At a glance

A new CPD scheme will be introduced by the SRA with effect from November 2016. The key features of the new scheme are as follows:

- The minimum 16-hour requirement for CPD will be discontinued from 1 November 2016.
- You can elect to adopt the new scheme early, at any time from now up to 31 October 2016. Some law firms are planning to do this, to take advantage of the greater flexibility offered by the new scheme in terms of training formats.
- Solicitors will continue to be required to undertake CPD, however, and to make an annual declaration that they have considered their training and development requirements and have taken appropriate measures to ensure their continuing competence. This declaration must be made as part of the process for renewing the practising certificate.
- Basic competency standards will be assessed by reference to the new Competence Statement which has now been agreed by the SRA following a period of consultation.
- The SRA will no longer prescribe CPD-qualifying activities and you will have the freedom to assess your own training needs, and more flexibility to undertake training activities which suit your needs and those of your employer.
- The system of accreditation of authorised training providers has already fallen away. On 1 November 2014, the SRA ceased to accredit legal training providers, or the courses they provide.
- On 1 April 2015, the SRA issued a toolkit to support the transition to the new CPD scheme.

What is the Competence Statement?

- The Competence Statement underpins the new CPD scheme. It is 'outcomes-based', i.e. it describes the activities which solicitors need to be able to do competently, rather than describing the attributes which solicitors require in order to be competent. From a practical perspective, it serves two main purposes:
  - it sets out, in tabular format, the standard of competence expected of a solicitor on admission and also at each of the relevant stages in their development pre- and post-admission. This is contained in an annexe to the Competence Statement and is referred to as the "Threshold Standard"; and
  - it defines the continuing competency standards required of solicitors post-qualification.
- The Competence Statement is divided into four sections: (i) ethics, professionalism and judgment; (ii) technical legal practice; (iii) managing yourself and your work; and (iv) working with other people. Under each of these headings, there is a list of activities which solicitors need to be able to perform competently. The key ones are summarised briefly below.
• **Ethics, professionalism and judgment:** This section contains the key requirements to act honestly and with integrity, and to maintain the level of competence and legal knowledge needed to practise effectively.

• **Technical legal practice:** This section covers the basic elements of legal advice, such as the requirement to obtain all relevant facts, undertake legal research, advise on all relevant options, advocacy and negotiation of solutions to the client’s issues.

• **Management of work:** This section includes requirements to prioritise and manage work activities, keep accurate and complete records and apply good business practice.

• **Working with other people:** Finally, this section requires clear and effective communications, and professional relations with clients and others.

• As illustrated above, the Competence Statement is deliberately generic since solicitors work in a wide variety of roles and specialisms.

**What is the Statement of Legal Knowledge?**

• In keeping with the generic nature of the Competence Statement, it requires a solicitor to "draw on sufficient detailed knowledge and understanding of their field(s) of work and role in order to practise effectively...", i.e. to have detailed knowledge of the law in their area(s) of practice. However, it also requires solicitors to have "an awareness of a broad base of legal knowledge", i.e. sufficient background knowledge of areas of law outside their immediate area of expertise to enable them to spot, and address, relevant issues, taking additional advice where necessary.

• To illustrate what the SRA means by a "broad base of legal knowledge", it has produced something called the [Statement of Legal Knowledge](#) which will underpin the Competence Statement and which sets out, at headline level, the core legal knowledge required of a competent solicitor in the following key practice areas: Ethics and Professional Conduct; Wills and Administration of Estates; Taxation; Business Law and Practice; Property; Torts; Criminal Law and Evidence; Criminal Litigation; Contract Law; Trusts; Constitutional Law and EU Law;

• Fortunately, the SRA does not expect solicitors to retain active knowledge of all of these areas, only those which are likely to have some bearing on their own practice area(s).

• Many in-house lawyers are expected to have working knowledge of a much wider range of specialisms than the average private practice lawyer, so the Statement of Legal Knowledge may not represent a significant change of approach for in-house lawyers. Also, the Statement of Legal Knowledge is extremely high level, but it may serve as a useful checklist for the purposes of planning training activities.

**How will we know we are compliant?**

• In the absence of an SRA-enforced 16-hour benchmark, your performance review system should become the focus of achieving compliance with the new CPD scheme. So it is important that the standards against which the performance of in-house lawyers is appraised should track the SRA’s Competence Statement and that the appraisal process should provide an opportunity to:
  o review the individual’s training record,
  o reflect on the effectiveness of the training he or she has received,
  o identify any gaps in their training and development, and
  o set out relevant training and development targets.

• On 1 April 2015, the SRA published a [toolkit](#) to help employers and individual solicitors to carry out this review and plan training and development programmes which will enable them to satisfy the
Competence Statement. The toolkit is not mandatory, but does provide some helpful clues as to what a compliant approach to training will look like.

**How will the new CPD system be policed?**

- The regulatory basis for the enforcement of the Competence Statement is Principle 5 of the SRA Handbook which states that solicitors must “provide a proper standard of service” to their clients.
- The SRA has said that it will use the opportunity of any contact with a solicitor or firm on a regulatory matter to check up on the CPD arrangements they have in place. This is more clearly directed at law firms, who are most likely in practice to be subject to SRA scrutiny.
- A more likely scenario for in-house lawyers would perhaps be an SRA investigation prompted by a controversial business failure or regulatory issues arising in a particular sector.
- However, the SRA toolkit emphasises that the new approach to CPD is "not a soft option" and "all solicitors will need to reflect on the quality of their practice".

**So what will change?**

**The 16-hour target** - The SRA's intention behind the removal of the minimum hours' requirement is that CPD should become more meaningful and less of a box-ticking exercise. However, retaining your own minimum hours' target may make it easier to measure participation in training and development activities, particularly for larger in-house teams, and may also make it easier to justify the cost of external training to your employer, although the broadening in scope of legitimate training activities (see below) may mean that there is less reliance on costly external training. There are ideas for cost-effective training in the SRA toolkit.

**Content and scope of training and development activities** - As the SRA will no longer prescribe CPD qualifying activities, you and your employer will have more scope to determine what sort of training is most appropriate for each individual in-house lawyer and for the business as a whole.

Clearly it will continue to be important for in-house lawyers to keep up to speed with developments in the law and practice in their primary practice areas and, in order to satisfy the Statement of Legal Knowledge, to undertake training in core legal topics such as directors’ duties. It may also be appropriate to include, for example, business and financial training which is tailored to your employer’s business objectives.

**Training format** – In-house lawyers will be able to take a more flexible approach as regards the format of training since the 30-minute minimum for a CPD-qualifying course will no longer be applicable, opening up possibilities for more 'on-the-job' learning to count towards satisfying the SRA's new competence requirements. Preparing for and giving a short presentation on a relevant legal issue at a board meeting or a regular update at a team meeting could contribute to CPD, as could downloading a 5-minute podcast on a particular topic or targeted research or reading on a relevant topic. The new CPD arrangements will favour short online training slots which busy lawyers can fit into their working day, and return to when needed.

**CPD records** – It will no longer be necessary to demonstrate compliance with the SRA's minimum 16 hours CPD requirement (although see above on retaining an 'internal' target). Nor will it be appropriate to distinguish between CPD-qualifying and non-qualifying activities for SRA purposes.

However, in-house lawyers must be able to demonstrate that they have taken steps to satisfy the competency standards expected of solicitors. It will therefore be important for in-house lawyers to keep a record of any activity which contributes to their professional development, and the flexibility in training formats inherent in the new scheme may make this more of a challenge. The SRA toolkit contains a template development record which you may find useful.

**Impact on your external advisers**

During the consultation process, some respondents expressed concern that the removal of the 16-hour minimum would lead to solicitors regarding training as optional. Quite apart from the risk to the public and
reputational issues this would cause for the profession as a whole if it were true, in-house lawyers may have justifiable concerns that the new CPD arrangements may adversely affect the standard of service provided by their external advisers.

From our perspective, this concern is misplaced. Law firms will remain under a regulatory obligation (Principle 5 of the SRA Handbook) to provide a proper standard of service to their clients, which in turn will form the basis of their continuing obligation to provide appropriate training and supervision for their lawyers and must be able to demonstrate the manner in which this is achieved.

We, in common with many other law firms, are likely to maintain an arbitrary minimum CPD hours' requirement as a benchmark for monitoring the learning and development activities of our lawyers, whilst embracing the 'quality not quantity' principle behind the reforms.

Travers Smith’s commitment to providing first-class training and professional development for our lawyers will not change. Nor will the obligation on our lawyers to attend training sessions organised by the firm for their benefit. We continually review our internal training and development programmes in any event to ensure they are fit for purpose and that our lawyers satisfy the demanding standards which our clients have come to expect of them.

**Practical steps towards achieving compliance**

To sum up, here are our 5 practical steps towards achieving compliance with the new CPD regime:

1. **Competence Statement**: Familiarise yourselves with the SRA’s new Competence Statement and its toolkit on the new regime.

2. **Review training programmes**: Review your current arrangements for training and development of your in-house team and decide what, if any, changes need to be made to reflect:
   - the SRA Competence Statement; and
   - the needs of the business and your individual or collective training needs.

3. **Training record**: Ensure that you/your team adapt the existing mechanism for keeping CPD records so that the new record captures all forms of training undertaken under the new regime.

4. **Performance appraisal**: Ensure your performance appraisal process provides an opportunity for reviewing individual training requirements and performance against the standards prescribed in the Competence Statement.

5. **Annual declaration**: The combination of the new training record and the performance appraisal should enable you to make the annual declaration required of all solicitors.

**Questions**

If you have any questions about the new CPD scheme and how it applies to you, or would appreciate assistance in reviewing your existing training arrangements in light of the new CPD scheme, please do get in touch with your usual contact at the firm or email Rachel Woodburn at rachel.woodburn@traverssmith.com.