

# Training for Tomorrow: A new approach to continuing competence

## Consultation response

### Introduction

1. This report follows our recent consultation on continuing competence and forms part of the wider Training for Tomorrow programme of work to reform our education and training regulatory framework. In the consultation, we proposed three options to reform our current approach to Continuing Professional Development (CPD):
  - i) **Option 1**, our preferred option, which would involve a shift from procedural compliance to competence under which we would revoke the current CPD scheme and rely instead on existing provisions in the Handbook requiring a proper standard of legal practice and of training and supervision. Option one would be integrated into our wider regulatory framework and supported by non-mandatory guidance;
  - ii) **Option 2**, in which we would replace the current CPD scheme with a new mandatory requirement to reflect on practice and implement a development plan without a mandatory hours requirement; and
  - iii) **Option 3**, in which we would retain the current requirement to do a minimum number of CPD hours but would require the training to relate to current or anticipated legal practice and recognise a wider range of development activity.
2. We also set out a number of different options for monitoring continuing competence.
3. Our consultation document asked the following questions:
  - whether respondents could foresee any impacts, positive or negative, for options 1 and 2;
  - whether we should continue to suggest a minimum number of CPD hours;

- what respondents saw as the advantages and disadvantages of alternative approaches to monitoring.
4. The consultation was launched on 5 February 2014 and closed on 2 April 2014. It was supported by a series of events including roadshows, meetings with representative groups, webinars and individual meetings. Throughout the period of consultation, we have had the opportunity to engage with a wide range of stakeholders and would like thank everyone who responded to the consultation or participated in the wider stakeholder events.

## Summary of our response and next steps

5. We have given full consideration to the range of views expressed through the consultation period and the concerns raised in relation to our preferred option. Whilst we acknowledge these concerns, we believe that the supporting guidance and materials we will make available to support the new approach, together with the lead in time, a clear communication and engagement strategy and an ongoing requirement to declare compliance on an annual basis will address these concerns. We remain of the view that Option 1 is the best way to achieve our regulatory objectives and to provide assurances to consumers that solicitors take their professional responsibility to deliver competent services seriously. However, in the light of the consultation we have delayed implementation until November 2016 to facilitate the change in culture and support firms with this responsibility. Furthermore, to demonstrate the continued importance that the SRA attaches to securing competent services for consumers, an annual declaration from individual solicitors and firms that appropriate professional development is in place will continue to be required.
6. We will now seek approval for the policy and regulatory changes as outlined in the consultation document from the Legal Services Board to take effect from November 2016. We will also continue to explore, develop and finalise the necessary internal changes to implement the new approach effectively. In due course, we will issue further information on the impact of our proposals on CPD providers and accredited training and on what the proposals mean for the CPD year beginning on 1 October 2014. We will explain how we will move towards full implementation in November 2016 and will set out arrangements for those who wish to move to the new approach from Spring 2015. The supporting toolkit and competence statement will be published in Spring 2015.
7. Ensuring a smooth transition to new ways of working is a key priority for us. A comprehensive communication and stakeholder engagement plan will be put into effect that will ensure we engage regularly with stakeholders regarding the move to the new approach and the timing of the proposals and provide support and guidance leading up to the full implementation in November 2016.

## Responses received

8. We received 64 responses to the formal consultation from a wide range of stakeholders including individual solicitors and regulated entities, training providers, representative groups, local Law Societies and the Law Society. A list of respondents is provided at Appendix 1.

## Overview of responses

9. The consultation exercise produced a wide range of responses and views. We have set out below the responses we received to each question but the headline findings can be summarised as follows:
  - respondents felt that the consultation document did not contain enough detailed information on the proposed implementation and monitoring of continuing competence under Option 1. This affected their ability to make a measured judgement when responding;
  - There was limited support for the implementation of Option 2;
  - Many respondents reported that implementation of Option 1 would require a change in working culture and a period of time to adjust or embed new processes for some regulated entities;
  - There was a frequent concern expressed that, without a mandatory requirement to undertake CPD, some regulated entities might not appropriately resource ongoing training and development for staff; this would deny some parts of the profession the opportunity for training and might affect the quality of legal services provided. Similarly, there was a concern that some individuals might see the removal of the CPD requirement as a green light to ignore the importance of maintaining their competence and not undertake any CPD at all;
  - Some respondents felt that Option 1 would result in "reactive regulation" with supervisory or enforcement activity being taken only after issues with the competence of a solicitor or the quality of legal service had been identified;
  - Some respondents suggested that Option 3 offered clarity on how compliance with our regulations could be achieved, required little change to systems and processes and, whilst it was a blunt instrument, did ensure that all solicitors carried out CPD on an annual basis;
  - Those in favour of Option 1 liked the freedom and flexibility it would provide and saw it as a mature option that allowed the profession to

take responsibility for their own training and development without interference from the SRA;

- Others felt that Option 1 would stop solicitors attending unnecessary courses simply to get their CPD hours and would encourage them to focus properly on their training and development needs;
- There was a concern with Option 1 that, if consumers of legal services believed solicitors were no longer required to keep up with changes in the law and regulation, this would pose a reputational risk for the profession generally.

10. Whilst the consultation was designed to identify the advantages and disadvantages of the range of options rather than to represent a vote on the preferred option, a number of respondents indicated their preferred option. Of those that did, just over 50% (35 respondents) suggested they would prefer Option 3 to be implemented, 16% (10 respondents) indicated they would prefer Option 1 to be implemented and 9% (6 respondents) indicated they would prefer Option 2. 20% (13 respondents) did not indicate a preferred option for implementation. Those that preferred Option 1 tended to be in-house solicitors and individual practising solicitors and those that preferred Option 3 were local law societies, representative organisations, training providers, training and development specialists and legal researchers.

11. The picture presented by the consultation responses is complex, however, as respondents identified both positive and negative impacts for their preferred option as well as for the other options, so it is necessary to consider more fully the wide range of comments and views that we received. These are set out in detail below.

## Overview of responses to question 1

12. We asked stakeholders for views on the positive and negative impacts of a new approach which would remove the mandatory CPD requirement and focus on competence through the existing provisions in the Handbook.

### Positive impacts

13. Many respondents acknowledged that current CPD arrangements are a regulatory burden for some and they discussed the financial and time burden of undertaking training to meet the regulatory requirement. For some respondents, Option 1 removed these burdens and provided individual solicitors and regulated entities with more flexibility and creativity to determine what activities might be suitable to ensure ongoing competence and to deliver an appropriate standard of service to clients. Respondents also felt that this freedom could help regulated entities to differentiate themselves within the legal services market. The Sole Practitioners' Group said "it will undoubtedly be a relief to many to have the freedom and flexibility to choose whether to do 16 hours or not since the time and cost of attendance can be burdensome".

14. Some regulated entities suggested that they already had in place bespoke approaches to ensure that staff remain competent to deliver high quality legal services. For these regulated entities, the implementation of Option 1 did not present any significant negative impacts in terms of implementing new processes or embedding new working cultures. The Sole Practitioners' Group said "A shift towards a more reflective approach will not represent a significant difference to most sole practitioners since their approach is already reflective".
15. A number of respondents acknowledged the logic of Option 1 and the consistency between Option 1 and our wider approach to regulation in contrast to the existing regulatory requirements. The Law Society said "we see the logic behind the SRA's views and our survey suggests that this would have some support within the profession".

### Negative impacts

16. Despite acknowledging the logic behind Option 1, the Law Society was concerned about how Option 1 would work in practice. This was true for a number of respondents who stated that they were not necessarily ideologically opposed to the principles and the benefits of Option 1, but there were too many unanswered questions or knowledge gaps in the consultation paper that inhibited their ability to see how it could work in practice, for example, the lack of detail as to what the non- mandatory guidance would contain and how compliance with Option 1 would be monitored. The Institute of Paralegals said they were "concerned that the lack of hard guidance provided to practitioners when interpreting their responsibilities under outcomes focused regulation will be replicated by option 1".
17. A frequently held concern was that the absence of a mandatory requirement to undertake CPD might mean that some solicitors would view the need to remain competent as voluntary. Others felt more strongly, suggesting that some individual solicitors would simply not do any education and training if there was no requirement for them to do so. The Law Society said that "...the signal will be sent, however unwittingly, that CPD is no longer required or is, in some way optional." This view was echoed by the Liverpool Law Society who suggested that "the implementation of Option 1 or Option 2 will result in less overall training being undertaken by the profession. It will send a message to individuals and firms that training is desirable but not essential".
18. A number of firm based respondents suggested that if the mandatory requirement was removed, although it would not be an issue for themselves in providing appropriate training and development for their employees, it may present a challenge for some regulated entities. Given the current economic climate, it was argued that the removal of a mandatory requirement could result in some regulated entities reducing their training budgets.
19. Linked to this, it was suggested that certain groups, such as newly qualified solicitors, junior solicitors and in-house solicitors, might be adversely affected if their employer decided to reduce its training and development provision. It was argued that current CPD requirements afford some protection for

solicitors in less well-resourced regulated entities by driving the allocation of budget and resource to learning and development. Nottinghamshire Law Society believe that "this is a particular concern for younger members of the profession as they are least likely to feel able to insist that their employer provides adequate CPD opportunities".

20. An implication of Options 1 and 2 is that we cease to accredit CPD providers. A number of respondents expressed concern that this might affect the quality of available training.
21. Some respondents indicated that smaller entities, in particular, would be more likely to forego training and development since they are more likely to have a lack of resources for purchasing education and training activities and, as a result, will be more likely to be judged as not providing competent legal services.
22. A small number of respondents felt that, if the above scenarios did occur, this could lead to a deterioration in the quality of legal services provided and possible reputational damage to the profession as a whole. This reputational damage was considered to be a general concern with Option 1 if consumers of legal services believed that solicitors were no longer required to keep up with changes in the law and regulation. Respondents also suggested that if entities/individuals became solely responsible for their CPD it was likely that insurers would see this as an increased risk and therefore increase premiums.
23. A key point raised by a large number of respondents was that the effective implementation of Option 1 required a significant cultural change for solicitors to regularly reflect on their performance and development needs and that this change could take some time to embed. Responses from a range of regulated entities suggested that it could take between one and two years to adapt existing approaches or embed new approaches, processes and systems successfully in the working culture of the organisation to meet the requirements of Option 1.
24. Many respondents felt that our ability to monitor the competence of legal services proactively could be restricted by the implementation of Option 1. It was suggested that the obligation for solicitors to declare, at the time of annual practising certificate renewal, that they have complied with the CPD requirements acted as a safeguard that practitioners were competent to practise. It was felt that this approach provided a better protection to consumers of legal services than relying on supervisory or enforcement activity once a risk regarding competence had materialised.

## Overview of responses to question 2

25. We asked stakeholders for their views on the positive and negative impacts of the introduction of a new CPD requirement based on mandatory planning, reflection and recording.

## Positive impacts

26. There was some support for a requirement for all solicitors to identify and document their training needs in a development plan, implement that plan and evaluate its effectiveness on a documented annual cycle. Respondents suggested that this would go some way to addressing the inadequacies of the current approach, ensure that the value and reason for undertaking training was considered and that there was a focus on consumers in delivering competent legal services. Law2020 LLP noted that "Option 2 appears to offer significant benefits in imposing a discipline upon solicitors...This might lead, over time, to a change in the solicitors' perception of CPD as a compliance requirement and a move away from the 'tick-box' mentality". The Legal Services Consumer Panel expressed a preference for this option saying "for us, this [option] ..... strikes the right balance, for the time being, about giving solicitors greater freedom to decide their own learning approach while keeping appropriate checks and balances in place".

## Negative impacts

27. The most commonly raised concern from respondents was that it would maintain a "one size fits all" approach to CPD and would not provide the flexibility and freedom of Option 1. Some respondents felt that this approach would not address the key problem with the current approach, i.e. the focus of CPD on ensuring compliance with the regulatory requirement rather than ensuring competence, because it could replace a box ticking exercise by a form filling exercise.
28. A large majority of respondents also felt that Option 2 could increase the regulatory burden on individual solicitors and regulated entities in terms of the resources, time and cost required to implement and maintain this approach. Some respondents also suggested that Option 2, through increased supervisory activity could significantly increase our regulatory costs.

## Overview of responses to question 3

29. We asked stakeholders whether or not we should continue to suggest a minimum number of hours CPD for all solicitors.
30. Many of the perceived negative impacts associated with the implementation of Option 1 were repeated by respondents when addressing this question. In responding to this question, respondents indicated that, whilst they supported the principles and objectives of Option 1, retaining a minimum number of hours requirement was preferred because respondents could not see how Option 1 would work in practice.
31. A number of respondents suggested that a minimum hours requirement was clear, tangible and familiar for solicitors and that solicitors clearly understood how they could meet this requirement. It was also argued that a minimum hours requirement ensured that solicitors undertook some level of training

and that it would prevent some regulated entities reducing the budget allocated to training and development. It was for these reasons that a number of respondents suggested that a minimum number of hours provided a "safety net" for consumers of legal services. The Sole Practitioners' Group stated that "training budgets may be cut significantly if the mandatory requirements are removed, particularly in these difficult economic times".

32. Some also argued that retaining a minimum hours requirement would not increase the regulatory burden on regulated entities as fewer changes to their systems and processes would be required and it would require less time, financial or people resource to implement than other options.
33. Some responses, particularly from larger regulated entities, indicated that their staff often exceeded the current 16 hours CPD requirement. These regulated entities indicated a preference for the retention of a minimum number of hours requirement as it provided a benchmark for demonstrating competent legal services to clients.
34. There was some discussion from stakeholders who responded to this question as to whether the current prescribed number of hours requirement should be changed and responses were split between those who thought they should be increased and those who did not.
35. Respondents were mixed in their support for allowing a wider range of activities to count towards CPD and that activity should be aligned to the individual's current or anticipated area of practice. Those in favour generally supported the increase in the range of available activities and the inclusion of on the job training as long as it was appropriately monitored. Those respondents with reservations were concerned that the link between training and practice could facilitate a dilution of the broad base of skills required by solicitors to deliver competent legal services.
36. Respondents who suggested that the minimum number of hours should be removed indicated that an arbitrary hours based approach did not necessarily equate to competence. It was suggested that an hours based approach encouraged individual solicitors to comply with a regulatory requirement rather than achieve competence. Linklaters LLP supported the view "...that there is a significant risk that the minimum hours requirement could encourage solicitors to focus on minimum compliance with the CPD requirement rather than on their competence and the relevant outcomes in the Code of Conduct". Some respondents also suggested that, for this reason, the current approach to CPD was a barrier to individual solicitors developing their competence.

## Overview of responses to question 4

37. We indicated in the consultation paper that, if we adopted Option 1, we would rely on our risk assessment, consumer engagement and supervisory activity to identify competence issues and that we would hold individuals and entities to account for the delivery of competent legal services. If we adopted Options 2 or 3, we also suggested that we would rely on the regulated entity (or



individual where they did not work in a regulated entity) to ensure compliance and that we would identify risks through our supervisory activity. However, we also indicated that there were a range of other options open to us for monitoring compliance and we sought views on the advantages and disadvantages of these options. The options included:

- requiring a nominated individual within an entity to take responsibility for competence of legal services and/or compliance with a CPD requirement - this might be either the COLP or other nominated individual;
- if we retained a prescribed CPD scheme, requiring all regulated entities to make an annual declaration to the SRA regarding compliance.

38. This part of the consultation did not generate as much debate and engagement from respondents as the previous questions. Responses cited either an absence of detail regarding the monitoring and enforcement proposals in order for them to come to an informed decision or they stated they were unable to see how monitoring and enforcement would work in practice. The Law Society stated that "there is not enough clarity about the SRA's approach to enforcement".
39. Of the regulated entities and individuals that responded, there was roughly an even split between those that thought the responsibility for compliance with competence requirements would be an additional burden for the COLP, and those that thought it was logical and right to place responsibility on the COLP.
40. Some respondents argued that, although the COLP should maintain ultimate responsibility for their regulated entities' compliance with competence requirements, it should be up to the entity to decide who, on a practical day-to-day basis, should be responsible for matters of training and development.
41. Some in-house lawyers failed to see how the monitoring options applied to them, focusing as they do on the regulated entity.
42. On the question of whether compliance was a matter for the individual or the entity respondents were again split.

## Our response

43. We are pleased with the level of engagement we have had in response to this consultation and with the wide range of views which have been expressed about the options and issues set out in the consultation paper. We said in the consultation paper that we considered Option 1 to be the most effective and least onerous way of achieving the objectives behind these reforms and we still believe this to be the case. We are pleased that a number of stakeholders were able to see the benefits that Option 1 will provide in terms of a reduction in regulatory burden, an increase in freedom and flexibility and a focus on the desired outcomes from education and training, for the ultimate benefit of the consumer, rather than on compliance with an arbitrary

requirement which may, or may not, provide assurances to the consumer about the quality of the service they receive.

44. However, we also recognise that many stakeholders, both in response to the formal consultation as well as at stakeholder meetings, raised concerns with the implementation of Option 1. Whilst even within that group there was a recognition that Option 1, in principle, goes some way to address the deficiencies of the current system, there were a number of concerns expressed which we must address. Thus, while we still believe it to be the case that Option 1 is the right approach, we have reviewed the approach to timing and procedures for bringing Option 1 into force to meet the concerns that have been put to us. Our response to these concerns is set out below:

#### **i) Concerns about impact on quality of advice**

45. The most frequently raised concern was that, if Option 1 was adopted, some entities, particularly smaller ones, might reduce training budgets. This might result in some solicitors being denied access to training, restrict the ability of individual solicitors to ensure their own competence, and therefore affect the quality of advice they provide. Similarly, there was a concern that some solicitors might see a move to Option 1 as a green light to stop undertaking training and development which again, in turn, might affect the quality of advice. Allied to this was a concern that ceasing to accredit CPD providers might affect the quality of available training.

#### **Our response:**

46. By delaying full implementation until November 2016 we are creating more time to help firms to adapt. A mixture of advice and guidance and clear communication will maximise the number of firms that are willing and able to comply. We will then be better placed to focus our regulatory effort on those that do not deliver competent services to consumers who cannot judge for themselves. We will seek to maximise our use of consumer reports, complaints data and research to ensure we are abreast of emerging risks to competent services.
47. Individual solicitors are, and will continue to be, required to exercise professional responsibility and make judgements about their competence in the context of their own practice area. The requirement to comply with Principle 5 will still exist. Implicit within this principle is a requirement to reflect on competence and practice, identify training and development needs and address them appropriately. We believe that this, together with other requirements in the Handbook, will ensure that solicitors and regulated entities will continue to take training and development seriously and undertake it on a regular basis. Option 1 will enable us to focus our regulatory resource where we have evidence that Principle 5 is not being met and where this poses an unjustifiable risk to consumers.
48. Option 1 does afford freedom and flexibility to regulated entities and individuals to determine their own approach to education and training. We would expect that, in accordance with the obligation to provide competent services, regulated entities will need to devote appropriate time and budget to CPD activities. The time and resources spent will be for each entity to

determine and may increase and decrease from year to year depending on the needs of the practice. There are a wide range of ways in which entities, including those with smaller budgets, can ensure that their staff remain up to date and competent to carry out the work that they do. Attendance at formal training courses is just one of these ways and, in some cases, may not be the most effective or cost effective way. For example, we have spoken with a number of stakeholders who indicated that they held regular update meetings with their staff to share learning from current cases and discuss upcoming issues. This is a valuable, cost effective and easy way to learn and to develop staff and would be an entirely appropriate way for an entity to show that it was taking steps to ensure the competence of its staff.

49. We do not share the concern that ceasing to accredit CPD providers will affect the quality of available training. We do little to assure the quality of training that we do accredit. There are a number of ways of training that may be more effective as noted in paragraph 48. Removing accreditation will require professionals to form their own judgements about the quality and appropriateness of training on offer. For this reason we propose ceasing to accredit CPD provision with effect from 1st November 2014.

#### **ii) Uncertainty about how to comply with the regulatory requirements**

50. Many stakeholders have expressed concern that, in the absence of a mandatory hours requirement, they will not know what they need to do to comply with our requirements. As we set out in paragraph 45 above, some solicitors might not undertake any development activity at all. Conversely, other individuals or entities will overcompensate for the lack of clarity by investing unnecessary time and money in CPD in order to ensure they can demonstrate compliance. This would be an unwelcome impact that would increase the regulatory burden on these entities/individuals. Some respondents indicated that they would prefer us to retain a minimum hours requirement both to provide some certainty about how to comply and also to ensure that all solicitors undertook at least some CPD each year.

#### **Our response:**

51. We intend to issue a toolkit to support the move to the new approach. The toolkit will provide guidance for solicitors and entities and will provide advice on:
- ways to reflect on their practice and identify training needs
  - the range of ways in which training needs might be addressed
  - how to record and reflect on training undertaken
  - tools that are available to assist with this process
  - examples of good practice
52. We are currently undertaking research to identify the range of training and development approaches used by regulated entities to ensure they deliver a competent service. We will use this research to inform the development of the toolkit and to provide case study examples for those who require them.
53. We are also developing a statement of competence which will set out what a competent solicitor should be able to do. This statement will form part of the

toolkit and will be a valuable tool to help solicitors reflect on their own competence and identify any training needs and to help entities determine the learning and development required in their practice.

54. We recognise that for many within the profession the minimum hours requirement offers familiarity and certainty and the obligation to declare compliance with the requirement can be seen as a safety net to protect consumers. However, undertaking a certain number of hours CPD does not provide any guarantee that consumers will receive an appropriate standard of service. Many respondents who supported the retention of a minimum hours requirement acknowledged this in their response to the consultation. We remain of the view that the current hours based requirement is flawed and represents an unnecessary regulatory burden. It tells us and the individual solicitor very little about the value of any CPD undertaken and creates a false certainty that undertaking 16 hours CPD will ensure a solicitor remains competent. We believe that a move to Option 1 provides better assurances for consumers that solicitors and their employers are taking their professional responsibilities to remain up to date and competent seriously and taking the time to think about the training and development that is needed rather than simply following the arbitrary instructions of the regulator.

### **iii) The need for cultural change**

55. Entities of all sizes and individuals from a range of practice areas indicated that a move to Option 1 would require a culture change within the profession and that this would not happen overnight. This culture change needs to relate not just to the development of new systems and processes for reflecting on and recording training but also to ensure individuals and entities commit appropriate time and resource to this process without the compulsion of a minimum hours requirement.

#### **Our response:**

56. We agree that there is a need for culture change within the profession if the new approach is to work effectively. In view of this, we do not intend to implement Option 1 until 1 November 2016. In the meantime, we will plan a range of activities to engage with the profession to support them through the change to the new approach. This engagement activity will be supported by two key resources: the toolkit and the competence statement, both of which will be available from Spring 2015. Regulated entities or individuals who feel able to embrace the new approach at an earlier date will be able to do so from Spring 2015 if they choose to. We will continue to require an annual declaration of individuals and firms that appropriate systems are in place for continuing competence. Solicitors take such declarations seriously and this also reminds them of their continuing professional and regulatory obligations. We believe that this lead in time, combined with clear communication and engagement with the profession, will provide the necessary support to assist the profession with the move to the new approach.
57. We will publish further details about the timescales for implementation of the new approach before the end of the current CPD year.

#### **iv) Insufficient detail about how we will ensure solicitors remain competent under Option 1**

58. Some respondents considered that we had provided insufficient details about how we would ensure compliance with our requirements under Option 1 while others suggested that it would be more costly to ensure compliance under Option 1 than under the existing requirements.

#### **Our response**

59. A move to Option 1 requires us to ensure that competence is properly embedded into our regulatory framework and requires us, and our staff, to have a better, and more sophisticated, understanding of what we mean by competence and when it poses a risk to consumers. This will require us to review and adjust some of our internal processes and to ensure our staff are properly trained to deal with issues relating to competence. We intend to carry out this work over the next 12 months and prior to the full implementation of the new approach.

60. We are clear that we must take a realistic and pragmatic approach to regulating competence within the profession. We do not wish to introduce monitoring and compliance arrangements that significantly increase the cost of regulation or impose further burdens on those we regulate. We know that it will not be possible, or desirable, to pick up every instance of incompetence, but we can develop an approach which embeds the concept of competence more clearly within our regulatory activities and seeks proactively to identify any significant risks or trends related to competence which require our attention.

61. Our early work suggests that there are 3 instances which might justify a regulatory intervention:

- i) **Firm based competence** - Where we identify a cluster of issues which may relate to competence linked to a particular firm, we may take action. We would investigate whether the firm had in place appropriate systems for identifying development needs, training staff and evaluating the impact of learning. Where these systems did not exist, our regulatory action would be more robust.
- ii) **Thematic or sector issues** - Where we identify concerns relating to competence in a specific sector or relating to a particular thematic aspect of competence we may take action. These issues might be picked up through media scanning, analysis of trends in incoming data or intelligence gathered by relationship managers or supervisors. Where we have evidence of incompetence in a particular sector, we have a range of regulatory tools at our disposal.
- iii) **Individual competence** - We will not usually seek to take action in the event of individual matters of incompetence because these will normally be dealt with elsewhere e.g. by the firm, the Legal Ombudsman or the courts. However, there may be cases where action on our part may be appropriate, for example, where the

seriousness of the incompetence justifies it, where there are repeated instances of incompetence or where the court refers a case to us. Where the individual cannot demonstrate that they have taken a responsible approach to their learning and development, this will be an aggravating factor in relation to enforcement action.

We would use our proposed Competence Statement to provide a definition of what we mean by competence.

62. We do not intend to introduce any new requirements on COLPs or other individuals within regulated entities for compliance with the outcomes in the Handbook relating to education and training as we believe that this obligation is already covered by the existing obligations of the COLP and to introduce any new obligations would be unnecessary and unjustifiable.

#### **v) Reputational risk**

63. Some stakeholders were concerned that, if consumers of legal services believed that solicitors were no longer required to keep up with changes in the law and regulation, this would damage the reputation of the profession generally.

#### **Our response**

64. We recognise that this is a risk with the new approach. We intend to address this risk through a comprehensive stakeholder engagement strategy which will make clear that the new approach does not represent any downgrading of the importance which we attach to the delivery of competent legal services (and therefore of learning and development) - in fact we believe that the new approach demonstrates our intention to focus more rigorously on competence within our regulatory activity.
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## Appendix 1

List of respondents who did not state a preference for anonymity.

Association of Personal Injury Lawyers  
Association of Women Solicitors (London)  
Bournemouth & District Law Society  
Cambridgeshire & District Law Society  
Central Law Training  
CILEx/IPS  
City of London Law Society  
DAC Beachcroft  
Dechert LLP  
Devon & Somerset Law Society  
Gateley LLP  
Hampshire Incorporated Law Society  
Herbert Smith Freehills LLP  
Ian Gascoigne  
Institute of Paralegals  
Jon Harman  
Junior Lawyers' Division  
Karen Medhurst  
Kent Law Society  
Law2020 LLP  
LawNet  
Legal Services Consumer Panel  
Linklaters LLP  
Liverpool Law Society  
Nottinghamshire Law Society  
Paul Clark  
Paul Feild  
Peter Williams  
Professional Conferences  
Solicitor Sole Practitioners Group  
Stephen Allinson  
Susan Highmore  
The Forum of Insurance Lawyers  
The Law Society of England and Wales  
The Surrey Law Society  
Thomson Reuters  
Tunbridge Wells, Tonbridge & District Law Society

## Appendix 2

### Overview of consultation respondent groups

The table below details the number and type of respondents to the consultation

Type	Number of respondents
Regulated entities	14
Local Law Societies	13
Training and learning specialists	11
National representative bodies	9
Individual solicitors	7
In-house	7
Legal research organisation	1
Consumer body	1
Anonymous	1
<b>Total</b>	<b>64</b>

*Table A2:1*

An analysis for each respondent group is detailed below.

#### Representative bodies

Responses were received from representative bodies at local and national level. We have analysed the responses from local Law Societies and national representative bodies separately.

#### **Local Law Societies**

A total of 13 responses were received from local Law Societies. Of these, nine responses indicated a preference for the implementation of Option 3. Of the remaining respondents, one of these indicated a preference for Option 2 and three respondents in this group did not indicate a preference. All those local Law Societies who indicated a preference for the implementation of Options 2 or 3 are accredited CPD providers. 1 of the 3 who indicated no preference is an accredited CPD provider. These preferences are shown in the table below:



<b>Local Law Societies: number of preferences for each option</b>	
Option 1	0
Option 2	1
Option 3	9
No preference	3

*Table A2:2*

### **National professional representative bodies**

A total of nine responses were received from national professional representative bodies. This includes the Law Society. Additionally, it also includes CILEX and IPS who sent a joint response. Of these respondents, six indicated a preference for the implementation of Option 3 (including the Law Society). One respondent in this group stated a preference for Option 1, and one stated a preference for Option 2. The CILEX/IPS response did not state a preference for any of the options. Table A2:3 summarises these responses.

<b>National professional representative bodies: number of preferences for each option</b>	
Option 1	1
Option 2	1
Option 3	6
No preference	1

*Table A2:3*

We note that the Law Society has a substantial income from its training offer but we have considered their response primarily as that from a professional body representing its members, rather than from a CPD provider.

### **Consumer representative body**

We received one response from a consumer focused body, the Legal Services Consumer Panel. This response stated Option 2 as its preferred option.

### **Regulated entities**

A total of 14 responses were received from regulated entities, and these provided mixed views for the implementation of each option. *Table A2:4* below summarises these responses:

<b>Regulated entities: number of preferences for each option</b>	
Option 1	3
Option 2	1
Option 3	5
No preference stated	5

*Table A2:4*

As detailed in the table, five favoured the implementation of Option 3, while three preferred Option 1 and one response indicated support for Option 2. The remaining five regulated entities that responded did not indicate a preference.

### Training and learning specialists

A total of eleven responses were received from organisations and individuals that are dedicated training and development specialists. Of these, eight respondents indicated a preference for the implementation of Option 3 and one stated a preference for Option 1, while two from this group did not indicate a preference.

These responses are summarised in *Table A2:5* below:

<b>Learning and development specialists/providers: number of preferences for each option</b>	
Option 1	1
Option 2	0
Option 3	8
No preference stated	2

*Table A2:5*

### In-house

We received seven responses from in-house solicitors. Responses from this group were evenly split between Option 1 and Option 3, with three respondents expressing a preference for each of these options, while one respondent indicated a preference for the implementation of Option 2.

<b>In-house: number of preferences for each option</b>	
Option 1	3
Option 2	1
Option 3	3
No preference stated	0

*Table A2:6*

### Individual solicitors

Individual solicitors accounted for seven responses. There was an even split in preference between Option 1 (two respondents) and Option 3 (two respondents). One respondent within this group stated a preference for the implementation of Option 2. The remaining two respondents in this group did not indicate a preference.

<b>Individual solicitors: number of preferences for each option</b>	
Option 1	2
Option 2	1
Option 3	2
No preference stated	2

*Table A2:7*

## Legal research provider

We received one response from a legal research provider which also offers accredited CPD. It stated that it preferred Option 1.