

talking point

That'll learn yer

by Alan Nelson



The last time the Solicitors Regulation Authority reviewed its CPD rules, *Back to the Future* was topping the box office. High time for a change? **Alan Nelson** reckons so.

New administrations are frequently criticised for changing things around just because they can. But this is hardly a complaint that could be levelled at the SRA and its decision to review the rules governing solicitors CPD. Any system that has been in place for 26 years might be due some attention.

The SRA say that the review should create a scheme that:

- properly helps to maintain and improve solicitors' competence, performance and ethical conduct;
- is proportionate, targeted and based upon the principles of outcome-focused regulation;
- actively helps solicitors to progress their careers and remain competent; and
- is properly monitored and enforced.

OK, but there is a bigger issue. In sectors as diverse as medicine, accountancy, architecture and engineering, the move towards more tightly regulated CPD regimes is driven by the need to restore public confidence in the professions. In health, cases such as Baby P and Shipman have been the catalyst. In finance it has been Enron and the banking crisis.

The link between these cases and CPD regimes is tenuous at best, but the professions need to be seen to be putting their house in order. Of course, the public's general distrust is hardly new - Dickens was no fan of legal institutions and Shaw memorably described the professions as "a conspiracy against the laity" - but we do seem to have reached a nadir and that has to be addressed.

I applaud the link that the SRA have made between this review and ethics and professionalism. That seems to go to the heart of public concerns. I recently heard a definition of a "professional" as a plumber who tells you that you don't need to pay him to fit a new boiler if all you need is a couple of washer replaced. Now my suggestion that we should compare lawyers with plumbers may not be welcome, but there are comparisons that can be made with other professions.

At present, solicitors must complete 16 hours of CPD a year, 25% of which is accredited. While this idea of accredited suppliers is not exclusive to law, the idea of stipulating their use

is not widespread. As a provider in many sectors, we have had to jump through lots of accreditation hoops. I can honestly say that I can remember no case where this has added any value. The evaluation is so superficial as to be pointless and the quality of the output of some of the suppliers who are approved is so poor as to render the process laughable. The whole apparatus is simply a tax on providers.

I read recently that the BSB generates over £200,000 a year from its accreditation service, which does seem to provide a clue as to the reason these schemes exist. With 90% of respondents in a recent survey rating social media style peer review of services as the recommendation they most trust, what is the point? If the BSB does go ahead with proposals to scrap accreditation, it is to be applauded. The SRA should follow suit. It adds no value and is well past its sell by date.

So what is the alternative? Other professions distinguish either between "verifiable" and "unverifiable" or between "structured" and "unstructured". Both seem more useful but I prefer the latter as the best description of the two types of activity that people engage with:

Go compare

What about the total number of hours? If the bleating that has erupted from barristers over the doubling of their requirement to 24 hours is anything to go by, solicitors may well be unhappy with any increase. But before you moan too much it might be worth looking at some comparisons.

Accountancy: of those institutes that opt for an inputs or hours-based approach, ACCA requires 40 hours a year, of which 21 must be "verifiable", CIPFA expect 120 hours over three years with no less than 20 hours in any one year, and Chartered Accountants Ireland look for 20 hours of structured CPD and 50 hours of unstructured each year.

Health: while the rules for doctors are not specific, dentists must complete 250 hours over a five year period, 75 of which must be verifiable. Chiropractors must do 30 hours while psychologists must complete no less than half a day a month.

Construction: For architects it is 35 hours of CPD each year, half of which must be "structured".

Even members of the British Institute of Interior Designers must complete 20 hours. So it seems to me to be inevitable that the requirement should increase. If part of the point is to gain public confidence, it doesn't look good if the implication is that a solicitor spends less time staying up to date than an interior designer!

What else can other professions add to the SRA's review? I'd highlight three areas:

1. Systems of measurement

CPD administrators argue whether activity should be monitored on an "inputs" or "outputs" basis. Inputs systems measure what you do – so many hours of this sort of thing. Outputs systems focus on what you need to achieve - writing a development plan and then explaining how you have achieved your goals. Critics of inputs systems say that they encourage people to sit at the back of irrelevant lectures playing with their blackberries. Critics of outputs based systems say that they are easy for the individual to fudge. In fact, the best systems combine the two.

Engineers Ireland, with whom we partner on the provision of CPD, have a well thought out system based on outputs, but with a clear stipulation that you won't be considered to have done enough unless it amounts to more than a certain number of hours.

So what should the SRA review do? The current guidelines advise solicitors to conduct a training needs analysis and write a plan for their CPD. This is laudable but the actual return is just a list of activities with a space for a comment. If the standard of submission is anything like those I have seen at the ICAEW, comments will largely be: "This was useful" or "Great course".

A key part of good CPD schemes is the act of reflection after learning has taken place. So either ask for the development plan to be included with the return or change the comments field to specifically request information on what was learnt, why it was relevant and what it is going to change. This alongside a requirement for a fixed number of hours delivers the inputs-based benefit of measurability with the outputs-based benefit of reducing the likelihood of people clocking up the hours cynically.

2. Keeping up with the times

We live in a Web 2.0 world. I have already mentioned the value of peer rating to distinguish good from bad. The legal world needs to keep up with the times on what counts as CPD. I use twitter as my way of reflecting on development activity and write blogs to

discuss issues that I am grappling with. The recent BSB recommendations disallow writing blogs, leading to the farcical situation that writing a blog doesn't count for you, but reading it does count for others! The SRA should not make the same mistake. A more flexible approach is needed. No serious learning and development professional any longer believes that learning equals courses and nothing else.

3. Deciding what to focus on

Many professions suffer from an over emphasis on staying up to date with technical knowledge. This is wrong for two reasons. The first is best summed up by Charles Jennings, who has written extensively on the exponential growth of information: "Being able to find just the right information or source of knowledge at the just right time in the just right context is far more useful than recalling something we've learned some time ago and hoping it is still relevant and 'right'."

We have moved from an era when you might expect a professional know most of what is needed and only have to look up the odd thing, to one where what matters is that you know when to look and where.

The second reason is that most consumers of legal advice wouldn't rate technical virtuosity as the most important issue. When I take legal advice at work or at home, I am rarely asking any hard questions. The lawyer who negotiates my contracts knows her stuff, but I am sure she isn't the world's expert. What I like about her is that she doesn't upset my customers by being pompous or picky, or by scoring silly legal points.

I like the concept of the T-shaped professional. The vertical bar of the T is about a professional's functional/technical skills whereas the horizontal bar represents the ability to apply knowledge across situations.

A good lawyer is one with rounded skills. Can they conduct a divorce without making the couple hate each other any more than necessary? Can they negotiate a contract to deliver business objectives rather than simply to be "right"? Can they buy a house for me without wasting months on trivialities?

If the review addresses these three areas it has a chance of creating a system that meets the needs of consumers and regains public confidence in the profession. If it looks like it is obsessed with box ticking or generating money for the SRA, if it appears to be distrustful of the internet, or if it focuses on technical skills at the expense of fully rounded professionals, then it will fail and rightly so.

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Unstructured:

The many ways in which we stay informed every day – reading journals and magazines, blogs and newsletters.

Structured:

The more formal activity we undertake to develop our knowledge, understanding and skills.