

CLC CPD CONSULTATION – REPORT ON RESPONSES

INTRODUCTION

In September 2022 the CLC published a consultation on its new proposals on Continuing Professional Development (CPD). The consultation closed in January 2022 and the responses were then analysed. The update below summarises some of the main points following that stage¹.

RESPONSES

50 individuals responded to an online questionnaire, of which 41 were responding on behalf of their CLC regulated practice. The Society of Licenced Conveyancers (SLC) also provided a detailed response.

ENDORSEMENT OF THE KEY PRINCIPLES

The following summaries views on our questions covering the new set of Principles, and their impact.

Broadly most respondents agreed with the core principles set out in the proposed changes to the CLC CPD Framework. There were clear indicators to strongly suggest that the new framework would be acceptable to the regulated market. In fact, only 6% of the CLC practices that responded, did not support the approach.

List of Questions

a. Move away from an hours-based approach and move towards an activity and outcomes based approach;

There was overwhelming consensus (83%) for a move away from an hours to an activity based approach.

The SLC in their response agree strongly, and remark that this brings the CLC further in line with some other regulators.

They noted that, “Simply providing evidence that you have completed the required number of hours to meet the CPD requirement does not demonstrate that the LC has reflected upon, changed behaviour, or enhanced their skill level by attending those CPD events. Moving to an activity-based framework will require LCs to reflect meaningfully on their competency, to identify the best way to maintain/improve their competency and to determine a robust action plan to meet the framework’s requirements.”

b. Include a fix mix of externally assessed and informally assessed activity;

¹ [CPD-Consultation-2022-Final-version-20220930.pdf](https://www.clc-uk.org/CPD-Consultation-2022-Final-version-20220930.pdf) (clc-uk.org)

86% supported the move to a more structured focus on activities covering ethics, professional standards, and consumer protections; whilst allowing individuals to choose from externally assessed and non-assessed activity.

The SLC stated that the CLC should give direction on the areas of ethics, professional standards, and consumer protection but that it required more information before giving it further support. And that the CLC should also give greater direction (mandated) on what legal, technical & industry knowledge LCs should obtain.

They believed that, “Whilst being an LC itself demonstrates that person’s competency, through their licence, we must be able to evidence that ongoing competency is being maintained. This inevitably will lead to comparisons with solicitor firms accredited under the Law Society ‘Conveyancing Quality Scheme’ which are required to have all conveyancing staff undertake mandatory, assessed training courses each year. Therefore, the Society believes that any areas directed by the CLC must be assessed (whether that be by external audit, external test, written observation, peer review, etc). Consumers must be satisfied that the ongoing competency activities are sufficient to demonstrate that the LC is maintaining or improving their competency on a regular basis.”

The SLC further stated that all forms of activity should be assessed (by whatever means) in order to reassure the public and fellow professionals that the required standards are being met: “ The Society is disappointed that the CLC only expects elements of the framework activity to be externally assessed or self-assessed? It is especially concerned that the CLC sees external assessment as being ‘quite light touch’. If so, this sends the wrong message to the profession and the public and undermines the LSB’s Statement on lawyers remaining competent throughout their careers.”

However, the CLC considers that there are both cost and competency benefits derived from a mixed model of externally assessed and internally supervised CPD activity. The latter, for example, includes in-house shadowing and informal training, and this approach would also allow it to be completed over a more sustained period of time, contextualised to the work place experience, and in particular to any matters in hand. (Whilst still flexible enough to allow for the application of approaches and lessons learnt from external assessments).

c. Introduce a regulated entity responsibility for ongoing competence, to improve the overall risk management and performance of CLC practices, which will apply to:

- Individual CLC Licence Holders
- Heads of Legal Practice
- Heads of Finance and Administration
- Money Laundering Reporting Officers
- Complaints Handling leads (these are described differently in different practices)
- Directors/Partners/Members/Sole Practitioners.

Expanding the CPD framework to include an entity responsibility for CPD was widely supported (84%). 19% of CLC practices believed that they already adopted an approach similar to that being suggested in the consultation. 35%, felt they could quite easily independently adopt the new CPD

approach. Whilst 40% believed that with some target support, they would be happy to work towards adopting such an approach. Nobody agree with the statement that the approach was too difficult to adopt.

Notwithstanding this support, there were some concerns expressed about how the framework would manage and moderate requirements for multiple role holders. We are already sighted on any unnecessary burden on multiple role holders being a potential barrier to practice level adoption. The CLC has no appetite to double up activity unnecessarily. Our focus is to encourage more meaningfully planned, risk based activity, relevant to the level of exposure to risk or the requirement to manage risk across a combination of commonly combined roles.

The SLC considered that this was too broad an approach and that the CLC should be looking to assess the competency only of personnel directly delivering legal services to consumers. Complaint handling leads and non-legal Directors/Members of firms should be subject to a 'fit & proper person' test on appointment and then subject to review during regulatory inspections, SLC felt.

The CLC believes that some considerable consumer benefit can be leveraged from expanding the CPD and competency to include key personnel beyond the direct delivery of legal services. It is also worth noting that the SLC's view was out of step with the wider regulated community that responded to the consultation, which was broadly in support of such measures, and believed that they were already taking this approach.

We also believe that the proposed approach has further benefits for consumer protection, via a potential reduction in the level of complaints to the Legal Ombudsman. This could also have two secondary benefits of: (1) reducing the overall amount of penalties levied (which will – all things being equals – lower costs); and (2) further mitigating reputational risks, for firms and the profession as a whole.

d. Consensus for increasing mandatory CPD as an upstreaming tool

64% agreed the CPD framework should include modification to allow the CLC to mandate specific CPD activity where needed following enforcement and/or disciplinary action, Around 20% did not have a strong view on this as a specific sanctions tool, but remained open minded to the idea.

A high level of willingness to undertake mandated training is very helpful. In part because it validates the approach taken for some time by the CLC in its licensing application regime. Which has been mandating CPD as evidence of up to date legal and technical knowledge as part of the standard formalities to apply for a range of applications, such as conversions, Head of Legal Practice and Head of Finance and Administration applications.

This approach has also been used somewhat successfully within the licence reinstatement processes. Which touches on disciplinary sanctions by way of requests being made by individuals that have been subject to sanctions, when they seek to return to regulation post compliance with those sanctions. To date, mandating CPD has stopped short of being formally used as a mandatory component of monitoring or enforcement regime.

The SLC strongly agreed with this approach, and noted that such action is recognised as being necessary where individual competency is impacting on the delivery of legal services to consumers. It added that "The Society also supports the CLC in broadening the powers of the Adjudication Panel

to mandate rehabilitative sanctions in addition to its traditional ones. This is seen as an additional tool to allow the Panel to make proportionate decisions.”

e. Should each CLC regulated entity should be required to submit of statement of its maintenance of ongoing competence annually or integrated into the inspection cycle.

Opinion was evenly split, 50% one and 50% three years. However, for reasons set out in additional licensing paper also being presented to Council, the more robust and in-depth three year reporting cycle for entities is emerging as the CLC’s preferred approach for optimum value and operational viability. We intend to keep the annual reporting requirement for Licence holders.

The SLC agreed and stated it should be scheduled within the three yearly inspection cycle.

f. Views on whether there should be other principles added that are currently not considered

Respondents did not believe that there were any other principles that should be included that had not already been considered.

g. The level of CLC involvement in the CPD Market

We were surprised to find there was considerable appetite (86%) for the CLC to be more involved in the oversight of CPD providers and more extensively the accreditation of CPD courses.

The SLC recommended that the CLC introduce an accreditation scheme. It believed that, “Any framework activity must satisfy any scrutiny of its delivery, and its result. There will, inevitably, be comparisons with activities facilitated by other regulators. [And] The CLC cannot afford its facilitated activities to be of less worth or impact than others.”

This would be a new work stream with un-mapped resourcing implications for the CLC and will be a subject for further consideration and exploration.

h. Implementation timescales

When asked about how quickly (or slowly) any changes should be implemented, the most common preference was for a 12 month transitional period, i.e. from the time between publication and implementation of the new framework within a licensing period. This is not out of step with our current thinking and which, given it does not create tensions with other related licensing initiatives, is achievable. The LSB requires that we published our implementation plan by January 2024.

The SLC believed that this was difficult to comment upon at the present time. And would require further detail as to how the framework will be worded, structured, and operated. Separate to this point, they recommended that “There needs to be a minimum transitional period of 18 months to enable individual LCs and firms to adapt to any new framework.”

Given, the level of support for the CLC’s proposals from the consultation, the CLC will now progress to development and modelling of the full revised framework encompassing all the changes that were consulted upon aiming for an implementation target of 01 November 2024.