

■ Actively managing learning and development

Peter Scott

The continuing competence requirements which came into effect on 1 November 2016 should be seen by law firms as a welcome development and not an added regulatory burden

There is a danger that some lawyers and their firms will ignore the new continuing competency regulation because it will mean they must apply themselves to a process requiring careful thought, reflection, planning and evaluation in relation to their learning and development needs, instead of just racking up 16 hours' continuing professional development (CPD) per annum as previously required. Indeed, I have heard from several firms that they are just going to continue achieving the 16 hours' without having any regard for the new continuing competency requirement.

From a risk management and quality assurance perspective, the learning and development undertaken by a firm's people should be regarded as critical to ensuring client satisfaction and building resilience into a firm's business. Training should be aligned in all respects with furthering the firm's objectives and should not be seen as a regulatory burden divorced from enhancing its competitive edge. For these reasons, it should be an imperative that law firms actively manage the learning and development of their people and do not leave this to the whim of individuals within a firm.

For many years it has been clear that to effectively perform the role of a solicitor, far more knowledge and skills than just 'knowing the law' are required and this is recognised by the new statement of solicitor competence. While what is required of solicitors in respect of technical legal practice is set out in part B of the statement, the rest of the statement deals with far wider requirements:

- part A – ethics, professionalism and judgement;
- part C – working with other people; and
- part D – managing themselves and their own work.

The statement of solicitor competence is a framework, albeit a framework without metrics. For this reason it is vital that firms do not regard the statement as setting out defined and exclusive obligations in respect of the competency of their people. Instead, each year as part of the practising certificate renewal exercise (PCRE) all solicitors must make the following declaration: 'I have reflected on my practice and addressed any identified learning and development needs.' The Solicitors Regulation Authority (SRA) states that it will monitor PCRE forms to identify those solicitors who have not confirmed that they have reflected on their practice and addressed identified learning and development needs (see www.sra.org.uk/solicitors/cpd/tool-kit/resources/annual-declaration.page).

'Competence' is defined as 'the ability to perform the roles and tasks required by one's job to the expected standard'.

Thus, learning and development needs not only to ensure compliance with mandatory principle 5, which requires solicitors and their firms to provide a proper standard of service to their clients, but in addition must address the 'roles and tasks required by one's job to the expected standard', the scope of which is likely to be far broader and driven by the business needs of a firm to include:

- strategic thinking and leadership;
- financial knowledge and expertise to improve profitability and cash management;
- performance and team management to get the best out of people;
- project management skills (to scope, price and deliver work on time and within budget);
- delegation and supervisory skills;
- business development, networking skills and becoming a trusted adviser;
- relationship building both externally and with colleagues;
- communication, media and negotiation skills; and
- whatever other capabilities, skills and knowledge may be required to help a firm build its competitive edge.

It can be seen that, while the statement of solicitor competence establishes the framework, it is the definition of 'competence' and the words 'to provide a proper standard of service to your clients' which establish the standards required and which are driven by the needs of clients, law firms themselves and external factors (e.g. legislation).

How should a firm – working with the individuals within it – now address the issue of learning and development to both ensure compliance by the firm (the entity) and by all individuals in the firm, while at the same time making learning and development a key part of its strategy to further the business objectives of the firm?

Firms' regulatory obligations for learning and development

While the new continuing competence requirements relate to the learning and development requirements for individuals, chapter 7 of the SRA Code of Conduct imposes specific requirements on firms.

Outcome 7.6 requires that firms train individuals working for them to maintain a level of competence appropriate to their work and responsibility.

This is reinforced by other outcomes in chapter 7 which directly impact on how firms should go about ensuring that they comply with training requirements.

- Outcome 7.8 – firms must have 'a system for supervising clients' matters', including regular checking of the quality of work.
- Outcome 7.2 – there must be effective systems and controls in place to achieve all the principles, rules and outcomes in the

SRA Handbook. This puts a clear obligation on firms to ensure compliance with principle 5 referred to above, which is at the very heart of continuing competence as it requires solicitors and their firms to provide a proper standard of service to their clients. This will in particular require firms to ensure that the client care outcomes in chapter 1 of the SRA Code of Conduct are fully achieved, given that they are about providing a proper standard of service.

- Outcome 7.3 – which requires firms to identify, monitor and manage risks to compliance with the principles, rules and outcomes in the SRA Handbook and take steps to address issues identified. To do this effectively will require firms to *actively manage* the continuing competence of their people.

Active management of continuing competence will require that firms approach the training needs of their people in a manner very different to how many have operated in the past.

Who should ‘own’ the learning and development function?

As a priority, if the management of continuing competency is to be effective for the purposes outlined above, then it will need to be decided who in a firm owns the learning and development function. Hitherto in many firms, training has been the domain of human resources professionals who have often done very little other than booking courses and keeping CPD registers. Other, perhaps more developed firms, now have dedicated training managers. Such firms ensure that the learning and development needs of everyone in the firm have high priority (with budgets to match) and are recognised as a vital function in ensuring a firm’s competitiveness. Some large firms go further and have established internal ‘academies’ to address all the learning and development needs of their people.

While having dedicated training people on board who understand the business needs of the firm and what is required to meet desired client standards, it is also important that in any firm there is ‘top level buy-in’ by management who should not only work to build a culture of learning and development, but who should themselves also live that culture. Moreover, to build a culture where learning and development are really valued is likely to require an extensive education programme over a period of time to win hearts and minds. The active and unequivocal support of management will need to be in place and clearly visible if such a programme is to achieve its objectives.

The role of COLPs

Given that training is now so directly linked to compliance with principle 5, the role of the compliance officer for legal practice (COLP) in a firm should also be reviewed and if necessary refreshed. Firms and COLPs should remind themselves of the requirements of rule 8.5 of the SRA Authorisation Rules 2011 setting out their responsibilities and, in case any may have forgotten, COLPs are still very much in the ‘firing line’. In particular COLPs should now take very seriously their role in relation to ensuring compliance with the requirements of continuing competence.

How can firms demonstrate continuing competence?

As the SRA has always emphasised to law firms, it is not enough to just be compliant. Instead, law firms and their people will

need to be able to demonstrate how they have achieved compliance. How to demonstrate compliance should be an essential part of the way in which law firms plan to manage their people’s continuing competence. There follows a list of some of the steps law firms may consider they will need to take in order to achieve this.

1. Creating a learning and development strategy

Firms should put in place a well-considered learning and development strategy designed to meet both:

- the needs of clients and therefore the training needs of a firm’s people in order to comply with principle 5; and
- the business objectives of the firm.

This should be a first step to take, not only to help demonstrate continuing competence, but also as a basis for improving the quality of everything a firm does.

2. Implementing a risk and compliance plan.

A risk and compliance plan which implements procedures designed to identify the learning and development needs within a firm and continuously monitor risks of failure to comply with principle 5 should ideally already be in place, but, if not, then one should be developed as a matter of urgency because managing risk is fundamental to good client care. When the director of risk of a major law firm was asked why her firm managed risk she said it was because of ‘the pursuit of excellence, with the aim of doing things better for the clients’. There are a number of ways to identify the learning needs of people within a law firm relative to managing risks and these may include:

- regular and random file reviews which can be a very effective way of monitoring where risks lie and therefore where people need training;
- mandatory online risk questionnaires relating to matters and clients prior to file opening;
- a system of positive confirmation by a firm’s people of their compliance with required procedures;
- a ‘no-blame’ culture designed to encourage disclosure of problems; and
- monitoring of claims for negligence and complaints against a firm – in particular, these may show that the learning needs of the people in a firm have not been met and are likely to attract the attention of the SRA as evidencing a breach of principle 5.

3. Operating a supervision system

A supervision system designed to improve client service and minimise risk is also likely to identify the learning needs of those being supervised. However, supervision is often not carried out as well or as consistently across a firm as it should be, lack of time being the usual excuse. Supervision should be given priority because how well (or badly) people are supervised is one of the first matters the SRA is likely to look at if things go wrong.

Supervision needs to be capable of being demonstrated and one way to do this is to make sure that it is the fee earners being supervised who make the necessary file records of their supervision, to back up records made by a supervisor. While I

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am not generally a fan of 'non-chargeable' codes for recording so-called non-chargeable time (they are often used as 'dustbins' to help fill up the day when there is not sufficient matter-related time to record), accurately completing records of time spent in relation to continuing competence and supervision should be something to be encouraged and firms should incorporate appropriate new codes to accommodate this.

4. Make training an integral part of performance management

Training should become an integral part of a firm's performance management system. A firm's people should know:

- what performance is required of them;
- the standards they must achieve; and
- the criteria by which their performance will be judged.

To manage (and improve) the performance of staff, many firms now have performance review processes whereby typically:

- learning and development objectives are set;
- development plans based around those objectives are put in place;
- learning and development activities are organised; and
- regular performance development reviews lead to continuing monitoring and support once further learning and development needs are identified.

Each step of a performance management process whereby a firm and its people have taken steps to improve performance should in any event be documented as the firm strives to build higher performance. However, documentation is even more vital when it comes to demonstrating continuing competence and records should show how a firm and its people have:

- reflected on their roles and work to identify any learning needs;
- planned how to address these learning needs;
- completed the necessary learning activities arising from these needs; and
- evaluated how these activities have met the learning needs.

A well-designed and well-implemented performance management system should be able to achieve all these objectives and at the same time ensure they are well documented.

5. A continuing competence plan

All of the above elements can be brought together as part of an overall continuing competence plan, an example of the elements to be incorporated is illustrated by the flow chart.

Strategy and business needs

- black letter law
- risk management and compliance
- business and soft skills



Individual training needs

- learning and development activities
- sources of learning?



Performance development reviews

- individuals and firm to evaluate how training has met learning needs
- continuing reflection, planning, training, monitoring and evaluation



Records to demonstrate compliance

- methods?
- annual declaration by firm

Continuing competence should be *driven* by law firms and not left solely to individuals if the benefits of the new continuing competency requirements are to flow through to firms' businesses. While the approach of the new requirements may take a little time getting used to, I would suggest firms should put in place and implement their continuing competence plans sooner rather than later. If they do so then not only are they likely to achieve compliance, but, more importantly, they are likely to become better at what they do in all the areas of their business which matter most to them. That should be a compelling enough argument for any law firm, but how many will actually meet the challenge?

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