Criminal Law Solicitors' Association

Cambridge House

Cambridge Grove

Hove, BN3 3ED

Email: admin@clsa.co.uk

CLSA response to:

Solicitors Regulation Authority Consultation: Strengthening our Continuing Competence Approach

1. Introduction

The Criminal Law Solicitors Association ("CLSA") represents solicitors and firms undertaking criminal defence work throughout England and Wales. Our membership ranges from sole practitioners to medium-sized firms, although the majority are small and medium-sized practices providing publicly funded criminal legal aid services.

Criminal defence solicitors perform an essential constitutional role. They protect individual rights, uphold the rule of law, support the proper administration of justice and help ensure the fair and efficient operation of the criminal courts. This work is undertaken in one of the most highly regulated areas of legal practice and against a backdrop of continually evolving legislation, procedure and case law.

The CLSA supports the principle that solicitors should maintain continuing competence throughout their careers. Public confidence in the profession depends not only on technical legal knowledge but also on the highest standards of ethics, integrity and independent judgement. Continuing professional development is therefore fundamental to maintaining confidence in both the profession and the justice system.

Any changes to the current regime should be proportionate, evidence-based and sufficiently flexible to reflect the diversity of legal practice. Most criminal defence practices hold a legal aid contract and are required to maintain either Lexcel accreditation or the Legal Aid Agency's Specialist Quality Mark (SQM). These quality standards already require firms to maintain training records and provide regular training on matters such as anti-money laundering, conflicts of interest and other ethical obligations. New regulatory requirements should not duplicate existing obligations or increase the compliance burden unnecessarily.

The criminal defence profession has faced sustained financial pressures for many years. Most firms operate on very narrow margins and have limited administrative capacity. Additional regulatory requirements, however well intentioned, inevitably divert fee-earning time away from client work. This is particularly significant for legal aid providers, which cannot readily recover increased compliance costs through higher fees.

The CLSA is also concerned that the move from an hours-based CPD regime to a purely reflective practice model has created uncertainty among practitioners about what is required to demonstrate compliance. While reflective practice should remain central to continuing competence, we believe it would be beneficial to reintroduce a modest minimum requirement for accredited external learning. This would provide practitioners with greater clarity and reassurance that they are meeting SRA expectations. We suggest that at least six hours per year should be completed through accredited training providers.

The CLSA strongly supports the importance of ethics within legal practice. However, we are not persuaded that a single prescribed method of ethics learning will necessarily produce better outcomes than the wide range of high-quality ethics training already delivered by employers, professional bodies and specialist organisations. The objective should be meaningful engagement with ethical issues rather than mandating one particular format.

In particular, Lexcel and SQM accredited firms are already required to provide regular training on anti-money laundering, Accounts Rules, conflicts of interest and equality, diversity and inclusion. These topics fall squarely within the scope of professional ethics. Consequently, solicitors working in Lexcel or SQM accredited firms should not be subject to additional mandatory ethics training requirements.

Finally, the CLSA welcomes the SRA's commitment to producing guidance, templates and practical resources. The emphasis should remain on supporting solicitors to maintain competence, rather than creating additional regulatory burdens.

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3. Response to Consultation Questions

Consultation Proposal One: Requiring solicitors to record their learning and development needs and how they identified and addressed them

The CLSA supports the principle underlying this proposal. Continuing competence can only be demonstrated effectively if solicitors maintain an appropriate record of their reflection, learning needs and development activities. Any record should be concise, meaningful and proportionate.

Question 1

To what extent do you agree with the proposal requiring solicitors to maintain a record explaining how learning needs were identified, how they were addressed and confirming that all aspects of the solicitor's work and role have been considered?

The CLSA agrees with this proposal.

A continuing competence obligation has limited value unless a solicitor can demonstrate that they have genuinely reflected on their practice and considered whether further learning or development is required. Maintaining a brief written record is a proportionate means of evidencing compliance and should assist both solicitors and the SRA if questions subsequently arise.

Question 2

Do you agree that records should be retained for a minimum period of three years?

The CLSA agrees that a three-year retention period is reasonable and proportionate.

Question 3

Do you agree that solicitors should confirm, when renewing their practising certificate, that they have reflected upon all aspects of their work, completed appropriate learning and retained evidence meeting the SRA's requirements?

The CLSA agrees with this proposal.

Question 4

Do you have any other comments regarding Consultation Proposal One?

The CLSA recommends that the SRA publish:

- an updated continuing competence template suitable for different practice areas;
- clear examples of effective reflective practice;
- worked examples showing the level of detail expected;
- sector-specific examples, including criminal defence, family, civil litigation, conveyancing and in-house practice; and
- practical guidance demonstrating how learning needs may arise through supervision, advocacy, legislative change, judicial guidance, appellate decisions and regulatory developments.

The CLSA also considers there is merit in reintroducing a modest requirement for structured accredited learning each year. While we support an outcomes-focused approach, accredited external training continues to provide independent quality assurance and exposes practitioners to developments beyond their immediate working environment.

To provide greater clarity and certainty, the CLSA suggests that solicitors should complete a minimum of six hours annually through accredited learning providers.

Consultation Proposal Two: Requiring solicitors to participate annually in mandatory ethics discussions

The CLSA supports the objective of reinforcing ethical standards throughout the profession and agrees that ethics should form a regular and meaningful part of continuing professional development.

Our concern lies not with the objective but with the proposed method of delivery. Ethics training is already provided effectively through accredited courses, webinars, conferences, specialist advocacy programmes, professional events and structured in-house training.

Lexcel and SQM accredited firms are already required to provide regular training covering anti-money laundering, Accounts Rules, conflicts of interest and equality, diversity and inclusion, all of which form part of professional ethics. The CLSA therefore believes that firms holding Lexcel or SQM accreditation should be deemed to satisfy any ethics-training requirement and should not be subject to additional mandatory obligations.

Question 5

To what extent do you agree with the proposal to introduce a new requirement for annual participation in mandatory ethics discussions?

The CLSA supports mandatory ethics learning but does not agree that facilitated discussion should be the only acceptable method of delivery.

In addition, solicitors working within Lexcel or SQM accredited firms should be exempt from any additional mandatory ethics-training requirement.

Question 6

Do you agree that discussions should be facilitated by a solicitor with a current practising certificate (or on the Roll), who has practised for at least three years and has no regulatory or disciplinary record?

The CLSA does not support facilitated discussion as the sole method of ethics training.

If the SRA adopts this model, it should provide facilitators with practical guidance, including:

- model agendas;
- suggested discussion structures;
- example ethical scenarios;
- guidance on encouraging participation; and
- guidance on managing differing viewpoints while maintaining focus on professional obligations.

Question 7

Do you agree with the proposed responsibilities of facilitators?

The CLSA does not support facilitated discussion as the sole method of ethics training.

However, if the proposal proceeds, the proposed responsibilities appear proportionate. The SRA should make clear that facilitators are not expected to act as assessors or examiners. Their role should be to encourage informed discussion rather than determine whether participants have reached a particular answer.

Question 8

Do you agree that mandatory ethics discussions should involve a minimum of three and a maximum of twelve participants?

The CLSA does not support rigid numerical limits.

Many criminal defence firms employ only one or two solicitors. A mandatory minimum of three participants would require them to make external arrangements solely to comply with the rules. Equally, larger professional training events may facilitate meaningful ethical discussion through workshops, breakout groups or moderated sessions.

The SRA should focus on whether genuine participation has taken place rather than prescribing specific group sizes.

Furthermore, Lexcel or SQM accreditation should be treated as satisfying any ethics-training requirement.

Question 9

Should aspiring solicitors undertaking Qualifying Work Experience and non-solicitor staff be permitted to participate?

Yes.

Question 10

Should additional ethics requirements be introduced before admission as a solicitor?

No.

Ethics already forms a substantial component of both the Solicitors Qualifying Examination and Qualifying Work Experience.

Question 11

Is three hours of annual ethics discussion too short, about right or too long?

If the SRA proceeds with this proposal, the CLSA considers that three hours is broadly appropriate.

Question 12

Do you agree with the proposed objectives of mandatory ethics discussions?

The CLSA agrees with the proposed objectives.

However, Lexcel or SQM accreditation should be deemed sufficient to satisfy any ethics-training requirement.

Question 13

Should the SRA provide optional case studies?

Yes.

The CLSA strongly supports this proposal. Case studies should cover a broad range of practice areas, including criminal defence, and should be updated regularly to reflect emerging issues and recent disciplinary decisions.

Question 14

Should solicitors certify compliance as part of practising certificate renewal?

Yes.

Question 15

Other comments on Consultation Proposal Two

Legal aid firms are already subject to significant regulatory oversight through Legal Aid Agency requirements and quality accreditation schemes. They also undertake some of the lowest-paid and least-profitable legal work.

There is no evidence that legal aid firms present greater concerns regarding ethics or continuing competence. Additional non-fee-earning compliance obligations risk increasing financial pressures and undermining sustainability. For that reason, solicitors working within Lexcel or SQM accredited firms should not be required to undertake additional ethics training beyond existing accreditation requirements.

Consultation Proposal Three: Requiring specific learning and development where competence concerns are identified

Question 16

To what extent do you agree with our proposal to make a rule so that we can require some or all solicitors to complete specific learning and development where we identify a competence concern or concerns in how competence is maintained?

The CLSA agrees with this proposal.

The SRA should have appropriate regulatory tools to address identified competence concerns. Where there is objective evidence of a competence deficiency affecting an individual solicitor, firm or defined cohort, it is appropriate for the regulator to require targeted learning and development as an alternative to, or alongside, other regulatory interventions.

However, such powers must be exercised in accordance with principles of proportionality, transparency and procedural fairness. Compulsory learning should not become a routine regulatory response and should only be imposed where there is a clear evidential basis demonstrating both the nature of the concern and the likelihood that the proposed learning will address it.

The CLSA welcomes the SRA's intention to apply these powers in a targeted manner supported by appropriate impact assessments.

Question 17

To what extent do you agree with our proposal to make a rule enabling us to require non-authorised staff within SRA-regulated organisations to complete specific learning and development where competence concerns are identified?

The CLSA broadly agrees.

Modern legal practice depends upon both authorised and non-authorised staff, including accredited representatives, police station representatives, paralegals, legal executives, trainees, caseworkers and administrative personnel. Where competence concerns relate to such individuals, it is reasonable to require appropriate learning and development.

Any requirement should remain closely linked to the individual's role and responsibilities.

Question 18

To what extent do you agree that any requirements imposed under this rule should be proportionate through publication of impact assessments, evidence-based rationale and targeted or time-limited deployment?

The CLSA strongly agrees.

Question 19

Do you have any other comments on Consultation Proposal Three?

The CLSA considers that this proposal has the potential to improve public confidence in the profession if exercised carefully and proportionately.

The SRA should publish guidance explaining:

- the circumstances in which compulsory learning may be imposed;
- factors relevant to proportionality;
- the types of learning that may be required;
- the evidence expected to demonstrate compliance; and
- the process for making representations or challenging proposed requirements.

Clear guidance will help promote consistency, fairness and transparency.

Supporting Solicitors

Question 20

Do you have any suggestions regarding how continuing competence resources, warning notices, guidance and annual assessments could be made more engaging and increase awareness?

The CLSA welcomes the guidance already produced by the SRA but considers there is scope to improve its accessibility and practical value.

We recommend:

- concise practice-area-specific guidance;
- regular thematic updates highlighting recent developments;
- short summaries accompanying longer guidance documents;
- greater use of practical examples and worked scenarios;
- searchable online resources organised by practice area;
- downloadable continuing competence templates;
- model reflective-learning examples;
- practice-specific ethics case studies; and
- periodic webinars covering significant regulatory developments and new warning notices.

Criminal defence practitioners operate within a rapidly changing legal environment. Practice-area-specific guidance is likely to achieve significantly greater engagement than generic materials.

Draft Regulatory and Equality Impact Assessment

Question 21

The CLSA broadly agrees that the proposals are capable of improving assurance regarding continuing competence.

However, the impact assessment should place greater emphasis on the cumulative effect of increasing regulatory obligations on small firms and legal aid providers.

Many criminal defence firms continue to operate under considerable financial pressure. Additional administrative requirements reduce fee-earning capacity and increase compliance costs that cannot readily be recovered.

The SRA should therefore continue to assess the cumulative regulatory burden associated with new requirements and ensure that implementation remains proportionate.

The impact on the following groups should be monitored in particular:

- sole practitioners;
- small firms;
- consultants;
- part-time practitioners;
- practitioners returning from career breaks;
- rural practices; and
- legal aid providers.

Draft Rules

Question 22

The CLSA has no further detailed observations on the draft rules beyond the comments contained within this response.

Should the SRA proceed with these proposals, the accompanying guidance should be comprehensive, practical and written in plain language. Experience suggests that clear supporting guidance often has a greater effect on day-to-day compliance than the wording of the rules themselves.
