of years since admission to the Roll as at 31 July 1996

Solicitors in private practice						
Years since admission	All solicitors		Men		Women	
	No.	%	No.	%	No.	%
0-9 years	24,910	44.7	13,491	34.3	11,419	70.3
10-19 years	16,125	29.0	12,320	31.2	3,805	23.4
20-29 years	9,758	17.5	8,913	22.6	845	5.2
30-39 years	3,564	6.4	3,424	8.7	140	0.9
40-49 years	1,143	2.1	1,117	2.8	26	-
50+ years	173	-	169	-	4	-
All years	55,673	100	39,434	100	16,239	100
Solicitors in employed and other sectors						
Years since admission	All solicitors		Men		Women	
	No.	%	No.	%	No.	%
0-9 years	6,831	55.3	3,252	44.8	3,579	69.9
10-19 years	3,386	27.4	2,092	28.9	1,294	25.3
20-29 years	1,755	14.2	1,527	21.1	228	4.5
30-39 years	334	2.7	319	4.4	15	0.3
40-49 years	54	-	53	0.7	1	-
50+ years	4	-	4	-	0	-
All years	12,364	100	7,247	100	5,117	100

Table 4: Position of solicitors working in private practice and holding a practising certificate at 31 July 1996

Position in firm	Men		Women		Total	
	No.	%	No.	%	No.	%
Partners	22,436	57	4,115	25	26,551	48
Sole practitioners	3,808	10	794	5	4,602	8
Associate solicitors	597	2	456	3	1,053	2
Assistant solicitors	10,390	26	10,530	65	20,920	38
Consultants	2,110	5	255	2	2,365	4
Other private practice	93	-	89	1	182	-
All positions	39,434	100	16,239	101	55,673	100

Annual Statistical Report 1996, The Law Society

Table 5: Numbers of Barristers in England and Wales as recorded at 1 October 1996

Barristers	Men	Women	Total
In independent practice	6,820	2,115	8,935
In employment	1,522	958	2,480
Non-practising	1,588	961	2,549
Overseas and retired Subscribers	2,061	1,254	3,315
Total barristers on record	11,991	5,288	17,279

General Council of the Bar

Table 6: Barristers in employment and independent practice in England and Wales

Year	In Employment	% Change	Independent Practice	% Change
1966	n/a	n/a	2,239	13.5
1976	n/a	n/a	3,881	73
1986	n/a	n/a	5,494	41.6
1996	2,480	n/a	8,935	62.6

General Council of the Bar

Table 7: Experience of barristers in independent practice in March 1997, as indicated by years of Call

Years of Call	Men	Women	Total
1987-1996	2,582	1,348	3,930
1977-1986	2,087	604	2,691
1967-1976	1,782	215	1,997
1957-1966	395	28	423
1947-1956	162	10	172
1937-1946	9	-	9

General Council of the Bar

Table 8: Position of barristers in independent practice

	London			Provinces		
	Men	Women	Total	Men	Women	Total
Queen's Counsel	728	53	781	137	7	144
Other Barristers	3,752	1,350	5,102	2,203	705	2,908
All Barristers	4,480	1,403	5,883	2,340	712	3,052

General Council of the Bar

	National Total		
	Men	Women	Total
Queen's Counsel	865	60	925
Other Barristers	5,955	2,055	8,010
All Barristers	6,820	2,115	8,935

General Council of the Bar

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