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YOUNG LITIGATION SOLICITORS AND THEIR PERCEPTIONS OF

MOVEMENT FROM QUALIFICATION TO THE 3-YEAR WATERSHED

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Statement of Objectives

The objective of this interview-based study, blending a phenomenological standpoint with the disciplines of grounded theory analysis, is to articulate the essences of the perceptions possessed by recently qualified solicitors practising litigation of their own developmental journey from qualification to the 3-year watershed, a point by which the profession assumes professional autonomy to have been attained.

Abstract

The study first discusses solicitors' training, in its political context, providing an outline of litigation practice measured against relevant competence frameworks, including those intended to mark the point of qualification for the future, demonstrating that the point of qualification may be characterised by stress, uncertainty and mixed messages as to the status (if any) now achieved: a period of "professional adolescence". The currently proposed competence framework for the point of qualification is analysed so as to extract from it an assumed "competence for development".

The literature relating to CPD; adult learning; nature and acquisition of expertise and workplace learning is then analysed in the context of the interview group. The existing CPD scheme is found to permit, rather than to encourage, development including the "aspiration" required to increase the *scope* of activity (contrasted with enhancement of the *quality* of performance). The andragogical assumptions, in particular those of self-direction and autonomy, are compared with the literature on the novice-expert spectrum, reconciled by concluding that the period of professional adolescence may depress developmental autonomy. Further discussion of expertise includes the questions whether junior lawyers perceive expert traits in colleagues; whether they assume that expertise is acquired unconsciously by accumulating "experience" or whether they perceive expert rules as susceptible of being taught. The discussion of workplace learning considers manifestation of the andragogical assumptions in the workplace, contrasting acquisition of tacit learning through "experience" with deliberate "engagement with experience" including classic reflection-on-action but also embracing the asking of questions and other recourse to colleagues. The role of the employer as definer, constrainer or supporter of developmental activity is woven into discussion at all stages.

The methodology adopted is a pragmatic synthesis of phenomenology with the disciplines of grounded theory; deployed in face-to-face interviews and detailed coding

of transcripts. Analysis first examines perceptions of the benchmarks of qualification and the three year watershed, concluding that prior experience in the training contract informs not only feelings of confidence and competence at the point of qualification but contributes to a perceived "deficit" which preoccupies and defines developmental activity in many for at least the subsequent two years. CPD, whilst ostensibly prioritised as sanctioned learning, is, despite assumptions that it involves didactic legal updating, perceived as addressing parts of that deficit subject to constraints about tightly defined relevance of content and level and appropriate delivery which supplies manageable steps for implementation of what is learned. Workplace learning is perceived as more valuable, allowing in particular for the repetition of tasks and the experiencing of the whole of a transaction seen to be absent from the training contract but informing the unconscious acquisition of expertise. Nevertheless, aspects of engagement with experience, in particular asking questions and the use of self-selected "slight seniors" are apparent, whilst reflection-on-action is possible for those whose deficit is less pronounced or who are able to draw on assistance for implementation. The study then concludes with an examination of the shape of the assumed competence for development derived from the picture provided by the interviews.

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GLOSSARY OF LEGAL TERMS

Academic stage	The law degree or equivalent.
Admission	Admission to the Roll of Solicitors on qualification.
ACLEC	Lord Chancellor's Advisory Committee on Legal Education and Conduct established in 1991 under Courts and Legal Services Act 1990. Replaced in 1999 by the Standing Conference on Legal Education.
ADR	Alternative dispute resolution. Methods of resolving civil disputes other than by court-based litigation. Includes, for example, mediation.
Arbitration	A method of private dispute resolution in which a decision is made, privately but (normally) on the legal merits of the case, under Arbitration Act 1996.
Articled clerk	An obsolete term for a trainee solicitor.
Articles	An obsolete term for the training contract.
Bar Council	The General Council of the Bar. The umbrella professional body representing barristers in England and Wales.
Bar Standards Board (BSB")	The regulatory body for barristers in England and Wales.
Barrister	A member of a legal profession distinct from that of solicitor, tending to specialise in advocacy in the criminal or civil courts (or both).
BVC	The Bar Vocational Course – an equivalent of the LPC for intending barristers.
CFA	A "conditional fee arrangement". A method of paying for litigation often (inaccurately) described as a "no win-no fee" agreement.
CIPA	The Chartered Institute of Patent Agents.
Civil litigation	The resolution of non-criminal disputes through the courts.
Civil Procedure Rules ("CPR")	A statutory instrument prescribing the procedure for civil litigation in England and Wales since 26th April 1999 (The Civil Procedure Rules 1998, S.I. 1998/3132). Divided into chapters known as "parts" and subdivided into individual "rules". Not applicable in Scotland or Northern Ireland.
CLE	Continuing Legal Education: CPD (US/Australian term)
Claim form	The initial formal document by which civil proceedings are instituted (previously "writ" or "summons").
Claimant	The individual or entity bringing a civil claim (previously "plaintiff").
CLS	The Community Legal Service. The body, under the umbrella of the LSC, dispensing public funding for civil litigation.
CLT	Central Law Training. A company offering post-qualification training.
CMC	Case management conference. A hearing prior to trial in which a timetable for the pre-trial stages is set.
College	The College of Law. An independent institution offering the CPE, LPC, PSC and post-qualification training.

Counsel	Term used by solicitors to refer to barristers (e.g. "We have taken counsel's opinion").
County Court	The lower civil court dealing essentially with cases worth less than £50,000.
CPE	The Common Professional Examination and the course leading thereto. The means of completing the academic stage for non-law graduates. In some institutions known as the Graduate Diploma in Law.
Defendant	The individual or entity against whom or which a civil claim is brought.
Department for Constitutional Affairs	Obsolete term for what is now the Ministry of Justice.
District Judge	A judge principally dealing with procedural pre-trial matters and small claims.
District Registry	A regional office of the High Court.
FILEX	A legal executive qualified as a Fellow of the Institute of Legal Executives.
Finals ("LSF", "Law Society Finals")	The immediate precursor of the LPC.
GDL	The Graduate Diploma in Law and the course leading thereto. The means of completing the academic stage for non-law graduates. In some institutions known as the Common Professional Examination.
Guide	The Guide to the Professional Conduct of Solicitors published by the Law Society and containing all relevant ethical rules and codes. Replaced by the *Solicitors' Code of Conduct 2007*.
High Court	The higher civil court dealing essentially with cases worth £50,000 and above.
Higher Rights	A qualification that can be obtained by solicitors entitling them to appear as advocates in the higher courts (Crown Court, High Court *etc.*)
ILEX	A legal executive qualified as a member of the Institute of Legal Executives.
Interim/interlocutory application/ hearing	A hearing prior to the trial.
IP	Intellectual property, i.e. copyrights, patents and the like.
Law Society	The Law Society of England and Wales. The professional body representing solicitors in England and Wales.
Legal Aid	Partly obsolete term for the public funding of litigation (now dealt with by the LSC and, in civil cases, the CLS).
Legal Executive	A person, not qualified as a solicitor (or barrister) employed to undertake some forms of legal or quasi-legal work within a law firm. The term is often used loosely and is not always confined to those who are training or have trained through the Institute of Legal Executives who constitute a distinct legal profession.
Legal Services Ombudsman	The ombudsman ultimately responsible for complaints about legal services, including those of solicitors, barristers, legal executives and licensed conveyancers.

Licensed Conveyancer	A distinct profession of those, not qualified as solicitors or barristers, who confine their activities to conveyancing.
Litigation	The process of taking a dispute through the courts. Decisions are made by the judiciary on the basis of the legal merits of the case.
Litigator	A generic term for a person, whether solicitor, barrister, legal executive or patent agent, professionally engaged in the conduct of litigation other than in a judicial capacity.
Lord Chancellor's Department	Obsolete term for what is now the Ministry of Justice.
LPC	The Legal Practice Course forming the vocational stage of training since 1993.
LSC	The Legal Services Commission. A body, the replacement for the Legal Aid Board, dispensing public funding for litigation.
Managing clerk	An obsolete term for a legal executive.
Master of the Rolls	A senior judge responsible for the maintenance of the Roll.
Master	The equivalent of a district judge in the Central office of the High Court in London.
Mediation	A method of private dispute resolution in which the parties seek to come to a compromise with the aid of an independent mediator.
Ministry of Justice	The government department responsible for the court system. Previously the Department for Constitutional Affairs and before that the Lord Chancellor's Department.
NLS	Nottingham Law School, part of the Nottingham Trent University.
Paralegal	A person not qualified as solicitor, barrister or legal executive employed to undertake some forms of legal or quasi-legal work within a law firm. Frequently a graduate of the LPC who has yet to obtain a training contract.
Patent agent/Patent attorney	A distinct profession specialising in the registration of and disputes surrounding patents and other intellectual property rights.
PD	Practice Direction. A supplementary (and lower in status) document acting as an addendum to a part of the CPR.
PI	"personal injury" or "professional indemnity".
Plaintiff	Obsolete (since 1999) term for the claimant (but still used in some other English-speaking jurisdictions).
PQE	Post qualification experience (*i.e.*, number of years following admission as a solicitor).
Practising certificate	The annual certificate entitling a solicitor to undertake legal work in practice.
Principal	A senior solicitor responsible for the supervision of a training contract. At the end of the training contract the principal is responsible for certifying satisfactory completion.
Pro bono	*pro bono publico.* Legal activity conducted on a charitable basis without charge.
PSC	The Professional Skills Course. A compulsory course undertaken during the training contract.

PSL	Professional Support Lawyer. A qualified solicitor or barrister employed by a firm not to undertake fee-earning work but to support know-how and frequently to deliver and organise training within the firm.
QBD	The Queen's Bench Division of the High Court (during the reign of a male monarch, the KBD).
QC	Queen's Counsel. A senior barrister (during the reign of a male monarch, a KC).
QLD	"Qualifying law degree", a degree including the seven subjects required for progression onto the LPC or BVC.
RCJ ("Royal Courts of Justice")	The Central Office of the High Court on the Strand in London.
Roll	The Roll of Solicitors in England and Wales: the formal list of those qualified as solicitors. Consequently "admitted to the roll" and "struck off the roll".
Seat	A stage during the training contract in which a trainee is based in a particular department. The structure of most firms is such that a trainee is rotated through several departments during the training contract, spending a period of months in each. Seats may be as short as three months.
Solicitor	A member of a distinct legal profession involved in contentious and non-contentious work and with direct contact with clients.
Solicitors Code of Conduct 2007	The ethical rules now governing solicitors in England and Wales. Replaced the *Guide to the Professional Conduct of Solicitors*.
Solicitors Regulation Authority	The regulatory body for solicitors in England and Wales.
Solicitors' Disciplinary Tribunal	A body with the ability to penalise solicitors for disciplinary offences.
T & CC	The Technology and Construction Court.
Trainee ("trainee solicitor")	An intending solicitor who has completed the vocational stage of training and is in the process of completing his or her training contract.
Training contract	The two-year contract of employment undertaken by an intending solicitor following the vocational stage. At the end of the training contract, if successfully completed, the trainee qualifies as a solicitor. To be replaced by a "period of work-based learning".
TSG	The Trainee Solicitors' Group. Now incorporated into the Law Society Junior Lawyers Section.
UKCLE	UK Centre for Legal Education.
Vocational stage	the Legal Practice Course.
Woolf	Lord Woolf, LCJ, previously Master of the Rolls and responsible for the review of civil litigation procedure that resulted in the CPR. Frequently used as an abbreviation for the new rules and their implementation (*e.g.*, "Since Woolf...."; "the Woolf Reforms")
Writ	An obsolete term for a claim form (since 1999).
YSG	The Young Solicitors' Group. Now incorporated into the Law Society Junior Lawyers Section.

GLOSSARY OF NEOLOGISMS AND CONCEPTS DEFINED DURING THE COURSE OF THE STUDY

Apprentice piece (lack of)	The opportunity to run a small case in all its aspects from start to conclusion, so seeing implications of decisions made, taking responsibility and understanding the interactions of component tasks.
Aspirational learning	Learning that is focussed on extending the *scope* of knowledge, capability, skills or tasks performed as contrasted with learning intended to improve the *quality* of performance in tasks currently performed.
Competence for development	The profession's apparent expectation for the way in which individual responsibility for professional development will be manifested.
Engagement with experience	A positive learning orientation involving a deliberate approach to extracting learning from experiences (principally but not confined to experience in the workplace) including but not limited to reflective learning.
Professional adolescence	A state of competing internal and external pressures, complicated by questions of professional identity and status, occurring at or around qualification.
Remedying the deficit	Activities focussed on filling the perceived gap between knowledge and skill as at the end of the training contract and the knowledge and skill demanded at the point of qualification.
Slight senior	A colleague, not appointed formally in a senior or supervisory role, but used by an individual as a less intimidating source of help and support.
Vector of development	A model of professional development with both magnitude and direction by which the individual improves *quality* of performance but also extends the *scope* of activity into new and more complex tasks.

CONCEPTUAL FRAMEWORK OF THE STUDY

Background training and educational experiences (Chapter 2)

QUALIFICATION (BENCHMARK)

Aspiration?

Espoused mental model of development

Litigation (Chapter 3)

Adult learners? (Chapter 5)

Self knowledge/ strategy (Chapters 4. 6 and 7)

Workplace environment (Chapters 6 and 7)

How competence for development manifests itself (Chapter 3)

CPD environment (Chapter 4)

Engagement with experience/ enhance practice (Chapter 7)

Aspiration?

3 YEARS PQE (BENCHMARK)

Expertise (Chap 6)

CHAPTER ONE - INTRODUCTION

1.1   Personal and professional background

It is a truth universally acknowledged, that no-one, meeting a Ph D student socially, should ask them what their thesis is about, for fear of being told, at tedious length and in wearisome detail.

The way to a concise response is, I suggest, is to explain why one has chosen the research topic. There is almost always – at least for those of us who do this part-time - a hunger to have the answer to a particular question sustaining the research over the years rather than a desire to learn or to deploy a particular methodology or method.

For myself, that unanswered question had been in a process of crystallisation over years both in practice as a lawyer and in education. I qualified at the age of 24 in 1990 after the usual two-year training contract and moved full-time into legal education in 1993. As a trainee and then a young solicitor myself, I had been conscious of a sickening degree of helplessness and fear at and after the point of qualification softened by a tier of helpful souls a few years senior to myself, who were prepared to spend more time than their own billing targets really allowed in helping out or answering the questions that one did not dare to put to the senior personnel or the partners and, as time went on, of becoming such a person myself. I was conscious of commercial drivers that seemed to preclude time to think or research to full understanding; and of a gulf between first, the approach taken to law and to "advice" during my degree; second, what was at that time a highly process-driven vocational training and third, the demands of actual practice. Formal CPD courses did not seem to me, then, to be relevant or to address these tensions.

Having entered education at precisely the moment that the vocational course I had completed ("Law Society Finals") was replaced with the more skills-based Legal Practice Course ("LPC"); I had been conscious for a long time of the highly-politicised nature of legal education. The tension between the demands of practice (and within that, between the demands of practice in a City firm and those in other types of practice, particularly as about a quarter to a third of trainees are employed in the City) and law as academic discipline is the background to this study examined in detail in Chapter 2. It is, however, right to say that this is a *background*. As will be seen in the later passages of Chapter 2, it is the LPC and the subsequent training contract that have received the brunt of debate and examination from the profession and, more recently

following the *Clementi Review* of 2004 and the Legal Services Act 2007, externally, from those interested in the quality of services and the regulation of the profession. Post-qualification education, squarely within the hands of the employing firms and the Solicitors Regulation Authority Continuing Professional Development system ("CPD") considered in Chapter 4, has, until very recently, been all but absent from public discussion.

I began to become involved with newly-qualified solicitors as students in 1997 (in CPD or masters' level courses, or both) and it is from this that my research question ultimately derives.

It quickly became apparent there was room for internal tension between the various stakeholders in such courses (university, sponsoring firm, newly–qualified students, tutors) and that newly-qualified solicitors posed most challenges and often seemed the most uncomfortable as students when compared to, for example, LPC students, trainees or more senior solicitors. A number of possible explanations presented themselves: education fatigue after six years' working towards qualification; tensions between competing identities (student versus qualified lawyer); external tensions derived from practice or from the early stages of adulthood (billing targets, home-making and young children); inappropriate demands of the course (perhaps simulation and reflection were premature approaches or too challenging in their expectations, see Cherrington and van Ments, 1994); possible regression from an ability or willingness to learn in a constructivist framework caused by the competing stresses of practice ("I don't have time for this: tell me the answer"); limited autonomy to try out in the workplace new ideas suggested on the course and so on. My initial research plan was, indeed, focused primarily on the gaming and simulation aspects of such courses in an attempt to pin down the precise nature of the problem. As the extent of the lack of research into the post-qualification period and CPD activity of lawyers became apparent, it became clear to me that restricting my project to simulation-based courses would not provide an adequate solution. There was a fundamental need to understand the position of newly-qualified lawyers at a broader level before narrowing investigation to this particular under-representative kind of CPD activity.

1.2   Research themes and questions

What I sought to locate, therefore was the perceptions and understandings held by this group about their own development forward from the point of qualification: the main

research question (Fig. 9). Beneath this nested subsidiary factors: did individuals perceive themselves as being learners at this stage at all (as opposed, for example to relying entirely on unconscious acquisitional learning derived from exposure to experience), and if so, what was the extent of their self-direction in terms of deliberate forward-planning? Was anything approaching reflective learning (7.6) – ultimately placed in this study at the end of a spectrum of deliberate "engagement with experience" (Fig. 43) - seen as valuable? Learning might seen to be best focused on the here and now so as to improve the quality of existing tasks, or more aspirationally, on learning to extend the range into new tasks. How, relatively, were CPD and workplace "experience" perceived, if at all, as learning environments? Unconscious acquisitional learning in the workplace might be invisible. The required minimum of CPD, for example, might be treated as a matter of compliance rather than valued as a learning opportunity. If simulation was an unattractive form of CPD classroom activity, what, then was seen to assist or hinder in terms of the individual's development whether in the classroom or outside it? The overall themes of the study, therefore (8.2) resolved into an exploration of:

a)   the perceived contribution of CPD activity (Chapters 4 and 11);

b)   the place of self-directed planning and forms of engagement with experience as strategies (Chapters 5 and 7; 12.6.3.1-12.6.3.5 and Chapter 13);

c)   the place of aspirational learning activity (Chapters 5 and 7 and 13.5); and

d)   the place of unconscious acquisitional learning in the workplace leading to largely tacit knowledge (Chapters 6 and 7; 12.3.2).

1.3   Threshold constraints on the study

The model of professional development, must be situated, both temporally and contextually, hence my division of analysis in Chapters 10 to 13 within, in the first case, the benchmarks of the point of qualification and the 3 year PQE watershed and, in the second, by consideration of CPD and non-CPD activity as well as introducing the concept of "aspirational learning" (directed in particular at extending the range of tasks). Other neologisms and concepts have been created or defined during the course of the study.

My upper temporal limitation – to the first three years of post-qualification practice – is both pragmatic and principled. A solicitor is not, without a waiver, permitted to practise as a sole practitioner until of at least three years PQE (2.6). Implicitly, then,

that initial three year period is assumed to be developmental and the significance of this upper benchmark is further discussed following analysis of the data, in Chapter 13 and particularly at 13.8.

One might ask why the present study confines itself to a particular field of legal practice. The simple answer is that it is my own field. Having widened the scope of my research in one respect, I had the possible advantage here of speaking the same language and understanding some of the same perspective as my interview group. Not, I emphasise, to prejudice the lack of prejudgment inherent in the phenomenological and grounded theory approaches (see Chapter 8), but to ease rapport, speed-up interviewing and aid transcription (8.8.1). The field of litigation was, too, in a state of flux, described in Chapter 3, which might, I felt, assist in magnifying issues in post-qualification education for the purpose of qualitative examination. Given the shifting sands on which their litigation-focussed vocational study rested, interviewees might be alert to a need to be flexible in preparation for an uncertain future. Another purpose of Chapter 3 is an overview of the litigation process for non-litigator readers.

1.4   Theoretical background

This thesis does not contain a conventional literature review, rather, a series of chapters (5 to 7 inclusive) reviewing literature across a spectrum of themes. A difficulty experienced at all stages of desk-work during this study was the extent to which potentially interlocking topics had been studied in isolation (Illeris, 2004, being a notable exception). So, Moon, discussing reflection as an educational tool:

> ... relatively few professional educators have crossed boundaries, even if they have been attempting to develop similar attributes in their novices or their trained professionals. It is as if reflection has been viewed through a series of narrow frames of reference, with little overlap.
> Moon (1999:vii)

A particularly marked divide was seen between educationalists and those writing from a management/human resources perspective. Writing about and by lawyers in this field is limited to a small group of specialists:

> [a] search of the literature reveals no evidence that the education needs of beginning solicitors, including their reasons for participation and non-participation in CLE, have ever been researched either in Australia or overseas.

and Michael Eraut, approached at a conference, was perceived, by me at least, to draw in his breath sharply when he knew I was researching lawyers. Indeed, empirical socio-legal research in legal practice is limited to the point of crisis (Adler, 2007) principally, as identified by Genn, Partington and Wheeler (2006), as a result of the vicious circle created by a "preponderance of doctrinal [*i.e.*, text-based] legal research" in the academy (Genn *et al*, *ibid*: 3) rendering lawyers in practice both ignorant and potentially suspicious of the empirical approach.

There seemed an unspoken reluctance to cross-refer to research conducted in other professional fields whether through snobbery (as might be the case with the significant body of writing on nursing); ignorance, or a genuine feeling that lawyers are a "special case". Consequently, whilst in Chapters 3 and 4, I consider material of specific relevance to legal education, in the following chapters I found it necessary to return to first principles, examining each of the main paradigms impinging on my research. After much thought, a morass of competing theories resolved into three main areas, each connected to an aspect of the overall themes and research questions:

a)   in Chapter 5, adult learning in general, including the theories suggesting different learning capabilities or challenges exist at differing "life stages" (related in particular to self-direction, engagement with experience and the contribution, if any, of aspirational learning);

b)   in Chapter 6, given that young professionals are, presumably, once the hurdle of initial qualification has been achieved, aspiring towards expertise, literature as to the nature of expertise and its acquisition (related to the contribution of unconscious, acquisitional learning leading to tacit knowledge); and

c)   finally, in Chapter 7, work that suggests that learning "from experience" and in the workplace generally can be enhanced by some sort of deliberate debrief or reflection, what I (related, again, to the questions of unconscious acquisitional learning as contrasted with deliberate engagement with experience and to the place of aspirational learning)

1.5   Conclusion

Each lawyer, as each teacher or each doctor, needs, I suggest, an identifiable and personal practice and is largely left to his or her own devices in acquiring it,

consequently a theme of responsibility for one's own development and the extent to which individuals recognise and are able or willing to take such responsibility, and the employer's constraints upon it pervades the study.   This is a small-scale study, humbler than, but seeking to add to work (Boon and Whyte, 2002 and 2007; Fancourt, 2004, Boon, 2005) exploring lawyers' views of the stages of vocational education preceding qualification.   Whilst I present my own, tentative conclusions in Chapter 13, the extent to which this study succeeds in its own aspirations is for the reader to define.

CHAPTER TWO - THE TRAINING OF SOLICITORS, SOCIALISATION AND THE TRAINING FRAMEWORK REVIEW

> It is during the first year ... that you learn to think like a lawyer, to develop the habits of mind and world perspective that will stay with you throughout your career. And thus it is during the first year that many law students come to feel, sometimes with deep regret, that they are becoming persons strangely different from the ones who arrived at law school in the fall.
> Turow, (1977: xii)

2.1   Introduction

In this chapter I set out the arrangements for pre-qualification education of solicitors, both to explain concepts that will appear later on, and to indicate the educational experience shared by the interview group and underlying the "qualification" benchmark. I also discuss the Training Framework Review and its aftermath to demonstrate the current state of politicisation of pre-qualification education and conclude by examining rather more diffuse aspects of socialisation into the profession.

2.2   History of legal education

Whilst it is not appropriate here to set out a complete history of solicitors' pre-qualification education, (such a review being accomplished by Saunders, 1996), it is characterised by a tension between the vocational and the academic, manifesting itself as a dichotomy as to the place of the theoretical, academic study of law as liberal art or philosophical discipline (see Bradney, 1995:4) as opposed to a period of study (see Duncan, 1997) designed as preparation for professional practice:

> ...of the 8,756 law graduates produced in 1995, only some 3,700 will find places to qualify as practising lawyers ... Overall, therefore, training for the legal profession has become a minority interest for undergraduate teaching.
> Sherr, (1998:37)

which opposes "Pericles" as jurist and "the plumber" as technician (Twining, 1967). A further complication is provided, not only by a non-graduate route into the profession, but also by the possibility of qualifying with a degree in a non-law discipline, followed by a top-up conversion course ("CPE" or "GDL") regarded for qualification purposes as equivalent to the law degree, such applicants being *more* employable than those with conventional law degrees (Bermingham and Hodgson, 2001).

2.3 The current position

2.3.1 Curriculum at the Academic Stage

From 1993, under the Law Society's Training Regulations 1990, the graduate route into qualification as a solicitor comprised three stages: the "academic stage" (qualifying first degree or first degree in another subject followed by the CPE or GDL), the vocational Legal Practice Course ("LPC") and the two year training contract incorporating at some stage the Professional Skills Course ("PSC"). For non-graduates, Fellowship of the Institute of Legal Executives ("FILEX") is taken as equivalent to a degree, FILEX completing the LPC generally being exempt from the training contract but required to complete the PSC.

Provided that, at the academic stage, a student covers the seven compulsory subjects in English law and the degree (a "qualifying law degree" or "QLD"),[1] or conversion course is validated by the Joint[2] Academic Stage Board ("JASB") he or she may proceed to the vocational stage in England and Wales. This validation is described by Vollans (2008), discussing the challenges that this dual professional and academic recognition creates in the treatment of academic misconduct, as a "precarious reciprocal trust" between profession and academy. The seven "foundations of legal knowledge" are Public Law; Law of the European Union; Criminal Law; Obligations including Contract, Restitution and Tort; Property Law; Equity and the Law of Trusts (Law Society, 2001b). The list is not uncontroversial:

> [i]f you have done your compulsory subjects, it does not matter how
> little other law you have done. If you are short on the compulsory
> subjects, it does not matter how much law you have done.
> Birks, (1995:3-5).

It is increasingly an idiosyncrasy of the domestic system that the majority of its lawyers embark on their subject as undergraduates. In the U.S.A., for example, law is studied at postgraduate level only, whilst in Australia, students commonly undertake five-year "double degrees" in law and another subject (Roper, 2003) followed by a short LPC-like course and a period in practice.

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[1] The QAA *Subject Benchmark Statement for Law* (2000) is explicitly not limited to qualifying law degrees.
[2] A collaboration between both solicitors' and barristers' professions.

2.3.2 *Teaching and Learning at the Academic Stage*

Having indicated at 2.1 that one of the purposes of this chapter is to outline the experience that newly-qualified solicitors might have of formal education and which they will bring as expectations to the post-qualification environment (see Chapter 5), including CPD (Chapter 4), a short description of typical teaching methods is justified.

Twenty years ago, when I undertook my own law degree, teaching focussed on the "grammar" of law – its principles, derived from statute or case law – and possible application of those principles to areas where the law was unclear. Aside from dissertations (which were not always compulsory), assessment was entirely by examination involving questions of two kinds: a) the "compare and contrast" or "discuss" essay question or b) short hypothetical scenarios (a diluted form of problem-based learning) by which one was invited to apply legal principles so as to "Advise X" of his or her legal rights. Teaching was by way of lecture and tutorial in which students discussed questions of a similar type to those that would appear in the examination paper. An alternative approach – the "case method" – favoured in U.S. law schools, requires students to extract principles directly from case law by Socratic questioning. An activity peculiar to law students: "mooting", a form of legal debate conducted as if in a courtroom, took place, if at all, on an extra-curricula basis.

Since then, legal education has blossomed into a discipline of itself (Bradney, 1997) in which more varied teaching approaches (see for examples, le Brun and Johnstone, 1994; Webb and Maughan, 1996; Economides, 1998; Burridge *et al*, 2002) include mooting as part of the curriculum; increased use of electronic media; legal skills at the undergraduate stage; an increased focus on legal ethics, clinical[3] and street-law[4] programmes.   The classic hypothetical scenario is still, however, the archetype for tutorial and assessment, Boon and Whyte finding, in their study of 22 solicitors who had been undergraduates between 1990 and 1993, that "strategic learning, involving low level activity during the course and 'memorisation and regurgitation' for exams, appeared to be a common method of working, accepted almost as a rite of passage" (Boon and Whyte, 2002:10).

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[3] Clinical programmes vary but at their most developed involve students advising members of the public and taking on as representatives and advocates, under the supervisor of a qualified tutor, cases in, for example, the Employment Tribunal.
[4] Street-law may be regarded as a sub-category of clinic in which students teach the general provisions of law on, for example, human rights, to interested groups of the public or in schools.

2.4   The Vocational Stage

2.4.1   Law Society Finals, Curriculum, Teaching and Learning

Saunders (*ibid*) lists a series of reports of formal committees on legal education from 1971 onwards, the first of which (chaired by Ormrod J.) established a three tier format: i) academic; ii) professional (currently the vocational stage and the training contract) and iii) continuing education (considered in Chapter 4). He also points out that it was not until 1979 that a university degree in law (as opposed to the "articles of clerkship" of up to five years combined with Law Society examinations[5]) was treated by the profession as anything more than an exemption from Part I of its own examinations (roughly equivalent to the modern conversion course); Part II representing roughly what is now covered by the LPC. The JASB recognition of some but not all law degree programmes and the FILEX route demonstrate the persistence of this approach. In 1979 Part II was replaced by a national "Law Society Finals" ("LSF") course offered by the College of Law and some polytechnics with nationally prescribed teaching materials and centrally-set examinations covering the seven "heads" of: Business Organisations and Insolvency; Consumer Protection and Employment; Conveyancing; Wills, Probate and Administration; Family; Litigation (Civil and Criminal); and Accounts.

The LSF involved a formulaic, didactic curriculum, devoted to the acquisition of information and its reproduction (and, to a limited extent, application to hypothetical scenarios) as opposed to development of skills. It assumed a general practitioner or "High Street" practice which was even then disappearing but which persists in the learning outcomes suggested for the period of work-based learning proposed to replace the training contract (SRA, 2008b; Appendix II):

> [t]he traditional paradigm brought together a solicitor for each client. That solicitor, broadly, dealt with the client and the client's work from the beginning to the end of a matter, sometimes bringing in counsel or more junior lawyers to assist, but rarely. ... That model has not been true for larger firms for many years but the paradigm has still had considerable force in legal education. All teaching at the undergraduate and at the vocational level still exists broadly around this paradigm and this construction of the lawyer-client relationship and the nature of legal work.
> Sherr, (2001:2)

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[5] Described by Dickens' Mr. Guppy as "an examination that's enough to badger a man blue, touching a pack of nonsense that he don't want to know", (Dickens, 1853: 893).

Criticisms of that model, according to Saunders, resulted in two further reviews (the Marre Committee on the Future of the Legal Profession in 1988 and a solicitor-specific Law Society Review of Legal Education in 1988 and 1989) and work by the Training Committee of the Law Society then resulted in the current academic stage plus LPC plus two year training contract sequence. This has its own limitations:

> [Initial Professional Education] syllabi are notoriously overcrowded because they attempt to include all the knowledge required for a lifetime in the profession[6] ... There is little sign as yet of IPE being conceived in a context of lifelong professional learning, in spite of increasing evidence that the frontloading of theory is extremely inefficient. Many IPE courses exacerbate this situation by frontloading theory within the IPE stage itself, thus maximising the separation between theory and practice.
> Eraut, (1994:11-12)

The peculiarity of the law degree in not being exclusively regarded as preparation for professional practice not only follows this frontloaded model with the "theory" being concentrated at the academic stage and the "professional practice" being hived off to the separate "vocational stage",[7] but would seem in principle to represent a justification for it: some, possibly even a majority of students being interested in the theory alone in a way that will not be true for, for example, degrees in medicine or nursing. Expectations of "law" as an activity involving substantial intellectual challenge inculcated at the academic stage have substantial implications for the satisfaction (or otherwise) of those subsequently entering the profession: see 2.8 below. For those who intend to and do qualify, Boon and Whyte (2007:189) found a desire for increased integration of the three stages and, in particular, a greater focus on practicality at an earlier stage.

2.4.2   *The Legal Practice Course, Curriculum, Teaching and Learning*

Drawing on vocational courses then being developed particularly in Canada, (see Webb and Fancourt, 2004:295) the LPC – additionally distinct from the LSF in being developed independently by different institutions ("providers") within a common, curriculum (the "written standards"; Law Society, 2004) – was intended both to

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[6] The fact that the work-based learning outcomes (SR, February 2007b; Appendix II) describe the knowledge and skills acquired during the academic and vocational stages as "expertise" (see Chapter 6) betrays such an assumption.

[7] There are exceptions such as the "exempting law degrees" combining LLB and LPC offered by some institutions.

incorporate skills but also to allow for a level of optional study better reflecting the differences between legal practice in the high street and the City (Slorach and Nathanson, 1996).[8] Workshop, simulation and role-play as well as individual and small group work were explicitly to be used and assessed. The total course occupied 36 weeks of activity and was both intensive and assessment-heavy. Boon and Whyte (2002) found a number of reactions to the workload and the continuous diet of assessment ranging from expressions of extreme stress to indications that because of the volume of work, assessment of individual subjects might be, or perceived to be, perfunctory.

The voice of the City (representing some 26% of trainees: Law Society, 2007) is said (Webb and Fancourt, 2004: 298) to have been instrumental in changes to the course in 1996 doubling the size of Business Law and Practice; allowing for three electives in place of two options; relegating Probate to an elective (apart from some limited prescribed content) and replacing Negotiation with Accounts. Human Rights was later added as an additional pervasive subject.

More pragmatically, in 1999, a group of City firms elected to send all of their sponsored students[9] to a small group of institutions, so allowing for consistency in the "City" electives pursued by those students and subsequently the development of "bespoke" LPC courses covering their own fields of practice.

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[8] The constituent components of the LPC in 1993 (I have, however, adopted current nomenclature) were:
Compulsory (or "core") areas
(a) Business Law and Practice
(b) Property Law and Practice
(c) Civil and Criminal Litigation
(d) Will, Probate and Administration
Skills (assessed on a "competent" or "not yet competent" basis)
(a) Interviewing and Advising
(b) Advocacy
(c) Negotiation
(d) Writing and Drafting
(e) Practical Legal Research
Pervasive subjects (embedded throughout the course)
(a) Revenue (tax)
(b) European Union law
(c) Professional Conduct and Client Care
(d) Financial Services
Options
Two optional subjects as offered by the individual institutions, *e.g.*, Employment Law, Commercial Property, Corporate Finance.
[9] It should be said that, public funding being extremely rare for the LPC, firms recruiting a large number of trainees routinely either sponsor or reimburse their LPC (and sometimes GDL) fees, sometimes also providing a maintenance grant or proportion of salary.

At neither the academic nor vocational stage is there any obligation on the student to undertake any placement in a solicitor's firm or any clinical work in the way that, for example, education students might undertake teaching practice. Whilst many do undertake summer placements and there are sandwich degrees and institutions with clinical programmes, the impetus to participate may be more to enhance one's CV than for practical application of anything that one has learned.

In Boon and Whyte's survey of solicitors who had been part of the first LPC cohort in 1993, the interactive, group-work approach of the LPC produced mixed responses and indications of difficulty in adjusting given the nature of the academic stage:

> I was used to lectures and being, you know, talked at really. And then all of a sudden there you were being asked if you had an opinion on things, and you think wow ... it was nice. But the first few weeks I thought "no, I don't want to have to express an opinion, I'm used to hiding at the back of a lecture hall and sleeping", you know, not having to say anything.
> Boon and Whyte (2002: 16)

including difficulties with simulation arising from the "frontloading of theory" (Eraut, *op. cit.* referred to at 2.4.1 above) and consequent lack of exposure of students to practice:

> [d]espite the large measure of approval of skills training on the LPC there remains a measure of doubt among participants. The criticism is largely on two levels. The first is that simulation is not like real life and that the skills derived from experience of it, if any, are artificial. The second is that, before experience of practice, it is unrealistic to expect students to bridge the gap between simulation and real life.
> Boon and Whyte (*op. cit..: 22*)

Subsequently, Fancourt, for the UK Centre for Legal Education, conducted a further interview study of 14 organisations seeking views on the adequacy of the LPC as preparation for the training contract, identifying – whatever might have been the intentions of those designing and running the course – a lack of coherent continuum in the other direction; between the LPC and the training contract:

> [m]any of the trainees interviewed did say the LPC did not prepare them for practice, but that was with the benefit of hindsight, and many of them also admitted they had seen the LPC as a series of assessment hurdles, and had not really engaged with the process.
> Fancourt, (2004:62)

and uncovering a remarkable degree of lack of interest by employers in the content of the LPC (together with tension between the needs of a particular practice for knowledge or skills not covered on the LPC, or taught in a way different from the employer's "house-style"). Boon and Whyte (2007) carried out interviews in 2001-2002 of 22 recently qualified individuals and found some positive approval of the course as preparation but, consistently with Fancourt's study, uncovered complaints about the extent and quantity of assessment and considerable potential for a mismatch between what was covered on the LPC and the needs of the subsequently employing firm. Even quite well-established firms (Fancourt, *op. cit.*; Boon and Whyte, 2007) and from my own experience, sometimes express a lack of knowledge of what is covered in the LPC to an alarming degree, suggesting in my view that firms may not perceive it as relevant preparation for the training contract or that students who have achieved skills in, say, legal research, on the LPC are unable to transfer them adequately to the kind of research problems found in the workplace. Similarly, outside the realm of the bespoke LPCs which can be commanded by City firms with substantial resources, specialised topics which may be highly relevant to an individual in a particular practice will not appear in the LPC curriculum and there may be difficulty in transferring other knowledge and skills from it into the workplace context (as for one of Boon and Whyte's, interviewees who commented " ...I had four years doing professional indemnity work for defendants, and the LPC[10] concentrates really on claimant work ..." 2007:186), particularly, I suggest, if the employing firm does not know, or perhaps even care, what benchmark has been set by the LPC.

2.5 The training contract

Following successful completion of the vocational stage, the student currently seeks employment as a "trainee solicitor" (previously "articled clerk"). The trainee is, at present and until at least 2010 (SRA, 2008b) an employee of an individual firm; local authority; the Government Legal Service or in-house legal department authorised to take trainees. Following the Legal Services Act 2007, this may include "legal disciplinary partnerships" and "Alternative Business Structures" not confined to the

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[10] Perhaps, even before the 2009 reforms, *the particular LPC attended by this interviewee* concentrated on claimant work.

conventional law firm model and including non-lawyers as owners of the business. The purpose of the "training contract" over what is normally two years is to "give trainees supervised experience in legal practice through which they can refine and develop their professional skills" (SRA, July 2007b: 3), placements in different departments within the overall contract generally being described as "seats". Trainees must also at present undertake a Professional Skills Course ("PSC").[11] The training contract is very much an internal matter: the Law Society's monitoring (now the responsibility of the Solicitors Regulation Authority ("SRA")) amounts to a questionnaire and visiting procedure (SRA, *ibid*: 19). Although, as described at 2.4, the LPC sought to provide a "one size fits all" preparation, the experience of a trainee in a large corporate practice in the City will be very different to that of a trainee in a general practice in Nottingham, or in a niche practice specialising in clinical negligence litigation (see, for example, Boon, Duff and Shiner, 2001, on differing career paths for young lawyers). Boon, however, found that "the majority of aspiring trainees had little choice in where they entered a training contract" (2005:240) but that experience differed widely, from a respondent whose "regional high street firm required him to meet clients from the first day across a wide range of topics" (*ibid*: 242) to another who spent the majority of his time photocopying (such variation persisting: Boon and Whyte, 2007: 176). The role of the training contract as "apprenticeship" will be discussed further at 7.2.1.

Whilst a trainee solicitor is required to keep a record or log of activities undertaken during the training contract, this is at present essentially a means of tracking that the individual has been exposed to particular experiences ("it is used to record the experience that the trainee is getting and the skills that the trainee is developing", SRA, *op. cit.*: 15). Although "practice skills standards" are provided (*ibid*: 9) the level attached to them is frequently phrased in terms of using the experience to "understand the importance of" or "understand the need to". The SRA requires feedback to be given to trainees, but there is nothing in the standards demanding development of what I will, in subsequent discussion, call a "competence for development" (Fig. 2), despite the aspiration that trainees will use the record as "an opportunity to reflect on what they have learnt and where there may be gaps in their experience and skills" (SRA, *ibid*: 15).

Although many employers will expend considerable care on the training contract experience as a means of contextualising what has been learned during the academic

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[11] comprising Financial and Business Skills; Advocacy and Communication Skills; Client Care and Professional Standards and 24 hours of electives.

and vocational stages to the particular practice (see Boon and Whyte, 2007:177), there is scope for exploitation. Boon and Whyte suggest, for example, that "from the views expressed to us, it appears that some employers expect trainees on day one to be consummate solicitors" (2002:32) and, at the other end of the scale, anecdotal histories of trainees expected to perform menial tasks (collecting dry cleaning, delivering post, *etc*.) abound. A de-skilling may even take place after qualification:

> [recent changes in practice represent] a form of industrialisation within the legal sector. Legal work is often organised in a more standardised and repetitive fashion. Work is de-skilled and broken up into different activities which can be handled by lower level operatives. Many working within this new system find it easier to begin areas of highly complex work. However, long hours and the repetitive nature of the work have caused many young solicitors stress and worries about whether they have made the right choice of career.
> Sherr, (2001:1)

The impact of the proposal to replace the training contract with a period of work-based learning (SRA, 2008b; Appendix II) which will not only require exposure to certain experiences but also assessment of competences acquired through or demonstrated in those experiences has, I know from my own conversations with practitioners, not fully registered with the profession at the time of writing.

2.6   Qualification

On successful completion of the training contract, the trainee is finally "admitted to the Roll of Solicitors". It is at this stage that the solicitor will normally specialise in some way although it will not be for another three years (by virtue of what is now *Solicitors Code of Conduct 2007*, rule 5.02 2(b); July 2007a) that the new solicitor is allowed to set up in practice alone. Those first three years, then – the period on which this study is focussed – remain implicitly a learning phase despite the apparent status achieved.

2.7   The Training Framework Review

Review of and adjustment to the LPC has been wearisomely constant from shortly after its birth (see Gorieley and Williams, 1996). Given the "fragmentation" (Webb and Fancourt, 2004:299; Boon, Flood and Webb, 2005) of professional practice, the likelihood of the LPC as a "one size fits all" basis with a commitment to a core and equal single route into qualification for all ever satisfying the more specialist or

powerful stakeholders was remote. Several references have already been made in this chapter to the Training Framework Review. Although interviewees in this study qualified prior to its implementation, the debate prompting and surrounding the review provides a political context both inside the profession as well as outside it (as, for example, consumer and governmental interest in quality of service: Farrar, 2001; Clementi, 2004; DCA, 2005 and on restrictive practices: OFT, 2001). A principal internal driver was that of promoting equality of access to the profession, particularly by under-represented groups (Law Society, 2001a) and compliance with the Disability Discrimination Act 1995 and Race Relations (Amendment) Act 2000.

In 2001, a consultation paper was issued by the Law Society's "Training Framework Review Group" (Law Society, 2001a) suggesting the development of:

> a framework or grid of competencies around which it will be possible to identify what should be required of the training process *at every stage of a solicitor's career* ... once the framework has been established the next stage will be to consider the standards and outcomes of individual parts of the process both pre- and *post-qualification* ... [my italics]
> Law Society, (*ibid*: 2)

A particular difficulty, however, remained the problem of the wide diversity of practice:

> ... the nature of practice is so diverse that some newly admitted solicitors might be expected to conduct a whole case, ... while others, such as those engaged in large commercial transactions, would only ever be responsible for part of the whole. Thus, there are difficulties in specifying a common level of outcome that could be expected from all solicitors in areas such as communication skills.
> Law Society (*ibid:* 6)

Following consultation, a report was commissioned (Boon and Webb, 2002) reviewing not only competency frameworks for lawyers in, for example, Australasia (the APLEC outcomes discussed at 3.7.2 and Appendix IIa) but also the wider educational literature. The written standards of the LPC were identified as not amounting to a, properly so called, competency framework (but note the vestigial "competence for development" included as an afterthought):

> The LPC standards also aspire to prediction in that the aims provide that "students should be able to ... 7) make the most of the experience which follows and gain the confidence necessary for competence in practice [and] 8) learn from the experience of the course and from

future practice". These are worthwhile aspirations but are not susceptible to performance testing on the course. They sit oddly with the idea of a competence framework unless one views the LPC standards as a compromise informed by both competence and capability agendas. This view is somewhat reinforced by a post-script to the standards specifies that, in order that students are prepared for continuing education, they should be able to "reflect on their learning". Boon and Webb (2002: 7.11)

Whilst I deal with competence and capability at 3.5 and 3.6 and reflection at 7.6, the point is, I suggest, well made here in the context of pre-qualification education; a divergence between the "aspirations" of the professional body and the expectations of educationalists. The proposed outcomes for the period of work-based learning (SRA, 2008b; Appendix II) can equally be criticised as not amounting to learning outcomes in any conventional sense because lacking in a clear statement of the level to be demonstrated. Some, even in their 2008 iteration, will prove challenging to assess in a meaningful way. Nor, in my analysis, do these outcomes necessarily articulate clearly with the proposed overarching "day one outcomes" (Appendix I) intended to define the point of qualification (see Appendix IIB). On raw reading, however, what the list clearly does represent is a set of desiderata delineating the profession's conception of an ethical and responsible practitioner. Law teachers are by no means immune to this tension between educational norms and the pragmatic (or, depending on one's perspective, naïve) approach of the profession, such that it is an aim of UKCLE to promote "the development and recognition of the law teacher as a professional educator" (Burridge, *et al*, 2002:xi).

Following a second consultation paper (Law Society, 2003), raising a number of possible pathways to qualification including most controversially, a "continuous pathway integrating academic, vocational and work-based learning", (*ibid*, annex 3) a series of individual reports was then commissioned on aspects of the proposals (Brayne, 2004; Grace, Thomas and Butcher, 2004; Johnson and Bone, 2004; Webb, Maughan and Purcell, 2004).

In parallel with this internal review a number of concerns were being expressed externally about competence in the profession, particularly in client care and client communication; complaints and complaint management (Farrar, 2001; Paraskeva, 2001); an independent review of the regulatory system of solicitors in particular (Clementi, 2004) which have resulted in the removal of self-regulation (through the creation of the SRA in 2006) and the Legal Services Act 2007. The regulatory

provisions of the Act, together with its widening of the legal services market, both create demands in respect of demonstration and maintenance of quality and competence which, I suggest, inform the current approach of the profession (see, for example, the SRA's proposals in respect of post-qualification CPD described in Chapter 4). In addition, the ruling by the European Court of Justice in 2003 in *Morgenbesser v Consiglio dell'Ordine degli Avvocati di Genova,* (see Law Society, 2005a), that E.U. professionals wishing to work in other member states could not be required to attend a specific course (such as the LPC) as a condition of doing so created confusion and potential for additional routes to entitlement to practise in this jurisdiction. The impact of both internal and external factors can be seen in a consultation paper on qualification (Law Society, 2006), maintaining the focus on diversity of access to the profession (including that of recognition of E.U. qualifications) but demonstrating the principal concern of the Law Society Regulation Board (precursor of the SRA), to be matters of demonstrable standard and quality, when:

> ... at the end of the current training contract period, individuals can be signed off by their training principal regardless of the standard of their performance in practice. As the gatekeeper to the profession, the LSRB has a responsibility to ensure that those entering the profession are competent to do so. With no formal assessment of trainees' performance in practice, the LSRB cannot currently be confident that trainees completing the current two year training contract have reached an appropriate standard.
> Law Society (2006: 3)

Despite its controversially liberal beginnings, which caused the head of one LPC provider – ironically echoing Twining (*op. cit.*) - to compare proposals for qualification as a solicitor unfavourably with the qualification requirements of CORGI plumbers (Gibb, 2005) the Training Framework Review has, however, slowly retrenched towards convention:

> [t]he majority of the TFRG anticipates that most students would wish, and would need, to complete a structured programme of vocational training in order to achieve the full range of outcomes required"
> Webb and Fancourt, (2004: 27)

This is true of the LPC, where, although the written standards have been replaced by learning outcomes, the prescription as to content (in particular as to the proportion of time allocated to different subjects) and as to delivery (as to the number of required

classroom contact hours and the possibility of studying the core subjects in one tranche of activity with the electives studied later perhaps even at a different institution) has been relaxed from 2009 (SRA, 2008a). Nevertheless, the requirement to complete the course of formal study remains (SRA, *ibid*).

It is also true of the period of work-based learning to replace the training contract in 2011. Initially this phase was to involve the gathering of a portfolio of evidence of those of the day one outcomes (Appendix I) best "developed and demonstrated in the workplace" (Law Society, 2001a: 15) with a limited (500-1000 word) reflective element, all centrally assessed. A further external assessment, possibly online, would cover ethics, client care and similar issues now covered by the PSC. By 2007, further consultation had taken place (SRA, February 2007b) and the day one outcomes had been tidied up, albeit still without any statement of level (the 2007 draft list of work-based learning standards stated somewhat unhelpfully that the standards to be expected were to be demonstrated in "straightforward/typical" work: SRA, *ibid*). The original draft standards have been tightened up (and the purported statement of level removed) and a pilot of it is taking place at the time of writing (Appendix II; SRA, 2008b). Despite the difficulties of some firms in supplying sufficient contentious seats, a requirement to cover both contentious and non-contentious practice is retained although assessment may be either by the employer or by external assessment organisations (allowing individuals unable to obtain a conventional "training contract" to contract externally for their mentoring and assessment with the consent of their employers: SRA, *ibid*). Whether this latter permission is able to deal satisfactorily with the question of increased access to the profession very much remains to be seen.

2.8   *Socialisation, vocational habitus and becoming*

The preceding discussion has focussed on the formal and external structures preceding qualification. Dis-integrated as they may be, they transmit certain perceptions of the ethos, values and nature of legal practice to individual students. At the benchmark of qualification, issues of status and expectations which may have sustained the individual through the slog of the preceding six years or more, may be put to the test. The lack of perceived continuum between LPC and training contract is substantially, it emerged from this study (see 10.3), mirrored by a lack of continuum between the end of the training contract and the point of qualification. Nevertheless, as a means of socialisation and of testing and validating (or otherwise) the expectations engendered

by the academic and vocational stages, the training contract may have a significant sobering and grounding effect. I consider such hidden aspects in this section.

2.8.1 Expectations and status

If "[t]he power and legitimacy of professions is acquired in part from their status as organizations defined by their control over knowledge" (Boon, Flood and Webb, 2005: 474) then an expectation may be transmitted that such control has or should have been achieved at the point of qualification. The actual status (if any) conferred by qualification is blurred, in this jurisdiction by the higher public profile of the barrister, and by the fact that "[i]ndividuals often choose law as a career with little knowledge of what lawyers actually do" (Rhode, 2008:223). Boon, interviewing 15 participants in the Law Society cohort study in England and Wales, suggests that the image of legal practice presented to undergraduates is "of autonomous professionals, ultimately in control of their work, helping clients" (Boon, 2005:252) and that undergraduates may be in ignorance of the fact that "legal work is often routine and mundane" (*ibid*: 254) and, of course, in the larger firms in particular where large teams are common, anything but autonomous. Status and control (both in the sense of control of a knowledge base and control of one's own work) is discussed principally by Boon, Flood and Webb (2005) in the context of the Law Society exerting control of the knowledge base through the Training Framework Review. It is, however, inherently now more ambiguous following the explicitly consumer-focussed regulatory and competition-expanding provisions of the Legal Services Act 2007, potentially attacking both inherent status and control of one's own work. The point of qualification is, therefore, a position of – to borrow a term from anthropology - considerable liminality (see 10.3.3.2).

The place of a motivation involving social justice or social welfare in choice of a legal career is an interesting and complex one. "Selfish" aspects of job security and financial reward are more explicit in the imagination of the general public for lawyers than for, for example, doctors or teachers, employed in the public sector who may be seen as primarily altruistic. Lawyers with an explicit personal commitment to social justice or welfare law, working in legal aid or in law centres (or otherwise in the public sector) may be seen as downtrodden and underpaid (see also Sherr and Webb, 1989). Consequently, "[t]he most important factors in choosing a [post-qualification] job for students in the cohort study were intrinsic interest, suiting talents, independence and

flexibility, promotion prospects, the kind of people they hoped to work with, long-term salary and early responsibility" (Boon, 2005:243). Nevertheless, Boon concludes that altruism or commitment to social justice demonstrates for young solicitors less through field of work than its "intrinsic satisfaction". Wallace, in a study comparing Canadian "Baby-Boomers" (born 1946-1964) and "Generation X-ers" (born 1965-1980), found that "work effort and earnings" were of greater significance to the older lawyers, whilst "the sense that one's work is socially important and having supportive colleagues are more important to Generation X's work" (2006:147). What this result does not, of course, answer, is whether the Baby-Boomers, when they were in their less-cynical 20s and 30s, had similarly hoped for intrinsic value and interest in their work allowing them to conclude that it was of social merit (*aka* "a vocation"): whether Wallace's findings are a function of youth, rather than history.

2.8.2   *Socialisation as normatisation*

Colley *et al* suggest a concept of "vocational habitus" embodying both the classical definition of vocation as "calling" but also its emotional and affective constituents, a synthesis which:

> ...proposes that the learner aspires to a certain combination of dispositions demanded by the vocational culture. It operates in disciplinary ways to dictate how one should properly feel, look and act, as well as the values, attitudes and beliefs that one should espouse. As such, it is affective and embodies and calls upon the innermost aspects of learners' own habitus.
> Colley *et al* (2003: 488)

but which "contains important contradictory tensions, which the learner must negotiate" (*ibid*: 489; see also, in a legal context, Scheffer, 2007). Sommerlad emphasises these traumatic aspects in portraying the training contract as a period of socialisation towards the vocational habitus *of the individual private-sector employer* that:

> break[s] trainees down and re-make[s] them in the image of the firm. The formal training in legal skills is designed to inculcate those dispositions which embody the culture of an organization and although full professionalism will ultimately be exemplified by certitude, initially the effect on the trainee tends to be *loss* of confidence.
> Sommerlad, (2008: 8) (her italics)

and cites many examples of outsiders to a perceived white, middle-class, male, corporate-lawyer norm who, without family connections in the profession, had unrealistic expectations of what work in it would entail, but in order to achieve entry (*i.e.*, to obtain a training contract) or success after entry, including retention after the end of the training contract, particularly in the case of women, had "to undergo an additional process of disassociation involving coming to terms with the gendered, raced, and classed identity of the profession, ...shedding aspects of [their] previous (inferior) identity" (Sommerlad, 2007:212) with the result that "a common theme for women trainees and newly qualifieds was 'continual anxiety'; 'all the girls were angsting, working hard and late ...'" (*ibid*: 213) until they had learned to "posture" in accordance with the norms they perceived in their workplace. That is, in accordance with the norms of their employer.

2.8.3   *The emotional and psychological toll*

Aside from the emotional toll potentially exacted by consciously aligning oneself with a foreign (male) norm (a process that, if continued, as Sommerlad (2008) points out, has the potential to negate any positive results in terms of access to and diversity in the profession delivered by the Training Framework Review), there is a question as to the emotional and psychological state required or engendered by the process of qualification *per se*. Although the context is that of postgraduate legal education in the U.S.A., and in a sample containing fewer women than men, Benjamin *et al* (1986) found law students to be initially psychopathologically normal but to acquire during law school levels of anxiety; depression; feelings of inadequacy; obsessive/compulsive behaviour and similar symptoms more elevated than those even of medical students, this trauma and competitiveness of the U.S. law school being borne out by autobiographical account (Turow, 1977; see also Monahan, 2001). In this jurisdiction, Boon comments that "[t]he studies suggest that legal education inculcates distinctive, common personality characteristics among law students, making it the most invasive and psychologically distressing graduate study" (2005: 238). Some of these traits are, of course, demanded by the profession (as, for example, the invitation of the expression "detail-conscious" in the 2007 draft work-based learning standards (SRA, February 2007b) to reward OCD-like behaviour). States of anxiety and similar symptoms might also, I suggest, be more pronounced in those specialising in litigation where pessimism is rewarded and clients almost invariably in crisis or adversarial frames of mind.

2.8.4 Actuality

Dinovitzer and Garth (2007) found that U.S. lawyers of higher social class, defined by the ranking of their law school, expressed lower levels of career satisfaction than others. Rhode (2008:224) comments that "[i]t is not surprising that recent graduates from the most prestigious schools, although working in the most prestigious firms, express the greatest dissatisfaction with their careers; they expected more from their credentials". Boon also found disillusionment in the recently qualified in England and Wales perhaps because of this tension created by the profession "project[ing] a complex, incoherent and inconsistent set of values" (2005: 250) but also particularly in those working in the company/commercial work that is lucrative for the employer but frequently of less intellectual challenge (that is, intrinsic interest) to the individual lawyer.

The status acquired on qualification must mean something, given the financial, physical and emotional toll it exacts, particularly on those "outsiders" who may be more conscious of the process and personal cost of socialisation. If, however, it does not necessarily produce or coincide with acquisition of confidence, control of the knowledge base or workload, intrinsic interest or social significance that the academic context (let alone the glamour projected by films and television) promised, one can understand why individuals in the interview group might be highly conscious of the status conferred at qualification but ambivalent as to what it might mean except insofar as defined for them by their employer.

2.9 Conclusion

The experience of the newly qualified in the interview group, then, has not been affected by the proposals resulting from the Training Framework Review (2.7). The day one and work-based learning outcomes relevant to litigation and dispute resolution will however be considered further in Chapter 3 as background to two benchmarks that I will use in the analysis at 10.3.2, 10.3.3 and 10.3.4: the perceived working environment at the point of qualification and the perceived qualities acquired by those at or beyond the three-year PQE watershed.

Individuals in the interview group may, however, be very substantially affected by other political issues affecting the profession and making demands on it to prove its own competence and to compete with others (2.3). The effects of the increasing

pressure on the profession to demonstrate and maintain standards, the general economic climate and the Legal Services Act 2007, potentially creating a wider and more competitive market within the legal services sector, may combine to render the new entrant more personally vulnerable in respect of his or her own continued employment and future career.

What has also been demonstrated is the fractured nature of the academic (2.3.1, 2.3.2) and vocational stages (2.4) and the fact that the academic stage and LPC (2.4) may reflect a somewhat fictional and idealised model of practice. Neither, necessarily, embody – even though the LPC may in principle be more advanced in terms of interactivity and groupwork – any clear responsibility or competence for development. The training contract (2.5), by way of supervised experience, even if of varying structure and relevance, may act at least as a form of socialisation for the profession (2.8) and a mediation of unrealistic expectations (2.8.1) of what working as a solicitor entails as well as introducing emotional and affective issues (2.8.3) into the arena of learning in the workplace. The implications of the training contract experience as actual preparation for the qualification role (apprenticeship contrasted with potential exploitation or mere timeserving) as well as this more diffuse socialisation may become significant for the individuals' conception of development after qualification and their responsibilities for such development. The theme of normatisation, alignment of goals and activities with the desires of the employer (2.8.2) will also reappear in the analysis.

In Chapter 3, then, I move into a description of the working context and an examination of the competences which the profession appears to demand from its practitioners.

CHAPTER THREE - LITIGATION, DISPUTE RESOLUTION AND COMPETENCE TO CONDUCT THEM

> Competence ... is the ability to draw the same thing over and over in the same strokes, with the same force, the same rhythm, the same trueness. This kind of beauty, however, is ordinary. ... The second level, ... is Magnificent. ... This one goes beyond skill, ... its beauty is unique. ... The third level is Divine ... A person seeing this would be wordless to describe how this is done. Try as he might, the same painter could never again capture the feeling of this painting, only a shadow of the shadow.
> Tan, (2001:233)

3.1   Introduction

It is apparent from the outcomes in Appendices I and II that the current trend of the profession demonstrated by the Training Framework Review is towards something approaching a competence framework, a movement paralleled outside the profession by the establishment at a different level of explicitly competence-based *National Occupational Standards for Legal Advice* (Skills for Justice, 2006) with related NVQs (currently at levels 2, 3 and 4) aimed at, for example, housing advice and debt workers. In this chapter I explore these competences in more detail, initially to provide an introduction to the process of litigation and dispute resolution and the activities in which the newly-qualified might be expected to engage.   Secondly, whilst acknowledging that these competence frameworks in their current form have not been applied to individuals in the interview group, in the context of a critical analysis of the contribution and utility of competence frameworks, I examine the extent to which such competence statements reflect any expectation by the profession of individual responsibilities and strategies for learning beyond the benchmark of qualification: the nature of any "competence for development".

3.2   What is litigation?

It should be said at the outset that, criminal litigation being a particularly specialist field, my interviewees worked exclusively in civil litigation, mostly in the commercial or contractual sector, but some in personal injury work.

"Civil litigation" covers the gamut of litigation that is not criminal: from the boundary dispute between neighbours to a dispute between a government and a nationalised industry about an international oil pipeline. The number of claims issued

(that is, where court procedure is initiated) has reduced very substantially since the implementation, in 1999, of substantial changes to civil procedure as a result of the Civil Procedure Rules 1998: from around 150,000 Queen's Bench Division cases in 1995 to fewer than 20,000 in 2006 (Ministry of Justice, 2007: 39). Only a small proportion of civil cases in which court proceedings are so initiated proceed as far as trial. So, for example, whilst 2,157,000 claims were issued in the county courts in 2006, there were only 65,000 trials (*ibid:* 50). The vast majority are resolved by other means such as negotiation or mediation long before they reach trial. Economic recession and "credit crunch" will tend to affect the extent to which clients are willing to engage in litigation as well as the likelihood of successfully obtaining financial compensation from their opponents. Modern litigation lawyers, consequently, find themselves involved in other forms of dispute resolution, and even in pre-emptive dispute prevention.

The parties to a civil dispute are intimately involved in the process and in the tactical decision-making except to the extent that they delegate such decisions to their legal representatives. Domestic litigation procedure also involves the parties and their lawyers in constant decisions about legal costs: in funding the investigation and prosecution of a case; in evaluating the merits of offers made in settlement and in making cost/benefit analyses of possible tactical manœuvres. The winner at trial can, broadly, expect to be recompensed the majority of legal expenses incurred, whereas the loser not only has to provide that recompense but also to pay his or her own lawyers. Although the solicitor will not generally conduct the advocacy at the final trial (when there is one), he or she will be involved in the stages of investigation, negotiating and pre-trial tactics described in more detail at 3.2 and 3.7.3.1. To flesh out this skeleton for non-lawyer readers, a fictional description of a case from outset to trial appears in Appendix III.

3.3   Alternative dispute resolution and other challenges for young litigators

It will be noted that interviewees refer to methods of dispute resolution other than litigation: mediation, arbitration, negotiation (or "settlement out of court") and it is fair to say that, given the perceived length, complexity and expense of litigation on the part of both clients and practitioners, such approaches are gaining in significance to the extent that there is serious discussion of the benefits of making an attempt at mediation compulsory (Genn *et al*, 2007; EU Directive 2008/52/EC). Aside from the wide

diversity of practice in specialist litigation itself, the young solicitor now needs to understand and develop a repertoire of these alternative methods.

3.4 Competences to conduct litigation and dispute resolution at the point of qualification

The needs of individual employers for particular competences in their qualified staff will differ enormously, a factor identified within the Training Framework Review:

> One respondent said: "[w]e question the validity ... of seeking to impose post-qualification competency frameworks in such a diverse legal profession ... competencies [would be] so generic as to be valueless ... the one area which is pervasive and could be reflected in a competency framework is ethics/professional conduct'"; it was also observed by one respondent that minimum competencies are very different in high street and City practices and that not all solicitors need "general knowledge" even of all "key areas".
> Boon and Webb, (2002: 13)

The distinction between "the City" and "the High Street" can be marked in the extreme, to the extent that those working in one sector may barely recognise the work of the other as that of a solicitor. The larger regional or national firms straddle the boundary. The distinction can be measured by the attitudes of the various sectors to the Law Society as a relevant authority (Lee, 1999). These differences between the work of trainees in different types of firm indicated at 2.5 above will follow through after qualification such that what is expected of newly-qualified solicitor A (in a small firm with a litigation department of three people working mostly in the local county court) will be very different from that of solicitor B (in a multi-national City practice employing thousands, working as one of a team of eight involved full time in a vast international shipping dispute).

One might therefore consider whether it is fair to describe B, in some aspects of his or her early career, as a professional at all. He or she may have no direct contact with the client or the court whatsoever, in stark contrast to his or her colleague in the smaller firm who spends the vast majority of his or her time seeing clients, appearing in court and taking personal responsibility for cases. Schön (1983), for example assumes this direct relationship as axiomatic of the professional relationship, such that the practitioner, reflecting, has the autonomy to change the course of action adopted and then, in reflection-on-action (see 7.6), to evaluate the effectiveness of the change; that

is, in my terms, to "engage with" the experience. He is not alone (see also Marsick and Watkins, 1990, discussed in Chapter 7):

> [i]t is because professionals face complex and unpredictable situations that they need a specialized body of *knowledge*; if they are to apply that knowledge, it is argued that they need the *autonomy* to make their own judgements; and given that they have that autonomy, it is essential that they act with *responsibility*...";
> Furlong, in Atkinson and Claxton (2000:16 at 18. His italics).

Whilst Schön's Resident is diagnosing and treating a patient, solicitor B may be spending a significant amount of time, as it were, rolling bandages and filling syringes.

Nevertheless, the idea of imposing a competence framework on this particularly diverse profession was mooted at a high level in the Lord Chancellor's Advisory Committee On Legal Education And Conduct ("ACLEC") second report *Continuing Professional Development for Solicitors and Barristers* and has, as demonstrated in Chapter 2, followed through into the Training Framework Review albeit only for the pre-qualification stages rather than, as ACLEC suggested, (1997: 29) "for lawyers in their *first three years* of practice" [my italics].

3.5   Competence

The concept of "competence" invades much of the discussion surrounding the pre-qualification development of solicitors as well as forming a principal component of the ongoing debate about overall quality of service by the profession as a whole. Possible alternative meanings of the term "competent" include:

a)   Properly qualified (Eraut, *op. cit.*: 164) – the *normative and political* meaning;

b)   Mid-way on a scale from novice to expert (Dreyfus and Dreyfus, 1986:23) – the *aspirational* meaning;

c)   As a more pejorative version of b), "only [just] competent"; "not negligent"; limited in the sense suggested by the quotation at the head of this chapter – the *bottom line* meaning (to be distinguished from the aspirational meaning in its suggestion that there is no need or expectation to move beyond it);

d)   That of a "meta-outcome" linking all the stages of pre-qualification legal education (Sherr, 1998:9) – the *holistic* meaning (neutral as to its aspirational sense):

> ... in mastering a complex skill, such as playing the piano, learning can proceed along a multitude of dimensions – posture, finger position, notation, use of the pedal, ... and so on. However, not all these dimensions can be separated for instructional purposes; even if this were the case it would be wrong to measure progress along each separate dimension as an indicator of progress towards the ultimate objective. This is because what is most important in learning complex skills is how the various dimensions "come together" to form an integrated whole. And it is precisely this type of outcome which resists behavioural analysis ...
> Tennant, (1997:103)

One potential difficulty for the newly-qualified, is that the meaning currently preoccupying the profession, particularly given the Legal Services Act 2007 and criticisms which led to it, is a combination of a) and c) above. Consequently, if or to the extent that a newly qualified individual looks to the profession to delineate a benchmark, at present, the response is defensive. A more holistic concept might be valued but is inherently difficult to explain to the newly-qualified solicitor seeking to attain it:

> [c]ompetence is not the only thing of value in law practice, but without it, nothing else matters very much. The legal profession and the courts both recognise the inherent value of competence: competence is an ethical duty and gross incompetence is considered professional misconduct. To clients, competence is the bottom-line requirement they demand in their legal representatives.
>   But what exactly is competence? ... Competence bears the same relation to professional work as truth does to art. Like truth in art, competence in legal practice can never be definitively analysed. It is one of those qualities best described by the label "you'll know it when you see it." ... Apart from all the value it brings to clients, competence is worth pursuing for its own sake.
> Nathanson, (1997: 144)

Some writers recognise that competence in the bottom line and normative senses carries with it a sense of the potential rather than the actual:

> [c]ompetence refers to what a person knows and can do under ideal circumstances, whereas performance refers to what is actually done under existing circumstances ...
> Messick (1984, quoted in Eraut, *op. cit*: 178)

Such a definition does little to satisfy the normative or political objectives of imposing a framework in the first place. Definitions in the normative and bottom line senses tend

to assume that what is assessed is *both* what would be done under ideal circumstances and what is done in practice, or that assessment (such as the proposed assessment of the work-based learning outcomes) can be conducted so as to assess the actual rather than the ideal, a difficulty that proponents of the "capability" approach claim to resolve.

The creation of the SRA as an independent regulator and the consumer-oriented political context of Clementi and the Legal Services Act 2007 was initially thought to change the profession's existing bottom-line to competence as a concept, perhaps following the post-Shipman medical model:

> Mr. Townsend [chief executive for regulation] said the traditional assumption that once a member was admitted to a profession, that person would remain competent, and that the regulator's role was to weed out "rogues and villains" was changing. "Increasingly, the focus of consumer concern has been about continuing competence, not just character."
> Gibb (2006)

Eynon and Wall, (2002:321) argue that "what is really required is assurance that poorly performing and inadequate members of the profession are identified and re-trained or leave the profession" – the normative and political aspect from an opposite perspective.

Competence as an over-arching concept related to non-negligent quality of performance also exhibits two further facets: that of the range of activities in which an individual is competent, and the level of their ability in such activities, or, as Eraut (1994: 167) succinctly puts it, "two dimensions, scope and quality". Recognition of these two dimensions is of particular significance for the purposes of this study. Quality occupies a spectrum from incompetent to expert. So Eraut – supporting an aspirational argument that competence as a bottom line description cannot by definition apply to a beginner – indicates that:

> [a] competent professional is no longer a novice or a beginner and can be trusted with a degree of responsibility in those areas within the range of his or her competence, but has not yet become proficient or expert. This contrasts with those definitions of competence adopted by most competency-based systems of training and education, which assume a binary scale by confining assessment decisions to judging whether a candidate is competent or not yet competent. ... binary scales [are] inappropriate for assessing most areas of professional knowledge and ... [are] incompatible with the notion of lifelong learning.
> Eraut (*ibid:* 215)

However, within the range of activities in which the interview group engage, there may be some ("form filling", for example) in which there is an absolute standard – right or wrong – whilst in other tasks the quality of a beginner's work is expected to be less (less innovative, less effective, considering less of the "big picture", less speedy or cost-effective) than that of the expert, whilst maintaining a "bottom line" of competence, that is, non-negligence. As theories of expertise tend to deal with extension of the *quality* of performance (dependent, as discussed at 6.2.2.1, on the definition of the domain of the expertise) my term "aspirational learning" is used principally to describe learning that is devoted to extension of the *scope* of activity.

Whether the objective of reinvigorating political and consumer confidence in the profession as performing at least competently by way of bottom-line is achievable by a competence framework is by no means certain. A competence framework does not of itself encourage development beyond the benchmark set whether as to scope or as to quality. Indeed, insofar as the purpose for adoption of such framework is that of public confidence in the profession, the priority or indeed the only objective of the framework might be to ensure standards of performance at the static level of the benchmark (quality), rather than to encourage practitioners to extend the scope of their activity aspirationally into new fields in which they stand at greater risk of making mistakes.

3.6   Competences

The difficulty of setting out and working with a competency framework, in the professional context, lies in the diffuse nature of professional activity where tasks and performance are often cerebral or verbal and the underlying attitudes and personal qualities impossible to detach or to assess summatively where, as with the work-based learning outcomes, such assessment is required. Although the Training Framework Review introduced the idea of an enforceable competence framework applied across the board to the profession in England and Wales, competence frameworks for lawyers are by no means new (*e.g.*, Fitzgerald, 1995; Nathanson, 1997:18; Winter, 1997). In a meta-survey of several jurisdictions, Gasteen concludes that:

> … although the research indicates very similar skills and knowledge are required of practising lawyers, the way in which these skills and knowledge are described and categorised are very different. Many of the differences in the definitions of competence are attributable to semantics or categorisation. While the majority of researchers seem to

> agree on a comprehensive or "thick" description they differ on how this
> description is divided and categorised.
> Gasteen (1995: 248)

Proponents of competence frameworks, particularly in the professional sphere, suggest that they promote:

a)   public confidence in the profession (Gasteen, *ibid*: 13);

b)   homogeneity and normatisation within the profession (Eraut, *op. cit.*: 169);

c)   clarity and transparency (SRA, 2008b);

and that the individual competences are susceptible of both identification and categorisation as well as being objectively measurable (for example, Edwards and Knight, 1995; Hogan and Hort, 1988). A contrary and more political view of point b) is that a "competence" approach, in restricting entry to and practice within the profession, may be "derived from the perceived need of a relevant group to occupy and defend for its exclusive use a particular area of competence territory" (Eraut, *op. cit*:165) or even that such an approach permits state control (Jones and Moore, 1993): painful in the context of the Legal Services Act 2007 and the state's dilution of the profession's self-regulation. Others, however, recognise that individuals develop skills and attributes at different stages (Crebert and Smith, 1998: 5).

Criticism of the competence movement within a professional context can be grouped into three arguments:

a)   That prescription of defined competences inhibits, rather than promotes, innovation, aspirational and metacognitive development (the *inhibiting* criticism); the very notion of a defined series of indicators – consistently with a bottom-line concept of overall competence - suggesting exclusion of others:

> ...outcomes and competence approaches are inadequate for the epistemological task ... They can lead us to focus on low-level procedures and attributes that are easy to define, at the expense of developing and assessing the higher skills of critical thinking, judgment and evaluation ...They encourage us to focus too much on the behavioural outcomes of learning, ...Both [outcomes and competence] approaches tend towards assessing understanding by looking at observable competences and outcomes ..... competence approaches in particular can dehumanise learning ...
> Webb, in Webb and Maughan, (1996: 35)

b)   That competences, in prescribing a minimum and bottom-line standard, create the inference that improvement as to scope, quality or both beyond the bottom line is

not required or positively undesirable, engendering complacency and even anti-professionalism (the *mechanistic* criticism);

> Competence is often conceived as "the ability to perform tasks"' and competence-based programmes may be characterized by the pejorative epithet of 'the 3 Rs' – Reductionist, Restrictive and Ritualistic.
> O'Reilly *et al*, (1999:55)

c)   That the diversity of professional work and the inchoateness of that work makes it impracticable to define meaningful competences (and/or to assess them) in any event (the *impracticability* criticism seen in some responses to the Training Framework Review). The fact that all but eight of the 37 work-based learning outcomes (Appendix II) could be applied to individuals working in any client-servicing capacity demonstrates this difficulty.

Gasteen, in addition, sees the competence approach as fulfilling political objectives at both ends of the spectrum "the one, because they form part of economic rationalism; the other because they demand accountability" (Gasteen, *op. cit*:13) and as a means of increasing public confidence in the profession.

This is not to say that proponents of competence frameworks are entirely utilitarian in their approach. Hager, *et al* suggest that professional competence frameworks adopted in Australia succeed in dealing with the "atomistic" (closely defined task analysis-based competenc*ies*) and the "holistic" (competenc*es*) – the *impracticability* criticism:

> ...these professional competency standards strike a balance between the misguided extremes of fragmenting the occupation to such a degree that its character is destroyed by the analysis or adhering to a rigid, monistic holism that rules out all analysis. That this balance is a reasonable one is indicated by the fact that ... these professional competency standards allow for professional discretion, *i.e.* they do not prescribe that all professionals will have identical overall conceptions of their work, *i.e.* these professional competency standards are quite consistent with one practitioner having, say, a strong commitment to social justice, while another is just as strongly committed to excellence of practice.
> Hager, Gonczi and Athanasou, (1994:5)

Some examples are given in a medical context, suggesting that, for example, such competences as "empathising with the patient" are "not difficult to assess[12] in realistic work contexts where it is an important part of the performance of the element. What is

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[12] A question arising in the context of the proposed work-based learning competence framework is who precisely is in a position to and can realistically assess.

difficult is assessing 'empathy' in the abstract" (*ibid:* 14). Nevertheless, Australian professions (see the Australasian version of the day one outcomes in Appendix IIA, discussed below at 3.7.2) have sought to deal with the *mechanistic* and *impracticability* criticisms:

> is conceptualised in terms of knowledge, abilities, skills and attitudes displayed in the context of a carefully chosen set of realistic professional tasks which are of an appropriately level of generality. ... The main attributes that are required for the competent performance of these key tasks or elements are then identified. Experience has shown that when both of these are integrated to produce competency standards, the results do capture the holistic richness of professional practice ...
> Hager, Gonczi, and Athanasou, (*ibid:* 4).

As an alternative to competence approaches, the concept of capability is advocated to promote the reflection ("engagement with experience"), innovation and creativity thought to be absent from the relatively static competence/competency model (see O'Reilly *et al*, 1999). This approach deals most effectively with the *inhibiting* criticism by embedding aspiration as to scope and enhancement of quality – a competence for development - as essential components:

> [t]he usefulness of the capability construct for professional education lies in holding ... [two meanings of the term "capability"] together in some kind of balance. In its first sense capability has a present orientation and refers to the capacity to perform the work of the profession: capability is both necessary for current performance and enables that performance. In its second sense, capability can be said to provide a basis for developing future competence, including the possession of the knowledge and skills deemed necessary for future professional work.
> Eraut, (*op. cit.*: 208)

Going further, Cheetham and Chivers (1998) merge competence and capability approaches (focussing on task) with the "reflective practitioner" approach, where the task is background or spur to an introspective personal development (for further discussion, see 7.6) consequently promoting the concept of engagement with experience and competences for development to a position of equality with the competences in the initial baseline activities.

3.7   Existing competence frameworks as benchmarks of workplace activity and as a competence for development

Members of the interview group may not be aware of the existing "written standards" purporting to constitute a competence framework that defined their LPC. Their training contracts were defined not by the proposed work-based learning outcomes purporting to set a common standard of achievement, but by a checklist of experiences to which they were to be exposed. Nevertheless, some firms will have their own developmental expectations and in-house competence frameworks and, as demonstrated at 3.5, the notion of competence in a bottom-line sense infects the current regulatory approach to the profession. Although the idea of articulating a set of competences for the profession may be relatively untried in this jurisdiction, such individual competences as have been publicly defined emerge, I suggest, from the profession's existing understandings and expectations of what young lawyers should be and be capable of at the point of qualification by virtue of their previous educational activities (including in particular the training contract) which may or may not align with the views of the young lawyers themselves.

Further, insofar as any of the publicly available frameworks include a competence (the "competence for development" counteracting the mechanistic criticism) recognising the capacity to engage in further development, whether aspirational or not and whether self-directed or not, this betrays the expectation of the profession as to the need for and shape of such developmental activity. An ability to develop, particularly as to scope, may, whether or not there is a supporting or inhibiting competence framework, be pragmatically essential. Cheetham and Chivers go to the length of repeating a position that "the view is frequently expressed that for the future, the only constant at professional level will be change, and that professionals will be continually obliged to 'reinvent' their professions" (1996:21, see also Edwards, 1998:380) and this is particularly true at present for the legal profession and even more acute for the litigation solicitor.

In the next section, then, I examine three such competence frameworks, particularly as they relate to a) litigation and dispute resolution and b) articulation of a competence for development:

a)   the Boon taxonomy of 1992, an evidence-based classification of civil litigation activity;

b)   the Australasian APLEC Competency Standards for Entry Level Lawyers of 2000 (updated in 2002); and

c)   the domestic day one outcomes (SRA, February 2007b, set out in Appendix I) and work-based learning outcomes (SRA, 2008b, set out in Appendix II) created by a combination of consultation with the profession and use of specialist consultants.

A provisional mapping of all three frameworks against each other appears in Appendix IIA. The Boon taxonomy, APLEC competency standards and day one outcomes are intended to be equivalents, defining the point of qualification; while the work-based learning outcomes are intended to define the standards to be achieved, as it were, by 5pm of the day before qualification.[13]

3.7.1   The Boon taxonomy

At a time when the LPC was in the course of development, Boon (1992) conducted a qualitative survey seeking to identify important skills both for articled clerks (now "trainee solicitors") and for newly-qualified solicitors. The first part of this study identified topics related to socialisation into the workplace (for later consideration of the same issue, see Boon, 2005):

a)   internal office procedures;

b)   social and interpersonal;

c)   acquiring and organising practical and specialist legal knowledge;

d)   acquiring practice skills; and

e)   intra-personal skills (otherwise seen as personal qualities).

Whilst 42 respondents identified "independence/ initiative/ responsibility/ accountability/ decision making" as an important skill, only 13 identified "willingness/ability to learn" and five an ability to "[build] on experience"; that is, a competence for development involving "engagement with experience" (perhaps) extending to a willingness to engage in aspirational learning. Posing a number of critical questions about the appropriateness of a competence approach, Boon, too,

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[13] The possibility – from 2009 - of detaching the elective from the body of the LPC (SRA, 2008a) may mean that some individuals will complete parts of their period of work-based learning prior to completion of their LPC.

identifies the need to incorporate provision for development beyond "mere" competence:

> [a]nother area which is perhaps undervalued is equipping the learner for future professional development. ... If, as seems obvious, achieving competence should be the starting point of professional development and not the end, it is arguable that critical reflection on performance is something which should be central to professional courses.
> Boon, (*ibid:* 14)

The second stage of Boon's survey derived from discussions with the profession and resulted in a set of "performance statements" designed to operate as competences in the field of litigation. Created in 1992, however, it may, therefore, betray the impact of the pre-LPC qualification regime and almost certainly does not reflect recent developments in the practice sector itself, such as the vast decrease in issue of claims and the rise of ADR.

3.7.2 *The Australasian Competency Standards for Entry Level Lawyers*

Much of the consultation and effort which has resulted in the SRA's day one outcomes was pre-empted in 2000 by the *Competency Standards for Entry-Level Lawyers* issued by the Australasian Professional Legal Education Council (APLEC). Whilst the precursors to admission as a practising lawyer in Australia and New Zealand differ from those in this country (and between states) (Roper, 2003), colleagues there operate in an English-speaking, common law environment which may bear more similarity to the context of the interview group than that of, say, their peers in Scotland. Unlike the day one and work-based learning outcomes, the APLEC document is explicitly conceived of as a competence framework in the technical sense, in particular, seeking to define the standard to be achieved. I have omitted, in the table at Appendix IIA, outcomes necessarily irrelevant to civil litigation and dispute resolution, using only those outcomes appearing in the chapters Civil Litigation Practice; Ethics and Professional Responsibility; Lawyer's Skills; Problem Solving and Work Management and Business Skills.

3.7.3 *The day one and work-based learning outcomes*

The work-based learning outcomes, as I have said at 2.7, do not articulate cleanly with the day one outcomes, although the 2008 version (SRA, 2008b) is better in this respect than the original 2007 version (SRA, February 2007a; see Appendix IIB) and neither set of outcomes sets an explicit level to be achieved. During the course of the development of these outcomes, however, Johnson and Bone (2004) sought - relying in part on the 2000 version of the APLEC standards - to set out assessment criteria for the final day one outcomes in more relevant detail (some of which were, therefore, to be demonstrated in the academic and vocational stages): I refer to these criteria in Appendix IIA where they shed light on the litigation context.[14]

Whilst the overview in Appendix IIA is offered by way of summary, it should be remembered that it is intended to apply to legal practice in the round, rather than specifically to litigation and dispute resolution. Outcomes necessarily irrelevant to civil litigation and dispute resolution have been omitted, as have the more detailed sub-outcomes. As a synthesised benchmark for the scope of activity an individual should be expected to be able to carry out on qualification, there is a clear level of alignment. Some differences, however, bear further consideration in their impact on the use of these taxonomies as a benchmark for the point of qualification.

3.7.3.1 Negotiation and ADR

Negotiation, whether in seeking to achieve the settlement out of court of a dispute or otherwise has occupied a peculiar status in pre-qualification education. It was originally one of the core skills embedded in the LPC, later removed - apparently on the basis that trainees did not engage in negotiation – and replaced with Solicitors' Accounts. The current "practice skills standards" for the training contract, however, contain a detailed list of negotiation sub-skills which the trainee is required to "understand" by observation or involvement in supervised negotiation (SRA, July 2007: 14). The proposed day one outcomes (Appendix I) refer implicitly to contentious negotiation under the heading "seek resolution of civil and criminal matters" but there is no reference to negotiation in the purportedly underpinning outcomes for the period of work-based learning. Indeed, it is only by very generous inference that one can find

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[14] As the 2007 version of the day one outcomes involved some rearrangement of structure and layout , I have adopted the 2007 headings and re-attributed the Johnson and Bone commentary to the nearest equivalent current heading.

anywhere in the proposed work-based learning outcomes any reference to carrying out activities that *implement* rather than identify, analyse or report a client's objectives (*i.e.*, representing heading C of the day one outcomes). If not required within the LPC or the period of work-based learning, a newly-qualified individual under the proposed new scheme need have no experience of negotiation, even by observation, at the point of qualification. Whilst it is, I suspect, unlikely that this will be the case, given the centrality of the activity in both contentious and non-contentious activity, its omission is curious, to say the least, when both Boon (1992) and APLEC (2000), as well as the current framework for the training contract, pay it particular attention as a necessary skill at the point of qualification.

The greater focus on "dispute resolution process"es encompassing, but not confined to, litigation in APLEC (*op. cit.*) than in Boon (*op. cit*) is, however, understandable. Methods of dispute resolution aligned to negotiation, such as mediation, were comparatively little-known in 1992 and even arbitration perhaps seen as confined to specialist areas (such as some types of commercial work). The day one outcomes, drafted at a time when there is both judicial and governmental encouragement to use ADR processes (see Genn *et al*, 2007) refer to "resolution" without specifying the means, and Johnson and Bone (*op. cit:* 33) set assessment criteria recognising the availability of resolution outside court but do not require participation in any method of dispute resolution other than litigation or negotiation in parallel with a litigation process. This contrasts with APLEC's explicit requirement for individuals to have "performed in the lawyer's role in the dispute resolution process effectively", although even APLEC does not descend, in its section devoted to "Civil Litigation Practice" to details of mediation (or arbitration) procedures.

The place of negotiation and participation in ADR, as part of a benchmark for the point of qualification, (and see 3.3 above) then remains to be clarified as part of the analysis of the interviewees' descriptions at 12.5.2.

3.7.3.2 Advocacy

The place of advocacy in the three taxonomies is significant. Boon (*op. cit.*) refers to "presenting an argument" whether in or out of court suggesting that in 1992, advocacy by solicitors was not a priority. For APLEC (*op. cit*) "representing a client in court"

occupies a considerable place in the repertoire of standards.[15]   Both are, however, described in terms of acting on behalf of a client. Whilst Johnson and Bone (*op. cit.*) suggest that an individual should be able to explain the structure of a trial, and the day one outcomes include the client-centred "advocate a case on behalf of a client" (which again it would seem need not necessarily be in court) in the modern domestic context, this competence is also phrased very specifically in terms of the rights of the solicitor both now:

> [o]n completing the training contract, trainee solicitors should be competent to exercise the rights of audience available to solicitors on admission.
> SRA, (July 2007b: 9)

and for the future (Appendix IIB):

Work-based learning outcome **1 Application of Legal Expertise**	*Day one outcome* **D Legal, professional and client relationship knowledge and skills**
1.3 Exercise effectively … relevant skills …including … advocacy.	The ability to: ….exercise solicitors' rights of audience

Although this expression of the interaction between the period of work-based learning and the point of qualification might be read as requiring that the individual only applies, after the LPC, advocacy skills already established (and unhappily described in the work-based learning outcomes as at the level of "expertise" at that point: see Chapter 6[16]) - an example of the inhibiting and mechanistic problems inherent in competence frameworks *per se* - this is, I think, rescued by the inclusion of the separate "competence for development" I discuss further at 3.8. The rationale for its expression in terms of solicitors' *rights* is, I suggest, one with a political resonance related to the profession's competitive relationship with the Bar and with the increasing number of other professions to whom rights of audience have been extended (such as, for example, patent attorneys and trademark agents). Another possible political inclusion can be

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[15] However, in some states in Australia there is a fused profession and all New Zealand-qualified lawyers are technically "barrister and solicitor" whether or not actually practising both roles.
[16] A competence framework for what might more conventionally be described as "expertise" in advocacy, unusually, exists (QC Secretariat, 2008).

seen in APLEC's reference to *pro bono* activity (without placing any obligation on the individual to carry out any such activity).

Few newly-qualified solicitors will conduct a formal trial even in the county court, Johnson and Bone's (*op. cit.:* 39) emphasis on trial advocacy skills in their assessment criteria notwithstanding. Indeed, prior to qualification trainee solicitors do not possess the rights of audience enabling them to appear in a trial in any event (so can, presumably, only practise trial skills in simulation). In fact none of the three taxonomies assume the newly-qualified lawyers will conduct a full trial, although the rights of audience here referred to would entitle a solicitor to do so. Unlike negotiation, omitted but in practice essential, the continued inclusion of advocacy in court may betray more political protectionism than recognition of activity actually carried out and falls for further analysis at 12.5.4.

3.7.3.3 Scope and Quality

No indications are given in the day one or work-based learning outcomes of the kind of case, in terms of complexity, financial value or other criteria, with which a newly-qualified solicitor might be expected to deal "competently", the reference in the original 2007 draft of the work-based learning standards (SRA, February 2007b) of the context of "straightforward/typical work" having been removed in the 2008 version (SRA, 2008b; Appendix II). Johnson and Bone suggest that NVQ level 7 (*i.e.*, M level) is too high in terms of skills to be expected of a newly-qualified solicitor:

> It can thus be seen that as at day one the solicitor appears to stride two levels –
> he or she has the graduate level (and on occasion master's level) of knowledge
> and understanding but his or her skills are not yet high enough to warrant the
> label of "manager" for which the NQF level 7 is primarily designed.
> Johnson and Bone (*op. cit.*: 4)

The fact remains, however, that the outcomes and assessment criteria could, with very limited exceptions,[17] both as to scope and as to quality, be applied with equal validity to solicitors at any stage of their career, that is, at the point of qualification as much as at 3 years' PQE. Consequently they operate perhaps more clearly than either of the other frameworks as a set of desiderata representing what the profession would like its

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[17] For example, the limited list of business organisation procedures identified by Johnson and Bone as requiring competent advice in an outcome not otherwise discussed here. A more senior solicitor specialising in the area would be expected to advise in a wider range of procedures.

members to be seen to be. Further, what is, in the words of the 2007 draft of the work-based learning standards, "straightforward or typical" – "straightforward" perhaps suggesting level and "typical" perhaps suggesting scope - for one solicitor will be unusual and atypical (or absent) for another (se 3.4). It may be difficult for some individuals to demonstrate the possession of some of the work-based learning outcomes in any meaningful way within their work; alternatively, having acquired certain competences in the classroom, they may prove irrelevant in practice. Matters relevant more to the workplace as a business environment – marketing, billing – do not necessarily appear in the competence frameworks (although see section 4 of the work-based learning outcomes in Appendix II). These two important caveats – scope and quality – render this list of outcomes substantially flawed as far as benchmark 1 (analysed at 10.3.2 and 10.3.3) is concerned and, in particularly, in any attempt to suggest an objective, external model for the developmental gap between qualification and the 3 year watershed (analysed at 10.3.4).

3.8   Competences for development

Work-based learning outcome	*Day one outcome*
1 Application of Legal Expertise	**E Personal development and work management skills**
1.4 Keep up-to-date with changes in law and practice relevant to his or her work.	
7 Self Awareness & Development	The ability to: ....
7.1 evaluate accurately the strengths and weaknesses of his or her professional skills and knowledge	• Recognise personal and professional strengths and weaknesses;
7.2 identify situations where the limits of his or her abilities are reached, and the next steps in such cases, in clients' best interests	• Identify the limits of personal knowledge and skills;
7.3 reflect on experiences and mistakes so as to improve future performance	• Develop strategies to enhance professional performance
7.4 identify areas where skills and knowledge can be improved, and plan and effect those improvements	• Recognise personal and professional strengths and weaknesses;

- Identify the limits of personal knowledge and skills;
- Develop strategies to enhance professional performance

As I have described at 3.7.1, a competence for personal or professional development emerged only implicitly from Boon's (1992) research, but it is notable that APLEC treats lack of expertise as a question of avoiding negligence rather than a question of personal development. A professional obligation only to take on work in which one is "competent" (in the bottom-line sense of "not negligent") appears in the domestic *Solicitors Code of Conduct 2007*, para. 1.05 (SRA, July 2007a), glossed in the notes as "[y]ou must provide a good standard of client care and of work, including the exercise of competence, skill and diligence" and in para. 2.01, "you must refuse to act or cease acting for a client …where you …. lack the competence to deal with the matter" and may have informed work-based learning outcome 7.2, (SRA, 2008b; Appendix II) which did not appear in the original 2007 draft (SRA, February 2007b).

In a review of similar professional requirements in the U.S.A., Sabis and Webert identify the dilemma as "[w]ith little or no experience, is there any case a new lawyer can accept and believe that she [*sic.*] is competent?" (2002: 924, see also Mudd and La Trielle, 1998). The bottom-line concept of competence, however, requires only that the individual identify him- or herself as not competent for a particular task; imposing no necessary obligation to aspire to become competent at it. One can nevertheless, as does Nelson, see an aspirational obligation as implicit in the avoidance of negligence:

> …competence is an elusive notion and, when definitions are attempted, they tend to be expressed as generalisations … What is clear is that, as Bushman (1979:55) points out, professional incompetence can be the result of several factors:
> - part of the knowledge, skills and attitudes professionals acquired during their academic education or in practice has been forgotten or declined;
> - some of the knowledge and skills have become useless through obsolescence;
> - some services they are asked to perform require knowledge, skills and attributes they never owned;
> - new information, skills and attributes have emerged and have become part of the profession's current standards of competence.
> Of these four factors, the one which is most likely to influence the levels of competence of the beginning solicitors who are the subject of this study is the third. It is clear that their pre-admission preparation cannot hope to cover the

full spectrum of what they will be called upon to perform in the workplace, especially if they engage in specialised areas of practice.
Nelson (1993:15)

An ability to take deliberate responsibility for one's own learning, or, in Eraut's terminology, to be "'professional learners' in order to become more effective 'learning professionals'" (Eraut, 1994: 14) might similarly be seen as inherent in a philosophical concept of professionalism. Whilst the work-based learning outcomes and day one outcomes are consistent with the prevailing bottom line concept of competence, both extend further into this aspirational sense than the APLEC standards appear to do, embedding a "metacompetence" promoting capacity to move beyond and above the basic framework and involving a degree of metacognition: an ability to transfer, to understand one's own learning.

Just as Cheetham and Chivers (1996, 1998) combine the reflective practitioner with the competence model; Winter (1996) in his "general theory of professional competences" goes further, showing categories (usually identified as competences to be achieved in their own right) essentially in their relationship to development of practice and expertise such that the task-based competences inform and are aspects of an overall commitment to development. Lester (1995, 1996a and 1996b; see also Carter, 1985), similarly develops a constructivist framework that seeks to smooth out "the distinction between learning processes and process of practice" by inculcating "engagement with practice" and use of reflective techniques from the outset; retaining only by way of guidance some form of "minimum standards" closer to my pragmatic adoption for this study of material ostensibly presented as a competence framework as a benchmark:

[t]he broad map structure is not a syllabus to cover or set of standards to achieve, but one way of representing a territory of which exploration is encouraged until sufficient experience and confidence are gained to redraw the map or extend its boundaries.
Lester, (1995:7)

This (meta)competence for development straddles the boundary of the normative and political meaning of competence and the aspirational meaning. The competence for development in the solicitors' context, however, is open-ended. The day one outcomes seek to determine the benchmark *from* which one is to aspire, but no specific guidance is given as to what one is to aspire *towards*. Analysed cynically, when one takes into account the prohibition on individual practice prior to the three-year post-qualification

point, it is possible to conclude that a solicitor is not regarded as "fully" qualified in the real normative and political sense until those three years have passed. There is potential for a significant dichotomy between individuals' subjectively perceived status and their externally perceived status (2.8.1): sufficiently autonomous to be able to exhibit and apply an open-ended competence for development (as now articulated in the day one outcomes) in circumstances when the underlying tasks on which that competence is to be exerted may remain under constraint and supervision. Winter and Lester give priority to the competence for development but in either case the existence of a competence for development at all provides an opportunity for tension between the individual and the employer which I will discuss further in the course of analysis (particularly 11.2.2 and 12.6.3):

> ... when designing and implementing action learning, the adult educator must confront the barrier erected in many U.S. competency-based programs that separates the "objective", job-related knowledge or skills "out there" and the "subjective" understanding of "who I am as a person". ... However, the facilitator recognizes that becoming more competent at tasks often touches on deep personal questions and requires an examination of the 'way things are done around here.
> Marsick, in Mezirow and Associates, (1990: 23 at 37/38)

Any movement beyond competence is, however, not necessarily linear: what is not tackled with any coherence by the writers on expertise discussed in Chapter 6 is the need for the novice not only to become competent and then expert in static or defined tasks (quality), but also to be able, aspirationally, to move into other tasks of similar level in different domains and to prepare to attempt more complex tasks (scope). Eraut suggests that objective and external models of professional development – such as competence frameworks – should:

> ... take into account during the period before and soon after qualification the following kinds of progress:
> •   extending competence over a wider range of situations and contexts;
> •   becoming more independent of support and advice;
> •   routinization of certain tasks;
> •   coping with a heavier workload and getting more done;
> •   becoming competent in further roles and activities;
> •   extending professional capability; and
> •   improving the quality of some aspects of one's work.
> Eraut, (1994:218-219)

Put more emotively, the distinction is between survival and competence at a single level and the ability (or metacompetence) to develop to a new level involving more complex tasks and ultimately into the "swampy" problems for which no precedents exist and which demand creativity in their solution (Schön, 1983).

I have sought to represent this more complex aspirational model - the "vector" with both magnitude and direction - in Fig. 1.
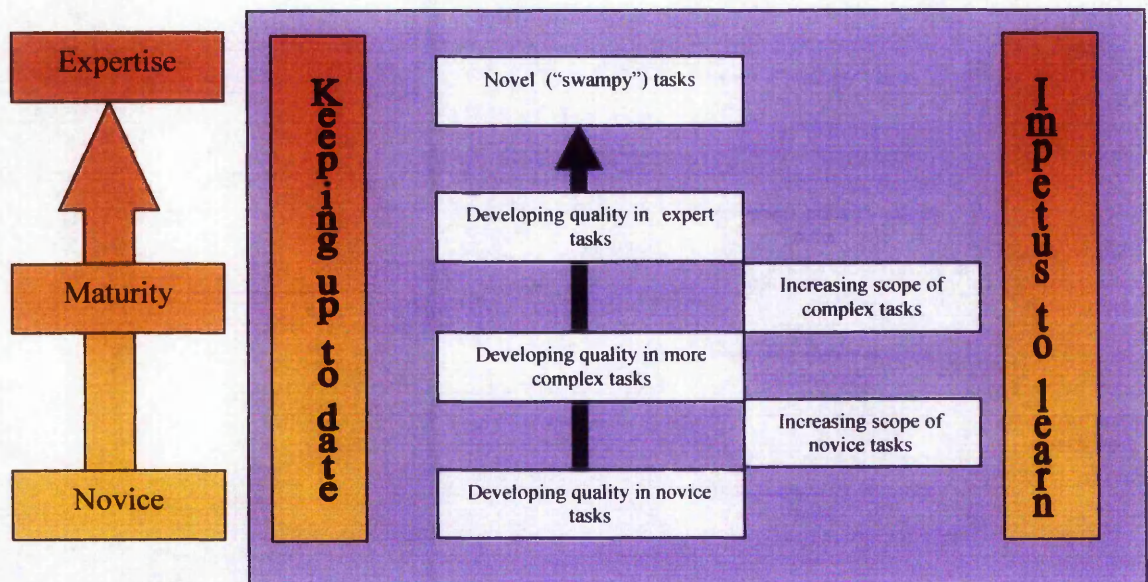
Figure 1 The vector of development

The absence of an equivalent set of competences fixed by the profession at the 3 year PQE point to constrain but also to focus; to define and authorise the exercise of a competence for development, may counter-productively depress the exercise of that competence.

3.9   Conclusion

In determining the shape of the model of development possessed by the interview group, the challenge will be, then, to establish their own experience of the point of qualification, by way of initial benchmark for development beyond it, a benchmark which may differ from either the existing studies (3.7.1 and 3.7.2) or the profession's expectations of it now set out in the day one and work-based learning outcomes (3.7.3; 10.3.2 and 10.3.3).   The actual place of ADR, negotiation (3.7.3.1 and 12.5.2) and advocacy (3.7.3.2 and 12.5.4), as well as more business-oriented activities such as

marketing (12.4.4) may constitute significant variations from that assumed benchmark. The place of the training contract as a means of equipping the individual for the point of qualification may be significant.

Nevertheless, although the day one and work-based learning outcomes have not been implemented for the interview group, the inclusion within them of a comparatively sophisticated competence for development (3.8 and set out in Fig. 2) does, I suggest, demonstrate an expectation on the part of the profession that the individual will in some way take a personal responsibility for development and will, at the point of qualification, possess not only motivation but also strategies (specifically that of reflection: 13.4.1) for doing so. The question is, then, whether such a competence is found (or at what point within the three year period it is found) (3.8 and 13.2- 13.5). A second factor will be to seek to identify whether (or at what point within the three year period), individuals perceive a need to engage in aspirational activity, taking on new tasks and new domains so as to increase the scope of activity (3.7.3.3 and 13.5).

The formal mechanism by which one is encouraged by the profession to exercise the competence for development *after* qualification is now discussed in Chapter 4.

	Work-based learning outcomes	Day one outcome	SRA post-qualification expectations (SRA, 2007a:11)
1 A level of self knowledge	**7 Self Awareness & Development** 7.1 evaluate accurately the strengths and weaknesses of his or her professional skills and knowledge 7.3 reflect on experiences and mistakes so as to improve future performance	The ability to: … • Recognise personal and professional strengths and weaknesses; • Identify the limits of personal knowledge and skills; • Develop strategies to enhance professional performance	… a career in which continuing education and professional development will be an integral part if the necessary standards of service are to be provided. In particular there is a need to:
2a A self-directed strategy for learning or personal development	**1 Application of Legal Expertise** 1.4 Keep up-to-date with changes in law and practice relevant to his or her work **7 Self Awareness & Development** 7.1 evaluate accurately the strengths and weaknesses of his or her professional skills and knowledge 7.2 identify situations where the limits of his or her abilities are reached and the next steps in such cases in clients best interests 7.3 reflect on experiences and mistakes so as to improve future performance 7.4 identify areas where skills and knowledge can be improved, and plan and effect those improvements	The ability to: … • Develop strategies to enhance professional performance • Identify the limits of personal knowledge and skills; • Recognise personal and professional strengths and weaknesses; • Recognise personal and professional strengths and weaknesses; • Identify the limits of personal knowledge and skills; • Develop strategies to enhance professional performance	… a career in which continuing education and professional development will be an integral part if the necessary standards of service are to be provided

		The ability to: …
2b engagement with experience	**1 Application of Legal Expertise** 1.4 Keep up-to-date with changes in law and practice relevant to his or her work **7 Self Awareness & Development** 7.3 reflect on experiences and mistakes so as to improve future performance 7.4 identify areas where skills and knowledge can be improved, and plan and effect those improvements	• Develop strategies to enhance professional performance • Recognise personal and professional strengths and weaknesses; • Identify the limits of personal knowledge and skills; • Develop strategies to enhance professional performance • keep up with changes in the law, procedure and management issues;
3a Enhancement of professional practice (quality)	**1 Application of Legal Expertise** 1.4 Keep up-to-date with changes in law and practice relevant to his or her work **7 Self Awareness & Development** 7.3 reflect on experiences and mistakes so as to improve future performance 7.4 identify areas where skills and knowledge can be improved, and plan and effect those improvements	The ability to: … • Develop strategies to enhance professional performance • Recognise personal and professional strengths and weaknesses; • Identify the limits of personal knowledge and skills; • Develop strategies to enhance professional performance • keep up with changes in the law, procedure and management issues; • acquire expertise in specialist areas of practice; • develop the capacity to organise and manage appropriate to the level of responsibility in the business entity;

3b Aspiration beyond existing practice (scope)	7 **Self Awareness & Development** 7.4 identify areas where skills and knowledge can be imp... and plan and effect those improvements	The ability to: ... • Recognise personal and professional strengths and weaknesses; • Identify the limits of personal knowledge and skills; • Develop strategies to enhance professional performance	• acquire expertise in specialist areas of practice; • develop the capacity to organise and manage appropriate to the level of responsibility in the business entity; Also, in a changing environment, the changes should accommodate practitioners who wish to change the direction of their careers, enter new specialisms or move into new types of employment, while sustaining quality service.	• sustain the commitment to the rule of law, administration of justice and ethical foundations of the profession.

Figure 2 The competence for development

CHAPTER FOUR - THE SOLICITORS' CPD SYSTEM

> ... I ask him if he'll let me go on an insolvency course.
> "How much is it?"
> "£400," I reply.
> "FOUR HUNDRED QUID!" he bellows. "DO YOU THINK WE'RE MADE
> OF MONEY? ... I am not going to sanction expensive courses just so that you
> can take a day off and eat nice biscuits! Try reading a book if you want to
> learn something."
> Anonymous assistant, (June 2006).

4.1   Introduction

On qualification, the view of the profession, now delineated in the day one and work-based learning outcomes, would appear to be that the individual solicitor is assumed to possess a competence for development, in order at least to improve his or existing practice (quality) and possibly to aspire beyond it (scope). In chapters 4 – 7 inclusive, I examine the means by and ends to which such a competence might be employed, prior to analysis in Chapters 10-13.

In this chapter I will, first, describe the CPD system for solicitors and place it into the context of CPD schemes as a class. Second, I will examine the function of CPD as a concept in the context of a number of competing tensions inherent within it. I conclude by setting out, given those tensions, the variables that might be perceived by the interview group as affecting the utility of CPD activity. Although, given the experiences of the interview group and the date of the interviewees, the prospective review of the CPD framework will have had no impact on them, I do, for currency, refer throughout to ongoing developments.

4.2   Continuing learning and CPD

A distinction should be made at the outset between a) continuing learning described by Houle (1980) as an ongoing process of learning and b) participation in a CPD scheme. Chapter 7 will examine continuing learning in sense a), where the impetus is more easily assumed to derive from the individual and where some learning may be acquired tacitly through quantity of experience rather than by deliberate engagement with experience.

4.3   The Solicitors' CPD scheme

Historically there was some confusion within the profession (Saunders, 1996; ACLEC, 1997; Hales, 1998) about the appropriate extent or objectives of a CPD scheme. Roper points out the quantitative importance of the CPD context in comparison with the pre-qualification period on which most discussion is focussed but recognises a lack of coherent theoretical underpinning:

> [b]ut, after [qualification] ... there are another 40 years or so of working life awaiting the new lawyer ... So we can contrast the framework which supports to the first 20 years or so [of life] with that supporting the remaining 40 years...
>   There is considerable development of theory in a number of areas related to CPD, ... What is lacking, so far as CPD for lawyers is concerned, is the bringing together of these various elements in some cohesive and useful way to provide a conceptual framework.
> Roper, (1997: 172, see also Roper, 1999)

Nor is this confusion confined to lawyers: reviewing attitudes to CPD across a number of professions, Friedman *et al* conclude:

> ... using CPD to measure competence requires very different activities than using CPD for personal development. ... However, if the current ambiguities of CPD are to be resolved so that, ... in a number of years CPD is considered in a similar light to initial qualifications a clearer and more consistent approach needs to be taken by UK professional associations as a whole.
> Friedman *et al* (2001:175)

This, I suggest, is the first of the many tensions and competing objectives that can be discerned in CPD schemes in general and the SRA scheme in particular: whether a CPD structure is envisaged by its creators as outward-looking and regulatory (the "sanctions" model (Madden and Mitchell, 1993) which may, but need not, "measure competence" in the bottom-line sense), or inward-looking and personal (the "benefits model" which, may be closer to a concept of "personal development").   It is also possible within the discourse of ambiguity identified by Friedman *et al*, for an organisation such as the Law Society, or now, the SRA, to espouse one model but in fact to implement something closer to the other.

4.3.1   Input: Hourages and CPD activities

Initial committees cited by ACLEC in its *Second Report* (1997) envisaged no more than a mechanism for technical updating (*op. cit.*: 13) or compulsory courses for the "older members of the profession"; ACLEC itself preferring an approach closer to the

lifelong learning described at 4.2 above. From 1 November 2001, however, all solicitors and registered European lawyers practising in England and Wales must undertake 16 hours of CPD in a year, *pro rata* for part-time staff. This is at the lower end of the time commitment spectrum, Madden and Mitchell, (*op. cit.*) finding, in their survey of 20 professional organisations (of the 65% who prescribed a number of hours) a median of 30 and modes of 20 and 30. At least 25% must be satisfied by attending accredited courses. The remainder may include writing books or articles, coaching and mentoring (this is not uncommon: Friedman and Phillips, 2002), reading journals or viewing videotapes (SRA, November 2000). The CPD scheme now falls within the overall quality assurance remit of the SRA, the relevant part of whose strategy is to "set standards for ... continuing professional development so as to maintain and enhance the competence, performance and ethical conduct of solicitors and uphold the rule of law" (SRA, February 2007a: 4), in principle, therefore, in Friedman *et al*'s terms, to "[use] CPD to measure competence". The SRA has recently identified, as one of a number of matters to be addressed "the small number of CPD hours required each year" (*op.cit.*: 12).

4.3.2   *Input: Flexibility as to content*

Provided the individual complies with the minimum requirement, it is for the solicitor him- or herself to decide in which CPD activities to participate, although a short "Management Course Part 1" is mandatory during the first three years. More recently, any member of the profession with supervisory responsibilities is required to undertake a minimum period of appropriate learning activity (at present self-determined by the individual and with no obligation to demonstrate any particular competence as a result): *Solicitors' Code of Conduct 2007,* rule 5. Despite the SRA's objective to improve competence (an "output" of CPD activity), the profession's definition of CPD remains one of input alone:

> "continuing professional development" means a course, lecture, seminar or other programme or method of study (whether requiring attendance or not) that is relevant to the needs and professional standards of solicitors and complies with guidance issued from time to time by the Society.
> SRA (November 2000: 4)

Nevertheless, it retains a considerable degree of flexibility for the individual whilst excluding, for example, research carried out on a fee-earning basis for a particular

client, even though such learning on a task-conscious (Rogers, 2003) basis in the workplace may in fact be more valuable to the individual's personal development than sterile attendance at a lecture.

After qualification, there is no need (and therefore no necessary impetus or expectation of funding) for the individual to achieve any further qualifications or – except as required by his or her employer – to demonstrate any higher competences beyond what might soon be represented by the day one outcomes. The suggestion of "solicitors' practice diplomas" amounting to 25% of a masters' degree for those wishing to pursue specialisms (Eccleston, 1994) has not been implemented to date, although additional single level accreditations for membership of specialist panels do exist (SRA, July 2007c). The SRA has now taken a more sophisticated approach to post qualification development recognising a number of post qualification phases, albeit in very broad terms defined hierarchically in terms of status rather than competence:

- Achieving specialist status;
- Setting up practice on own account or setting up a new practice (as its head) with others;
- Supervisor status in an accredited training establishment;
- Head of Legal Practice/Head of Finance and Administration in an existing firm …

SRA (February 2007a: 9)

Whilst not explicitly re-defining CPD, it also sets out (*ibid*: 11, included in Fig. 2) a series of expectations for the post-qualification period which bears comparison with the competence for development derived from the work-based learning and day one outcomes but betrays an assumption that there will be (measurable) output, at least in terms of bottom-line competence. It is notable that management of the firm as a business appears only in this statement and that no attempt is made to define the strategies which might be used to achieve these outputs, whilst a new overall and outward-facing objective of sustaining the rule of law and perpetuating ethical behaviour now appears.

4.3.3   Input: Delivery

Much provision of CPD activity is in-house, particularly in the larger firms, which have the luxury of professional support lawyers; training officers and sometimes training departments (see Eales-White, 2002 for an example).   Nelson, investigating

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participation in CPD activity by young lawyers in New South Wales (1993), found "in-house staff development" to be placed third in preferred learning style after "ask someone else" and "look it up yourself" (see 12.6.3.3) , with "non participatory" and by implication externally delivered, lectures in fourth place.

Delivery otherwise may be by specialist groups of solicitors or others (such as the Association of Personal Injury Lawyers); academic providers (such as NLS or the College) or by commercial providers (such as CLT). Lawyers can be demanding clients in their expectations of external delivery (Tobin, 1987; Greenebaum, 1992).

The type of CPD offered is market-led and the archetype is the talk and chalk model of the updating lecture on a technical area identified by Cruickshank:

> [t]he primary method for delivering continuing legal education is still the "talking head". From a panel, experts speak to their written papers in sequence. Audiences of up to 200 have little input except for a handful of questions at the conclusion of each panel. In some courses, this goes on for two days, seven hours each day ... Nevertheless, lawyers attend these courses in large numbers, give them good evaluations ... and are satisfied with one or two practical insights that can be applied on the job. But the course format may be what lawyers are used to, not necessarily what they want or need.
> Cruickshank in Webb and Maughan, (1996:227)

As, whatever its other limitations, the solicitors' scheme *permits* activity other than such "talks", this default concept will be described as "CPD updating".

Research on CPD provision within the domestic profession is limited. An informative study carried out in the Republic of Ireland (McGuire, *et al*, 2002a: 1012) concluded, at least when the respondents are "firms" (and therefore presumably actually senior or training personnel within those firms rather than individual lawyers) – and despite the archetype described above - that the espoused priorities for CPD are administration skills; communication skills; time management skills; customer service skills and legal research skills. In fact, the same writers identify "conceptual knowledge" imparted by CPD updating as typical only of the "student" stage of career progression, prior to traineeship or qualification (and the "process knowledge" acquired by mentoring and coaching within the workplace still at the lower level of the post qualification stages) (McGuire, *et al*, 2002b). One might, therefore, expect the interview group to prioritise workplace learning over CPD updating in positive contribution to their own development.

4.3.4 Input: Sanctions and monitoring

The Professional Associations Research Network (PARN, 2001:8) approved the fact that maintenance of the solicitors' annual practising certificate is conditional on completion of the prescribed amount of CPD. In practice, however, this amounts to the solicitor ticking a box on a form and relies on the integrity of the individual. Central records are no longer held: the solicitor is required to keep his or her own record, which may be called in for inspection. Anecdotes of solicitors at the end of the CPD "year" sitting at the back of the room reading the newspaper during lectures on specialist subjects entirely irrelevant to them in order to make up sufficient hours are common. And, consequently, the system as it currently exists does not promote the objective suggested at 3.5 of flushing out the inadequate and the negligent.

The disciplinary bodies regulating solicitors are empowered to strike off, impose conditions on the practising certificate and levy fines, but not, as far as I can establish, to make continued registration subject to additional training where, for example, account keeping or client relations has been found to be deficient. Again, the "danger that [CPD participation] could become a tick box exercise bearing little relationship to real development needs" and "the difficulty of monitoring whether CPD is properly carried out" have been identified (not before time) as issues to be addressed by the SRA (February 2007a: 12).

4.3.5 Output: Planning what is to be learned and application of what has been learned

The 2000 definition (SRA, November 2000) contains no obligation to do anything other than the input of reading, viewing or attendance. The SRA's 2007 attitude (February 2007a) gives greater importance to the output, particularly in the bottom-line sense of maintaining "standards of service". The SRA's *Guide to the Solicitors Regulation Authority's CPD Scheme* (September 2007), however, continues to place responsibility for professional development squarely on the individual who is provided with a SWOT[18] analysis and recommended to set short, medium or long-term development objectives. The extent to which this or anything like it is actually used by the interview group formed part of the interview structure.

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[18] Strengths, Weaknesses, Opportunities, Threats. See 13.3.3 for interviewees' awareness and usage of this device.

Unlike the educationalists (Eraut, 1994; Lester, 1995, 1996a and 1996b; Winter, 1996) the SRA – not unexpectedly, given the political climate and the remit of that body – renders the aspirational aspects (extending scope) of post-qualification learning subservient to the bottom-line meaning of competence (maintaining quality and avoiding negligence):

> [i]t is arguable that a commitment to professional development is essential if a solicitor is to comply with the core duty to provide a good standard of service and the requirement not to take on work unless competent to do so.
> SRA (February 2007a: 12)

Whilst the sentiment is to be applauded, the statement that it is no more than "arguable" that a commitment to development, (if only to updating) is related to quality of service is, particularly in the political climate which led, *inter alia*, to the need for the SRA itself, quite extraordinary. Nevertheless, even this plan still amounts only to a greater degree of monitoring of explicit prior evaluation of developmental needs and does not, of itself, assist with *ex post facto* evaluation or application of what, if anything, has been learned and its implications for the future (see 7.6).

4.4 Placing the solicitors' scheme in the context of CPD schemes as a class

The original solicitors' scheme demonstrated "best practice" in a survey of 196 professional organisations and has been used as a benchmark by other organisations setting up CPD schemes (PARN, *op. cit.*). That best practice is, however, defined entirely in terms of logistics (website, accreditation of courses, record forms, planning forms). The scheme is unusual of those studied in being both mandatory and – at least in theory – subject to sanction (refusal of the annual practising certificate).

The input-focused 2000 definition of solicitors' CPD can be contrasted with the output-oriented definition offered by PARN in synthesis of a number of suggestions offered by writers and professional associations:

> CPD is any process or activity of a planned nature that provides added value to the capability of the professional through the increase in knowledge, skills and personal qualities necessary for the execution of professional and technical duties, often termed competence. It is a lifelong tool that benefits the professional, client, employer, professional association and society as a whole and is particularly relevant during periods of rapid technological and occupational change.
> PARN (1998-2000:5)

Madden and Mitchell's working definition adopts a similar approach to stakeholders, whilst including an aspirational element: "the maintenance *and enhancement* of the knowledge, expertise and competence of professionals throughout their careers according to a plan formulated with regard to the needs of the professional, the employer, the profession and society" (1993:12, my italics). The significant difference between PARN's definition and that for solicitors is its emphasis on outputs ("learning") as opposed to inputs; on attributes other than technical knowledge and updating; on benefits to a spectrum of stakeholders including but not confined to the individual and, most importantly, on lifelong learning and recognition of change. The SRA has now identified this "focus on process and time spent on CPD activities rather than outcomes" as an issue to be addressed (SRA, February 2007a: 12). Its new formulation of the purposes of post-qualification development is clearly influenced by the current political environment, to focus on, in the words of the white paper that introduced what is now the Legal Services Act 2007, "putting consumers first" (DCA, October 2005). It does, however, cover a wide range of topics as well as introducing a focus on management of the legal services business and education for the management role that was not required prior to the introduction of *Solicitors Code of Conduct 2007*, rule 5 (SRA, July 2007). These topics can be aligned with the three functions of CPD identified by Madden and Mitchell (*op. cit.*: 12):

a)   updating so as to ensure continuing competence ("keep up with changes in the law, procedure and management issues");

b)   aspirational preparation for new responsibilities ("develop the capacity to organise and manage appropriate to the level of responsibility in the business entity"; "accommodate practitioners who wish to change the direction of their careers …") and

c)   improving personal and professional effectiveness beyond updating ("acquire expertise in specialist areas of practice"; "sustain the commitment to the rule of law, administration of justice and ethical foundations of the profession")

although the additional aspect of Madden and Mitchell's formula - insofar as it might involve intrinsic interest or personal satisfaction or development - is not present.

The breadth of these professed objectives, however, creates an inherent potential for conflict between the different stakeholders and between subjective personal development and objective demands for competence:

> ... CPD promises to deliver strategies of learning that will be of benefit to
> individuals, foster personal development, and produce professionals who are
> flexible, self-reflective and empowered to take control of their own learning.
> This emphasis on the personal, however, could conflict with concepts of CPD
> as a means of training professionals to fulfil specific work roles and as a
> guarantee of individual, professional competence.
> Friedman and Phillips, (2004:362)

The solicitors' framework, in contrast, prioritises external bottom-line competence over internal personal development: "the responsibility of individual solicitors and practice managers to ensure that their training and development needs are met in a way that enables them to provide a quality service in the areas in which they operate" (SRA, February 2007a: 7). Friedman and Phillips' solution to this conflict is to substitute "a continuous process of learning by reflection" (Friedman and Phillips, *op. cit.*: 374) for *ad hoc* and discontinuous default CPD updating. The strategy of reflection as a learning process is embedded within the "competence for development" espoused by the day one (Appendix I) and work-based learning (Appendix II) outcomes. Nevertheless, although the SRA's new formulation for CPD refers to a "commitment to professional development" as "arguabl[y] ... essential" to the quality of service delivery (February 2007a:12), the four main objectives given have, as set out above, pre-determined foci and objectives, the fifth ("commitment to the rule of law", *etc.*) is vague and strategies for achievement of the objectives are absent.

Although, at present, no-one is required by the scheme itself to demonstrate any positive output in terms of competence, the solicitors' scheme does at least oblige employers to allow 16 hours each year of activity that is not fee-earning and is ostensibly developmental.

Whilst the SRA recognises a need to focus on outcomes, it has as yet as offered no mechanism for promoting the "arguably" essential achievement of those outcomes, even in terms of bottom-line competence. Nor does the SRA at present propose any form of profession-wide testing of competence post-qualification such as the medical re-licensing scheme: "[a] suite of schemes covering all specialisms is not proportionate, desirable or achievable" (SRA, February 2007a: 1). In fact, the internal appraisal systems of individual firms may be far more likely to be influential in both choice of CPD activity and application of CPD-acquired learning for the individual practitioner. The lack of a profession-wide mentoring system or portfolio supporting post-qualification learning (except in limited areas, such as higher rights training) may also

tend to divorce CPD activity from practice and, therefore, from implementation in practice.

Three themes, therefore, emerge from a comparison of the solicitors' scheme with others:

a)   it is a sanctions model, compelling some degree of participation without measuring the outputs (despite an apparent espoused commitment to competence);

b)   its provision is generally didactic and focussed on technical updating (or at least may be perceived to be such);

c)   stakeholders are less than clearly identified, even in the more specific SRA model which, if taking a fully client-centred approach, might for example, go as far as demanding compulsory education on client service skills (a recommendation that might be deduced from McGuire *et al*'s results, *op. cit.* at 4.3.3) for the entirety of the profession post-qualification (the work-based learning outcomes, by comparison, focus on client relations and communication to the exclusion of much else).

Insofar as the SRA model suggests that personal development may take place it is either a) constrained by very specific objectives or b) formulated as a rather vague generic statement of professional principle.

4.4.1   The sanctions model: tensions between accountability, regulation and personal development

For an occupational group that aspires to be a profession, a CPD scheme might be seen as a necessary component of such status. Madden and Mitchell, indeed, identified different styles of CPD in older and in aspirant professional groups (1993: 26). Whether or not legal practice is "professional" is almost never discussed (an exception being Sherr, (2001:1)) such that solicitors hardly need a CPD scheme to join the club of professional bodies (although under the Legal Services Act 2007, they might need one to maintain that position). The "sanctions" model characteristic of older professions applied to solicitors contrasts with the "benefits model" frequently adopted by those groups whose professional status is tender, and which focuses more on the output than on the input.

Madden and Mitchell (1993:11) identify a number of reasons why a "policy and structure" for continuing education might be adopted, incorporating objectives both for

the individual and for his or her employer (improving economic competitiveness; redressing skills shortages and increasing transferable skills; continuous updating of skills and retraining for new roles) as well as the client-focussed bottom-line objectives that preoccupy the SRA. The discrepancy between CPD at the micro-level of the individual's personal development and interests and the macro-level of the public-facing profession as a whole and its need to demonstrate bottom-line competence is not confined to solicitors:

> [i]t appears that while maintenance of technical knowledge and skills assumes paramount importance in the defining the function of CPD for the members, CPD is seen by the professional body as a means of demonstrating that it is monitoring the continuing professional standards of the members."
> Madden and Mitchell (*op. cit*: 19)

Indeed, bodies adopting the "sanctions model":

> are united in having instigated a CPD policy in order to demonstrate standards of professional competence ... The effectiveness of CPD practice and provision is measured in terms of compliance with CPD requirements, since the desired outcome is compliance.
> Madden and Mitchell (*op. cit*: 27)

an approach which conflates "learning" (as result or process) with "teaching", a meaning gently described as "inappropriate" by Illeris (2002:15).

Cervero (2001) considering CPD in the U.S.A. between 1981 and 2000, recognises this trend of treating CPD as an accountability mechanism, driven in part by professional malpractice claims (a similar political impetus to that of the SRA) and identifies a "struggle between the learning and the political economic agendas" (*ibid*: 27), part of that economic agenda being the ease and economy of delivering the updating-type lecture. Watkins suggests that balancing of the role and objectives of the various stakeholders is necessary, but that such balancing might effectively address the needs of the client-stakeholder:

> [c]ompulsory CPD raises some issues which must be approached with sensitivity. Established members may feel patronized and potential members may be deterred by a too stringent approach to CPD. ... This new emphasis on mentoring and the stakeholder approach suggests CPD is increasingly being viewed essentially as a partnership between the professional, the employer and the professional association – a partnership which is informed by, and takes into account, the needs and requirements of the client.
> Watkins, (1999: 73)

The conscientious individual might, of course, be assumed to exhibit a self-directed responsibility towards at least maintaining the quality of his or her existing practice (category 3a of the assumed competence for development at Fig. 2), despite the ostensible priority within the existing scheme of compliance stick over personal development carrot. The ability to ""develop strategies to enhance professional performance" and to "identify areas where skills and knowledge can be improved, and plan and effect those improvements" now appear in the day one (Appendix I) and work-based learning outcomes (Appendix II, see also Fig. 2) supplying the element of output missing from the SRA's CPD statement. Mandatory CPD does at least, even if by stick rather than by carrot, force the recalcitrant horse to the educational water, with the possibility that despite everything, there might be an output (see also Ogden, 1985; Ratclif and Killingbeck, 1992):

> [t]he argument is that in every profession there is a residuum – preferably a small one – of members whose practice fails to come up to standard. It is largely for their sake that defensive measures have to be taken. Thus "formal courses don't really meet the needs of lively members of the profession, but they help to ensure minimum standards".
> Becher, (1996:53)

A question not asked is, whether and perhaps particularly in the case of the reluctant or recalcitrant, the existence of a CPD framework can be seen by the individual as absolving him- or herself from any obligation to see the workplace *outside* the CPD classroom as a place for learning (for analysis, see 11.5 and 12.3).

4.4.2 Didactic updating: tensions between improving the knowledge base and improving practice

Cervero puts the dilemma raised, in my view, by the need for CPD to satisfy bottom-line political and accountability requirements whilst ostensibly being a mechanism for personal development, very clearly:

> *Issue 1: continuing education for what? The struggle between updating professionals' knowledge versus improving professional practice.*
> The most fundamental issue that must continually be addressed is: "What is the problem for which continuing education is the answer? If the picture painted at the beginning of this article is the answer, [a didactic, updating lecture] then it is clear that the problem has been conceived as "keeping professionals up to date on the profession's knowledge base". In fact, keeping professionals up to date is as close to a unifying aim as continuing education has ...

Cervero (*op. cit: 25*)

I have shown at 4.3.4 that the archetype for solicitors is precisely that CPD updating lecture. Whilst I am conscious of an element of special pleading, the need to remain up to date is particularly significant for lawyers, whose body of technical knowledge is subject, literally, to daily change; a need reflected both in the SRA formulation ("keep up with changes ...") and treated as so fundamental in the work-based learning outcomes ("keep up to date with changes in law and practice") that it is conceptualised as falling outside the category of "self-awareness and development". Add to this the possibility that members of the interview group are at a stage of professional development (developed in Chapter 6) in which they may still be in formulaic, rule-following mode (Dreyfus, 1986:22), one might ask whether not just CPD as I suggested at 4.4.1 but CPD updating in particular, whilst in one sense relieving a need, in fact impedes personal development in other aspects. So, for example, Aspland considers that such CPD activity may create an:

> ...expectation of dependency upon prescribed technical answers to situations rather than a tolerance of ambiguity and the development of adaptability and autonomy. ... the traditional-style provision of CPD purveys "expert" skills and principles to be learned and applied. Both of these tend to encourage students to accept "right" ideas passively and uncritically.
> Aspland, in Woodward, (1996:138)

To the technician lawyer – and possibly therefore to a large constituency of the newly-qualified - this may feel efficient and fulfilling. It is obvious, easy and can provide immediate satisfaction. The material is "cumulative" (entirely situation specific) or "assimilative" (an extension or enhancement of what is already known). The focus on updating could itself, positively inhibit more introspective engagement with experience:

> [t]his continual focus on the new rather than on renewal promotes new knowledge which comes from outside rather than new knowledge arising from the distillation of personal experience; thus indirectly discouraging learning from experience and CPD activities which attempt to reorganise and share the accumulated experience of problems and cases.
> Eraut (1994:12)

Taking CPD beyond acceptable straightforward updating (which in the legal context assumes that new laws will be introduced periodically) carries with it the danger that

initial, perhaps fondly held and hardly-won, conceptions and practices might be found to be wanting:

> [t]he single most defining characteristic of resisted learning, however, is its supplantive nature, in that the material replaces or threatens knowledge or skills which have already been acquired ... the greater the emotional investment in beliefs or practices, the greater the disturbance caused by efforts to change them.
> Atherton, (1999:77)

It is axiomatic that learning in the accommodative and transformative modes involves discomfort and challenge:

> [r]eflective thinking is always more or less troublesome because it involves overcoming the inertia that inclines one to accept suggestions at their face value; it involves willingness to endure a condition of mental unrest and disturbance.
> Dewey, (1910:13)

A question for this study, therefore, is the extension to which individuals see past mere updating – whether in a CPD context or otherwise – and the extent to which they are able to embrace a wider model of development encompassing the three dimensional vector shown at Fig. 1 and the competence for development at Fig. 2, in particular the engagement with experience (category 2b) discussed at 7.5 and 7.6. Analysis of the aspirational aspects of the competence for development in particular appear at 13.5.

4.4.3 Stakeholders: tensions between competing demands

The tension between the individual and the consumer-client is, as described at 4.3.4, pervasive in current discussions of the solicitors' scheme. Whilst the work-based learning outcomes and the SRA (February 2007a: 12), place responsibility for *identifying* developmental needs on the individual; responsibility for satisfying them is "placed on managers and supervisors" (*ibid*). Even that identification, in the liminal stages, may be affected by tendencies of the individual to identify (see 2.8.2) with the employer. The employer, through those managers and supervisors, is also expected to pay for the courses and make time available for attendance and it would be unreasonable not to expect constraints to be present. Some employers will require individuals or groups of individuals to undertake CPD activities seen as beneficial to the firm; internal lectures may be mandatory and so on. An individual seeking permission to undertake CPD activity beyond the norm, or which is particularly

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expensive, may be refused (the quotation at the head of this chapter *is* a recognisable employer's response). So, Carter, (in Woodward, *op. cit.*: 84) found tensions between corporate interest and benefit, departmental interest and benefit and individual self-interest and benefit in CPD. Such tensions include the possibility of companies refusing to support such activity on the ground the individual would leave. Consequently Carter suggests (*ibid*: 87) that companies are "not yet managing CPD satisfactorily at postgraduate level" and (*ibid*: 89) demonstrate a "mismatch in perceptions which leads employers to view with suspicion staff who are obviously aspirational and wish to enhance their career prospects through continuing education and development outside the company". Woodward, in the same volume (*ibid:* 5-6) suggests that, where there is tension between the common modern aspiration of employers to the status of a "learning organisation" geared towards competitive advantage and the "individual commitment" to personalised learning of any individual within the organisation; the employer will necessarily prevail, partly because of the overwhelming quantity of learning that is, in Eraut's terms, a "by-product" (2005) of work itself rather than of CPD activity:

> ... experiential learning, gained in the working environment has primacy over off-line activities. Individual commitment to CPD cannot therefore hope to equal the potential impact of organization commitment. ... Hence, though individual commitment is certainly not without value (least of all to the individual), investment in learning organizations, with both systems and cultures which offer employees continuous incremental and diverse learning opportunities, must – from the perspective of learning theory – have greater impact.
> Woodward, (1996:6)

Whether the interview group, in the early years of employment and establishment of a professional identity, are in a position to separate their own goals from those of their employers (that is, whether the competence for development manifests as "getting on" or "getting on within this firm") may not be immediately apparent or may not be disclosed at the earliest stage (see 11.2.2, 12.6.3.1, 13.3.3 and 13.3.4). It may well be sufficient, members of the interview group perhaps at this stage only having experience of a single employer, that the competence manifests itself at all, irrespective of the dual or single identity of the stakeholder.

4.5   Conclusion

The most significant aspect of the existing solicitors' scheme (4.3, 4.4) for the purposes of this study is that it exists at all. Whilst its messages are mixed (4.4.1, 4.4.2), it does at least perform two functions that may translate positively into the perceptions of the interview group: a) allowing for employer-sanctioned and employer-funded ostensible educational activity on an ongoing basis, b) a message that participation is part of one's professional obligations (as necessary but not, perhaps, sufficient for development: 4.3.4, 4.3.5). Its flexibility, I suggest, assumes the competence for self-development without necessarily actively promoting it (at least post qualification) whilst, on the other hand, the didactic nature of much provision (4.3.3) may be seen as impeding self-directed development and the identity of the individual as stakeholder (4.4.3) in the process may be occluded at this stage of the career. The SRA review (February 2007a), of course, seeks to address some of these failings, as do the proposed day one outcomes and work-based learning outcomes (the latter perhaps rather more successfully) and will, I hope, provide a forum for discussion of important issues, such as the place of the competing stakeholders and the responsibility of the individual.

Issues for exploration with the interview group will, then, involve:

a)   Their conceptions of what CPD is and whether it holds any value above mere compliance (4.3.4; 11.2);

b)   How CPD interacts for different stakeholders, in particular the personal development of the individual contrasted with the objectives of the employer (4.4.3; 11.2.2);

c)   The nature of individual engagement with CPD (11.3);

d)   Evaluation of the value of CPD when contrasted with workplace activity (11.5, 12.2).

A number of references have been made in the latter discussion in this chapter about the possible characteristics of the interview group as new entrants into the profession, whose developmental goals may not at this stage be separate from those of their employers (see 2.8.2) and who may be able to focus only on survival at this point. This is a liminal stage that I will describe as "professional adolescence". Yet the individuals are, chronologically, adults, and it is assumed that adult learners, by definition, are capable of self-direction and autonomy in their learning, a paradox that I move on to discuss in Chapter 5.

CHAPTER FIVE - ADULT LEARNING?

> "I am pleased to inform you that I am out of my articles at Kenge and Carboy's and admitted to the roll of attorneys in my own right and I have taken a 'ouse in the locality of Walcot Square in Lambeth. In short, I am setting up on my own in the legal profession and I intend to do very well in it."
> Davies (2006, episode 15)

5.1   Introduction

As set out at Fig. 2, a working definition of the competence for development expected by the profession can be extracted from the results of the Training Framework Review. Whilst this competence is broadly drafted in the day one and work-based learning outcomes, and, as demonstrated in Chapter 3, appears to be focussed, if anything, on a politically-motivated bottom-line meaning, it is at least susceptible of dissection into a number of overlapping assumptions (1 to 3b) of relevance to this study.

Category 2 in this analysis encompasses both a) an ability to choose appropriate CPD or other activity and, b) in my wider term, conscious "engagement with experience", the latter being reinforced by the specific reference to reflection in the underpinning work-based learning outcomes.   I identify category 3 as involving the vector shown at Fig. 1., or the LINEA three-dimensional "model of progression" (Steadman, 2005:15) by both:

a)   increasing the efficiency of the individual's existing task load (quality); and

b)   expanding the number of tasks and their complexity (scope) is more tentative but at worst, the wording does not exclude such a reading.

As I have demonstrated at 4.3.4, the input-focussed solicitors' CPD scheme conflates "teaching" with "learning".   More appropriate definitions of "learning", for Illeris (2002:15, 2004:14) are:

a)   what is learned (the output);

b)   a psychological process occurring within the learner;

c)   a process of interaction of the learner with the "material and social environment" to which he adds an emotional dimension (which may in this context be an aspect of socialisation: 2.8.2). This recognition of

a)   the social (here the impact of the employer may be significant, see 4.4.3) and environmental; and

b)   the psychological or cognitive

as factors affecting both what is seen as relevant to learn and the learning process is significant, particularly as the minimum formal ("learning-conscious": Rogers, 2003) CPD activity will occupy the individual for less than 1% of his or her annual working time. Where learning takes place in the workplace outside the CPD context, learning *per se* is not the objective of the activity (Rogers, *ibid*: "task-conscious" activity; Eraut, (2005): learning as "by-product"). Any deliberate learning process then going on within the individual – as contrasted with tacit acquisition of knowledge and skills from repeated exposure - is dependent on the possession of the competence for development, particularly items 2a and 2b. Self-direction, (2a) assumes that the individual understands what it is necessary to learn in the task-conscious workplace and 2b that the individual has or can easily develop suitable strategies for learning (for example reflective learning or critical incident analysis), or perhaps, that such strategies as have previously been developed in the classroom will automatically transfer to the workplace. The societal and emotional pressures exerted on the newly-qualified in the course of socialisation may be entirely different to those experienced during pre-qualification classroom education and of a different magnitude to those of the comparatively sheltered training contract. The individual's learning will now be affected by the expectations of the employer as additional stakeholder and power authority. Both personal psychology and this social and workplace context potentially affect not only what it is thought appropriate to learn (for example, the extent to which individuals are expected by their employers to engage in aspirational learning (3b) along the vector of development) but also how it is thought appropriate to learn it (for example, any expectation of rigid "right answers" and passive CPD lecture room experience).

The newly qualified group is, however, in its mid-twenties at the youngest and might be assumed to be able to take self-directed responsibility (2a) and to generate strategies for learning (2b, 3a) by virtue of its adulthood and innate maturity in any event. Writers in the andragogical paradigm suggest that a capacity for self-directed learning is not only inherent in but is definitive of an adult learner. Writers on the development of expertise, on the other hand, (see 6.2), describe beginners as rule-bound and dependent. In this chapter I examine literature on adult learning considering first, the implications of both psychology and social context and, second, the attributes and validity, for the interview group, of the "andragogy" paradigm that, in its assumptions about self-direction and generation of independent strategies for learning, appears to inform the framing of the profession's assumed competence for development.

5.2   The psychological, social and "life stages" context

5.2.1   Cognitive development

Different learning approaches or abilities have been said to emerge at different ages. So Knox distinguishes between abstract, transferable "fluid intelligence" and situated and experience-based "crystallised learning", suggesting that:

> [b]etween the twenties and the sixties the range of individual differences in learning ability increases. ... crystallized learning abilities, which relate more directly to daily experience, are either stable or gradually increase during most of adulthood.
> Knox (1978: 424)

although it may simply be, I suggest, the case that formal academic study in the classroom tends to emphasise fluid intelligence so that the muscle of contextualised crystallised learning is necessarily exercised more extensively thereafter as the boundaries of the learning context particularly in the workplace, expand. Kitchener and King suggest that the ability to accept that there may be no "right answers" to a problem "does not develop until the adult years (that is, in the late twenties or early thirties)", (in Mezirow and associates, 1990:174) and found that "reflective judgment scores have consistently increased with age and education" (*ibid*: 162).   Similarly a demand for "right answers" is described by Benner (1984) and Dreyfus (1986) in professional beginners (see 6.2 below). Whilst Illeris, (*op. cit.*:166) criticises the Dreyfus model of stages in the development of professional expertise as insufficiently criterion-referenced to be a true "psychological stage model"; it does not, I submit, purport to be a universal psychological model but an series of symptoms *observed* in a particular context; a micro structure within an overall personal development of maturity.

Such limitations may, therefore, be related more to context than to chronological age. The nature of the pre-qualification education and the passivity of CPD updating may also inhibit the demonstration of "adult learner" traits in the new professional. Inhibitions in ability to reflect (work-based learning outcome 7.3, see Appendix II) may similarly derive less from immature cognition than from a lack of sufficient experience on which to base reflection:

> ... new practitioners may not initially have the experience and knowledge to draw on as material to facilitate the process of critical reflection. ... there is the need to specifically focus on critical reflection and a broader knowledge

base at the higher stages of undergraduate education and during postgraduate education (in terms of both formal qualifications and CPD). This challenges the "technical up-date" orientation of CPD adopted by many professional groups which tends to keep speciality areas "up-to-date" with new procedures and equipment advances, maintaining an even narrower focus than undergraduate education.
Yielder (2004: 76/77)

a topic to which I return when discussing reflection and mature tolerance for uncertainty (King and Kitchener, 1994) at 7.6.

5.2.2   Life stages

Accommodative learning is both difficult and potentially threatening, particularly, I suggest, if the existing knowledge and skills-base is, as it might be in the newly-qualified individual, limited, insecure or hard-won.   The life stage of the individual could be significant either a) as exerting pressure and stress *inhibiting* learning, particularly aspirational learning; or b) as a time of "personally significant transition" (Brookfield, *op. cit.*: 29) *promoting* learning.   Illeris, describing Mezirow's concept of "transformative learning" suggests crisis as a promoter of a level of reflexive learning beyond accommodation but implicitly requiring even greater personal resources:

> [t]here would seem to be a fourth[19] level [of learning] that occurs only with crisis-like situations in which a solution must be found by transcending the premises of the situation and where the learner has an urgent motivation and can summon psychological resources to learn.   Structurally this type of learning may be characterised as a complex accommodation involving the simultaneous restructuring of several cognitive as well as emotional schemes. Functionally, it changes the learner's self, thereby providing the learner with qualitatively new understandings and patterns of action.
> Illeris, (*op. cit.*: 59)

Some writers assimilate this network of threats and motivations (generally in Knowles' (1984, 1998) terms: "readiness to learn") into a pattern of generic "life stages".   Mezirow identifies both as precursors of transformative learning:

> [a]dulthood is the time for reassessing the assumptions of our formative years that have often resulted in distorted views of reality.   Our meaning schemes may be transformed through reflection upon anomalies. ... In addition, ..., perspective transformation occurs in response to an externally imposed disorienting dilemma – a divorce, death of a loved one, *change in job status*
> ...
> Mezirow, (1990.: 13, my italics)

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[19] The preceding three are i) "cumulative" (rigidly situation-dependent conditioning); ii) "assimilation" to existing knowledge, skills and experience and iii) "accommodative" learning.

Illeris distinguishes between models of objective "social life stages" and those showing individual "interpretative life stages (*op. cit.*: 169) before dealing with a further model derived from Kolb (1984) based on a childhood "acquisition" phase; "specialisation" representing roughly the stage reached by the interview group and closed by the "life turn" of maturity and a degree of comfort with the self and metacognition represented by "integration" (or, perhaps, the removal of the "threat").

Frequently, the "life stage" of those in their early twenties is described in terms of starting a career and starting a home and family (see, for example the list given in Tennant, 1997:46). This is, with respect, obvious, and unhelpful in terms of establishing precisely what threats, motivations and conflicts arise between career, home and family. Better, I suggest, to identify likely priorities derived from the life stage. A new professional, for example, might be particularly focussed on the status and professional identity recently acquired, which may translate into an alignment of personal goals with those of the employer which has endorsed that status (2.8.2). This may preclude the individual's willingness to question assumptions – and thereby threaten such a hard-won, tender and employer-dependent identity (the stage of "professional adolescence") – a willingness inherent in the self-direction considered by Brookfield and Mezirow to be essential to "adult" learning.

Lists of life stage priorities can, however, only produce generalities and may be dated or skewed in respect of culture or gender whether or not, as Tennant – a psychologist - suggests (*op. cit:* 54), their methods are necessarily flawed. Illeris, (*op. cit.*: 217), for example, suggests that cultural and societal norms have changed sufficiently in (modern Western) society that it is no longer possible to regard youth as a training for a particular class or gender expectation predictable in advance; "[i]t is no longer possible to make your choice of life course once and for all when young, and then expect to spend the rest of your life accomplishing it".

Tennant concludes as a result that:

> it is best to abandon the project of identifying universal age-related stages or
> phases of development, and focus more on the process of change and
> transformation and how the various factors in development interact.
> Tennant, (*op. cit.*: 54)

Nevertheless, individuals in the interview group are likely to share some characteristics: in prior learning experience; in age; perhaps in social class (Vignaendra, 2001, see also Sommerlad, 2007, 2008 for pressures on those who do not) in, perhaps, home-making and settling down and, of course, in having crossed the professional threshold into qualification. These might include:

a) Status and new professional identity and need to impress the employer;

b) Changes in workload and expectations as to responsibility (remedying the deficit created by any failure in the training contract to prepare the individual for such expectations);

c) Establishing a home and possibly a long-term relationship.

There is, therefore no reason not to describe this phase of the individual's life as one of stress and change, akin to adolescence, particularly in the emotional and social spheres that Illeris (*op. cit.*) seeks to synthesise with the cognitive in creating a model of learning.

Generalisations about life stages or cognitive development may have indicative validity. The truth is, I suggest, much closer to Illeris' more complex conception – considering duration of learning stages, the spheres to which they relate and the nature of learning (whether a smooth progression or involving "various steps and stages, separated by more or less crisis-inspired jumps or transitions") that allows for an interaction of priorities, threats, and power relationships possibly in different fields. An individual might be seen as particularly mature and self-directed in, say, development as a parent, but rule bound and dependent as a newly-qualified lawyer. Similarly, professional development may form a micro-sequence within the macro-sequence of overall maturation) and over different durations:

> [a] complete approach to learning and development sequences must ... allow for sequences of widely varying duration, ranging from the linking together of two or more specific learning events in a particular sphere, to the life course viewed as a total entity ... It must also allow for individual sequences being mainly cognitive, emotional or social in nature, or being involved in two or three of these spheres, and it must allow for the fact that the sequence may be conditioned by, or be involved in, interaction with a biological maturation or ageing process. ...
> Illeris, (*op. cit.*: 172)

Further issues of cognition are developed in the discussion of theories of expertise in Chapter 6. Nevertheless, given that there is likely to be some homogeneity within the interview group, it is instructive to examine whether and to what extent, they and their

situation might fit within the accepted canon of adult learning theory or "andragogy", balancing their situation with what Rogers (*op. cit.*, 34-35) has described as three "perspectives" of adulthood - full development; autonomy and perspective - whilst recognising that adulthood is a social construct "established in part by reference to peers and in part by reference to or contrast with childhood" (*op. cit.*: 52). My suggestion is that members of the interview group do not necessarily fit within that paradigm, not because as a class or as individuals, they are lacking in such characteristics either actually or immanently, but because other impediments occlude them for the present; resulting in the Dreyfus "novice" or "beginner" (see 6.2) of whatever chronological age. These factors of status and identity; responsibility; autonomy and uncertainty combine, I suggest, in my concept of "professional adolescence" (4.5).

5.3   *Adult learning*

Much of the writing on adult learners is designed to assist those who, for example, are involved in evening classes or Open University provision (*e.g.*, Rogers, 1996; Rogers, 2001) and whose concept therefore assumes

a)   that learners are returning to formal learning activity after a break; and

b)   that the (sole) environment for that adult learning is the "learning-conscious" classroom.

The interview group, however, is likely to be no more than two to five years distant from its last experience of full-time education and may have up to three years' experience of CPD activity by the time of interview.

Factors thought to be characteristic of adult learners, a combination of prior experience and current motivations, can be derived both from a pragmatic experience of adult education (Rogers, 1996; Rogers, 2001) and the theoretical perspectives of Knowles' "andragogy" (Knowles, *et al* 1984, 1998). Whilst Illeris (*op. cit.*), rejects a linear definition of progress from child to adult learner, he nevertheless considers there to be characteristics distinctive of adult learners compared with children that are not inconsistent with Knowles'.

Knowles' developed list of "core adult learning principles" (1998: 4) is:

1   Learner's need to know (why, what, how);

2   Self-concept of the learner (autonomous, self-directing);

3   Prior experience of the learner (resource, perceptions);

4   Readiness to learn (life-related, developmental task);

5   Orientation to learning (problem centred, contextual);

6   Motivation to learn (intrinsic value, personal payoff).

One can map these principles – with the addition of the concept of "self-direction", discussed further below - against the five categories I have extracted from the "competence for development" as follows:

	1 Self knowledge	2a Strategy for development	2b Engagement with experience	3a Enhancement of existing practice (quality)	3b Aspiration beyond existing practice (scope)
Need to know		▓		▓	
Self concept	▓				▓
[Self direction]		▓			
Prior experience	▓			▓	
Readiness to learn		▓			▓
Orientation to learning			▓		
Motivation	▓	▓			▓

Figure 3 Competence for development mapped against andragogical assumptions

The same principles are also reflected in the interview structure described in Chapter 9:

	Q2 Feeling on qualification	Q3 Plans for development	Q4 Characteristics to which aspire	Q5 Concept of CPD	Q6 Characteristics of good learning experience	Q7 Characteristics of poor learning experience
Need to know		▓			▓	▓
Self concept	▓		▓		▓	▓
[Self direction]		▓			▓	▓
Prior experience	▓			▓	▓	▓
Readiness to learn		▓		▓	▓	▓
Orientation to learning				▓	▓	▓
Motivation		▓			▓	▓

Figure 4 Interview structure mapped against andragogical assumptions

Knowles treats the core principles of andragogy as if operating in isolation from the wider aspects of adult life (family, work, community and so on). Others, in particular, Rogers (*op. cit.*) see tensions between those competing factors, whilst Illeris, (*op. cit.*) seeks to achieve a balance between them. It is, I suggest, precisely those wider aspects

which may prevent members of the interview group operating as adult learners in Knowles' pure sense.

5.3.1 The principles of andragogy

5.3.1.1 Learner's need to know

The principles of "need to know" (engaging categories 2a and 3a of the competence for development: Fig. 3) and "motivation" (categories 1, 2a and 3b) are later additions to the list and seem to be aspects of the same thing: the rationale for entering into the [formal] learning activity (see 7.2.2 for manifestation of this aspect in the workplace). Illeris and Rogers, (2003) in a written debate, both use "motivation" in the sense of a positive choice to *enter into* a formal learning activity, rather than consideration of the likely benefits of *having done so*, the latter being closer to Knowles' apparent intention as to "motivation". "Need to know" would also, for Knowles, encompass not only a need to understand why the learning activity should be undertaken at all, but also why it is to be undertaken in a particular way. Both Brookfield (1986:174) and Illeris (2002:101) identify the self-evident: that involuntary participation in formal learning activity leads to resentment and resistance to learning. As will have been apparent from the discussion in Chapter 4, the coercive nature of the CPD scheme necessarily involves a degree of involuntary participation; although its limited extent (16 hours) and the breadth of potential subject-matter (see 4.3.2 above) may militate against the worst effects. What might prove more contentious in the CPD content is the method of teaching. The didactic method (see 4.3.2 above) tends to the familiar and unthreatening; allowing the student to construct him- or herself as a passive recipient of "correct" updating information. Brookfield argues that those who demand didacticism (and therefore implicitly, "right answers") are "socialised" into wanting it and must, therefore, be challenged into acknowledging the benefits of a more "self-directed" approach (*op. cit.*: 111). Illeris similarly, (Illeris and Rogers, 2003) sees it as the role of the teacher to "convince" students to adopt a more autonomous role, seeing this ability to "reconstruct" as being beyond the capacity of children and consequently definitive of the adult learner. Rogers also acknowledges a "component of dependency" but suggests in contrast that the way in which individuals construct themselves as students is itself an exercise of self-direction:

> [i]f some adults wish to construct themselves as students in terms of being subaltern, and to construct the role of teacher as being dominant, … I too have my own constructs of adult and student which suggest to me that I might try to encourage them to become more self-directing and autonomous. I do not wish to have their constructs imposed on me, but even more importantly I do not wish to impose my constructs on them.
> Rogers (2003: 67/8)

Rogers assumes, however, that formalised learning is necessarily uncontextualised (2003: 23). The meaning of "uncontextualised" or "general principles" is, in this context, one of degree. In a CPD updating lecture one may

a)   state the rule of statute or procedure (very uncontextualised);

b)   explore its application by the courts to decided cases;

c)   invite students to apply it to hypothetical scenarios;

d)   invite students to apply it to specific circumstances in cases they are dealing with (very contextualised).

The most advanced publicly offered updating lecture will, I suggest, stop at c). If nothing else, questions of client confidentiality complicate d) in an environment outside the individual's office.

An investigation of what members of the interview group see it necessary to learn (Question 4, see 12.4, 12.5, 13.3.1, 13.5) and how they perceive it is best done (Questions 6 and 7, 11.3, 12.3.2, 12.6.3, 13.3) is a pervasive aspect of this study. The extent to which didactic CPD updating provision affects that perception, if it does, (CPD perhaps being seen as sufficient or appropriate, because sanctioned); also demands investigation (Question 5, 11.5, 12.3). That factor, together with the stress of the period of professional adolescence and the need urgently to remedy any deficit between competence as at the end of the training contract and expectations of competence at the point of qualification, may result in a particularly dependent self-construction.

5.3.1.2 Self-concept of the learner

Knowles, however, would identify such a self-construction as a reaction against inappropriate, non-adult, classroom environments:

> [a]dults … resent and resist situations in which they feel others are imposing their wills on them … the minute adults walk into an activity labelled "education" … they hark back to their conditioning in their previous school experience, sit back, and say "teach me". This assumption of required dependency creates a conflict within them between their intellectual model –

learner equals dependent – and the deeper, perhaps subconscious, psychological need to be self-directing.
Knowles *(op. cit.: 65)*

The test, I suggest, whether passive self-construction as learner is perceived by the individual as negative (Knowles) or neutral (Rogers) will be what happens when the individual is offered something different. Knowles' students – give or take the element of conditioning into what a classroom experience is – could be expected to leap at it and Rogers' – by deliberate choice – to reject it. Nevertheless, in his later work, Knowles recognises – as I have suggested 5.3.1.1 - that the situation of the learner can adversely affect his or her ability to adopt a self-directed learning strategy:

> ... a learner who is experienced with the subject matter and has strong learning skills will likely be frustrated in highly controlled learning situations. Conversely, a learner who is inexperienced with the subject and has poorly developed self-directed learning skills will likely be intimidated, at least initially, in highly self-directed learning situations.
> Knowles (1998: 136)

This is, however, to identify "self-direction" as synonymous with "self-teaching". Knowles recognises a separate and possibly overlapping meaning of self-direction in the sense of "personal autonomy". Self-concept of the individual engages categories 1 and 3b of the competence for development and is examined in the workplace context at 7.2.3. Whilst acknowledging that, in exercising autonomy, the individual might choose to be dependent, Knowles nevertheless perceives such autonomy as involving more than just a positive assertion of a choice in the type of learning environment:

> [a]utonomy means taking control of the goals and purposes of learning and assuming ownership of learning. This leads to an internal change of consciousness in which the learner sees knowledge as contextual and freely questions what is learned.
> Knowles, *(ibid:* 135)

Tennant (1986) detects a cynicism in some of Knowles' earlier (1984) statements about autonomy, in which the type of learning approach or activity is explicitly chosen in order to be congruent with "the organisation's long range development goals". As I have suggested at 4.4.3, the power relationships within the CPD (and workplace learning: 2.8.2) situations of the interview group may be particularly significant. If "self-direction" in either sense is not promoted, expected or encouraged by the employer

and, most particularly, by the individual's immediate line manager, it will take a great deal for the junior individual, wishing to please, to pursue a different approach.

Knowles' second concept of self-direction is, however, close to that of Brookfield (1986) and Mezirow (1990), in providing for a positive and metacognitive engagement with the experience of learning, particularly in what is learned and its accommodation to what is already known:

> [t]he most fully adult form of self-directed learning, however, is one in which critical reflection on the contingent aspects of reality, the exploration of alternative perspectives and meaning systems, and the alteration of personal and social circumstances are all present ... when adults come to appreciate the culturally constructed nature of knowledge and values and when they act on the basis of that appreciation to reinterpret and recreate their personal and social worlds.
> Brookfield, (*op. cit.*: 58)

The significance, then, of this approach to learning – involving an element of self-teaching developed beyond the simplistic correspondence course of Knowles' initial definition - is in its demand that individuals not only interact positively with the learning situation; but also that they positively question norms and assumptions in an approach similar to the double-loop learning of Argyris and Schön (1974), including those presented by the power authority (teacher, supervisor). This engagement with experience, particularly as a means of learning in the "task-focussed" context, is explored in more detail at 7.5 and 7.6. In the present context, it is not obvious that this ability to question assumptions is intended to form part of the expected competence for development; although the drafting does not preclude it. One can see, indeed, why, given the bottom line, negligence-avoiding objectives (demanding that rules be complied with rather than questioned) underlying the drafting, it might positively be thought to be inappropriate. The self-knowledge of the individual is explored, in particular, at 13.2 and self-direction at 13.3.4.

5.3.1.3 Prior experience of the learner

The prior experience of the adult learner (engaging categories 1 and 3a of the competence for development and explored in the workplace at 7.2.1) may be seen as positive, for example:

a)   established study habits (acquired and consolidated in the academic and vocational classroom);

b)   relevant experience in the field of the learning activity (which will be limited in the interview group).

or inhibiting, for example:

a)   fear or negative experience of formal learning;

b)   assumptions that learning involves "dependent" passive reception of information;

c)   existing knowledge or experience that is contrary to that which is now being "taught" (that is, see 4.4.2, that the new material is "supplantive"). In the context of the interview group, the existing knowledge or experience may not be the individual's own but that of his or her immediate superior – both role model and power authority - who expects his or her assistants to work in a particular way (see 12.6.3).

Both groups of factors have been seen as influencing the psychological processes of learning:

> [w]hat we perceive and fail to perceive and what we think and fail to think are powerfully influenced by habits of expectation that constitute our frame of reference, that is, a set of assumptions that structure the way we interpret our experiences.
> Mezirow in Mezirow *et al*, (1990:1).

Such habits of expectation are refined, (*ibid:* 2), into

a)   "meaning schemes" such as rules of cause and effect or categorisation; and

b)   "meaning perspectives" of a higher order involving not only assumptions but also belief systems, learning styles and similar structures used to interpret events.

They will also define the nature of the learning process: assimilatory to existing, non-conflicting prior knowledge derived from earlier experience or requiring accommodation to pre-existing knowledge derived from experience. Rogers (*op. cit.*: 31/2), in identifying that unconscious "acquisition learning" from task-conscious experience can hinder formalised learning, suggests that a function of formalised learning is positively to bring such tacit knowledge into the foreground so as to integrate the two.

Tennant (1997:140) creates a "reconstructed charter" for andragogy defined in all aspects as recognising the "life world" - that Knowles separates from the andragogical model - and point of view of the individual learner, both as a starting point for subsequent reflection and as, in effect, a further form of contribution to the learner's

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experience: rendering the learner an "equal and legitimate participant" in the (formal) learning activity. This respect for the individual and recognition of his or her activities outside the classroom, also underlies Brookfield's approach to the use of participatory learning methods and collaboration in design of learning activity to build on the "concerns and experiences" of learners and to foster a culture in which assumptions are challenged and paradigms shifted, again by explicit examination and comparison against the experiences of the learner or, where the field of the learning is novel, "by framing the investigation of new ideas, skills or information in terms that are accessible to the learner, given his or her past experiences" (Brookfield, 1986:12).

A further, and significant, feature of the contribution of the learner's current and prior experience is, of course, that of work-related learning, whether, as with CPD, in a classroom or, as discussed in Chapter 7, contextualised within the workplace. Brookfield recommends further contextualisation even in the classroom:

> [i]n staff development exercises for [professional] groups, it is much more meaningful to build curricula and organize workshops that take these experiences ["agonizing choices between different courses of action ... serious ethical dilemmas"] as their starting point, engage participants in a collaborative analysis and exploration of experiences, and encourage professionals to reflect continually on their interpretation of correct [*sic.*] practice in actual work settings.
> Brookfield, (*ibid:* 173)

That last point, of course, provides the final aspect of contextualisation (my sub-category d) at 5.3.1.1): first bridging the gap between the workshop and the workplace and second, providing a technique that can be used as a strategy for learning in the task-conscious workplace environment itself. Both are facets of "engagement with experience" discussed at 7.5 and 7.6.

Whilst writers in the field invite us to assume that any given group of adult learners is more heterogeneous than any given group of child learners, members of the interview group will at least, as I suggested at 5.2.2, share comparable experiences of the academic and vocational stages even if their training contract experiences differed (Vignaendra, 2001). They may, therefore, be described as expert learners (at least in the classroom) but novice or beginner professionals and, potentially, as novice or beginner self-directed learners, at least in the workplace. The inclusion of the competence for development in the work-based learning and day one outcomes suggest, however, that their colleagues will, in the future, be expected to exhibit a considerable repertoire of

self-directed learning strategies. Their limited range of experience might hinder when it is sought to introduce challenge and critical awareness: the learner at this stage may only know of one "way to do it" (from the LPC or the training contract) and tend to validate his or her own status as now being qualified, by rejecting other ways. The learner might seek very narrow contextualisation into precisely his or her own (limited) current sphere of practice and reject activity, particularly in the classroom, that does not deliver such contextualisation or requires effort by the learner to transfer learning into his or her own context. Questions of status – the hard-won qualification – might complicate issues of respect in the classroom. Explicit exploration of such issues with the interview group is sensitive but important in the overall aim of creating a rich description of the learner's model of learning (10.3.2, 10.3.3, 13.2 and 13.5).

5.3.1.4 Readiness to learn

Like "need to know" and "motivation", this principle (engaging categories 2a and 3b of the competence for development and explored in the workplace at 7.2.2) is connected less to what the learner brings to the learning context or the process the learner adopts than to the rationale for the learner entering the learning context (always assumed to be one of "learning-conscious" activity) in the first place. Knowles refers to young women not yet ready to learn about childcare but brought to a readiness to learn about it once the possibility of children becomes a personal reality (1998: 67). In this way readiness to learn is seen as a function of a need to perform a particular social role and as part of a developmental continuum. Brookfield (*op. cit.*: 122) describes "every" learning group as composed of individuals of differing readiness to learn. Knowles concludes that "[t]here are ways to induce readiness through exposure to models of superior performance, career counselling, simulation exercises and other" (*op. cit.* :67).

Whilst one can see that such activities can lead an individual to reassess his or her existing levels of confidence and readiness to move on to a higher level (aspiration) it is difficult to see how, in Knowles' own example, any degree of such activity could persuade a young woman determined against ever having children into a childcare class or a stressed and pressured young solicitor to learn – at the moment - to deal with, for example, team leadership when he or she has, as yet, no team to lead. Indeed, the individual's readiness to learn may well be more urgently focused on remedying any deficit between the training contract and new expectations arising no qualification. The relevance of the readiness to learn criterion is, of course, of the distinction regarded by

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Illeris as (see *e.g.*, Illeris and Rogers, 2003) definitive of the difference between adult and child learning: that children are assumed to learn what they are instructed to learn irrespective of any understanding of its personal relevance. Such readiness or motivation to learn in children is, however, by no means automatic: approbation of parents or teachers and obtaining good results in examinations might be seen as equivalent to the "adult" motivations for the newly-qualified solicitor of obtaining approbation of his or her immediate superior and his or her employers, obtaining promotion and so on. Truly uncontextualised learning – one thinks of John Milton's daughters, taught to pronounce (but not understand) a number of languages in order to read to their blind father - in children may simply be an exercise of adult power. The power and attitude of the employer may be unstated but still a considerable factor in the activities participated in and approaches taken by the individual newly-qualified lawyer.

In terms of the vector of professional development, the identification of the point at which an individual is ready to move on (engage in aspirational activity) is fundamental. Beginners may exert control by defining closely what it is necessary for them to do and to know *at this stage* only. Rejection of attempts to encourage aspirational activity may, as with Rogers' "subaltern" learners, be a response to a particular teaching *process*, a manifestation of self-determination as to *content* of learning in the threatened, stressed individual rather than a rejection of it. Alternatively, the power relationships within which the individual is situated might foster such limitation. The extent to which individuals in the interview group are able, if they are, to look above the parapet towards this third, aspirational level of the competence for development will emerge from the interviews (Questions 3 and 4) and is considered at 13.5.

5.3.1.5 Orientation to learning

The orientation to learning engages category 2b of the competence for development and is discussed in the workplace context at 7.2.2. Knowles suggests that adults have a problem-centred orientation to learning, that is, that they prefer relevant, experiential, problem-solving activity to uncontextualised, "subject-centered learning" (*op. cit.*: 146). Brookfield describes adult learners as engaging voluntarily in learning activity "because of some innate desire for developing new skills, acquiring new knowledge, improving already assimilated competencies or sharpening powers of self-insight" (*op. cit.*: 11). He goes on to suggest that such highly motivated adult learners are more willing to become involved in, or at least "less likely to resist" active participation in discussion,

role play and similar activities (in a formal learning environment). This is not, however, confined to "adults": one only has to watch a toddler to realise that role-play, discussion and Socratic questioning ("Why?") form a large part of our instinct as far as learning is concerned. But again, the emphasis in the literature is on the formalised learning context. Aside from the CPD lecture hall, the question does not arise in workplace learning where the task, the solving of the actual problem, is all and the learning design largely implicit or left to chance (except perhaps in the case of deliberate mentoring and coaching): the nature and extent of the learning that might be expected in the workplace being discussed further in Chapters 6 and 7. Resistance to interactive activity, if any, in the CPD context may be a symptom of problems of tightly-defined relevance (see 11.3.1.1) or to the fact that such activity does not provide "the answers" in a palatable way (11.3.2). Orientation to learning in a more generic sense is evaluated at 13.4

5.3.1.6 Motivation to learn

The orientation to learning engages category 1, 2a and 3bb of the competence for development and is discussed in the workplace context at 7.2.2. Knowles refers to specific benefits of having engaged in the learning experience for adults such as increase in salary. Tennant considers that the ability to engage in aspirational learning is greater in adults than in children; although he appears to be thinking of very young children in Piagetian terms and comparatively limited delayed payoff:

> [i]f anything, adults have a greater capacity to tolerate the postponed application of knowledge, partly because they conceptualize time in larger "chunks" than children, and partly because they have a capacity for hypothetical thinking (*i.e.* thinking about future possibilities) not evidenced in young children.
> Tennant, (1986:117)

Such a payoff is delayed, of course, when the aspirational aspect of the competence is engaged: if an individual does not see an immediate application for what is to be learned and is under stress not triggering transformative learning in Mezirow's sense, there is little internal motivation to engage in learning, unless the stress is so great that the individual is considering seeking other employment. The power of the employer in providing approbation, whether positive (learn this and you will be promoted) or negative (learn this or you will be made redundant) may be a key factor. An

individual's motivation may simply be to record the minimum number of required CPD hours in a year. Such "payoffs" might be seen as an aspect of the need to know: what do I get out of knowing this?

Working in a law placement programme, Morton, Weinstein and Weinstein (1999), found it impossible to adopt a purely andragogical approach. The law students, new to the field, were unable to articulate their own learning objectives. Some were motivated to undertake placement in legal practice "in order to be able to list on their resumé some kind of lawyering experience"; or because it was perceived as an easy option; were scared of their placement supervisors (on whose evaluation of their success they relied) and unwilling to "confront" them. Further, their prior educational experience had been passive rather than encouraging self-direction as well as of limited extent: "the majority of [U.S.] law students come directly from undergraduate school,[20] which they attended directly from high school. The wealth of life experience anticipated by the andragogical model is just not there" (*op. cit.*: 511/512). Morton, *et al* suggest that students in their age range (23-28) have "not always reached the stage of 'adulthood' the andragogical method requires" (*op. cit.*: 469). Employing both a "life stages" model and a cognitive development model, the authors suggest, consistently with the findings of King and Kitchener (1994) discussed at 7.6.1, that the sheltered university environment inhibits rather than fosters self-direction, and that development of "adult characteristics" in their group of full-time students when compared to the population as a whole had been delayed by "extended years of schooling" (*op. cit.*: 15). There was also evidence of the deliberate limitation of horizons and withdrawal from aspirational activity as a means of control of a threatening new environment that I have suggested at 5.3.1.4:

> ... they are uncertain about their ability to succeed at being lawyers and want to learn the basic survival skills that will allow them to feel competent. Matters that appear to be extraneous to that challenge do not have much priority. Thus, discussions of ethical issues that are perceived as irrelevant to current experience and moral dilemmas that the students do not see themselves facing, are perceived to be distractions from learning the basic lawyering skills that will allow them to succeed (*i.e.* survive) at their internships.
> Morton, Weinstein and Weinstein (1999: 18)

The interview group, of a similar age, has, of course, had two years to overcome some of the tensions of sheltering, naivety and lack of field experience described in the

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[20] University study of law in the U.S.A. takes place at postgraduate level only so the participants, although new to law, were not undergraduates.

Morton *et al.* study, although even the training contract is a comparatively sheltered experience. Once one removes the "easy option" or "surface" approach (see 8.3) deliberately taken by students within a degree course (although this may simply transmute, in the CPD context, to a compliance approach to participation), I suspect that what may be involved with the interview group – if it is - is perhaps less a delay in development *per se* but a regression or deployment of deliberate control mechanisms for survival brought on by the newness and stresses of the workplace – as well as a lack of exposure to learning strategies suitable for learning outside the classroom - and that it is this regression that is perceived by Dreyfus (1986) and Benner (1984). Nevertheless, one can see that some of the tensions identified by Morton *et al*, (1999) in particular the lack of underlying experience and the temptation to look to superiors for benchmarks of success, might persist into the interview group. Issues about motivation arise from analysis of the deficit between training contract and expectations of the point of qualification (10.3.2, 10.3.3) as well as, more generically at 13.2, 13.3 and 13.4.

5.3.2 *Andragogy as a political philosophy*

The discussion above has suggested a difference between what adults "are" in Knowles' sense and what they "ought" to be. Mezirow's enthusiasm for reflection and self-direction is similarly evangelical:

> [f]ree, full participation in critical and reflective discourse may be interpreted
> as a basic human right.
> Mezirow, (*op. cit.*: 11)

Jarvis, however, perceives a link between andragogy and the cultural and philosophical "romanticism" of progressive education in the 1960s (see, for example, Rogers, 1969):

> ... andragogy emerged at a time when the structures of society were
> conducive to the philosophy underlying the theory and ... its own structures
> reflected the structures of the wider society. ... [Andragogy] has assumed the
> status of a theory because it emerged when it did, ...
> Jarvis, (1971:37)

Rogers, who, as described above, takes a more relaxed view of what adults "ought" to be in the learning context, identifies a different source for such evangelism in the politics of the 1970s and 80s:

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> ... adult education was at that time marginalized and unpopular with policy-
> makers. ... We found ourselves needing to stress the essentially distinctive
> nature of our work in order to establish our credentials as professional
> elements within the educational sector.
> Rogers, (*op. cit.*: 1)

and points to a blurring of the distinction between "adult" and other students in the more recent "discourse of lifelong learning" (*ibid*: 2), creating greater uncertainty about the fundamental premise still held by Illeris: that there is something distinctive about the learning processes of the adult learner.

Brookfield, further, recognises a "Western" aspect to assumptions of autonomous field independence:

> [f]ield dependent learners ... are comfortable in highly regulated settings or
> those where the norms are well-defined and unchanging. ... Hence, by
> implication, a field independent style of learning is deemed to be somehow
> more democratic – and hence, more laudable – than field dependency.
> Brookfield, (1986:41)

Similarly, Tennant (1986:119) identifies the andragogical approach centred on "self-direction" as leading to "an unpalatable view of education as the identification and elimination of deficits or 'gaps' in knowledge, performance or self-concept"; as normative and controlling in a "middle class" conception of what adult should be in a learning environment, concluding:

> ... [i]t is important to abandon some of the myths about adult learning which
> have general currency and which Knowles supports: the myth that our need
> for self-direction is rooted in our constitutional make-up; the myth that self-
> development is a process of change towards higher levels of existence; and the
> myth that adult learning is fundamentally (and necessarily) different from
> child learning.
> Tennant, (*ibid*: 121)

Consequently, although the assumptions of the concept of andragogy provide a useful set of categories by which to analyse the experiences and views of the interview group; their value lies principally in the act of categorisation: the experiences and views of the interview group are not to be regarded as wanting if they diverge from that model.

5.4   Conclusion

The adult learning – divorced from considerations of incomplete cognitive development (5.2.1) or life stages (5.2.2) - described in this chapter is, in Brookfield's terms (*op. cit.*:

9), a series of assumptions (5.3.1) only. This series of assumptions – which, in Tennant's analysis, reinforce a particular *status quo* or political stance (5.4) - might be disapplied in the case of individuals facing a particular series of threats and priorities inherent in the period of professional adolescence, both as to desired learning process and as to desired knowledge (in particular as to the aspirational). The fact remains that adult students *do* construct themselves (5.3.1.1), in particular contexts, as dependent, rule-bound learners and as severely limiting the horizons of what they consider relevant to learn. Brookfield (1986), Mezirow (1990) and Illeris (2004) would see it as an integral part of their role as facilitators to coax learners into an independent and "self-directed" orientation that they would perceive as definitive of "proper" adulthood or maturity. Rogers, on the other hand, accepts the student self-construction, the adoption of that persona in the context being, for him, just as much concomitant or definitive of adulthood, whilst accepting more gently the possibility of introducing a more independent approach by negotiation. The extent of the interview group's self construction along this axis will emerge from the interviews and go some way to identification, for the teacher or mentor, in Rogers' terms, of "where [the individuals] are": 13.3.3, 13.3.4. Such results may also lead to a suggestion of the point along the 0-3 year continuum at which individuals may be more ready to become self-determined in the Brookfield and Mezirow sense of being ready or prepared to engage in critical reflection (7.6.2.2) that challenges the assumptions and norms that they have so recently acquired (engagement with experience) and to become involved in aspirational learning: 13.4.1.

What remains, however, and will be discussed further in Chapter 6, is that such a limited self construction, whatever the reason for it, in the early stages of a professional career would go some way to reconciling the apparent dichotomy between the independent, self-directed adult learner and the dependent, rule-bound "novice" and "beginner" of the Dreyfus (6.2) spectrum. It should be recalled that the writers on adult learning tend to make one further assumption (5.3) – that the learning experience is formal and classroom based – consequently in Chapter 7 I explore the nature of learning in the workplace.

Finally, however, whilst the nature and place of self-direction within adult learning has been discussed in detail, the "readiness to learn" assumption (5.3.1.4), in the sense of a readiness to engage in some degree of aspirational activity, appears uncontroversial in the literature. The aspiration is, presumably, to expertise. Consequently, in Chapter

6 I examine the definition of and development of expertise generally, in order to assess the place of explicit aspirational learning in the literature on the acquisition of such qualities.

CHAPTER SIX - EXPERTISE AND ITS ACQUISITION IN THE
PROFESSIONAL CONTEXT

> "…I fear that I will rise no higher."
> I asked why not.
> He smiled. "Alas! I am an expert."
> Lynn and Jay (1989:381)

6.1   Introduction

It might be thought odd to include a chapter on expertise in a thesis devoted to the recently qualified. It is axiomatic in much of the literature that an individual cannot be said to be "expert" in a professional field without eight to ten years' experience; and the best that can perhaps be expected at this chronological stage is "competence" (see Chapter 3). This, however, somewhat begs the question as to what precisely is meant by "expertise".   The work-based learning outcomes (SRA, 2008b, Appendix II), for example, contain the heading "application of legal expertise" in respect of a set of outcomes to be achieved *prior to qualification*. Because I have drawn, in the vector of professional development at Fig. 1, a distinction between enhancement of existing performance (quality) and aspirational extension of the scope of activity, that concept is formulated in terms of a series of graded activities or domains, some quite small (interviewing witnesses; telephone advocacy), in which an individual might become comparatively easily "expert" before progressing to increase the scope of his or her activity. Others might define a domain of expertise more broadly, (as *e.g.*, commercial litigation), drawing the scope of activity as well as its quality within the definition of expertise. At 5.3.1.3, I have indicated that members of the interview group might already be described as "expert learners", at least in the learning-conscious, classroom-based contexts with which they have been familiar. Questions arise whether expertise is a state of intuition, technical sophistication or both; and whether it is formed largely by knowledge and skill tacitly acquired from quantity of experience. Even if it is, one might ask whether the acquisition of expertise can be accelerated by, for example, a reflective engagement with experience (7.5, 7.6) or provision of "expert rules" as processes for future application. Finally, returning to the definition of the content of expertise, it might include factors other than discrete technical sophistication, such as, in particular, a competence like that of the expert learner, but deployable in a more complex and diffuse environment.   I have already discussed the limitations of the

existing CPD system in Chapter 4 and the assumption that the interview group might be able to operate as independent, "adult" learners in Chapter 5. The development of expertise might require not only self-directed responsibility for development but also the autonomy to experiment and to make mistakes such that expertise is achieved through engagement with experience rather than acquisition of tacit knowledge. So Furlong, writing about teachers:

> [i]t is because professionals face complex and unpredictable situations that they need a specialised body of *knowledge;* if they are to apply that knowledge; it is argued that they need the *autonomy* to make their own judgments; and given that they have that autonomy, it is essential that they act with *responsibility* – collectively they need to develop appropriate professional values.
> Furlong, (in Atkinson and Claxton, 2000: 15 at 18)

In this chapter, therefore, I consider a) the traits of "noviceness" that individuals might see in themselves in the workplace, and consequently the traits of "expertise" they might perceive in others, specifically those of 3 years' PQE, or to which they might aspire; b) the extent to which expertise can be deliberately acquired or accelerated in a workplace setting by engagement with experience, in preparation for the more detailed development at 7.6 of the "reflective practitioner" paradigm and c) the potential contribution of quantity and quality of experience in the workplace to the tacit acquisition of expertise (7.3) in the absence of deliberate engagement, a discussion which will provide a link into the discussion of workplace learning *per se* in Chapter 7.

6.2   *What is expertise?*

"Expertise" cannot be divorced from consideration of what experts *do*, as well as what they *know*. A starting point is to create a description of the distinctions between novices and experts (and stages in between) by observation. The Dreyfus brothers (1986: 16ff) famously identified five steps between novitiate and expertise, framed in the context of "skill acquisition" and considered in the field of nursing by Benner (1984):

1.   *Novice*: "Elements of the situation to be treated as relevant are so clearly and objectively defined for the novice that they can be recognized without reference to the overall situation in which they occur" (Dreyfus and Dreyfus, *op. cit.*: 21). Benner (*op. cit.*: 21) puts this more clearly: "[t]he heart of the difficulty lies in the fact that since novices have no experience of the situation they face, they must be given rules to guide

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their performance". Using this definition of the novice as complete beginner, the *soi-disant* "expert-novice" studies cited in this chapter (Ropo's being the exception) do not therefore involve novices but some level of beginner. It is here, then, that the fit between the training contract and allocated tasks and responsibilities on qualification becomes of significance. I explore at 10.3.3 the effect that pre-qualification experience has on individuals' *feelings* of competence and confidence at the point of qualification.

2.   *Advanced Beginner*: "[t]hrough practical experience in concrete situations with meaningful elements … the advanced beginner starts to recognise those elements when they are present … [t]hanks to a perceived similarity with prior examples" (Dreyfus and Dreyfus, *op. cit.*: 22). I suggest that the majority of the solicitors interviewed may be within this category, having (Benner, *op. cit.*: 22) "coped with enough real situations to note … the recurring meaningful situational components [including] … global characteristics that can be identified only through prior experience" and, at 12.3.2, explore whether they might recognise the contribution of repetition of experience to personal development.

3.   *Competence*: the competent (see 3.5b)) individual is now able to prioritise and assess the weight of variables in the situation to be diagnosed and infecting the appropriate solution:

> … a competent performer with a goal in mind sees a situation as a set of facts. The importance of the facts may depend on the presence of other facts. He has learned that when a situation has a particular constellation of those elements a certain conclusion should be drawn, decision made or expectation investigated.
> Dreyfus and Dreyfus, (*op. cit.:* 24)

Benner (*op. cit.*: 25) suggests that this stage can be observed in a nurse "who has been on the job in the same or similar situations two to three years"; a phase that might, in the hierarchy frequently but wrongly attributed to Kirkpatrick (1971), be described as "conscious competence". Whether the training contract can be included within this period, allowing a recently qualified individual to reach this stage will be subject to exploration at 10.3.3.1 in terms of the "fit" between it and the job on qualification.

4.   *Proficiency*: intuition based on tacit knowledge of previous situations or patterns begins to assert itself.:

> No detached choice or deliberation occurs.   It just happens, apparently
> because the proficient performer has experienced similar situations in the past
> and memories of them trigger plans similar to those that worked in the past
> and anticipations of events similar to those that occurred
> Dreyfus and Dreyfus, (*op. cit.*: 28).

In my interview group, those at the three to four year level (*i.e.*, the closing benchmark seen from the interviewees' perspective at 10.3.4) might perhaps show characteristics of this profile, having developed more robust cognitive patterns as a result of a greater repetition and exposure to the variables of practice.

5.   *Expertise*:   is regarded in the Dreyfus model as entirely intuitive and unconscious:

> An expert's skill has become so much a part of him that he need be no more
> aware of it than he is of his own body ... When things are proceeding
> normally, experts don't solve problems and don't make decisions; they do
> what normally works
> Dreyfus and Dreyfus, (*ibid.:*30).

I have already described at 5.2.1 Illeris' objections to the Dreyfus model and it is also apparent that the model (no particular evidence-base for which is clear in the Dreyfus brothers' text) is based on the assumption of expertise developing tacitly over time and through quantity of relevant experience in the field (Bereiter and Scardamalia, 1993: 17; Eraut, 1994: 125).   Eraut identifies the priority of the Dreyfus model as being on "perception and decision-making rather than routinized action" (*ibid*: 124) (although in fact intuitive routine is described in the quotations above) and as having a demarcation at the onset of the fourth stage (proficiency) to a more intuitive, more "unconsciously competent" approach.   Achievement of intuitive behaviour is equated with expertise (Bereiter and Scardamalia, *op. cit.*).   Eraut also points out (*op. cit.*) that the Dreyfus description of expertise, being founded in such unconscious intuitive behaviour (the lack of explicit deliberation at the higher stages being applauded) contrasts with the writings of the "reflective practitioner" school (discussed at 7.6) and that it does not address cognition and memory as contributors towards the creation of expertise, factors I consider further at 6.2.3.   Nor do the Dreyfus brothers - even at the zenith of "expertise"

– appear to consider problems that are so ill-defined, "swampy" or novel as to be situated outside the "routines" even of an expert. Gregory, (in Atkinson and Claxton, 2000: 185) considering the expertise of managers, also points out that the Dreyfus model assumes that there is a distinct framework of "expert rules" and theories that can be provided to the novice, as opposed to the being "dropped in the deep end experienced by many managers".

Further, the model assumes a smooth constant upwards progression towards expertise without the "jumps or transitions" suggested by Illeris (*op. cit.*). I have suggested at 5.5 that tension between "adult learner" and "novice professional" theories can be resolved by postulating a regression to a more dependent role caused by the stress of the new professional environment. So, for example, Boshuizen (2004:85ff), considering medical students in their fourth, fifth and sixth years in comparison with each other and with medical specialists, saw an upward progression in diagnostic accuracy, but a distinct dip for fifth year students in relation to number of knowledge propositions generated, number of biomedical concepts used and number of auxiliary lines of reasoning used. The fifth year students, rather like the newly-qualified solicitors, were in the early stages of a new internship role imposing significant new stresses and demanding new responsibility. Arts, Gijselaers and Segers (in Boshuizen *et al*, 2004: 97 at 104) found a similar dip in managerial problem-solving – to be contrasted with diagnosis – at a fourth year of study. Boshuizen (*ibid*: 87) likens the phenomenon of regression to that seen in children whose understanding of irregular past tense forms recedes briefly as they seek to process and reorganise new linguistic information.

Benner (1984) provided a more rigorous evidence-base for the Dreyfus brothers' work in her observational study of nurses. Other early investigations into expertise were, however, frequently attempts to identify the precise heuristics and algorithms ("expert rules") used by experts so as to replicate them in computer programs that might be used for diagnosis or problem-solving; an agenda seen by the Dreyfus brothers as inevitably doomed to failure:

> [n]o matter how much more work was done in computer simulation and operations research, and no matter how sophisticated the rules and procedures became, such analytic abstractions would never allow the computer to attain expertise.
> Dreyfus and Dreyfus (*op. cit.*: 10)

Charness (in Anders Ericsson and Smith, 1991:39) justifies the frequent use of chess in such studies as a result of its mechanism for ranking players and the fact that games can be notated. One might also add that the underlying rules of chess can be learned comparatively easily, so allowing novices and beginners to enter into the domain. By necessity, the nature of the tasks (scope) being completed in the experimental studies are problems that both a novice and an expert can attempt, otherwise no comparison could be made. As Bereiter points out (*op. cit.*: 34), therefore, they will involve tasks likely to be easy and routine for the expert participants.

Chess is also the only expert domain study in which the individual player is explicitly involved in competing against an opponent. This provides a useful comparison with the practice of litigation: the rules of the CPR are comparatively easy to learn but the intervention of an opponent, him- or herself at any stage from novice to expert,[21] adds an additional complication not present in, for example, medical diagnosis or managerial problem-solving, although both diagnosis and problem-solving are aspects of the litigator's role. Blasi argues that "[a]t bottom, lawyering entails solving (or making worse) problems of clients and others, under conditions of extraordinary complexity and uncertainty, in a virtually infinite range of settings" (1995: 317).

Blasi also points out the necessity, in legal practice, for an understanding of environmental variables including the context of the client, the opponent and the dispute as an element of "expertise" in solving legal problems:

> ... one difference between business lawyers with four years' experience and business lawyers with more than fifteen years' experience is not only that the more expert lawyers conform to the model ... rapidly perceiving patterns in problem situations and retrieving appropriate approaches to solutions. The more experienced lawyers also have a fundamentally different perception of the problem itself, a perception much more sensitive to the relationships between lawyer and client.
> Blasi (*op. cit*: 395)

Similarly Nathanson, "[o]ne difficulty, especially for new lawyers, is to be able to identify which decisions should be client centred and which lawyer centred. ... In most

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[21] One might assume that the legal representatives on either side of a case would be of equivalent levels of experience, those allocating work identifying a case as "suitable" for a particular individual to deal with. The relative value of clients to a firm, the likelihood of work in a small firm being dealt with by more experienced individuals and different perceptions as to the complexity of a case (the claimant, for example, seeing the matter as a simple issue of debt collection whilst the defendant is aware of a potentially complex defence) may lead to discrepancies of experience and expertise between opposing solicitors.

situations, however, the rules are not clear and much depends on the relationship between lawyer and client" (1997: 46).

The theme of the nature and extent of the human variables involved in the legal context and outside the framework of the procedural rules – lawyer, client, opponent, opponent's lawyer, judge, arbitrator or mediator – will recur in this chapter, as they make the identification of expert behaviour in any objective sense in legal practice much more complex than in, for example, chess or human physiology. A disease does not lie, change its mind or act irrationally (even if a patient does). A chess piece does not have its own opinions about its deployment.

If the Dreyfus progression model has its limitations, then expert profiling provides an alternative identification of generic attributes possessed by experts. Glaser and Chi (in Chi *et al* 1998: xvii), in what Holyoak (in Anders Ericsson and Smith, 1991: 302) describes as the cognitively-based "second generation of expertise theories" – *sequelae* to those based on heuristic search and algorithm - identify a series of attributes of experts, at least in respect of problems in which they may be realistically compared to novices and beginners:

1.	Experts excel mainly in their own domain ("domain specificity");
2.	Experts perceive large meaningful patterns in their domain ("pattern recognition");
3.	Experts are faster than novices at performing the skills of their domain and they quickly solve problems with little error ("speed and accuracy");
4.	Experts have superior short-term and long-term memory ("memory");
5.	Experts see and represent a problem in their domain at a deeper (more principled) level than novices; novices tend to represent a problem at a superficial level ("depth");
6.	Experts spend a great deal of time analysing a problem qualitatively ("analysis");
7.	Experts have strong self-monitoring skills ("self-monitoring").

Salthouse (in Anders Ericsson and Smith, *ibid*: 294) synthesises a generalised list of "processing limitations" in non-experts which may be recognised by interviewees (pointing out that such limitations should not be assumed to be present to an equivalent extent at all stages of the development of expertise) and which can, I suggest, be

usefully compared with some element of overlap against Chi *et al*'s set of expert attributes:

	Expert attribute	Processing Limitation in non-experts
1	Domain specificity	Not knowing what to expect (related to understanding of the domain)
2	Pattern recognition	Lack of knowledge of interrelations among variables Not knowing what information is relevant
3	Speed and accuracy	Lack of knowledge of interrelations among variables Not knowing what to do and when to do it Lack of production proficiency
4	Memory	Not knowing what information is relevant
5	Depth	Lack of knowledge of interrelations among variables Difficulty in combining information[22]
6	Analysis	Difficulty in combining information
7	Self monitoring	

Figure 5 Salthouse's limitations mapped against Chi's expert attributes

For the purposes of this discussion, I will separate the expert attributes into three categories, aligned with the demarcation set out in the introduction to this chapter:

a)   traits of expertise in diagnosis and problem solving that might be perceived in the workplace by members of the interview group (speed and accuracy; depth and analysis);

b)   aspects relevant to the deliberate acquisition of expertise or to a positive learning orientation as inherent in expertise ("engagement with experience") (domain specificity; self-monitoring); and

c)   attributes of expertise derived tacitly from quantity and quality of experience (pattern recognition; memory) specifically those related to the efficient cognitive organisation of expert knowledge.

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[22] I omit a further item on the list; that of insensitivity to sensory/perceptual discriminations which Salthouse derives from studies of expertise in music and sport, although it might arguably be applied to legal "performance" skills such as negotiation or advocacy.

6.2.1 Traits of expertise in diagnosis and problem solving that might be perceived in the workplace by members of the interview group

Whilst the 3 year PQE benchmark used in this study might be more likely to equate to "proficiency" rather than "expertise" on the Dreyfus scale; individuals may not only identify developing traits of expertise in those at the 3 year watershed, but also measure themselves against more experienced lawyers with whom they work. Traits of expertise may, then, inform the individuals' model of development as characteristics which they might or should develop or to which they might aspire (questions 2 and 4 of the developed interview).

6.2.1.1 Experts are faster than novices at performing the skills of their domain and they quickly solve problems with little error ("speed and accuracy")

Although both Blasi and Salthouse recognise the beginner's lack of understanding of the breadth of and interrelationship between variables involved in appropriate decision-making and in taking solution steps (what to do and when to do it), the work-based learning outcomes at 5.1 to 5.4 (SRA, 2008b; Appendix II) place a great deal of emphasis on compliance with deadlines, implying an understanding of the length of time tasks are likely to take.

Blasi relates speed on the part of legal experts to the efficiency or "collapse" of their stored knowledge, at least where the problem under discussion is routine for the expert:

> ... we can expect experts to solve problems more quickly because less processing is required. ... Experts seem able to recognise the problem quickly and retrieve a solution method from memory, while novices are left with the slower and weaker method of heuristic search for a solution ... What once required conscious thought becomes for the expert automatic, routine, and consequently much faster.
> Blasi (*op. cit.*: 344)

an analysis endorsed by Ropo in the case of the diagnostic expertise of teachers (in Bozhuisen *et al*, 2004:167).

If speed is axiomatic, at least in routine situations – recognised in most legal firms by the fact that the hourly charging rate of the junior is considerably less than that of the expert – the assumption that experts produce more accurate results is, however, worth question. In fields where objective "right answers" or more accurate predictions are possible, experts have not necessarily shown themselves to produce more accurate

results than computer systems. So, for example, Camerer and Johnson (in Chi *et al*, 1988: 202), distinguishing between expert performance and expert process, conclude – apparently only in routine activity - that "expert judgments in most clinical and medical domains are no more accurate than those of lightly trained novices" but suggest (*ibid*: 203) that "[w]hereas experts may predict less accurately than models and only slightly more accurately than novices, they seem to have better self-insight about the accuracy of the predictions". Unless the novices were peculiarly confident, one might speculate that their default position would be to assume that their solutions were wrong in any event. Camerer and Johnson do, however, conclude that expert *processes* might be more efficient (*ibid*: 211).

A peculiarity of litigation is that the "right" legal answer is unknown until it is determined by the trial judge or arbitrator: expertise might be assumed to lie in the accuracy of the lawyer's prediction, and in a "test case" even that may not be available. So Blasi comments that:

> in ... legal problems ..., the initial state of affairs is imperfectly known and there is no single perfectly specified goal: these problems do not have right answers, only better or worse ones. ... [P]roblems are generally large and complex, with solutions that span days, months or even years. There is only imperfect feedback about the effects of choices made along the way. ... [A] litigator can assess the wisdom of a particular tactical decision only after the case is tried and decided.
> Blasi (*op. cit.*: 349)

Furthermore, a "right" commercial answer for a client will be subjective and subject to change during the course of the retainer, lying in its fit as far as the client's personal and commercial objectives are concerned at the relevant time. For lawyers, then, an "accurate" solution might be best described as one that best recognises all the variables inherent in the situation, particularly including the client's objectives and which can be reached by the most cost and time efficient route.

Blasi provides a neat example of the different approach of experts and non-experts in Ned, in his first week, asked to decide whether a particular claim is suitable for summary judgment[23] and focussing almost entirely on procedure and case law:

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[23] In both domestic (CPR Part 24) and U.S. procedure, a mechanism for obtaining early judgment where the opponent's case is demonstrably too weak to be worth the additional time and cost of pursuing it to a full trial.

> [t]o Ned, this is a pretty straightforward matter. He remembers the basics about summary judgment from his civil procedure class in law school[24] ... His reading of the contract's warranty waivers and a couple of recent appellate decisions makes fairly straightforward the recommendation Ned puts in his memo to the partner on the case: Ned should prepare a motion[25] for summary judgment to get Clyde out of the case. Simple. Or so it seems to Ned. Ned is a novice.
> Blasi (*op. cit.*:322)

Ned later consults Ellen, the senior litigator with 20 years' experience, who:

> ... listens to Ned's presentation, goes over the file with him briefly, and then quickly responds: the firm will not recommend to Clyde that they move for summary judgment. While it is true that Clyde has a strong case ... other considerations compel Ellen's decision...
> Blasi (*ibid.*)

These other factors include the attitude of the opposing lawyer, in particular the risk that the motion might prompt him to take other action that would uncover evidence detrimental to Clyde; the likely attitude of the judge to the motion and the risk of antagonising him or her in a way that might adversely affect the future trial;[26] the time and cost of making the application and the likelihood of appeal from the decision, even if Clyde is successful. Ned has had to expend all of his available time on recalling procedure from law school and conducting research as if "from scratch" into law and procedure. Ellen is here incorporating into her method of problem-solving (her "expert rules") not only her understanding of wider contextual variables such as the attitude of the opponent and the judge, but her understanding of the *implications* of making a summary judgment application at this stage. In conversation with Ellen, Ned may be able to recognise the relevance of the contextual variables, but his experience of cases progressing to trial is likely to be so limited that the implications ("not knowing what to do and when to do it") may be invisible to him. The nature of litigation practice, when most cases will stop short of trial or other significant stages, means that he may never have seen the *implications* of tactical steps taken - as if the opponent in chess always resigned during the middle game or the patient always died – so further restricting his representation of the problem to the here and now. Nathanson suggests that:

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[24] The equivalent stage for the English or Welsh student would be during the Civil Litigation compulsory element of the LPC.

[25] In this jurisdiction, an application.

[26] Except in specialist contexts such as the Commercial Court, the procedural and trial judges will not be the same person in England and Wales.

> [o]ne challenge new lawyers have with [evaluation of potential solutions] is that they find it difficult to evaluate options when they do not know what the possible consequences are really like. How would they know what could possibly happen at a trial – especially the emotional highs and lows of unpredictable events – unless they have experienced one themselves? ... To learn about consequences, new lawyers must consult more senior lawyers who have had the necessary first hand experience.
> Nathanson (1997: 45)

Given that Ned will necessarily be under pressure, as a newly-qualified lawyer, to meet workload and billing targets (external expectations as to "production proficiency" in Salthouse's terms), and that his time was spent on matters such as recall of procedure and research on the law, the question for Ned will be whether, on a future occasion he recalls a) the kind of variables considered by Ellen and b) if he does, he is able to evaluate the impact and future implications of such variables on the problem at hand. The "second generation" cognitive theories described by Holyoak (*op. cit.*: 308) would suggest that Ellen's list of appropriate variables at least, possibly by way of a checklist, could be taught directly to Ned, accelerating his progress to the Dreyfus' advanced beginner. However, Holyoak later (*ibid*: 327) suggests, paralleling those who emphasise the more intuitive aspects of expertise (*e.g.* Atkinson and Claxton, 2000), that "the knowledge embodied in a constraint network typically will involve subtle interactions and contextual shading that 'expert' rules often may miss". Such subjective shading may, of course, be precisely the kind of distraction that, in other fields, renders the expert's view less accurate than that of the computer and also seems, I suggest, to be more relevant to the question whether the more diffuse implications of action can be taught - as "expert rules" - to Ned and his peers. So doing would, I suggest, first of all involve recognition by Ned that expert rules were being employed and that they had value (see 7.6.1, 10.3.4).

Ellen is also, in this example, spectacularly able to *articulate* to Ned the variables she is considering and her assessment of the possible implications as well as being very open about the problem-solving thought process she is employing. Some particularly intuitive experts may not be able to do this (operating at the "unconsciously competent" level), or might espouse theories that are not those actually employed by them as, for example, in the Dreyfus brothers' example (*op. cit.*: 152) of pilot instructors teaching a method which they had themselves been taught and believed themselves to employ but, on testing, were found not to use.

Indeed, "[t]he expert-oriented theories of the Dreyfuses and Schmidt *et al.*, start from the assumption that how clinical decisions *are made* by experts is also how clinical decisions *ought to be made*" (Eraut, *op. cit.*: 138). Patel and Groen recognise two problems, relating accuracy of result to the problem-solving method employed:

> [t]he first question is why some experts are accurate in their diagnoses although others are not. The second is why inaccuracy is always associated with a transition from forward reasoning to backward reasoning. Our plausible explanation is that such a transition is caused by feelings of uncertainty regarding one's conclusions ... It seems reasonable to assume that in some cases experts may not be aware that their knowledge is leading to an inaccurate diagnosis but are simply aware of the existence of the nonsalient cues that cannot be linked to the main diagnosis. In other words, the only difference between accurate and inaccurate diagnosis is the presence of loose ends.
> Patel and Groen, (in Anders Ericsson and Smith, 1991: 118)

This idea that experts reason in one way (forward-reasoning) whilst beginners reason in another, less productive, way (backward-reasoning), appears in many of the studies. In forward-reasoning, the problem solver works "forward" from the known (symptoms) to the unknown (diagnosis, solution): inductively. This is contrasted with backward-reasoning by which the problem-solver seeks to work backwards from a hypothesis to see whether the known information fits within it: deductively. Even if beginners such as Ned can be taught to use inductive reasoning (working forward from the set of variables and implications provided by Ellen), treating that method as an aspect of transferable "domain independent expertise", if its usage depends on the possession of a store of experience and a wide repertoire of potential variables and implications from which to select generic factors potentially transferable to other situations, or both, teaching the process alone will be insufficient to improve Ned's future performance.

Patel and Groen, in addition, suggest that recourse to backward reasoning might occur as a default position even in experts where the solution reached otherwise appears incomplete. Blasi comments that:

> ... it is not difficult to see that it is the expert physician's vast store of templates, of patterned symptomology, that makes forward reasoning possible. Only when this schematic knowledge fails to produce a match to the pattern of symptomology does the expert physician retreat to the much slower cycle of backward reasoning from symptom to hypothesis to test, and repeat.
> Blasi (*op. cit.*: 346)

Holyoak, (*op. cit.*: 306) identifies "backward search from goals" as being characteristic of *both* novices and experts in computer programming (although experts and novices approached the detail of the task differently) because "the initial state places few constraints on the solution path" and suggests that in fact, experts may switch between the two modes. Indeed, it might be noted that it is precisely this balancing of hypothesis, test and solution that is commended by Schön and his followers in the archetype of the "reflective practitioner", a paradigm, however, necessarily as I will discuss at 7.6.1, formulated as an approach to novel problems; *i.e.,* those difficult even for the expert. Nevertheless, discussing a connectionist approach combining both cognitive representation and problem solving process as a "third generation" of expertise theories, Holyoak sees the process of forward-searching not only as a means of solving problems but also as a means of enhancing the quality of future performance:

> relatively free problem exploration would be expected to foster the acquisition of board knowledge of problem constraints and regularities ... such learning would yield a rich constraint network, which in turn would facilitate the solution of relatively novel problems in the domain.
> Holyoak (*op. cit.*: 325).

Blasi describes the distinction between forward- and backward-reasoning without indicating a preference for either in litigation or dispute resolution. Forward-reasoning might seem appropriate for the diagnosis stage, where there might be positive benefits in considering whether the claim might, for example, be best characterised as one in contract, or one in tort, or one in breach of statutory duty. Similarly forward-reasoning might effectively generate a range of possible solutions or realistic results. Where the client is able to articulate a positive objective, however; or where one is seeking to establish whether the facts meet a given set of criteria (as, for example, whether the threshold for an application for summary judgment is met, even before making higher level decisions about whether, even if it is met, it would be tactically appropriate to make the application) some element of backward reasoning in establishing which, if any, possible solution routes or analyses might be susceptible of meeting that objective, is inevitable. Nathanson, (1997) similarly, proposes a model of legal problem solving incorporating some elements of backward reasoning (hypothesis generation and testing in the context of a novel problem from determined goals).

For this study, then, it might be expected that members of the interview group would be quick to identify their own lack of speed in both diagnosis and problem solving.

They may also have seen examples of experts considering a broader range of variables and implications in analysing appropriate solutions and of forward-reasoning (and judicious use of backward-reasoning) in action. Forward-reasoning not only has significance as a problem solving technique in legal practice, but also as a means of learning from experience. The apparent reliance of forward-reasoning on a pre-existing repertoire however has implications for individuals' abilities to remark such variables as relevant and potentially transferable in the first place, or to understand their interrelationships and implications, that is, to engage in modes of reflective thinking that identify – without help - points of potential application for a future occasion, before that future occasion has manifested itself (see 7.6.2.3 and 13.4.1).

6.2.1.2 Experts see and represent a problem in their domain at a deeper (more principled) level than novices; novices tend to represent a problem at a superficial level ("depth")

Ned treats the problem as one of ("black-letter") law and procedure, very much as an examination question requiring him to "Advise Clyde" in isolation and at a specific point in time:

> [a] law student given this kind of problem is trained to identify and analyse the legal issues. Since this problem is a real one, not many legal issues arise. ... For the [practising] lawyer, the first issue would not be [technical] enforceability [of the contract], but to identify the nature of the problem. The lawyer needs to define the problem to make sense of it ... One of the most direct ways to define the problem ... is to identify the client's goals.
> Nathanson (*op. cit*: 55)

Ellen, however, seeks to advise Clyde, the real person, in an ongoing situation in which actions have implications. Ellen might categorise the problem as an instance of client-centred risk management or of cost/benefit analysis. Similarly, Chi *et al* refer to studies in physics where "experts used principles of mechanics to organize categories, whereas novices built their problem categories around literal objects stated in the problem description" and in programming where "the experts sorted [problems] according to solution algorithms, whereas the novices sorted them according to areas of application" (Chi *et al, op. cit.*: xix).

This focus by novices on the immediate and concrete is summarised by Anzai (in Anders Ericsson and Smith, 1999: 65) reviewing a series of studies in physics, as revealing that "novices tend to interpret physical phenomena not on the basis of the

underlying physics principles but by direct observations based on common sense".
When the problem presented is the first of its nature that the individual novice has ever
encountered, of course the novice's lack of experience of other cases with similar
factors will prevent any deeper categorisation by reference to such shared factors: for a
beginner, every case is still unique (see 12.3.2).

So, the beginner's struggles to combine information; create an appropriate problem
representation; identify variables and assess how their implications for the solution
coalesce to prevent the diagnosis and proposal of solutions at anything but a superficial
level. That superficiality may also lead to inflexibility: Ropo found expert teachers
adapted their original lesson plans to suit the situation, whereas novices stuck more
rigidly to their plans (the "rules" approach described by Benner, *op. cit.*, of those at the
Dreyfus "novice" stage). Experts "seemed to have deeper knowledge of the students
and classroom problems than novices or postulants".[27] Lesgold *et al* (in Chi *et al*,
1988:311 at 338) suggest that experts treat their cognitive patterns with less
absoluteness than do novices: "the situation in experts, in which tentative schemata are
held as tentative until rigorously tested, [compared with] the situation of the true novice,
whose schemata are tightly bound to the purely perceptual", that is, the inflexibility and
"guidance" focus of the Dreyfus novice. Put more pragmatically, one needs to be
confident with rules and the implications of breaking them before having the confidence
to do so.

One wonders whether members of the interview group are in a position to perceive
that their expert colleagues categorise problems in a different way; one that links
problems together at a more principled level of similarity as well as one permitting
resources to be spent on more sophisticated solutions that reflect an assessment of the
likely implications of action and allow for flexibility in ongoing problem solving.

6.2.1.3 Experts spend a great deal of time analysing a problem qualitatively ("analysis")
Finally, the sophistication of the categorisation by the expert of the nature of the
problem – itself a demonstration of the expert's understanding of a broader range of
variables and implications – promotes efficiency in working towards a solution:

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[27] A term adopted by Ropo to describe subjects who were interested in but not involved in teaching – true
novices in the Dreyfus sense.

> [t]here is one activity in which experts in a variety of fields have been found
> to invest more effort than have novices. It is the activity of constructing a
> problem representation – identifying and elaborating constraints, goals,
> relevant principles, and analogues ... the usual consequence is that the
> problem comes to be recognised as of a familiar type that the expert can solve
> in a straightforward manner, thus achieving net savings in time and effort over
> the novice, who must proceed in a more groping manner.
> Scardamalia and Bereiter, (in Anders Ericsson and Smith, 1991: 172/3).

Whilst Ellen did not appear to spend a great deal of time in analysing the problem presented to her by Ned, she was able to combine information from a wide range of sources and assess at a more sophisticated level whilst "go[ing] over the file with him briefly, and then quickly respond[ing]" (*op. cit.*). The efficiency of her expertise in what was, for her, a comparatively routine situation, allowed her to expend her time not on close analysis of law and procedure but on identification and analysis of the most relevant variables in reaching a solution so as to represent it as something more than a quasi-academic problem in law and procedure. Nevertheless, in a non-routine problem, Blasi suggests, Ellen's approach might still be different to Ned's:

> [i]n non-routine problem situations, however, experts seem to spend more
> time than novices in solving the problem. ... experts spend more time
> understanding the problem and developing a full problem representation (or
> situation model[28]), while novices tend quickly to turn to attempts to solve the
> problem. Experts generate more potential solutions to novel problems
> because they are able to consider a wider range of solution procedures. ...
> Metaphorically, having fewer schematic building blocks to work with, the
> novice quickly finishes construction of a simple situation model, while the
> expert struggles to construct a much more complex edifice.
> Blasi, (*ibid*: 344/5)

Ropo (*op. cit.*: 168) puts this phenomenon succinctly as "experts take longer to represent a problem to themselves, but they end up with a better representation of it". Pragmatically, the beginner may also be struggling with external pressures – targets; training commitments; lack of juniors to whom to delegate; shared secretarial resources; continued socialisation into the profession and the firm; lack of autonomy; new responsibilities such as marketing - that are unlikely to hamper the expert. Lack of autonomy may be an indicator of novicehood, *pace* Dreyfus, but can also be an inhibition to the development of expertise.

Holyoak puts this working harder of experts – on the problem itself - robustly as "experts sometimes feel more pain" (*op. cit.*: 304). Whether members of the interview

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[28] See discussion at 6.2.3.2 below.

group perceive a difference in approach to such problems and, more importantly, see it as an approach that will ever be valid or useful for themselves will depend on the extent to which the expert articulates any of the process, variables and implications, whether for teaching purposes or as part of his or her own reflection-in-action (see 7.6.1)

6.2.2 *Aspects relevant to the deliberate acquisition of expertise or to a positive learning orientation as inherent in expertise*

The preceding discussion has served at least to identify some aspects of expert behaviour that might be identified by novices in the interview group with a view to explicitly emulating them if it is possible for them, with their very limited experience and autonomy, to do so: Ellen's checklist of additional variables to be considered; forward-reasoning; consideration of the implications of action; expending available resources on representing and understanding the problem rather than leaping to solution identification. Such heuristics allow for what Patel and Groen (in Anders Ericsson and Smith, 1991:93 at 119) describe as "domain independent expertise". On the face of it, therefore, beginners might explicitly learn checklists of variables and be inducted into the likely implications of different solutions as propositional information transmitted from their seniors as well as being encouraged to try forward-reasoning (unless it, by definition, can only be used when a store of possible diagnoses and solutions has been accumulated, by whatever means) in the classroom or in the very limited domain of entry-level activity. Such learning may be for deployment in that context or, aspirationally, in preparation for the time when they will be presented with more expert-like tasks, a topic for further discussion in this section. In addition, however, one might ask whether a positive learning orientation – which might be perceived by beginners in the experts with whom they work – is inherent in the concept of expertise, *per se* (a concept discussed at 6.2.2.2 below). Phenomena related to the deliberate acquisition of traits akin to those of expertise emerge from questions 3, 5, 6, 7 and 8 of the developed interview structure discussed in Chapters 10 to 13 but in particular at 13.3.2 to 13.4.

6.2.2.1 *Experts excel mainly in their own domain*

This phenomenon – related to Salthouse's (in Anders Ericsson and Smith, 1991) concept of "not knowing what to expect" – may have resonance for the interview group given their attachment to the particular field in which they are working. As their prior field-specific experience during the training contract is, as I have indicated at 2.5, likely

to have been very limited, domain definition may also be a means of control, defining for the individual the domain to be mastered in manageable terms, in which case it might be expected positively to inhibit development of "domain independent expertise" that might be significant in terms of transfer to a different – perceived as currently irrelevant – domain (scope). Indeed, the very statement that expertise is largely domain-limited suggests that there are significant impediments to such transfer. Further or alternatively, attachment to a particular field may be related to the vague question of the precise identity acquired on qualification; symptomatic of a need to define their own status not only as "a solicitor" but as, for example, "a commercial litigator". To the extent that confidence and security comes with expertise, the smaller the domain, the easier it is, of course, to achieve expertise in it. A broad definition of the domain imposes a much higher threshold, so that there are fewer experts overall and most people working within the domain, including many of those defined as experts, will find something to improve. Improvement then will be as to quality and perhaps less likely to be perceived as crossing thresholds or involving transfer to threatening new domains (scope): there will always be something towards which to work. Benner (1984:178) recognises explicitly the fairly obvious point that the same person might be an expert in a field where he or she has experience, is motivated and has relevant resources but a novice in a field where those aspects are missing. This may be another factor explaining the transformation of an individual who is highly experienced at and successful at performance in – in the context of the interview group - a classroom context into a somewhat distressed novice in the field (Ropo, in Boshuizen *et al*, 2004: 159 at 163, reports hostility and distress in expert teachers asked to teach an unfamiliar topic to unfamiliar students). A distinction arises between what Scardamalia and Bereiter (in Anders Ericsson and Smith, 1991:172 at 179) describe as "knowledge telling, usually sufficient for an examination" (see also Nathanson, 1997: 45 quoted at 6.2.1.1) and "knowledge-transforming", both solving the problem faced and enhancing expertise. The problem of transfer of substantive knowledge and skills from the LPC classroom is not, necessarily resolved by the training contract, as so many individuals qualify into what, as will become apparent at 10.3.1 and 10.3.3, they perceive as a very different domain in which existing knowledge and skills appear irrelevant. Nor can it necessarily be assumed that – at least outside the CPD classroom – expert learner skills will transmute, without aid, into skills appropriate for learning in the task-conscious workplace and suggestions that new learning techniques might be acquired may not

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necessarily be welcomed by those who may feel that at least they ought already to be able to define themselves as "expert learners".

In support of the contention that some forms of expertise are domain independent, Holyoak, however, (in Anders Ericsson and Smith, 1991: 307) suggests, that – critically - with appropriate support, individuals can learn to identify and to transfer abstract problem–solving skills and methods of analysis (that is, expert rules as to process if not as to variables and implications) into new domains. I have already discussed at 6.2.2 above the possibility of learning lists of relevant variables and techniques of forward-reasoning both substantively and as a method of developmental engagement with experience. Blasi suggests that such underlying analogues and theories can be identified and applied as a means of assisting the process of problem recognition and solution (*ibid*: 318). Nathanson (1997) suggests a problem-solving model for application in legal practice. Boreham (1988) treats templates and models for diagnosis as useful despite their rigidity, at least for the Dreyfus (1986) beginner, who may be inclined to demand them in any event.

Somewhat pejoratively, such transferable and generic process skills have been described as "weak" as opposed to domain-specific "strong" methods. For example:

> [w]eak methods are general methods independent of domain-specific knowledge and include generate-and-test-procedures, trial-and-error search, means-end analysis and problem reduction. Strong methods involve various strategies to exploit domain-specific knowledge to find an efficient solution.
> Anzai (in Anders Ericsson and Smith, 1991:64 at 71)

Guberman and Greenfield, writing from the perspective of cognitive psychology, (1991:254) consider both "the use of existing knowledge and skills to acquire new conceptual knowledge (vertical transfer) and the application of existing knowledge and skills in novel contexts (lateral transfer)" and identify that "task familiarity" is insufficient to allow for transfer. The implication is that one must step back from the instant problem to identify the more "abstract" or generic technique or solution that is susceptible of transfer, possibly by way of the reflection-on-action espoused by the work-based learning outcomes and discussed further at 7.6. In the context of the "third generation" of symbolic connectionist theories of expertise, Holyoak (*op. cit.*: 313) suggests that the operation of experts can in fact be broken down into "units of knowledge" simpler than the complex heuristics generally regarded as "expert rules". If this is the case, then such units or sub-rules are clearly more easily applied across

domains than domain-specific rules that have to be interpreted and generalised before transfer can take place.

Such potential for transfer then might be explored in the workplace, but would, I suggest with Holyoak, need to be explored explicitly and with support that in an individual case may be missing or only provided on an *ad hoc* basis.

In terms of the deliberate acquisition of expertise, then,

a)   identification of and attachment to a particular domain may be related to professional identification and status (see 10.3.3.2);

b)   the new professional will understandably be focussed on understanding the new domain, and a limited domain at that, rather than engaging in aspirational activity that might allow for movement into a different domain (or, if the domain is defined widely, to betterment within it);

c)   expertise in classroom learning may not transfer to workplace learning;

d)   the extent to which the training contract is of assistance will depend on the closeness of the perceived "fit" between training contract activity and post-qualification activity (see 10.3.3.1);

e)   experience-based or theoretical appreciation of possible implications of different courses of action may be domain-specific. Checklists of variables may be domain-specific or, perhaps in the wider sense in which they include consideration of the client's overall objectives and financial constraints, susceptible to transfer across domains or aspirationally. Processes of analysis, equally, may be domain specific (as Wigmorean analysis of evidence in litigation) or more obviously transferable (forward-reasoning) across domains or aspirationally. Such application will, however, require workplace support and individual readiness to engage. Forward-reasoning, in particular, whether as substantive problem-solving technique or as a means of engagement with experience (13.4.1), may not, in the absence of extensive underlying exposure, be feasible without assistance.

Clearly simple identification of variables, implications and "expert rules" is not of itself sufficient to transfer "expertise" from one individual to another in the absence of immersion in the workplace and repeated "practice" (which might then add what Holyoak describes as "subtle interactions and contextual shading"), but it may assist or accelerate the achievement of expertise.

6.2.2.2 Experts have strong self-monitoring skills ("self-monitoring")

Even if external support for development is at the whim of the commercial objectives of the employer, if a subjective positive learning orientation (over and above participation in CPD updating) is concomitant with expertise itself; then one might expect the interview group to wish to emulate their seniors in this respect and the seniors to expect it of their juniors.

As a benchmark for the possession of such a learning orientation, experts have been shown to have a greater sense of their own calibration than novices. Chi *et al,* reviewing studies in a variety of fields, (*op. cit.*: xx) suggest also that experts, with their greater degree of exposure to problems within the domain, are better able to distinguish those that will be challenging, so assisting them in appropriate allocation of time.

A metacognitive self-monitoring is also seen as a positive aspect of an expert's approach to non-routine or ill-structured problems. Such conscious "reflection-in-action" is to be contrasted with a reflective approach to learning in the workplace, both discussed in more detail at 7.6. As with any process or problem-solving template, such as those identified by Boreham (1988), Holyoak (in Anders Ericsson and Smith, 1991), Blasi (1995) and Nathanson (1997), there seems no reason why its use should be confined to an expert approaching an ill-structured problem. Self-monitoring might, finally, be assumed to encompass a commitment to extension of an individual's expertise; the same "competence for development" shown at Fig. 2. Indeed, Bereiter and Scardamalia see a deliberate commitment to working at "the growing edge of expertise" (*op. cit.*: xi) as a defining characteristic of expertise properly so-called and to be contrasted with technical "specialisation": "[w]hen working at the edge of their competence, the more expert people go about things in ways that result in their learning still more." (*ibid*). There is a clear demarcation, they suggest, between the aspirational expert seeking to expand and enhance his or her expertise and the reductivist specialist, using a similar repertoire of routines and solutions to make his or her life easier:

> [t]he career of the expert is one of progressively advancing on the problems constituting a field of work, whereas the career of the non expert is one of gradually constricting the field of work so that it more closely conforms to the routines the nonexpert is prepared to execute".
> (*ibid*: 11)

This reductivisim, which may emerge in the developed interview structure at question 3, is, I suggest, in its aspect of taking control, related to the possible deliberate

constraining of the individual's working domain that may be present in the stressed beginner seeking to survive described earlier.

Without seeking to determine whether they emerged from those who had been expert learners in a preceding classroom context, Bereiter and Scardamalia (*ibid*:154) identify "expert-like learners" who "resemble the experts not so much in what they are able to accomplish but in what they are *trying* to do and in how they approach challenging problems". The distinction is between what Bereiter and Scardamalia refer to as the "best fit" strategy (*ibid*: 156) (described as attractive because it always provides some kind of solution): "[e]ven if the symptoms do not fit any known pattern very well, one can always select a pattern that fits better than the others"(*ibid*: 158) used by "non-expertlike" students (which I have described earlier as "backward-reasoning") and the "knowledge building goals" of the expertlike, the latter involving aspects of forward reasoning, "deep" rather than surface learning and an aspirational learning orientation. Given the context of and pressures on the individuals in the target group and as discussed above in the context of domain specificity, one might predict a tendency towards the non-expert approach as a means of taking control of a complex and uncertain domain.

The support of others such as Ellen, not only in articulating variables, implications and processes, but more generally, in defining whether aspiration is desirable, is significant. So, for example, van der Heijden (2002, 2003) concludes, not surprisingly, that employers fail in supporting development beyond "the employee's present contribution and familiar job domain" (2003: 163). I have already considered the contribution of the employer as a stakeholder at the CPD stage at 4.4.3 and its possible signal that deficit updating is not only necessary but sufficient. CPD may, in Yielder's views (see 5.2.1), also hold some responsibility in failing to equip individuals with strategies to develop expertise:

> ... the development of expertise in professional practice also involves the development of expertise in learning, which means that CPD and formal postgraduate programmes need to also develop meta-cognitive and self-reflective strategies so the professionals can retain "critical control" over their expertise.
> Yielder (2004: 77)

In the context of this study, then, the orientation to learning or manifestation of the competence for development is perhaps the most significant aspect of expertise, whether

the individual seeks to acquire expertise or whether it is an aspect of true expertise in any event. Even if members of the interview group have been expert or expert-like learners, the pressures of the early stages of post-qualification practice – including the lack of exposure to a sufficient quantity of practice to promote identification of transferable generic principles - may well depress that expertise as it would appear to create other regressions, so that it cannot be deployed, or cannot be deployed in any way that crosses the threshold of the limited present domain. If so, at what stage might those pressures have been released sufficiently to allow its deployment? The truism about having 40 years' of experience or one year of experience 40 times, in the sense of the desirability of engagement with that experience will be considered further in Chapter 7.

6.2.3 *Attributes of expertise derived tacitly from quantity and quality of experience*

Finally, it is important to consider aspects of expertise that it would seem are not susceptible of deliberate acquisition, however strong the learning orientation; helpful the external support; charismatic the expert to be emulated or explicit the checklist. Immersion in practice and exposure to repeated situations is fundamental to the development of expertise and the development of the attributes previously discussed, particularly those of the intuitive expertise applauded by the Dreyfus school. This final tranche of attributes is set out in preparation for the discussion of task-conscious, workplace-based activity in Chapter 7. Here, however, I consider the end product of quantity of experience in a cognitive sense relating to the organisation and storage of knowledge derived from that experience and its "compression" to permit the expert to assess, in problem solving, a broader range of variables than the novice and as a benchmark on which the other aspects of expertise covered in this chapter are founded. The quality of such experience, in terms of seeing tasks to the end such that the implications of actions are materialised underpins the understanding of the interrelationships of those variables and the suitability of potential solutions.

Yielder (*op. cit.*: 69), it should be said, criticises much of the literature in this field as favouring an interpretation that "the encouragement of implicit knowledge is preferred for professional development because it allows more cognitive space due to the increased use of long-term memory", preferring a more consciously self-critical, reflective approach to expertise in which, as for Bereiter and Scardamalia (1993), a deliberate commitment to personal betterment is necessarily inherent. Phenomena related to this tacit acquisition of expertise emerge from questions 2, 5, 6 and 7 of the

developed interview structure and are explored in the workplace at 7.3 and in the analysis at 12.3.2.

6.2.3.1 Experts perceive large meaningful patterns in their domain

Holyoak's "second generation" of expertise theories focussed on the knowledge of experts, its organisation and accessibility. A quantity of experience in the domain is said to lead to the presence and recognition of meaningful patterns within the individual expert's mind utilised both in diagnosis and in problem-solving as "crystallised" expertise "consisting of intact procedures, well learned through previous experience, that can be brought forth and applied to familiar kinds of tasks" (Bereiter and Scardamalia, 1993:35). Examples relating to "diagnosis" have been described as "chunks" (clusters of information derived from a finite list of variables, as with the restaurant orders memorised by Ericsson and Polson's subject, in Chi *et al*, 1988: 23); "illness scripts" (conditions for, pathology and symptoms of a disease, as described by Boshuizen in Boshuizen *et al*, 2004:73 at 75; a "stereotype" for a disease against which the presenting patient can be measured: Eraut, 1994:129); or as "schemata". Those more relevant to problem-solving would include situation models (*e.g.* Blasi, *op. cit.* and Patel and Groen in Anders Ericsson and Smith 1991: 93 at 116); and "mental models". Groen and Patel (in Chi *et al*, 1988:287 at 291) distinguish between the two on the following basis: "[t]he notion of a situation model may be considerably more general than that of a mental model, which is usually formulated in terms of knowledge of a device or a class of physical phenomena.[29] In contrast, a situation model would seem to be knowledge required to perform some kind of task". A mental model, then, might incorporate diagnosis and contextual variables, whilst a situation model might include problem-solving and other processes and understanding of the implications of action. There is, however, some tendency in the literature for distinctions between the various terms to be idiosyncratic. With available studies necessarily focussed on discrete types of expertise, the distinction, if there is one, between the cognitive processes involved in diagnosis and those involved in problem-solving tends to be elided and, for the purpose of the remainder of this discussion, the term "cognitive patterns" will be preferred as a generic expression.

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[29] the sense in which it is employed in the title of my study.

Blasi combines the two groups of cognitive patterns (*op. cit.*:337) in selecting "problem schemas" for use in the legal context, such problem schemas having two parts, "one for describing problems and the other for describing solutions". He then goes on (*ibid*: 339) to describe "mental models" and "situation models" as "schemas with the variables filled in"; that is, as applications to the actual problem under consideration that can be used as mental simulation to assess the effects of taking certain steps (that is, reflection-in-action) and which could – like the checklists of variables discussed at 6.2.1.1 - be shared between experts and novices:

> ... both Ned [the novice lawyer] and Ellen [the expert] have a situation model that might be broken down into fairly discrete models of the opposing counsel, the judge, the client and so on. Taken together, their situation models permit them to both think and talk about what might happen if certain actions are taken. At the same time, the situation model contains information about the likely direct and indirect consequences of actions. Thousands of theoretically possible but highly unlikely consequences are not included in the model (*e.g.* that the opposing counsel will commit suicide on receipt of the summary judgment motion) ... because Ellen has a much larger repertoire of problem-solution schemas on which to draw, she is able to build larger, richer and potentially more accurate situation models. For example, Ellen's problem-solving depends in part on her models of the opposing counsel and of the judge, who scarcely figure in Ned's mode.
> Blasi (*ibid*: 342)

The internal cognitive patterns of the two lawyers, nevertheless, differ in focus. Blasi acknowledges that "Ned may in fact know more of the current doctrinal law surrounding a summary judgment than ... Ellen ... whose law school training has faded into a dim haze" (*ibid*: 323). Eraut, indeed, suggests that "[r]ecently qualified specialists have as good an information base as most experts. This led to the hypothesis that it was not propositional knowledge in itself which characterised expertise, but having it better organised and more readily available for use" (*op. cit.*: 129).

However, whatever her approach to the purely legal and procedural aspects of the problem, Ellen is able to proceed directly to analyse other factors not only because of her knowledge of the implications of a wider range of variables but because that experience has allowed her to organise her knowledge more efficiently:

> [t]he knowledge of experts is organized in ways that permit the expert to recognize patterns that are entirely invisible to novices in complex situations. In routine cases, this organized knowledge permits and expert merely to match a problem situation to a stored "problem schema" and to retrieve from memory the associated solution procedure. In more complex and uncertain situations, the schematic knowledge permits experts to construct mental models that capture much of the complexity of the situation and to "run" the

mental models in simulation in order to evaluate the likely consequences of
alternative courses of action.
Blasi, (*op. cit.*: 318)

A different example of legal analysis (Lawrence, in Chi *et al*, 1988:239), evaluating the
sentencing approach of three Australian magistrates – two expert and one novice –
found similar distinctions in approach to what was inherently an ill-structured domain,
in the following areas:

a)   overall frames of reference;

b)   in some, but not all, cases, selection of relevant information;

c)   inferences drawn from available information.

such that "experience" had created reductivist "patterns for reducing workloads"
(Bereiter and Scardamalia would regard such an objective as definitive of the specialist
non-expert); similar goals and perspectives as well as "ideas about what to look for, and
ways to follow up leads in the data. The simulations of the experts were markedly
different from that of the novice in pulling leads out of the files and reports" (Lawrence,
op. cit:256-7).

Such efficient cognitive organisation would appear to be the product of repeated
exposure to problems in the same field, such that cognitive patterns emerge both for
diagnosis and potential solutions without any conscious engagement with that
experience. A problem of domain definition, as shown at 6.2.2.1, is to identify what
might constitute such repetition within the same domain. The smaller the domain, the
more restricted the number of potential cognitive patterns susceptible of creation and,
given the overall homogeneity of the experience, the easier to accumulate them.
Further, the difficulty of domain definition creates a difficulty in distinguishing between
betterment within a given domain and aspirational activity seeking to extend the
domain. Bereiter and Scardamalia place considerable emphasis on the "interaction
between domain knowledge and immediate cases" (in Anders Ericsson and Smith,
1991:170 at 175), finding a difference between novices and experts in their *use* of
knowledge akin to both that asserted by Schön to represent "reflection-in-action" (7.6.1)
and what Holyoak (*op. cit.*) sees as a benefit of the use of forward reasoning:

> … differences may also be found in the back and forth *process* that goes on
> between domain knowledge and particular cases. Expertise is characterised
> by high levels of such activity, whereas non-expert behaviour is characterised
> by an attenuated or unidirectional passage of information. The result is that
> experts keep enhancing their competence through encounters with particular

cases, whereas this is less true of non-experts ... the dialectical process by
which domain knowledge enhances responses to particular cases and
responses to particular cases enhance domain knowledge may go some
distance toward explaining how experts got to be experts in the first place.
Bereiter and Scardamalia (*op. cit.*: 178)

Without the engagement seen by Bereiter and Scardamalia as concomitant with
expertise, the creation of cognitive patterns is, in the context of the vector of
professional development (Fig. 1), rather static, enabling individuals to increase
efficiency in the kind of activity in which they are currently engaged. In some domains,
that efficiency can be extended infinitely: once I understand the rules of chess, I do not
require anyone else's permission to play a more sophisticated game. In others, such as
litigation, there is an aspect of moving on, being ready to extend the domain, embedded
in the competence for personal development but requiring active engagement with the
cognitive patterns derived from experience in order to become an expert in the Bereiter
and Scardamalia sense as opposed to a specialised non expert operating in a limited
domain.

6.2.3.2 *Experts have superior short-term and long-term memory ("memory")*

A concomitant of superior cognitive organisation is that "the automaticity of many
portions of [experts'] skill frees up resources for greater storage" (Chi *et al*, *op. cit.*:
xviii). Anders Ericsson and Smith (*op. cit.*: 15) see memory as relevant to static pattern
recognition only but also find some areas in which what Patel and Groen describe (in
Anders Ericsson and Smith, 1991:93) as "enhanced recall" is not an expert characteristic
as, for example, where speed is a characteristic of the activity or where the general
population also has access to the knowledge base. Such memory can be "trained" (*ibid*:
29). What is perhaps of greater significance is that, if or to the extent that experts
appear to show more efficient memory, the efficiency lies not in the breadth of that
memory but that

the patterns experts learn to recognise are ones of *high significance.* Expert
knowledge is not just a head full of facts or patterns, a reservoir of data for the
intellect to operate upon. Rather, it is information so finely adapted to task
requirements that it enables experts to do remarkable things with intellectual
equipment that is bound by the same limitations as that of other mortals.
Bereiter and Scardamalia (*op. cit.*: 29, 30)

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Boshuizen describes a process of knowledge encapsulation, once the student has dealt with "knowledge accretion, validation and integration" in the early part of professional training:

> ...when the student's clinical reasoning process is characterised by lines of reasoning consisting of chains of small steps, commonly based on detailed, biomedical concepts, sometimes supported by notes and sketches. These kinds of exercises result in a well-integrated, validated knowledge network Boshuizen (*op. cit.*: 75)

Many lawyers would question the integration of the law student's knowledge as presented at the point of qualification. Contract is the usual suspect, frequently taught in the first year of the degree (and therefore completed some five years prior to qualification) and not obviously integrated with related subjects (tort, employment, commercial law) that might be studied in the later stages of the degree. Remedial steps are frequently undertaken during the LPC and sometimes also by firms to keep the propositional knowledge of contract at the forefront of a student's mind and, in the early stages of work within a firm, to demonstrate its application to particular fields of practice. Boshuizen would, however, see the existence of a "well-integrated network" of knowledge, including the transfer across domains, as a necessary precursor to the making of:

> direct links of reasoning between different concepts. The more often these direct lines are activated, the more the concepts they include cluster together and the more a student is able to make direct links between the first and last concepts of such a line and skip the intermediate ones. ... This process was termed "knowledge encapsulation". ... This ... accounts for the automation involved ... The third learning process is illness script formation. Scripts are based on experience ... Network-based reasoning is done step by step. In the case of encapsulated networks, these may be big steps, but they are still taken one at a time. Illness scripts, on the other hand, are activated as a whole. ... For the sake of completeness we must add a fourth learning process. Diagnosing and treating patients leaves traces in the memory. These traces can be used later and function as a shortcut to activate relevant knowledge ... Boshuizen, (*ibid.*:75)

What they have in common is the suggestion that the expert is able to short-circuit search through presenting facts or symptoms for those that might be relevant by recognition of unconscious profiles or models created through the many hours they have spent in the workplace and retrieval from a repertoire of potential solutions. Such schemata serve both to identify relevant variables and implications but also as models

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against which the current situation can be measured to identify the extent to which the current situation differs from stored models. It is implicit in Blasi's suggestion that the schemata of expert lawyers are not only more efficient, but also include more variables: as if the efficiency of diagnosis or problem-solving heuristic created by the structuring of the expert's knowledge into such schemata allows for better recognition of the wider context of the problem.

6.3   Conclusion

The interview group is likely, I suggest, to be in the phase labelled "advanced beginner" possibly verging on "competent" whilst those at the watershed might be "proficient" (6.2, see also 10.3.4). The traits of expertness most likely to be apparent to those in the interview group in the workplace will, I suggest, tend to be those relating to speed and accuracy (6.2.1.1). They may – assuming that they are supervised by people prepared to articulate and explain their own thought processes – understand that the expert is able to take into account a broader range of variables and see implications that their limited experience does not permit them to. This may, however, be hampered in the absence of a degree of experience in the field permitting application of propositional knowledge into a "real " context (6.2.3.2) and forward-reasoning (6.2.1.1) or an articulate and helpful senior and perhaps also by a tendency to categorise problems (6.2.1.2) concretely and in a way that obscures commonality and the possibility of transfer between fields. Difficulties in following strategies through to their conclusions and the overall conceptual difficulty in identifying a "right answer" in litigation (6.2.1.1) may preclude them from identifying experts' solutions as more accurate (although the mere fact of their being proposed by an expert might lead them to assume that such solutions are necessarily more "right").

A key to the development of the interview group will be its members' self definition of the domain in which they are working (6.2.2.1). The impact of messages sent by the employer, supervisor and by CPD activities, as well as workplace pressure to perform and meet targets will contribute to the individuals' concepts: whether on the one hand they see themselves as working towards or having achieved reductivist "specialisation" within a very limited domain or on the other, as aspirationally continually working towards betterment within and extension of a widely framed domain.

There may be a point within the first few years of development where the focus shifts, sufficient control and confidence having been attained that the individual is ready to

consider more aspirational activity or, in Bereiter and Scardamalia's (1993) sense, move into an expert's career (6.2.2.2). That point may differ for different types of activity, different firms and according to the personality of the individual and it may be at that point that the individual can be assisted by work, with a suitable senior (6.2.2), on transferable expert rules and checklists of variables.

Nevertheless, there would appear to be an irreducible minimum of repeated exposure to similar situations required to aid expertise by allowing both:

a)   deliberate reflective forward-reasoning identifying generic transferable principles for future application and with an element of metacognitive self-monitoring (6.2.2.2); and

b)   the formation of cognitive patterns as a result of quantity and quality of experience (6.2.3). Here the responsibility is that of the workplace in ensuring that the individual is allowed to have such sustained experience, so "remedying" the possible deficiencies of the training contract in that respect.

CHAPTER SEVEN - LEARNING AND REFLECTION IN THE WORKPLACE

> By three methods we may learn wisdom: first, by reflection, which is noblest; second, by imitation, which is easiest; and third by experience, which is the bitterest.
> (attributed to Confucius, quoted in Hinett, 2002)

7.1 Introduction

As shown at 4.3.1, the minimum learning-conscious CPD activity each year is 16 hours. The task-conscious workplace will, consequently, remain the quantitatively more significant environment for post-qualification learning. In this chapter I examine concepts of workplace learning; then consider the extent to which Knowles' andragogical assumptions, derived from the classroom, might operate in the workplace in the shape of the competence for development (see Fig. 3). Having introduced the idea at 6.2.3 that repetitive quantity of experience in the workplace may serve to embed expert schemata and collapsed knowledge, I then consider the effect of quality of experience and other unconscious learning in the workplace. Finally, in pursuit of "engagement of experience" I consider more deliberate learning strategies, including but not limited to reflection-on-action, usable in the workplace.

Fuller, *et al* (2007) identify a number of characteristics of the "expansive" workplace learning environment as contrasted with its "restrictive" equivalent. Law firms in the private sector will differ in their placement on the continuum between the two and the approach may be very different during the sheltered and explicitly learning-focussed (and regulated) training contract. Nevertheless, as discussed at 2.5, expectations and activity during the training contract may still differ significantly (Boon and Whyte, 2002 and 2007) and this is of course not confined to the legal professions, Billet (in Rainbird, Fuller and Munro, 2004: 120) noting in the case of trainee hairdressers in different salons that "... in the same occupation, the particular workplace's goals and practices determined much of the structuring of activities and the kinds of tasks to be undertaken and to what standard".

At and from the point of qualification one recognises some of the set of characteristics set out by Fuller *et al* (*op. cit.*) as potentially likely aspects of the new solicitor's experience; as in particular tensions between time available for "knowledge-based courses and for reflection" and focus on transition to "full rounded participation" being expected to be "as quick as possible" so that the new expectations are met. That

said, even these criteria betray assumptions about the nature of workplace experience. "[L]ittle or no access to qualifications", for example, is given as a characteristic of a restrictive environment but there is no real tradition of post-qualification external qualification in the profession (4.3.2). Similarly, lack of "cross-company/setting experiences"; "participation in multiple communities of practice inside ... the workplace" or "opportunities to extend identity through boundary crossing" are virtually inevitable in a law firm divided into specialist departments. Even "transition ...to full rounded participation" fails to define the nature and scope of such full rounded participation (as opposed perhaps to the "legitimate peripheral participation" I discuss at 7.2.1): in the kind of tasks allocated to a newly qualified or in the kind of tasks allocated to an experienced solicitor; a problem not resolved, in fact, even by the work-based learning outcomes (SRA, 2008b; Appendix II)? Can a "multi-dimensional view of expertise" be adequately achieved in a professional organisation organised in the most part into such specialist departments, in any event?

A starting point for a discussion of the way in which learning as a process manifests itself in the workplace is that of Marsick and Watkins (1990), who advocate against "an overriding interest in how best to organise learning through training" (1990: 4) – betraying their standpoint by this pejorative use of the word "training" – in favour of learning in the workplace:

> through interactions with others in [the learners'] daily work environments
> when the need to learn is greatest ... the potential exists to help people learn
> more effectively in the workplace by focussing on real life rather than on
> prescriptions, examples and simulations.
> Marsick and Watkins (*ibid*: 4).

They contrast "informal" and "incidental" learning with formal learning, the latter being not only learning-conscious but "typically" (*ibid*: 12) taking place in the classroom. "Informal learning" is, in Knowles' (1984, 1998) terms, "self-directed" by the learner (although not necessarily learning in personal isolation: Marsick and Watkins, *op. cit.*: 209) but outside the classroom. "Incidental learning", a sub-set of informal learning, is conceptualised as a "by-product" of other activity, close to Rogers' "task-conscious learning" but differentiated from "informal learning" by the degree to which the learning is unconscious or "buried" (*ibid*: 14) in the task. "Informal learning" may, however, extend as far as deliberate mentoring or career development programmes (*ibid*: 15). As both are said to be enhanced by "proactivity,

critical reflectivity and creativity" (*ibid*: 7) - although incidental learning requires a greater degree of surfacing of its object before learning is said to take place – I suggest that it includes both the unconscious acquisition of schemata and pattern recognition from repetitive experience introduced at 6.2.3 as well as the deliberate "engagement with experience" with which I deal at 7.6. What is important, then, is not taxonomy but the recognition that informal learning, where it is taking place even in an "expansive" workplace context, is "non-routine because it occurs in an indeterminate, unsystematic, uncontrolled context" (*ibid*: 23), which, consequently, renders the learning of anything in the workplace - even mundane tasks - "non-routine" because of the variables of the context in which learning to undertake the "routine" task occurs. Billett argues that:

> [w]orkplace learning experiences may be seen as *ad hoc* because they are not consistent with practices adopted in educational institutions. Yet, … it is imprecise and misleading to describe engagement in work activities as being unplanned or unstructured, as they are intentional … these experiences are often central to the continuity of the work practice.
> Billett in Rainbird, Fuller and Munro, (2004: 118)

I suggest, however, that the distinction is more accurately about the focus of workplace activities (*i.e.*, "task" rather than "learning" conscious) rather than comparison with the structure of classroom activity. The point of workplace activity, at least once the training contract is over, is, of course, completion of the work and promotion of (frequently) commercial ends: the individual is expected to at least pay his or her way and achieve a level of productivity. Not only is any additional learning a by-product of such commercial drivers, but a by-product which, insofar as it permits aspiration *beyond* the current workplace role, may be inimical to employers. Even where, as might be expected in the professional workplace, increased efficiency in *existing* tasks might be acceptable or encouraged, lack of classroom-like structure is not necessarily counter-productive to learning in principle: part of what is to be learned in the workplace being an ability to deal with the implications of the lack of structure with which problems present themselves in practice. I discuss the interrelationship between employer and learner at 7.2.1.1.

Whilst workplace learning is frequently dealt with as a separate paradigm, it also includes approaches for which the umbrella term "experiential learning" is used. Whilst, of course, all learning derives from an experience of one sort or another, and some forms of experiential learning (as, for example, educational simulations used in

the classroom, see Cherrington and van Ments, 1994) are learning-conscious, the term may combine both tacit (possibly "incidental") as well as more deliberate ("informal") techniques such as mentoring or individual reflection. In terms of "what is learned", Henry, (in Warner Weill and McGill, 1989: 27), includes emotional and attitudinal learning, whilst Eraut (in Rainbird, Fuller and Munro, 2004:201) lists eight headings detectable to some extent in the work-based learning outcomes (SRA, 2008b, Appendix II) although notably lighter, as I indicated at 3.7.3.1, as to decision-making and judgment:

a) task performance (including efficiency and productivity) (sections 2, 3, 5, 6.3);

b) awareness and understanding (of the working context and values) (3.1, section 4, 6.4, section 8);

c) personal development (which would include the competence for development) (section 7);

d) teamwork (5.4-5.7; .section 6);

e) role performance (*i.e.,* time management, supervision, keeping up to date) (1.4 and section 5);

f) academic knowledge and skills (section 1);

g) decision-making and problem solving (1.2, 3.2); and

h) judgment (including risk identification and management) (3.3, 3.5, 5.2, 5.3, 8.2).

That said, the term, particularly in the sense employed by Kolb (1984) and drawn on by the reflective learning school of writers discussed at 7.6 below, is generally taken to involve some form of active engagement. Mumford (1995), however, identifies four different approaches in a survey of 20 male and one female company directors ranging from an entirely tacit response in which "[t]he person …claims that learning is an inevitable consequence of having experiences" (*ibid*: 14) through an "incidental", crisis-derived approach similar to that of Marsick and Watkins (1990) and of Mezirow ("learning by chance from activities that jolt an individual into conducting a post-mortem", (*op. cit*:14)) to more deliberate "retrospective" and "prospective" approaches closer in nature to the conventional experiential and reflective paradigms. Similarly, Cheetham and Chivers (2001) include "unconscious absorption or ismosis [*sic.*]" in their list of 12 informal professional learning methods, which occupy a similar spectrum from intuitive, unconscious methods such as practice and repetition (7.3, 12.3.2) and unconscious absorption, through a mid-range taking opportunistic

advantage of useful opportunities in the workplace such as collaboration and liaison, extra-occupational transfer and some aspects of observation and copying (12.6.3.1) and the more crisis-driven stretching, perspective switching (including "Damascus Road experiences") to the more self-consciously deliberately learning oriented mechanisms of reflection; feedback; mentor and coach interaction; psychological and neurological devices (such as deliberate lateral thinking; metacognition as a consciousness of one's thinking process; and some aspects of "reflection–in-action" (7.6.1) and articulation, frequently by teaching or speaking).

In this chapter, I consider only those areas of the copious canon of literature on "informal and incidental" task-conscious learning in the workplace which have direct relevance for the context of my own study, including some aspects of the Early Career Learning at Work (LiNEA) project of the universities of Brighton and of Sussex on "Learning during the First Three Years of Postgraduate Employment" which are of resonance for the target group: newly qualified in objective terms, but having functioned in the workplace for at least two years. The question of direct transfer of learning from the academic or vocational classroom is, then, somewhat remote, although the question of transfer from (or, indeed, use or relevance of: Boon and Whyte, 2002 and 2007; Fancourt, 2004) the training contract to post-qualification workplace may be significant for the individual's later personal model of what he or she needs to do to develop in that workplace, any gap between the two creating a deficit requiring immediate remedy. Secondly, because the focus of this study is on the learning and development of *individuals*, rather than that of their hosting or employing organisations, literature on "knowledge organisations" and "learning companies" – that is, on the wider organisation or employer as engaged in learning or the possessor of knowledge and expertise, derived from, for example, the work of Lave and Wenger (1991) on communities of practice - is omitted from discussion here. Indeed, Eraut (in Rainbird *et al*, 2004: 201) criticises Lave and Wenger as attempting "to eradicate the individual perspective on knowledge and learning and [failing] to recognise the need for an individually situated (as well as a socially situated) concept of knowledge in the complex, rapidly changing, post-modern world". The employing organisation remains significant as a contributor to or constrainer of any learning by individuals and it is for that reason that the LiNEA study is a relevant comparator for my own investigation. The primary research questions of the LiNEA project are

- What is being learned?
- How is it being learned?
- What are the main factors affecting this learning in the workplace?

Steadman, (2005:3)

a series of questions not unlike my own, although not extending to an exploration of any contrast between workplace task-conscious activity and learning-conscious CPD activity. Whilst the LiNEA publications do not set out any distinction between aspirational learning and enhancement of existing practice as a deliberate part of their sequence of research questions, their concept of a "trajectory" aligns very closely to that which I have earlier described as a "vector" of professional development (see Fig. 1) incorporating both tacit/intuitive and informal/deliberate approaches in different contexts:[30]

> [w]e therefore prefer to describe our typology as a progression typology, and to see a person's current position on each aspect as a point on a lifelong learning trajectory. We also anticipate that, at any one stage in a person's career, there will be three groups of learning trajectories. They will be explicitly and intentionally progressing along one group. They will be implicitly and unintentionally progressing along a second group. And at the same time they will be standing still in relation to a third group.
> Steadman, (2005:15)

The learning strategy assumed by the profession actually to be employed by individuals employed in pursuit of this vector, and the extent to which it is understood to operate independently of the employer or aspirationally is represented by the andragogical assumptions, mapped, in Fig 2, against the competence for development.

7.2   The extent to which the andragogical assumptions might operate in the workplace

As discussed at 5.3, the benchmark for andragogical literature is the *return to the classroom* of a mature student. Concepts of andragogy are not co-extensive with those of experiential learning:

> [f]or example, self-directedness is not a necessary prerequisite of experiential learning, though it may help. Nor does experiential learning require learners to be consciously aware of their own specific learning needs.
> Cheetham and Chivers, (2001:256)

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[30] A "trajectory" being a path through space, whereas "vector" carries with it a sense of time or magnitude as well as of direction. As I am interested in the increasing complexity (magnitude) of tasks, I prefer "vector" in this context.

For a newly qualified, the new and potentially threatening environment of the workplace might suppress or inhibit transfer to it of a comparatively self-directed approach acquired in a more learning-conscious environment.

7.2.1 *Prior experience*

It is, I suggest, the aspect of Marsick and Watkins' work that recognises the lack of explicit learning-focus in workplace activities that is the most helpful for this study; their delimitations of "incidental" and "informal" learning as concepts shading into each other and sometimes defined in contradictory terms ("incidental learning" for example being later described as necessarily "tacit and unintentional": 1990:127). Their concept of "informal learning", heavily influenced by Schön (see 7.6), also assumes not only relevant prior experience but also congruity between past experiences and current problems:

> [i]nformal learning thus demands that a person pay attention to the results of actions, and that he or she use judgment to compare these results mentally to a schema or model or what is expected based on past results. When it is clear that a situation does not fall within that schema, the learner realises that he or she cannot rely on prescriptions from the past ..."
> Marsick and Watkins (*op. cit.*: 76)

It is this assumption about prior experience that informs their rather naïve statements about professionals as a class *necessarily* being "autonomous, self-organizing and self-directed" (*ibid*: 118). So, whilst Lave and Wenger (1991) prioritise the newcomer to the prejudice of the ostensible "master", Marsick and Watkins position informal learning only at a point when the individual has sufficient experience in practice to draw on it to inform new learning, treating "professional" as synonymous with "experienced".

The extent to which the newly qualified solicitors a) are equipped (or feel themselves equipped) to undertake the tasks expected of them in the workplace – an aspect of self-knowledge (category 1 as shown in Fig. 3) - and b) are ready to employ any deliberate strategies (category 2a) to enhance the quality of their performance (category 3a) is likely to be strongly affected by the quality of their training contract and the nature of any discontinuity between it and the expectations of performance that arise on qualification. Even if there is substantial discontinuity, however, the existence of the

training contract separates them from two of the three groups of early career professionals participating in the LiNEA project. The trainee accountants (Eraut and Furner, 2002) and graduate engineers (Maillardet, Ali and Steadman, 2002) were still working towards external qualification status. The accountants in particular benefited from the audit; necessarily an activity involving a group of individuals at different levels of experience and a uniquely very structured and consistent training environment supporting the vector of development without discontinuity for new entrants:

> [w]hat this structure enables is the early allocation of simple tasks under close supervision, followed by gradual increases in the complexity of task, the amount of work that can be delegated at any one time and the level of independent responsibility taken by the trainee. As a result trainees became net contributors to their teams within a couple of months, which was highly motivating for them and accelerated their inclusion.
> Eraut and Furner, (*op. cit.* : 4)

Whilst a non-contentious transactional team in a law firm might share some of the predictability and structure of the audit, the level of that consistency is likely to be less than that of an audit team and the trainee solicitor is, in most firms, deliberately shifted from "seat" to "seat" during the training contract in order to cover both contentious and non-contentious work (this practice was no longer common in the case of graduate engineers: Maillardet, Ali and Steadman, 2002:14). The graduate engineers, however, found themselves doing makeweight work composed of isolated tasks:

> ...new recruits find themselves designing web sites, up-dating standard 2D engineering drawings by putting the data into computer programmes ... constructing and testing individual components, or working on similarly chosen, discrete, but basically routine tasks.
> Maillardet, Ali and Steadman, (*ibid*: 14)

Whether or not one considers the work to be makeweight, it is likely to be a necessary corollary of the seat system, as much as of any lack of competence on the part of individuals, that a similar degree of atomism may be present in the experience of the trainee solicitor. Further, as already indicated (Sherr, 2001:1), there may be pressure within the profession in both private and publicly funded sectors to assume that practice at all levels:

> [c]an be decomposed and embedded in procedure-governed practices ... The standardization of this approach implies a corresponding standardization of "the client" and her [*sic.*] legal problem. This in turn lays the foundation for

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fixed fees, since it is implicit that such work can be carried out by "least cost"'
labour at each stage.
Sanderson and Sommerlad, (2002: 6)

I contrast this top-down mechanisation - described by Sanderson and Sommerlad through the metaphor of the computer program, which itself has resonance in the context of the search for replicable heuristics of expert practice described in Chapter 6 - with the possibility that, as with Ned and Ellen, a trainee could be brought to awareness of a wider range of variables and implications affecting the effectiveness of a solution, enhancing, rather than reducing, creativity and flexibility in reaching that solution. The point of difficulty is, perhaps, to identify the stage at which the individual treats such collections of variables and implications or expert process checklists less as a recipe to be adhered to (the technical rationality described by Schön and apparent in the novices and beginners of the Dreyfus/Benner canon) than a repertoire to be deployed.

Although I have expressed reservations about their focus on the organisational nature of learning, what can usefully be derived from Lave and Wenger (1991), in the context of this study is, I suggest, firstly the concept of "legitimate peripheral participation" as a label for the atomistic, task-based structure that may represent the training contract (but recognising the inherent legitimacy and value of such apprentice tasks):

[a] newcomer's tasks are short and simple, the costs of errors are small, the apprentice has little responsibility for the activity as a whole. A newcomer's tasks tend to be positioned at the ends of branches of work processes, rather than in the middle of linked work segments. ...
Lave and Wenger, (*ibid:* 110)

and secondly their recognition of the "importance of near-peers in the circulation of knowledgeable skill" (*ibid:* 57) extending the sphere of those from whom learning is acquired (the "community of practice") beyond the single apprentice-master or expert (a concept with which I will deal in more detail at 7.5.6).

Fuller *et al* (2005: 65), however, suggest that the concept of legitimate peripheral participation fails to pay sufficient attention to those who have achieved "full membership" of the relevant body of practitioners but who continue to regard themselves as learners (here, the qualified solicitors of less than three years' PQE who may perceive themselves as holding this ambivalent status); that the concept underplays explicit teaching strategies other than osmotic (and tacit) apprenticeship and that it

acknowledges but does not explore the contribution of power to the operation of the community of practice.

I have already discussed some aspects of the power of the employer generally at 2.8.2 and as stakeholder in CPD at 4.4.3. Clearly the influence of the employer is much more significant in the workplace, particularly perhaps where that workplace is in the competitive private sector. Whilst the employee may have taken a positive decision to join a particular organisation in order to acquire expertise in a particular field; to work with a particular role model or even because the organisation has a reputation as particularly supportive to individual development, the entirety of the learning agenda beyond those initial decisions may be set by the employer. Employer and employee will presumably be *ad idem* that the employee should be able efficiently to carry out the tasks expected of him or her on qualification but their opinions might differ about the extent to which the training contract actually prepares the individual for that objective.

Even in the best-regulated organisations, the qualification structure itself may contribute to a conflict with the employer, by labelling individuals as "fully qualified" at a point when they, as is apparent at 10.3.3.6, identify expectations that they will now be able to perform tasks they have not been expected to perform before and to take responsibility for transactions when they have yet to see a transaction all the way through. In Lave and Wenger's terms, the period of legitimate peripheral participation is either incomplete at the point of qualification as a solicitor (and in some larger firms the recently qualified solicitors may continue to work in a comparatively dependent role in a large team without active client contact for some years) or is flawed in failing to expose the individual apprentice to all the tasks involved in full participation. The classic folk method of apprenticeship required the novice to produce an "apprentice piece" as demonstration of his or her skill: explicitly *not* a series of atomistic tasks but a complete product, with all necessary interrelationships correctly made. It is possible, however, that the modern trainee solicitor has, to continue the analogy, made a number of drawers; fixed the occasional handle and done some polishing, but has not had the opportunity to contextualise such learning into the creation of a complete miniature cabinet by, for example, managing a small case or transaction from beginning to end (and so coming to understand the implications of decisions made in so doing).

The position of the newly qualified solicitor as far as the point on the continuum between initial apprenticeship and Lave and Wenger's (*op. cit.*) conception of "mastership", or the Dreyfus brothers' (*op. cit.*) idea of "expertise" then, may bear

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considerably more similarity to that described in the case of the third LiNEA group of newly qualified staff nurses who had previous experience of working on wards as students:

> [f]or the majority of newly qualified nurses, the transition from student to staff nurse was "*massive*". It seems formally that the transition happens overnight, with all the accountability and responsibility of being qualified thrust upon the novice staff nurse ... "*I just wasn't prepared to do it. I didn't feel qualified to do it even though I was qualified on a bit of paper...*"
> Miller and Blackman, (2002:13. Their italics.)

This self-knowledge manifesting as perception of a deficit between the training period and the point of qualification occurred even though the majority of the nurses had the advantage of positive prior experience as student nurses, sometimes on the same ward (*ibid*: 16). Nevertheless, at a point about four to six months into their period of qualification, half the nurses described a crisis of confidence and feelings of incompetence sufficient in some cases to make them doubt their choice of career. Similarly, Filstad (2004) in a study of the use of role models by 11 newcomers to a real estate agency (some of whom had previous experience as assistants in real estate) found that the first four to six weeks of new employment were crucial in establishing or re-establishing confidence and personal feelings of competence. This is in striking contrast to the accountants, within their very structured, learning–focussed environment and without prior experience of accountancy, but consistent with doubts expressed by the engineers who had been employed in more atomistic tasks, as to their technical competence on leaving university. Perhaps the degree of crisis is related to the individual's realisation, irrespective of the relevance and utility of their previous experience, how much there is still to learn:

> [i]t may seem surprising that these graduates [engineers], as they begin their careers, are relatively less confident in their technical skills, but this may be because they have already realised what they still have to learn in terms of company and sector specific engineering skills. They already know enough to realise how much there remains to learn.
> Maillardet, Ali and Steadman, (2002: 17)

and that mistakes carry implications for clients or others. Consequently, one might conclude that whether the previous experience has been good or bad in the sense of adequately equipping the individual to perform tasks expected on "qualification" through a carefully graded supportive environment, or by way of completion of an

apprentice piece, and whether by virtue of a qualification "crisis" or mature understanding of the limited extent of the training period, the previous experience of young professionals instigates a learning orientation for at least a period after qualification. Boon and Whyte found that both objectively positive and objectively less than positive prior experience during the training contract may still produce a positive result:

> [t]hose who remember their training with fondness, as a beneficial and worthwhile experience, tended to do so for a combination of reasons. Primary among these was being given early responsibility, being kept occupied with lots to do, and being given support and help or constructive criticism when required. ... Yet a lack of support in a trainee's work environment can have advantages; advantages that were in reality only appreciated in retrospect. For instance a number of participants who reported difficult training contracts said their experiences made them independent, self sufficient and confident.
> Boon and Whyte, (2002: 45)

Where a deficit is perceived between the training period and expectation on qualification, as for example, demonstrated amongst newly qualified teachers:

> [t]here is a world of difference between the roles occupied by student teachers – roles that can readily be seen in [legitimate peripheral participation] terms – and what is expected of even the newest of newly qualified teachers, who are expected to participate fully in the practice of the school and the department from the first day of their employment: they have their own timetable, their own classes, their own workload that is, at the least, 90% of that of more experienced colleagues.
> Yandell and Turvey (2007: 547)

it is realistic to suggest that that orientation will be focussed on urgent action designed to remedy the deficit. Boon and Whyte conclude that a deficit may be present for some people but may to some extent be inevitable:

> [a] number of our participants doubted whether, for the day-to-day challenges and pressures of "real life as a lawyer", any education or training could properly prepare a person. Particularly with regard to the stress, the relentlessness of billing chargeable hours, the repetition and the consequent boredom. ... Those of our participants who did feel that their academic and vocational training gave them the tools to become confident and competent solicitors tended to do so because they qualified into the area of law in which they had spent their "best" seat as a trainee. Thus on qualification they simply continued doing what they had already been doing.
> Boon and Whyte, (2002: 42)

If and to the extent that the SRA's work-based learning outcomes are implemented, the learning-consciousness of what is now the training contact will be made more

explicit focussing on a generic, profession-wide set of competences and, arguably, reducing the risk of trainees being allocated to makeweight or secretarial tasks. In addition, the addition of the competence for development (Fig. 2) provides recognition of the need for the individual also to develop explicit strategies for personal development.

7.2.2   *Need to know/motivation and readiness to learn/orientation to learning*

Once qualified, the objectives of employee and employer may diverge as far as the aspirations of the employee to attain a personal expertise (a self-directed strategy designed to enhance the quality of performance in terms of categories 2a and 3a of the competence shown in Fig. 3) or to extend the scope of activity (category 3b) are concerned, in extreme cases resulting in the departure of the employee. It may, for example, be in the interests of the employer for an individual to share his or her skills and knowledge rather than to establish a personal reputation and role as a specialist expert or, at the other end of the scale, for an individual to develop speed and efficiency in a comparatively mundane and constrained field such as, say, mortgage repossessions, rather than to aspire beyond that role. The employer's possible desire to restrict the employee's field of operations or learning also extends to circumstances where the objectives of the employer are to push an individual into "full" participation before he or she is ready to do so. On the other hand, many employers will be highly supportive of both static and aspirational learning.

Even if newly qualified individuals possess a generic learning orientation because of or despite their previous experience, the question remains what it is that they see it as important to learn. Clearly insofar as there is a deficit between training contract and new expectations to be remedied, this will provide an immediate survivalist focus for learning. And it may be survival and remedying of the deficit that is the primary driver for a considerable period before any readiness to engage in aspirational learning emerges.

The fact that a competence framework such as the work-based learning or day one outcomes setting out what is to be learned is not a complete answer is demonstrated by the nurses in the LiNEA study, some of whom had been given lists of competences, but who nevertheless, in the crisis of qualification, "assumed in their relative inexperience that they should be doing everything. This was seen as a daunting task, especially as they believed that they must show that they could do everything well" (Miller and

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Blackman, 2002: 15). Problems for the nurses were delegation (upwards or downwards) but prioritisation and time management were substantial challenges, the elements of which as set out by Miller and Blackman bear a remarkable similarity to the "processing limitations" of the non-expert described by Salthouse and discussed in Chapter 6:

Miller and Blackman	Salthouse
Knowing where to start	Not knowing what to expect Not knowing what to do and when to do it
Knowing what to look for	Not knowing what information is relevant Lack of knowledge of interrelations among variables Difficulty in combining information
Knowing what help is needed to prioritise successfully: the art of delegation	Lack of production proficiency

Figure 6 Miller and Blackman mapped against Salthouse's processing limitations

suggesting that the phenomenon described in the context of time and resource management is a facet of lack of expertise generally. The extent of the "not knowing" may also extend to deficits not only in substantive knowledge and skills but also to knowledge and skills in learning strategy: not knowing where to find answers; not knowing what steps to take to improve performance; not having sufficient prior experience to learn accommodatively from comparison between known situations and new variants and so on.

The LiNEA studies display the factors affecting workplace learning – necessarily in a contextualised, problem-solving context - graphically in two triads: learning factors (confidence and commitment; challenge and value of the work; feedback and support) and contextual factors (allocation and structuring of work; encounters and relationships with people at work; individual participation and expectations of progress and performance) (Eraut *et al*, 2004). The results of these triads for each of the LiNEA professions together with my own tentative attempt to produce a similar analysis in respect of the newly qualified solicitors appear in Appendix V.

7.2.3 *Self-concept/self direction*

Just as Rogers (2003) points out that a student might deliberately self-define as passive in the classroom, individuals might deliberately self-define themselves in the workplace in a constrained way. An individual newly qualified might, as I indicated at 6.2.2.1, self-define very narrowly so that (or at least with the result that) it is easier to take control and to define the sphere in which development towards competence might take place as a result of the pressures, stresses and uncertainties arising on qualification, including any need to remedy the deficit already described. Similarly the technical specialist described by Bereiter and Scardamalia (1993) as identifying techniques to make his or her life easier rather than opening up the possibility for greater challenge might, I suggest, do so as a result of stresses, frustrations and constraints of, say, time or resources. Either group might have time only to engage in the more intuitive learning approaches that do not require additional time or engagement, such as "unconscious absorption" and "practice and repetition" (Cheetham and Chivers, *op cit*: 282) or only to take more deliberate steps only on an *ad hoc* basis or when a crisis or mistake prompts (in Mumford's (1995) "incidental approach" and Cheetham and Chivers' (*op. cit.*) collaboration and liaison; extra-occupational transfer; observation and copying; stretching and perspective switching). As I suggest at 5.3.1.4, such narrow self-definition is not necessarily at odds with the andragogical assumptions and may in fact be an expression of them. In the case of the beginner, the individual might consciously or unconsciously for a period align his or her own objectives for what is to be learned with those of the employer, role model or line manager on the basis that at this early stage in the career such authority figures "know what is best for me" or more cynically as a trade-off for employment and approbation within the firm.

Although Billett sees workplaces as "learning environments that are negotiated and constructed by individuals, albeit mediated by what is afforded and regulated by the workplace, as well as the cultural norms and practices being exercised through the work practice" (2004:320), he also identifies a considerable number of "not benign", power-related factors that may inhibit the affordance and constraint of opportunities for learning in the workplace. Consequently, if "self-direction" in either sense (which as discussed at 5.3.1.2 might involve the questioning of workplace norms and embedded structures) is not expected or encouraged by the employer and, most particularly, by the individual's immediate line manager in the kind of environment in which an "expansive

cycle begins with individual subjects questioning the accepted practice, and it gradually expands into a collective movement or institution" (Engestrom in Rainbird, Fuller and Munro, 2004: 152), it will take a great deal for the individual to pursue a different approach.

Marsick and Watkins, however, assuming that professionals will be self-directed and autonomous in their learning, discount the effect of the immediate senior on an individual's self-direction or strategy:

> ... professionals are more likely to be driven by their commitment to a calling and a desire to update their knowledge base continually. Professionals seem to be more peer-oriented than supervisor-oriented; they want recognition from their peers and are likely to learn from them. They are autonomous, self-organizing and self-directed.
> Marsick and Watkins, (1990:118)

They also suggest that expert-learnerhood will transfer to or operate necessarily in the workplace:

> [p]rofessionals are already motivated to learn, and have developed a set of procedures for going about that learning. They use one another, and the body of knowledge produced by the profession, as reference points in learning.
> (*ibid*: 46)

Both ideas, are, I suggest, naïve or predicated on the basis that what is to be learned is in the realm of CPD updating: knowledge rather than skills, attitudes or tactics or that "professionalism" only arises at the point of mastership after considerable exposure to the workplace. Indeed, if they are suggesting that professionals possess transferable strategies for learning at an early stage, their own theory is redundant in suggesting that there are learning approaches discrete to the workplace. Eraut *et al* (2004) treat "disposition to learn and improve one's practice" as something learned *in* the workplace although two thirds of their respondents were defined as still pre-qualification at the point of the investigation. I suggest, then, that learning strategies in the early phase of post-qualification activity may, by exercise of self-direction, tend to be focussed on survival, remedying of immediate deficits and pleasing the immediate power authority. One means of survival may, of course, be to focus on getting the job done without engagement, trusting in quantity of "experience" for the acquisition of unconscious learning.

7.3   Quantity and quality of experience as a basis for the tacit acquisition of learning;

At 6.2.3.1 I suggested, in discussion of the contribution of "cognitive patterns" to the development of expertise, that repeated exposure to similar problems would tend to create more efficient cognitive patterns in the absence of deliberate engagement with experience. This cognitive approach assumes, of course, that learning takes place for and within the individual rather than the employer. Indeed, Tennant (1997: 74) criticises Lave and Wenger's "community of practice" as rejecting "...the idea that learners acquire structures or schemata through which *they* understand the world" (my italics). Garrick, conversely, regards the approach of cognitive psychologists (such as Tennant) as incompletely recognising "social and cultural contributions to thinking and acting" (in Boud and Garrick, 1999:216 at 223). There is a developing school of thought characterising teams or "working communities" as possessing expertise in resolving complex problems in a fluid context (Engeström in Rainbird, Fuller and Munro, 2004:145). The individual, who, admittedly working within and therefore influenced by a social and cultural context may, I suggest, nevertheless move from the "community of practice" of one field of practice or firm to another.

The tacit knowledge and skill derived from quantity of experience is also to be distinguished, I suggest, from heightened self-confidence resulting from its external recognition, leading to motivation towards further development (Evans, Kersh and Sakamoto in Rainbird, Fuller and Munro, 2004:222) in a stimulating "expansive" work environment. In the workplace, then, the individual must be exposed to a sufficient quantity of sufficiently similar and perhaps comparatively repetitive activity to allow cognitive patterns for diagnosis and treatment to develop. Immersion in the routine is:

> important for refining procedures and rendering tasks to be undertaken with minimum resort to conscious thought. This then frees up working memory to focus on other tasks. This permits individuals to use their cognitive resources more selectively and strategically.
> Billett, (2004:315)

and such "practice and repetition" is listed by Cheetham and Chivers (*op. cit.*) amongst mechanisms identified by professionals as employed in the workplace. Eraut, indeed, sees tacit knowledge as "an attribute of several types of knowledge":

> [p]eople may assess situations almost instantly by pattern recognition, less rapidly by drawing on their intuitive understanding of the situation, or more deliberatively by using reflection and analysis ... Often this intuitive understanding is not fully recognized until somebody, deliberating between two or more options, expresses a strong preference for one particular option, because they suddenly feel that it fits the situation much better than the alternatives.
> Eraut, (2004: 253)

The interrelationship between reason and intuition in theoretical conceptions of professional learning in particular has generated, perhaps by way of reaction to a perceived polarisation between the intellectual and the anti-intellectual, to a paradigm (the "intuitive practitioner" introduced at 7.3) in which the tacit and unconscious, typified by the classic apprenticeship, is not only acknowledged but perhaps preferred:

> [a]t one extreme, the apprenticeship model relies on unreflective induction: experience is deemed both necessary and sufficient for professional learning to occur ... At the other, the scholastic model gave a central place to highly intellectualized understanding, which was then supposed to dissolve, in a straightforward way, into competence through practice ... we believe that the importance of the deliberate, conscious articulation of knowledge, ... may in the current intellectual climate be overestimated, while intuitive forms of knowledge and ways of knowing have tended to be ignored and under-theorized.
> Atkinson and Claxton, (2000:2)

That said, in an objective review of the intuitive practitioner literature (in Atkinson and Claxton, *ibid*: 255), Eraut distinguishes between intuition, implicit learning and tacit knowledge; implicit learning representing a process and tacit knowledge an output which, in Eraut's view, can be acquired explicitly (or deliberately) as well as implicitly as when one learns to swim or ride a bicycle. Even so, an aspect of learning such skill, even if explicit teaching is part of the process, clearly remains repeated practice by the individual learner until actions become automatic (tacit) and it is for this reason that I have treated such repetition and practice as belonging to the more tacit and intuitive end of the spectrum. Intuition Eraut then considers to be a process leading towards knowledge or a form of knowledge use (employed in problem solving, decision making, learning and assessing situations):

> ... people know when they are having an intuition and do not know when they are engaged in implicit learning. What implicit learning contributes to intuition is tacit knowledge that can only be used intuitively, because using knowledge rationally requires that it be explicit rather than tacit.
> Eraut (*ibid.*: 256)

Nevertheless, however one characterises intuition, it remains, as Eraut points out "…
dependent on a professional's prior knowledge and experience, both that which has
been explicitly developed and that which has been implicitly acquired" (*ibid:* 258).
The emphasis, then, remains on repetition - what one might more colloquially term the
quantity of "experience" - in the relevant domain as creating a basis for knowledge and
skills that are towards the less conscious end of the spectrum and contribute to the
building of cognitive patterns, heuristics and, by way of "intuition" hunches and
possible solutions that "feel right" but are then susceptible to more conscious
examination. If the classic apprenticeship model relies on quantity of experience, the
quality of such experience is also a relevant factor, allowing the individual completing
the apprenticeship to see the whole rather than remain enmeshed in the atomistic parts,
a routine which may increase confidence in the short term but is unlikely to do so after
the point of qualification when the individual becomes required to deal with the whole.
A further aspect of quality lies in the extent to which the experience allows for more
active engagement by way of learning strategy.

7.4   The role of "engagement with experience"

Osmotic or repetitive acquisition of tacit and unexplored knowledge, attitudes and skills
(6.2.3, 12.3.2) leading to "intuitive" solutions are plainly not the only form of learning-
rich activity taking place within the law firm. Individuals may adopt a more deliberate
learning strategy in order to learn explicitly from their colleagues, by more
introspective personal debrief (or "reflection") – category 2b of the competence for
development - on their own or with others or a combination of the two. The extent to
which this is possible will depend on a number of factors, including the individual's
motivation and readiness to learn in this way as well as the expansive or restrictive
nature of the workplace.

The extent to which reflection can be discerned within the autonomous practices of
the interview group is of considerable significance as it has been suggested by a
number of writers that the initial stages of professional practice are too intense, stressful
and focussed on survival for reflection in its classic sense to be possible or even
desirable. In addition, concepts of reflection may require evaluation of problems
against the background of a range of experience simply not yet possessed by the newly
qualified. Cheetham and Chivers (2001:270), for example, found a considerably lower
rating for "reflection" as a contribution to *initial* development than they did for later

professional development: "[i]t may be that reflection does not become fully effective until practitioners have built up sufficient experience against which to reflect" (*ibid*: 270). However, the following forms of learning from or with others were identified (in ascending order of importance): use of a role model; support from a mentor; learning through teaching/training others; networking with others doing similar work; learning from clients/customers/patients; working as part of a team and working alongside more experienced colleagues.[31] Such interaction with others might involve passivity by that other (as, for example, when the learner was observing a colleague or learning by osmosis simply by working alongside a colleague individually; or as part of a team or had personally adopted the colleague as a role model); some degree of positive learning-focussed interaction (as with mentoring or networking) or a very deliberate learning focus (as when feedback was sought and given). Bereiter and Scardamalia (*op. cit.* quoted at 6.2.2.2) describe the expert as working at the "growing edge" of expertise in enhancing scope and quality, an orientation distinguished from that of the static or challenge-reducing technical specialist. A usefully similar concept at the other end of the scale is that of Vygotsky's "zone of proximal development", the:

> distance between actual developmental level as determined by independent
> problem solving, and the level of potential development as determined
> through problem solving under adult guidance or in collaboration with more
> capable peers.
> Vygotsky (1978: 86)

where the key factor is the need to work with more expert colleagues at the fringes of one's own competence, prior to such capacities being embedded in one's own competence and new fringes extended enhancing quality but also extending scope.

It is notable that some professions (see for example GMC 2006:14) see teaching or training others or a willingness to do so as part of the normal attributes of professionalism and the ward round can involve a positive facilitation of learning (Talbot, 2000). However, the blurring, in a workplace where learning-focus and client/task-focus are combined may, for medical students, result in "thinking like a student" demonstrated by a strategic approach combining the formative "seeking guidance" with the summative "proving competence" and "deflecting criticism" (Lingard *et al*, 2003). The summative assessment aspects of the work-based learning

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[31] The more generic (or vague) category of "on the job learning" was given the highest rating and "self-analysis or reflection" fell between "learning from clients" and "working as part of a team".

proposals may transfer this result into the law firm if it is not already informally present for trainees competing to be "taken on" at the end of the training contract. Similarly, the workplace as teaching environment is always subsidiary to the overall objectives of the workplace, oscillating perhaps unpredictably between the two:

> "…. We do try to teach around the patients, but … you can't stop and say, I'm sorry, I know the child's having a seizure, but we need to talk about what causes seizures".
> Lingard *et al*, (2003: 608)

Whatever the difficulties of combining the explicit training grades of the hospital with patient care, there is nothing in the *Solicitors' Code of Conduct 2007* to reinforce such a culture of learning and teaching in the case of solicitors, despite the fact that some coaching and mentoring can attract CPD points and that a section of the compulsory Management Course Stage 1 (Law Society, August 2007:2) to be undertaken in the first three years after qualification includes:

a)   developing teams;

b)   developing individuals;

c)   self-development; and

d)   evaluating/improving training and development;

which might entail - but does not require - a personal involvement in the teaching of others.

Interaction with others that involves learning may, then, be unconscious in process (by iteration and repetition or by osmosis derived from working alongside more experienced colleagues) and even tacit in result.   Cheetham and Chivers' results do, however, suggest that individuals were highly conscious of such activity as being learning rich even though they might have had more difficulty in the latter case in articulating precisely what had been learned:

> [s]ome felt that the process [or working alongside more experienced colleagues] had been particularly effective in developing more tacit forms of knowledge, *i.e.* professional "know-how" of a variety not easily articulated, as well as how to behave as a professional.
> Cheetham and Chivers, (2001: 275)

Similarly, Eraut, Alderton, Cole and Senker (in Coffield 1998: 37) found that "learning from other people and the challenge of the work itself proved to be the most important dimensions of learning for the people we interviewed". They also identified a

continuum of active involvement by the employer from "exposure and osmosis" (where "[t]he role of the manager is limited to that of enabling sufficient exposure to a diversity of contexts and situations but otherwise remains passive" (*ibid*: 38)), through assumptions that individuals would engage in "self-directed learning" and the more formalised approaches of initial "induction and integration"; "structured personal support" involving formalised or informal mentoring or advice-giving by colleagues; and "performance management" involving such techniques as appraisal and target-setting. The latter clearly, where effective, could be of particular significance to individuals in the target group in the absence of an umbrella set of competences prescribed by the profession for the post-qualification period.

7.5. *Mentors, coaches, slight seniors and asking questions by way of engagement with experience*

The least formal method of learning from others in any deliberate sense is that of "asking questions". In a small study (Talbot, 2000) of junior hospital doctors' experiences of ward rounds, for example, the keen consultant who was not "in a rush" and encouraged questions was identified as a contributing factor to a good learning experience by all participants (particularly where those questions could be asked in a private pre-round discussion where ignorance would not be on public show). At a different level – less formalised and potentially less intimidating - at least one of the organisations participating in the LiNEA study of trainee accountants formalised what I will call the "slight senior" as a focus for questions by allocating the new entrant "a buddy ... who is a year or so ahead" (*op cit*: 26). Whilst Eraut and Furner comment that such formal "buddy" systems were not valued by their interviewees, other responses suggest that the phenomenon persisted in a self-selected, informal form:

> ...they have to rely on colleagues for most of their learning and advice. In
> particular they valued working with senior trainees only one or two years
> ahead of them, who remembered what it was like to be a first year trainee and
> were usually more approachable.
> Eraut and Furner (*ibid*: 28)

More formal mentoring or coaching (as contrasted with task-conscious and negligence-avoiding supervision) schemes will exist in some law firms and are not uncommon in CPD systems as a class (Friedman and Phillips, 2002). The definition of "coaching" used by the profession is explicitly "performance-based", and is achieved

through "the transfer of specific skills from the coach to the individual" although "ownership of the process must rest with the individual" (Law Society, March 2004:2). "Mentoring" (*ibid*: 3) is conceived of as longer-term and "not specifically performance based" but deriving its benefit from the relationship between mentor and mentee.

More conventionally, a coach is not necessarily an expert in the field but is skilled in the process of development of expertise (as a sports coach may, but need not, be a practitioner of the sport concerned). Passmore, (2007) however, suggests that the distinction between the two is blurred and that sector-specific experience is valued, particularly by the coachee, in coaching as well as in mentoring. The semantic confusions in the field are now such that Parsloe and Wray (2000:8) have abandoned both terms in favour of the inclusive "influencer" although, in my view, the distinction between the more specific performance-focus of "coaching" as opposed to the more diffuse "mentoring" may retain some value and the distinction is retained by the Chartered Institute of Personnel and Development, (2007 and 2008). At least five models of mentorship (Maillardet, Ali and Steadman, 2002: 12) were identified in the LiNEA study of graduate engineers, but, unlike the trainee accountants, (mostly novices in the Dreyfus/Benner sense with no previous experience of accountancy) the engineers exhibited some feelings of lack of confidence in their technical abilities (competence) although they were confident in their orientation and determination to learn and develop. The principal strategy for such development, however, remained "asking questions" (*ibid*: 27) although the "slight senior" as a recipient of such questions was not discussed in this study.

As CPD points are, however, only available for "authorised" and documented formalised coaching and mentoring schemes within the solicitors' profession, the informal *ad hoc* coaching, mentoring or "influencing" – as well as filtering of the "This may be a silly question, but…" enquiry – often, as I indicated in Chapter 1, engaged in voluntarily by mid-career "slight seniors" (see 12.6.3.2) whilst, I suspect of fundamental importance to the profession and the avoidance of negligence, has the potential to be ignored and devalued. Indeed, if an informal mentor fails to meet his or her workload target as a result of such voluntary coaching or mentoring of others, he or she may be subject to criticism rather than praise. Filstad goes as far as suggesting, in a generous formulation of types of role model, that:

> [m]anagement needs to involve colleagues as available role models. This suggests that not only the newcomer's supervisor is responsible for organizational socialization but several colleagues as survival models, motivation models and success models are involved in that responsibility.
> Filstad, (2004:404)

Even where formally sanctioned or even *ad hoc* continuing "influencing" relationships do not exist, the role of the colleague - whether supervising senior, peer/slight senior or a paraprofessional (Cheetham and Chivers, *op cit*: 277) such as, in this context, a secretary, legal executive or paralegal - for the purpose of "asking questions" is explicitly valued:

> ...we were surprised by the amount of learning which occurred through mutual consultation and support. ... Typically such consultations would entail a request for quick advice, seeking another perspective on a problem, help with a technical procedure or information on whom to ask for help on a particular issue.
> Eraut *et al*, (in Coffield, 1998: 43)

(although one might wonder whether questioning is really a source of learning if, for example, the individual on another occasion asks for the same information; where the individual could employ research skills to find the answer from another source; or indeed until one can demonstrate that the response to the question has been retained and employed on other occasions).

Anders Ericsson, adopted by van de Wiel and others (in Boshuizen *et al*, 2004: 184), suggests a mode of "deliberate practice" particularly in routine activity, focussing on preparation and deliberate debriefing and seeking of feedback which might also be related to informal asking questions strategies and *ad hoc* mentoring and coaching. Even in comparatively low-level and repetitive activity, such conscious activity might serve to improve performance although not of itself promoting aspiration (scope) or enhancement (quality) of the domain. An more sophisticated method of engagement with experience and one found in the work-based learning outcomes, is that of reflection.

7.6   Reflection as engagement with experience

Whilst working alongside an expert allows for tacit learning by osmosis, the use of others as a learning aid appears, in most cases, a deliberate tactic to solve immediate problems or enhance learning.   Although "the field of experiential learning is

characterized by contradiction" (Moon, 1999: 20) the term serves to distinguish explicit methods such as these from the development of tacit schemata, in a paradigm frequently drawing on Kolb's somewhat absolutist concept:

> [l]earners, if they are to be effective, need four different kinds of abilities – concrete abilities (CE), reflective observation abilities (RO), abstract conceptualisation abilities (AC) and active experimentation (AE) abilities
> Kolb (1984:30)

conventionally shown in an epistemological cycle which Kolb (*ibid*: 20) attributes in origin to Lewin, as a sequence distinguishing between the dimension of "grasping" an individual experience (comprehension[32] and apprehension[33]) and that of transforming it into (transferable) knowledge (intention[34] and extension[35]):

Concrete experience
(CE)

Observations and
reflections (RO)

Formation of abstract
concepts and
generalisations
(AC)

Testing implications of
concepts in new situations
(AE)
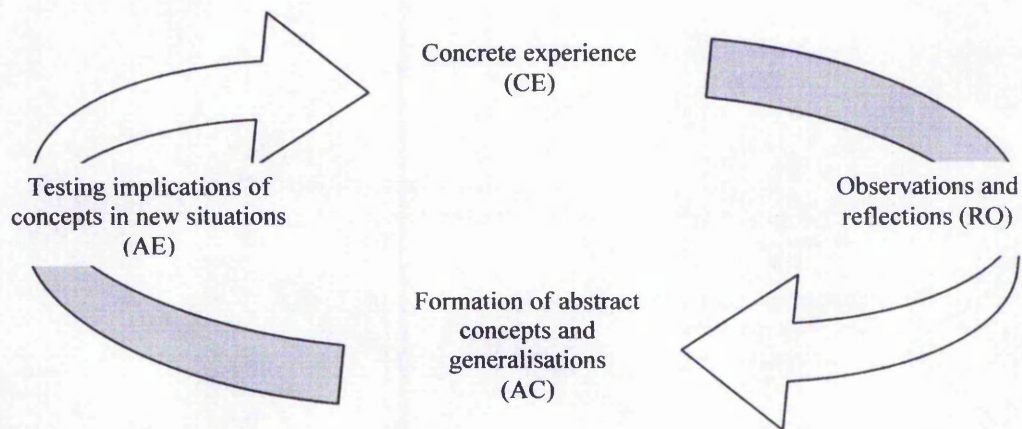
Figure 7 Kolb's experiential learning cycle

recognising that the result of the cycle is a new concrete experience, on which the remaining parts of the cycle can again be exercising, resulting in a third new concrete experience and so on. Cowan, (2006:53) shows the process as a horizontal spiral involving sequences of reflection for, reflection-in and reflection-on-action, which better demonstrates the forward thrust – the vector - from experience to new experience.

In the Kolb original, pairs of these four variables in conjunction represent different types of learning:

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[32] A conceptual or symbolic understanding: abstract conceptualisation.

[33] A tangible, felt understanding: concrete experience.

[34] Internal: reflective observation.

[35] Active change: active experimentation.

a)   AC + RO, assimilative knowledge typified by abstract theories;

b)   CE + AE, accommodative knowledge typified by "trial and error" solutions;

c)   AC + AE, convergent knowledge, typified by "right answers" and

d)   CE + RO divergent knowledge, typified by imaginative, creative solutions.

Drawing on research by the U.S. Carnegie Commission on Higher Education in 1969 (*ibid*: 125), Kolb placed law, like medicine, architecture and other "social professions" into the Abstract/Concrete quadrant. Law was marginally more active than reflective on the AE/RO axis but considerably further towards the concrete on the CE/AC axis than the other professions.   In a study of schoolboys (Hudson, 1966), it was also once suggested that "the minority of convergent arts specialists ... often turn out to be budding lawyers ..." (*ibid*: 42).   The implication, or the stereotype, is, therefore, of lawyers as convergent, rule-obeying, liking neat answers suggested by the result of experimentation (or for propositions to be supported by evidence) but complicated by the presence of contradictory and unscientific elements of arts and observation and reflection.   Such contradictions, as I have discussed above at section 2.8, seem to be inherent and the question remains whether the attributes, assuming that they are accurate, are selected for, enhanced by practice and approbation or draw the individual to the profession.

Kolb's tidy sequential model has itself been the subject of criticism: that it is no more than a "description of the learning process in general" (Warner Weill and McGill, 1989:26); as inappropriately polarizing reflection and action (Mezirow, 1990:6); as failing to connect the different elements coherently and as a model "constructed to substantiate the validity of a learning style inventory" (Miettinen, 2000:61); as omitting the emotional and social dimensions of learning (Illeris, 2002:145); and, most significantly for this discussion, as at best vague as to the nature of the reflection demanded (Boud, Keogh and Walker, 1985:13; Miettinen, *op. cit.*: 67).   The place of reflection as a positive learning strategy, leading to transferable generalisations, transfer itself identified by Eraut as involving a series of interrelated activities which he does not fix as either forward-looking or retrospective (see 7.6.2.3 below):

1   the extraction of potentially relevant knowledge from the context(s) of its acquisition and previous use;
2   understanding the new situation – a process that often depends on informal social learning;
3   recognizing what knowledge and skills are relevant;
4   transforming them to fit the new situation;

> 5   integrating them with other knowledge and skills in order to think/act/communicate in the new situation.
> Eraut (2004:256)

is endorsed by the expected competence for development in the work-based learning outcomes ("Reflects on experiences and mistakes ..."). The question, then is what reflection means in this context; how it might manifest itself and at what level of complexity, depth or, *pace* Mezirow, transformativity. Whilst there is a nod towards reflective learning in the LPC context (see 2.7 and SRA, 2008a) and some work has been done to promote reflective learning in the academic stage (Hinett, 2002), one cannot yet assume that individuals enter the workplace with any prior experience of reflective learning as technique even if it is, in principle, transferable across contexts.

7.6.1   *Reflection-in-action*

First of all, one must distinguish between two modes of reflection:

a)   that involved in the resolution of problems, used by Dewey to determine whether a *belief* was valid; an "act of search or investigation directed toward bringing to light further facts which serve to corroborate or to nullify the suggested belief" (Dewey, 1910: 19) and extended by Schön, as "reflection-in-action", to determination of the appropriateness of *action*; and

b)   the *ex post facto* evaluation of an experience ("reflection-on-action"), shown as part of the Kolb cycle, from which transferable learning for future situations is generated.

Dewey, it might be noted, distinguishes between his own philosophy of scientific curiosity and that of "the habit of mind that thinks for purposes of conduct and achievement ... Engineers, *lawyers*, doctors, merchants are much more numerous in adult life than scholars, scientists and philosophers" (1910: 143, my italics) whilst the lack of understanding (to the extent of apparent hostility) of law and legal practice exhibited by Schön, the principal writer in the field, is egregious:

> Schön rarely wrote anything about law or lawyers. If he ever saw a law school class, there is no trace of it in his writing. The index to *Educating the Reflective Practitioner*, for example, contains only six references to legal education or lawyers – out of 343 pages of text. One of the references is flat-out wrong and the other five are so obvious that they might be products of casual chats with law faculty acquaintances.
> Neumann (2000: 404)

This reflection-in-action, then, is promulgated by Schön (1983, 1987) by way of reaction to a positivist "technical rationality" (aligned by Neumann, *op. cit*.: 404, not entirely successfully, with the "black letter law" of the academy) in which solution recipes are applied to the resolution of problems; an approach congruent with that of the Dreyfus/Benner novice and beginner and to some extent with the algorithmic models of expert knowledge described at 6.2.

Schön's concern is with a mode of creative problem resolution ("professional artistry") which incorporates re-framing of the problem itself - problem setting as well as problem solving - in circumstances where the problem is unique or uncertain and, therefore, beyond the reach of the tacit, expert repertoire. Eraut points out that Schön's definition is weakly differentiated but concludes that, at least when the problem must be reset and solved within a very short time-frame, "reflection is best seen as a metacognitive process in which the practitioner is alerted to a problem, rapidly reads the situation, decides what to do and proceeds in a state of continuing alertness" (1994:145), distinguishing this from the underlying deliberative process, (*ibid*: 153) particularly where problem solving takes place over a more lengthy period than Schön envisaged. Such deliberation, of course, also demands time to be available for metacognitive evaluation.

In addition, Schön considered the reflection-in-action of the expert practitioners he observed to be necessarily based on possession of "a repertoire of examples, images, understandings and actions." (1983:138).

One of Schön's favourite examples occurs in the learning-conscious environment of an architectural design studio. The supervising architect, Quist, is asked by a student, Petra, for advice on a problem. Quist then, in a sequence in which he persistently fails to listen to his student (described by Schön as "answering questions before they are asked", *ibid*: 90) and interrupts her when she seeks to explain her own thinking (*ibid*: 92), takes over and begins to articulate a lengthy reframing of the problem and its possible solutions, interspersed with orders to her ("you should have the administration [block] over there", *ibid*: 91) which would, I suggest, inhibit and devalue her own professional artistry, should she fail to obey. This may be archetypal reflection-in-action - and does to some extent allow Quist to articulate a set of variables and implications which he sees as being relevant to the problem, much as Ellen does with Ned - but it is appalling teaching, unless Quist is, perhaps, a particularly charismatic

role model and Petra a peculiarly robust student. Schön nevertheless considered mastery of the technique to form a desirable part of a professional education:

> ...we will assume neither that existing professional knowledge fits every case nor that every problem has a right answer. We will see students as having to learn a kind of reflection-in-action that goes beyond statable rules – not only by devising new methods of reasoning,... but also by constructing and testing new categories of understanding, strategies of action, and ways of framing problems.
> Schön (1987: 39)

Whilst Schön's exposition of the technique seems to cut in at the point when tacit knowledge (the Dreyfus/Benner expert stage) peters out or is recognised as insufficient, there seems no reason in principle why individuals such as Ned should not be given by Ellen permission and autonomy to engage in the key structure of reflection-in-action, the reframing of the problem, provided, as I have said above, the problem is susceptible of reframing and to the extent that the technique can be employed with a limited range of prior experience.

Ferry and Ross-Gordon, (1998) in an empirical study of reflection-in-action amongst teachers, defined reflective problem-solvers as employing four out of six indicators taken from Schön:

a) recognition of the problem;

b) recognition of incongruities;

c) evidence of reframing of the problem;

d) generation of new solutions;

e) testing in action of solutions and

f) evaluation of outcomes.

They found "greater differences between those educators who were highly reflective and those who were not, than between novice and experienced practitioners" (*ibid*: unpaginated), that is, that the deployment of the technique, particularly in the hypothetical testing of the likely implications of possible solutions that presented themselves, was not dependent on prior experience. It is, however, less than clear from their report what problems were being reflectively solved; they seem to have been related to having too few chairs, too few handouts or too many students: problems, as in the expertise studies, susceptible of being solved by people with different ranges of experience in any event.

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King and Kitchener (1994), as shown at 5.2.1, detected an age-related component to the ability to engage in reflective thinking in the Deweyian sense of testing the validity of a belief. In a longitudinal study of 80 people, they found (*ibid*: 149) 51% of individuals in the age range 21-25 to be at their stage 4 – "quasi reflective thinking" in which "knowledge is uncertain and knowledge claims are idiosyncratic to the individual since situational variables ... dictate that knowing always involves an element of ambiguity (*ibid*: 14-15) and 47% of those between 26 and 30 at stage 5 where "knowledge is contextual and subjective since it is filtered through a person's perceptions and criteria for judgment. Only interpretations of evidence, events, or issues, may be known" (*ibid*: 15). Whilst they acknowledge that the progression they detect might be a result of age, education or a combination of the two, it is notable that participants in the study first tested as doctoral students were more likely to demonstrate stage 6 reflective thinking:

> knowledge is constructed into individual conclusions about ill-structured problems on the basis of information from a variety of sources. Interpretations that are based on evaluations of evidence across contexts and on the evaluated opinions of reputable others can be known
> (*ibid*: 15)

both at the point of interview and ten years later (*ibid*: 151).

Whilst the definition of reflective thinking as being related to a tolerance for ambiguity is similar to that advocated by Schön in more active problem-solving, the fact that doctoral students – at the educational extreme and required to demonstrate a more self-directed learning orientation - showed a mature tolerance for ambiguity detracts substantially, I suggest, from conclusions that an ability for reflective thinking is necessarily age-related. As I have suggested at 6.2.2.2, the search for "right answers" discerned in the beginner may demonstrate not a failure to recognise ambiguity but a means of controlling it. Further, of course, an ability to deal with questions of creativity in Schön's sense or ambiguity in King and Kitchener's assumes that the circumstances in which the individual is operating allow opportunities for creativity and ambiguity to arise.

One might conclude, therefore, that the underlying technique, related by King and Kitchener to the admittedly teachable skill of critical thinking:

> ...critical thinking is typically characterised as a set of skills that can be
> acquired through the learning of increasingly complex behavioural rules ...
> the development of reflective judgement is the outcome of an interaction
> between the individual's conceptual skills and environments that promote or
> inhibit the acquisition of these skills.
> King and Kitchener (1994: 18)

can be taught to and deployed by the beginner prepared to tolerate a degree of uncertainty in appropriate conditions. Those appropriate conditions are, I suggest, where the beginner is equipped with sufficient autonomy to reframe the problem; the problem is not so mundane or constrained as not to be susceptible of reframing; where reflecting-in-action is not dependent on possession of a wide repertoire of variables and implications (unless perhaps those variables and implications can be brought into the process through debate with a more senior colleague, (6.2.2) which may itself serve to incorporate them into the repertoire of the newcomer) but where the individual is able to bring into the solution some element of recognition and testing of the possible implications of likely solutions.

Schön did eventually concede that, at least in the legal workplace, there was potential for uncertainty and professional artistry and that the legal apprenticeship in practice might constitute as much of a reflective practicum as his pet architectural studio (Schön, 1995). As Menkel-Meadow points out:

> [t]hese [legal precedents] and boilerplate clauses were once the creative ideas
> of some lawyers who developed a new reading of a statute, a novel argument
> before a common law or constitutional court, developed a new scheme of risk
> allocation, or found a new source of capital or drafted a new clause for a deal
> document.
> Menkel-Meadow, (2001: 106)

Despite Schön's initial ignorance, I suggest the reframing of legal problems and exercise of professional artistry is inherent in the law, and particularly in litigation. Someone had to reframe *Donoghue* v. *Stevenson* (the well-known snail in the ginger beer bottle case) as a claim in tort rather than contract, so giving birth to the modern law of negligence. More recently, someone had to see a procedural rule less as giving of permissions but as not excluding a particular creative solution, resulting in the rule in *Khanna* v. *Lovell White Durrant*, a result now embodied in C.P.R. r. 34.2(4). Whether individuals in the interview group are exercising or learning from colleagues to exercise such a technique in their daily practice will depend, however, on the nature of the

problems allocated to them, recognition of the technique as being used and of value and the autonomy provided to generate creative solutions.

7.6.2   Reflection-on-action as engagement with experience

Mezirow distinguishes between reflection in problem solving and reflection as a means of learning:

> [m]eaning schemes and perspectives that are not viable are transformed through reflection. Uncritically assimilated meaning perspectives, which determine what, how and why we learn, may be transformed through critical reflection. Reflection on one's own premises can lead to transformative learning.
> … Transformative learning involves a particular function of reflection: reassessing the presuppositions on which our beliefs are based and acting on insights derived from the transformed meaning perspective that results from such reassessments.
> Mezirow, (*op cit*: 18)

Rogers (*op cit*: 31/2), in identifying that task-conscious learning in the sense of unconscious "acquisition learning" from experience can hinder formalised learning, suggests that a function of formalised learning is positively to bring such tacit or unconscious knowledge or assumption into the foreground so as to integrate the two. Marsick and Watkins, similarly, regard the unconscious "buried" nature of incidental learning that is "typically tacit and unintentional" (*op cit*: 127) as requiring precisely that surfacing and attention before (real or valuable) learning can take place (*ibid*: 14), including, in a statement drawing closely on Schön, the acquisition of expertise:

> [b]y attending to the lessons of experience, professionals evolve from simple, programmed actions to a kind of fluid artistry.
> (*ibid*: 231)

Polanyi, on the other hand and in an approach endorsed by the "intuitive practitioner" school (7.3), suggests that the deliberate dissection of what is known tacitly may inhibit or damage rather than improve:

> [t]he meticulous dismembering of a text, which can kill its appreciation, can also supply material for a much deeper understanding of it. … But the damage done by the specification of particulars may be irremediable. … in general, an explicit integration cannot replace its tacit counterpart. The skill of a driver cannot be replaced by a thorough schooling in the theory of the motorcar …

Polyani, (1983:18-20)[36]

Reflection in the problem-solving sense is aligned with critical thinking and with the ideas of single loop and double loop learning advocated by Argyris and Schön (1974), mentioned by Schön (1987) but not, as Bright points out, (1996:163) necessarily incorporated into his model of reflection. Double-loop learning is a term attached to Argyris and Schön's model II of theory in use (1974: 19) which is itself related to Mezirow's transformative learning in involving the questioning of fundamental norms and assumptions. This is by no means the only manifestation of the concept. Brookfield, for example, detects a mundane aspect to reflection as problem solving in teaching – using examples very similar to those apparently used by Ferry and Ross-Gordon - which is not critical (1995:8). Schön, to whom the notion of uniqueness is central, suggests however that, in the case of a burned out expert to whom much has subjectively become mundane (or who has become a reductivist technical specialist in Bereiter and Scardamalia's sense), reflection may serve to re-energise:

> as practice becomes more repetitive and routine ... the practitioner may miss important opportunities to think about what he is doing. ... When this happens, the practitioner has "over-learned" what he knows. A practitioner's reflection can serve as a corrective to over-learning. Through reflection, he can surface and criticize the tacit understandings that have grown up around the repetitive experiences of a specialised practice, and can make new sense of the situations of uncertainty or uniqueness which he may allow himself to experience.
> Schön (1987: 61)

The political aspect, inherent in Schön's reference to "a crisis in the professions" and in Dewey's objections to behaviourist tendencies in schools is such that "reflection" is seen as a *sine qua non* of education and education for or in the professions in particular (Johnston 1995; Ecclestone 1996) and consequently has generated a post-Schönian paradigm in reaction where "intuitive practice", as problem-solving without conscious engagement, expertise in the tacit, Dreyfus sense, is applauded (Atkinson and Claxton, 2000) and (*ibid*: 23) a "new rationalism" demanding evidence-based practice. The move to competence frameworks and NVQs has been identified as marking a return to

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[36] Maughan, (in Webb and Maughan 1996:59 at 93) gives a graphic example of "interference with tacit knowledge" where the use of explicit interviewing "checklists" for law students whose legal knowledge was not yet embedded in their tacit repertoire overrode (and implicitly was given such priority because explicit and pre-printed) their tacit knowledge of appropriate social interaction, producing such howlers as: "Client (clearly distressed): 'My mother died two weeks ago.' Lawyer: 'Right. Have you brought the death certificate?'"

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positivist "technical rationality" (Bines and Watson, 1992:18; Taylor, 1997:13; see also Chapter 3).

Widespread approbation of the concept or at least of the term(s) "reflective learning" means that, for example, Brockbank and McGill (2007:104) found six different concepts at large amongst university tutors, encompassing varying degrees of reflexivity and criticality inside and outside "experiential" learning environments. Where learning is spoken of in a workplace context and one of the things learned may be reflective approaches to problem-solving, Schön's term "reflective practice" has in some cases come to mean both or either problem-solving and learning strategy (*e.g.* Tarr, 1999) and to be embodied in, or a driver of, professional competence frameworks, particularly those striving for capability rather than competence (see Cheetham and Chivers, 1996, 1998). Whilst some writers have seen the politicisation of the concept as permitting more emancipatory, critical reflection as a form of political practice (Clouder, 2000), the influence of the "learning organisation" and gestalt approaches such as that of Lave and Wenger is seen in recent movements where reflection whether as problem solving or as a form of debrief and post-event learning activity is perceived of as taking place in – and therefore by implication for – the group, rather than as an individual activity or taking place with a mentor or even a peer (see Ferry and Ross-Gordon, 1998:9; Brockbank and McGill, *op cit*: 96 and 100).

7.6.2.1 Definitions of reflection as a learning strategy

For the purposes of this study, then, I distinguish reflection as a problem-solving process (a possible object of learning) from reflection as a learning strategy in which performance is examined and tacit knowledge and skills surfaced and deconstructed for the purpose of, at least, enhancement of performance, knowledge and skills. Writers in the field trace the origins of their philosophy to Dewey, who, as I have indicated, in fact defines a very simple critical process:

> ... the ground or basis for a belief is deliberately sought and its adequacy to support the belief examined. This process is called reflective thought ...
> Dewey (1910: 1-2)

dissected into identification of:

i) a felt difficulty; ii) its location and definition; iii) suggestion of possible solution; iv) development by reasoning of the bearings of the suggestion; v) further observation and experiment leading to its acceptance or rejection
Dewey (*ibid*: 72)

with similarities to Schön's problem-solving approach. Eraut disentangles the complexities of Schön's opaque and overlapping definitions by taking the word "reflection" out of the equation, and distinguishing between deliberative processes (problem solving) and metacognition of such deliberation (Eraut, 1994: 149). Eraut also resorts to the dictionary to distinguish between the reflective thought process involved in surfacing and considering and more reflexive metacognitive awareness (*ibid*: 155). This deliberative surfacing and examining is brought to a more forward orientation bearing on future performance by its inclusion as an element ("RO") of the learning cycles following Kolb (1984) where the context for learning is "experiential" (Fig. 7).

If reflection in this sense is a (learned) process leading to learning as output, then, phenomenographically, it may be engaged in as a "surface" mechanism or by way of deep learning. The model of the reflective process, then, is three dimensional although Moon (1999:154) has attempted to map it two-dimensionally, representing the initial, more mechanistic aspect of reflection as process (noticing, making sense, and making meaning) as "surface" and the final stages of working with meaning and transformative learning as involving "depth" with its concomitants of double-loop learning and reflexivity.

In a legal context, Neumann (2000) reports the approach of Condlin in treating Model I, the solution of problems, as being grounded in "persuasion" and taking of control (and seeking victory at trial rather than negotiated settlement). This concept aligns with Bereiter and Scardamalia's (*op. cit*.) idea of the technical specialist whose focus is on reducing complexity and workload rather than engaging in the deliberate challenge that they see as definitive of the "expert". Model II is then treated as "learning", a stance involving engagement with clients and their objectives (given approbation in the day one and work-based learning outcomes): a questioning of the assumption that trial is the appropriate solution. Whilst an automatic route to trial is perhaps more typical of a Model I practitioner in the U.S.A., it may, I suggest, translate in the domestic context in the instrumentality of Ned following procedural steps without necessarily focussing on

client's objectives: "I am doing this because it comes next in the sequence", contrasted with Ellen's "I am doing this because it will achieve my client's objectives".

Moon's aspects of depth may therefore tend to result in change or enhanced performance and her developed model in the context of reflective writing as an educational tool (2004: 185) incorporates the idea of "product" of the process either as resolution or as a trigger for further reflection. As identified by Cowan (2006), there is a forward trajectory in reflection whereby the learner moves toward further action ("AE") and further reflection rather than, as might be inferred from the two-dimensional layout of the Kolb (1984) cycle (Fig. 7), remaining static, a direction mirrored in my own diagramming of a vector of development (Fig. 1).

The confusions of usage of "reflective" terms are such that I have, therefore, consciously perpetrated a neologism to explain my own concept and it is the post-event reflection or debrief intended to contribute to learning which falls at the more sophisticated end of my spectrum of that neologism: "engagement with experience" (with "deliberate practice" (7.5) in the middle and observation and asking questions (7.5) at the less sophisticated end: see Fig. 43). Cowan's third concept of reflection *for* learning (formulated in the classroom context) of identifying personal learning objectives is, I think, encompassed separately in my discussions of developmental strategies and planning. Here, however, I borrow two sub-concepts from Brockbank and McGill (2007: 127) in a learning rather than problem-solving context: "evaluative reflection" and "critical reflection".

Evaluative reflection is backward-looking, the individual considering strengths and weaknesses of performance. It might, therefore, be seen as, *inter alia*, remedial and confidence building and, in Moon's terms, as "surface", leading towards the transitional phase of "making meaning", rather than necessarily enhancing quality of performance in the future or being transformative. An evaluation of strengths and weaknesses is, however (see work-based learning outcome 7.1 in Appendix II) a precursor to such improvement. Insofar as individual strengths and weaknesses and their contribution to performance are being examined, such activity may also be an antecedent to reflexivity.

Critical reflection, then, is oriented to the future, involving implications for future performance and Moon's phases of working with meaning and transformative learning. That future orientation aligns it with Mezirow's crisis-prompted version of critical reflection as a form of metacognition where the apprehension that assumptions can no longer hold demands reflexive resolution:

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> [a]nomalies and dilemmas of which old ways of knowing cannot make sense
> become catalysts or "trigger events" that precipitate critical reflection and
> transformation
> Mezirow, (1990: 14)

Here, of course, prior experience is fundamental. If there is no "old way of knowing" or performing to come into conflict with what is now presented, there is, for Mezirow, no prompt for reflection to take place. Even where there is prior experience, it would, of course, be possible for the individual to choose to resolve not by accommodative transformation, but by defensively sticking with the old way of knowing. Mezirow's crisis must, then, be so elemental as to exclude this possibility. Nevertheless, Mezirow does not see transformative learning as lying in the act of reflection alone but as part of the Kolb cycle (Fig. 7) to which taking action ("AE") as a result of reflection is key:

> ...reflective discourse and its resulting insight alone do not make for
> transformative learning. Acting upon these emancipatory insights, a praxis, is
> also necessary ... The learner must have the will to act upon his or her new
> convictions.
> Mezirow *(ibid*: 354)

The crisis promoting learning is, then, an epistemological dilemma based on elemental conflict between what is known and what is new and leading to reflexive transformation and changes in performance. It is similar to double-loop learning in its questioning of assumptions but differs from it in that what is questioned is an internal "way of knowing" rather than a more external assumption, rule or professional norm. Whilst Mezirow does not suggest this, insofar as the resolution of the dilemma may be more assimilative than accommodative – both ways of knowing or performing being perceived as valid for different circumstances – it may extend, in my terms, to aspiration, increasing the scope rather than or as well as the quality of performance.

An emotional dimension has been detected in reflective activity. Barnett suggests that it is not simply the underlying dilemma that engages the emotional aspect but also that questions of status – a point that may have resonance for the qualified but still learning interview group – are involved:

> [l]earning ... is existentially discomforting, and especially so in a work
> setting. Learning is typically associated with being young, and being in a
> state of personal development (or even immaturity). Having publicly, as an

adult, to disclose that one is in a state of learning is likely, therefore, to
generate mixed messages in relation to one's organisational persona
Barnett (in Boud and Garrick, 1999: 35)

Brockbank and McGill found the emotional dimension of reflection to be absent or distrusted in the academy, although considering that it demands "a high degree of emotional intelligence, in that to be genuine implies a willingness to express feelings, acceptance relies on managing competing emotions and empathy is the key skill for handling emotional material" (*op cit*: 54). Illeris sees accommodation in the cognitive sense as inherently linked with strong emotion and emotional change:

> [i]f a sudden event or the kind of cognitive processes that have earlier been
> referred to as reflection, meta-learning or transformative learning cause a
> radical reconstruction of the individual's comprehension of certain set
> conditions and contexts, there may be a corresponding radical shift in the
> emotional patterns
> Illeris, (*op. cit.*: 74)

Moon (1999:95) suggests that emotion might be a part of the process of reflection; the content or object of a reflective process (as when a strong emotional response prompts reflection) or as suggested by Boud, Keogh and Walker, a promoter or inhibitor of the process of reflection even where the crisis or dilemma is not present:

> [n]egative feelings, particularly about oneself, can form major barriers
> towards learning. They can distort perceptions, lead to false interpretations of
> events and can undermine the will to persist. Positive feelings and emotions
> can greatly enhance the learning process, they can keep the learner on the task
> and can provide a stimulus for new learning.
> Boud, Keogh and Walker (1985:11)

The emotional debrief is a critical aspect of the reflective process for Boud and his collaborators, as it is for Bolton (2001), working in the healthcare sector with, for example, young nurses exposed to and reflecting on their first death. Whilst such strongly emotive experiences are not excluded from legal practice (clients commit suicide and are murdered; are imprisoned; become bankrupt; are divorced; become disabled; have their children taken into care); to the extent that the period of transition into qualification into a confused profession (2.8.2 and 2.8.3) engages personal questions of status, confidence and competence which I have described as professional adolescence, it is likely to possess an important emotional dimension.

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7.6.2.2 Conditions for reflection

Some studies suggest that there is an age or experience related aspect to reflection. King and Kitchener (*op. cit.*) track a developmental spectrum over time but recognise that education (and therefore context) may impact on the tolerance of uncertainty that they see as concomitant of a reflective approach to validation of belief. As elsewhere, I suggest that context is significant, particularly where readiness to engage in reflection as a particular learning strategy intersects not only with the stage of professional education achieved (Moon, 1999:63) but also with the individual's position on the expert-novice spectrum, with the possibility of regression as the individual seeks to control the new professional environment.

Atkinson and Claxton suggests that "considerable tacit expertise" may need to be possessed before the process of "explicating and theorizing one's competence through discussion and reflection" is possible or appropriate (2000:3). Eraut (1994: 61) quotes Korthagen in recognition that the stress of initial activity in the workplace can inhibit the capacity for anything but survival: consistent both with Rogers' concept of self-determination and with the observed characteristics of the Dreyfus scale. Brockbank and McGill conclude that a concept of learning as transfer of rules and guidelines transmitted from an expert (that inherent in CPD updating) "will not engender the concept of a reflective learner, because the one-way process of transmission is antithetical to the means by which a person can become a reflective learner" (2007:61). Ecclestone (1996), indeed, suggests that Dreyfus proficiency is the watershed, and this seems to be consistent with the view of Marsick and Watkins (1990:76) referred to in section 7.2.1 above.

Moon suggests reflection or reflective learning occurs:

- When learning is relatively ill structured or is challenging to a learner
- When the learner is intent on meaningful learning /wants understand the material for herself ...

Where there is no new material of learning ... reflection occurs

- In situations of "upgrading" of existing ideas where meaning is made from prior experiences that were not necessarily meaningful to the learner;
- In situations in which there is consideration of existing ideas that may be meaningful in order to seek additional or deeper meaning; where there is general reflection without a specific intention to make meaning – but meaningful ideas occur.

Moon (2004:87)

Three possible approaches therefore present themselves as being largely consistent with the stages of the Dreyfus model (although, as indicated at 6.2, the Dreyfus model assumes tacit acquisition of expertise without reflective exploration):

a)   No reflective activity (novice/beginner). Whether through deliberate survivalist choice or through stress and lack of time inherent in the new working environment, the individual does not engage in introspective reflective activity. The uncertainty or incompatibility leading to accommodative reflection in Mezirow's sense does not occur because work is too consistent, constrained and mundane to allow it to occur or because, in time of stress, such inconsistency is not noticed. The individual may assume that "right answers" exist and that they are provided by adherence to procedure or acquired by direct observation from the supervisor as role model or disseminator of information. In this model there would be little reason for an individual to ask questions of him- or herself or of others seeking to understand or evaluate activity.

b)   Evaluative reflection (beginner/competence). Day (1993) suggests that a confrontation is required as a precursor to reflection; Mezirow uses the epistemological crisis and Moon sees the first stage in reflection as "noticing". Clearly some trigger to the act of reflection is demanded: one does not reflect on everything. In the workplace such a trigger may be provided by a disaster, an opportunity for formal feedback or appraisal or by undertaking comparatively autonomous performance (such as advocacy) which may also be emotionally loaded. Where there is a limited range of experience the individual may be reflecting retrospectively on the strengths and weaknesses of performance in a single event. As Eraut noted (2004) and as is explicit in the learning cycles, further work is required to transfer the results of this evaluative process into enhanced performance in the future; the *praxis* advocated by Mezirow. The individual may need external assistance to confirm the assessment of strengths and weaknesses but more significantly to work out how to cure weaknesses in order to perform better in the future. Questioning or feedback and appraisal may provide an opportunity for this. Even more so does the individual require the assistance of the employer to provide opportunities to consolidate what is learned by "active experimentation" in Kolb's sense to employ what has been learned. At this stage there is no conflict between individual and employer: the

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individual may not seek autonomy to behave differently in the future from the organisational norm; in fact the changed future performance may bring the individual closer to the organisational norm or the practices of the supervisor-role model. Nevertheless, the stress of the workplace situation, in the absence of externally imposed triggers, may impede reflection oriented to the future (as opposed to an immediate emotional debrief): how can I evaluate my strengths and weaknesses in the context of a single experience which, for all I know, may be *sui generis*; why should I identify means of improving performance for the future if I can at this stage foresee no future opportunity to perform this task again?

c)   Critical reflection (competence/proficiency), on the other hand, may threaten the employer by questioning its norms or those of an individual supervisor or role model. The crisis triggering such transformative reflection, I suggest, is likely to derive from multiple experiences, such that the individual begins to explore the subtle variations between them, leading to uncertainty and creativity. Moon (2004:28) points out the importance of variation in promoting learning including the relation of one experience to another, a concept familiar to the phenomenographers cited in Chapter 8. Creativity of itself assumes that the individual possesses considerable autonomy to change one's behaviour in practice. In addition, the ability to compare several experiences may contribute to a more forward-looking attitude to future application of what has been learned; the fact that there have been multiple occasions not only contributing to the subtlety of the results of reflection but also confirming that opportunities for consolidation in the future are likely to arise.

7.6.2.3 Forward looking and backward looking reflection

Fish (1991) identifies a connective strand in reflective activity, oriented to the future but also a retrospective strand in which patterns are identified by looking back. Evaluative reflection has a clear retrospective orientation whilst critical reflection is, as I have suggested, more forward-looking. The act of reflection, however, may take place close in time to the event which is its subject or more remotely. In addition, Moon (2004: 101) suggests that sometimes sophisticated reflection may take place as a form of "cognitive housekeeping" in the absence of an event as a reordering of internal experience in order that new ideas are developed from existing experience. The

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problems I have identified in evaluative reflection in particular, the form of reflection which may be more present in the newly qualified lawyers, because of their lack of experience may also, I suggest, contribute to a delay in the reflective process. One can see the impetus for an immediate *emotional* debrief, but as far as changed future practice is concerned, it may not be pragmatically until a later occasion arises that the individual looks back to determine what can be learned from the previous experience.

7.7   Conclusion

No one theory of workplace learning would seem to address all the complexities found in the field and I conclude that individual theories -- whether for unconscious repetition and "incidental" learning leading to tacit knowledge or more deliberate "informal" learning (7.1) - might be necessary for individual disciplines, individual workplaces and individual learners:

> [l]earning involves the complex and often reflexive interrelationships between community of practice, individual dispositions to learning, inequalities of position and capital, and wider influences upon and attributes of the field. ... workplace learning cannot be understood through the abstraction of any one of these elements at the cost of excluding the rest.
> Hodkinson and Hodkinson (2004: 180)

Although not created in this context, the andragogical assumptions might nevertheless demonstrate in the workplace (7.2) where the influence of the employer as stakeholder (7.2.1 and 7.2.3) is of greater potential influence than in the CPD classroom as not only a definer of what is to be learned by way of skills and attitudes as well as knowledge, but also how it is learned. Self-knowledge resulting in perception of a deficit arising at the point of qualification (as prior experience: 7.2.1, 10.3.3) may result in a primary driver (need to know: 7.2.2) demanding remedying of that deficit. Pressures on the individual's time and personal resources may suggest that there is insufficient space for self-directed deliberate learning strategies, which may involve questioning the employer's norms. A suitable quantity and quality of experience (7.3, 12.3.2), however, whilst no doubt increasing individual confidence, permits the repetition which leads to creation of tacit schemata. Where engagement with experience (7.4, 12.6.3, 13.4.1) is discernible, however, the question remains where on the available spectrum (Fig. 43) it will fall: in interaction with others in the zone of proximal development (7.5); with mentors and coaches, with self-selected "slight seniors" (as in the LiNEA

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results) and by way of asking questions or by more sophisticated reflection. Individuals may or may not recognise the deployment of reflection-in-action as a problem solving technique (or "expert rule") by their seniors (7.6.1) or perceive it as, like critical thinking, a technique which can, in principle, be taught, at least where the individual is sufficiently intellectually mature to tolerate levels of ambiguity, where the problem admits of creativity and where the variables informing the necessary reframing can be articulated and transmitted. Category 2b of the competence for development (13.4), however, assumes that individuals will also be capable of reflection-on-action (7.6.2), which, in its double loop sense, involves the questioning of norms. Reflection as a learning strategy is not without ambiguity in the literature (7.6.2.1) but can be aligned with the experiential model such that, in its less sophisticated "surface" manifestation, there is a trigger to reflection and evaluative assessment of strengths and weaknesses to make "sense" of an experience retrospectively. More elaborate reflection (7.6.2.2), of which individuals may not be capable without prior experience permitting at least "proficiency" on the Dreyfus scale or at least mentoring assistance by someone with such experience, has a forward looking (7.6.2.3, 13.4.1), critical aspect, by which there is working with meaning and transformation for the future.

CHAPTER EIGHT – METHODOLOGY

D.I. Carlisle: "I trust you aren't questioning my methodology, Blythe?"
D.C. Blythe: "I wasn't aware you *had* a methodology, sir."
Bowker, (2004, episode 1)

"That's the problem of consciousness in a nutshell, " Ralph says. "How to give an objective, third-person account of a subjective, first-person phenomenon."
 "Oh, but novelists have been doing that for the last two hundred years," says Helen airily.
Lodge, (2001: 42)

8.1   Introduction

Mature, part-time students are, I suspect, more likely to come to the Ph D project with a research question largely formed, than to identify themselves as phenomenologists, ethnographers, conversation analysts or action researchers in search of a project. As I have described in Chapter 1, I had been aware of a notable gap in expectations in the very early years after qualification for years.   There seemed to be a sense of resistance in students involved in the zero to three year PQE phase on courses with which I was that was not present in LPC students; not present in students of, say, five years PQE nor in trainees. Initially I wondered if the simulation basis of many of these courses was at fault – perhaps too complex, too aspirational (and therefore "irrelevant") insufficiently high-fidelity (Cheetham and Chivers, 2001:261) or too similar to the LPC - hence the early title "Challenges to learning of young litigation solicitors in simulation courses". A feature of this study has been that, whilst the essential focus has been constant, and driven by the same sense that something was missing or not understood, the title of the project has evolved towards a better fit with the problem as it emerged. Whilst it was clear that a qualitative, interpretivist approach was appropriate, so as to obtain a narrative picture, the same cannot be said of the search for a more specific methodology (to be contrasted with method); a concept with which I have now struggled for nearly a decade. Pragmatically, when I knew, or thought I knew what I wanted to find out and how I might go about it, I resisted the idea of having to place the project in a predefined box. Pragmatically, again, many of my choices about how to go about obtaining data were defined by practical constraints rather than principled considerations driven by any particular philosophical or political standpoint.

Eventually, the delineation of the research question dictated a broadly phenomenological approach through the individual interviewee to the What?, the

When? and the How? and, to the extent that the treatment and results of the analysis, in defining the phenomenological essence, contain any elements of Why?, aspects of grounded theory. Such synthesis, suiting method and methodology to the project and the research question, and drawing as appropriate from different traditions, is my ultimate response to that struggle.

8.2   Identifying the research question and subsidiary questions

Whilst my interest in simulation-based courses continues, I felt that, as indicated in Chapter 1, what was first needed was a precursor study of the target group's experiences in and approaches to learning generally. This I initially constituted (stage 1) as "What are the perceptions of young litigation solicitors of knowledge, of themselves as learners and of their learning processes?": a question which I envisaged locating a (possibly common) espoused epistemology that might explain the resistance that I felt that I had discerned in the field to a certain kind of constructivist, "experiential" classroom environment. This, extremely broad, central research question informed a series of subsidiary questions that are reflected in the interview schedule. I speculated that key constituents of such an epistemology might be:

a)   whether or not "learning" was perceived to be complete or continuing at this stage (self as learner);

b)   whether learning was conceived of as principally occurring in the classroom/as CPD or in the workplace and informally (self as learner/learning environment);

c)   whether key knowledge was perceived as being principally information (updates on the law), skills and/or tactics (knowledge); and

d)   the extent to which learning was conceived of as "just happening" through osmosis/as sufficient with minimum CPD compliance or involving deliberate planning/debriefing/reflection (self as learner/learning environment).

It is from this list that I derived the overall themes of this study:

a)   the perceived contribution of CPD activity (Chapters 4 and 11);

b)   the place of self-directed planning and forms of engagement with experience as strategies (Chapters 5 and 7; 12.6.3.1-12.6.3.5 and Chapter 13);

c)   the place of aspirational learning activity (Chapters 5 and 7 and 13.5); and

d)   the place of unconscious acquisitional learning in the workplace leading to largely tacit knowledge (Chapters 6 and 7; 12.3.2).

A review of the data obtained from the stage 1 interviews resulted in a supervisor-prompted reconsideration of the title and the re-formulation of the central research question, particularly as to the nature of the epistemology that I sought to uncover. If one takes as a guide Illeris' (2002:15, 2004: 14) four concepts of learning to which I referred at 5.1:

1   what is learned;

2   psychological learning processes leading to meaning 1;

3   interaction processes between the individual and the environment as preconditions of meaning 2;

4   as a synonym for teaching.

what I wanted to have articulated to me was more akin to meaning 3 than, as might have been suggested by the original title, meanings 1 or 2, focussing on the output (meaning 1) or internal process (meaning 2). Should it be possible to extract them from the data, some aspects of meaning 2 – such as the contribution of unconscious learning to tacit knowledge and skills - might also contribute to the overall picture, as would meaning 1 insofar as it described the results of aspirational activity. The term "mental model" (see Johnson-Laird, 1983; Gentner and Stevens, 1983) was initially borrowed from cognitive psychology as a comparatively neutral shorthand for these, slightly overlapping, concepts:

> [i]n interacting with the environment, with others, and with the artefacts of technology, people form internal, mental models of themselves and the things with which they are interacting. These models provide predictive and explanatory power for understanding the interaction.
> ...
> *Mental models* are naturally evolving models. That is, through interaction with a target system, people formulate mental models of that system. These models need not be technically accurate (and usually are not), but they must be functional.
> Norman, (in Gentner and Stevens, 1983: 7)

The final working central research question, then, "Young Litigation Solicitors And Their Mental Model Of Movement From Qualification To The 3-Year Watershed", incorporates this sense of an interest in an interaction with the professional environment, both in the CPD classroom and in the workplace. It also allowed for a sense of evaluation of that environment - what were the priorities; the values; the strengths and weaknesses of the various aspects of that environment? – ultimately as a measure of the way in which the "competence for development" (Fig. 2) might

manifest itself in the understanding of the interview group. A further refinement to this third formulation of the research question was in identifying a watershed as a benchmark for that evaluation; the "mental model" working concept itself assuming a description of a process with, at least implicitly, a goal or outcome. This de-emphasised the place of types of knowledge and focussed on the variables relating to self as learner and interaction with the learning environment. That said, its being a term of art in a particular discipline held the potential for confusion, particularly as what was ultimately discerned was, in many senses, a lack of clear model (perhaps even an anti-model) and the title was ultimately refined to avoid it (8.3).

8.3   *The phenomenological approach*

The primary research question, then, settled into a search for a picture of individuals' perception of a particular experience (the first three years post-qualification) in a particular context (development to and beyond the three year watershed) *as articulated by them*. In Chapters 6 and 7 I have acknowledged that this picture is, at least where unconscious acquisition of tacit knowledge and schemata and the efficient arrangement of expert knowledge are concerned, of cognitive processes which take place, given appropriate background experiences, without conscious involvement on the part of the learner: an automatic response to the stimulus of such experience consistent in broad terms with Skinner's behaviourism. It is possible that individuals might take a quasi-behaviouristic approach to CPD activity, assuming, consistently with the messages transmitted by the input-only, sanctions model, that attendance in order to receive information is synonymous with learning (Illeris' meaning 4); or that they perceive a need for a greater degree of engagement, a more constructivist stance, before learning is created, or to enhance the applicability or depth of learning. They may, or may not, perceive that their senior colleagues operate (Chapter 6) in a different way, and perceive the existence and value of such "expert rules" as being susceptible of transmission to them. Aspects of constructivism might also be present in the response to CPD and potentially aspirational activity where there is a tension between "easy" assimilation and "difficult" accommodation. As far as engagement with experience in the workplace is concerned, my label is admittedly constructivist, drawing on the self-directed assumptions of the andragogical paradigm (Chapter 5) and on the concept of reflection-on-action (7.6) whilst recognising that, as emerged from the data, some forms of engagement with experience may be more straightforward,

Central working research question

Subsidiary research questions

Questionnaire questions

Interview questions

What are the perceptions of young litigation solicitors of knowledge, of themselves as learners and of their learning process?

Knowledge

What knowledge is relevant to you?

Q2 How did you feel about yourself as a litigator on qualification?

Self as learner

Do you perceive yourself as a learner?

Description of how individual perceives themselves as a learner (if at all)

Q4a What falls under CPD?

Q4b What contributes that does not fall under CPD?

Do you forward plan your development?

Whether firm has structure for CPD or individual responsibility

Learning environment

What assists you in gaining knowledge?

Learning journal/PDP/record/plan of development?

Any other way in which CPD activity selected

Q3 Do you have any conscious plans about your learning/development?

What hinders you in gaining knowledge?

Q5 Description and evaluation of a helpful leaning experience

Q6 Description and evaluation of an unhelpful learning experience

Q7 Anything further to say about support for development of NQ solicitors?

Figure 8 Original title, research questions and articulation in questionnaire and interview
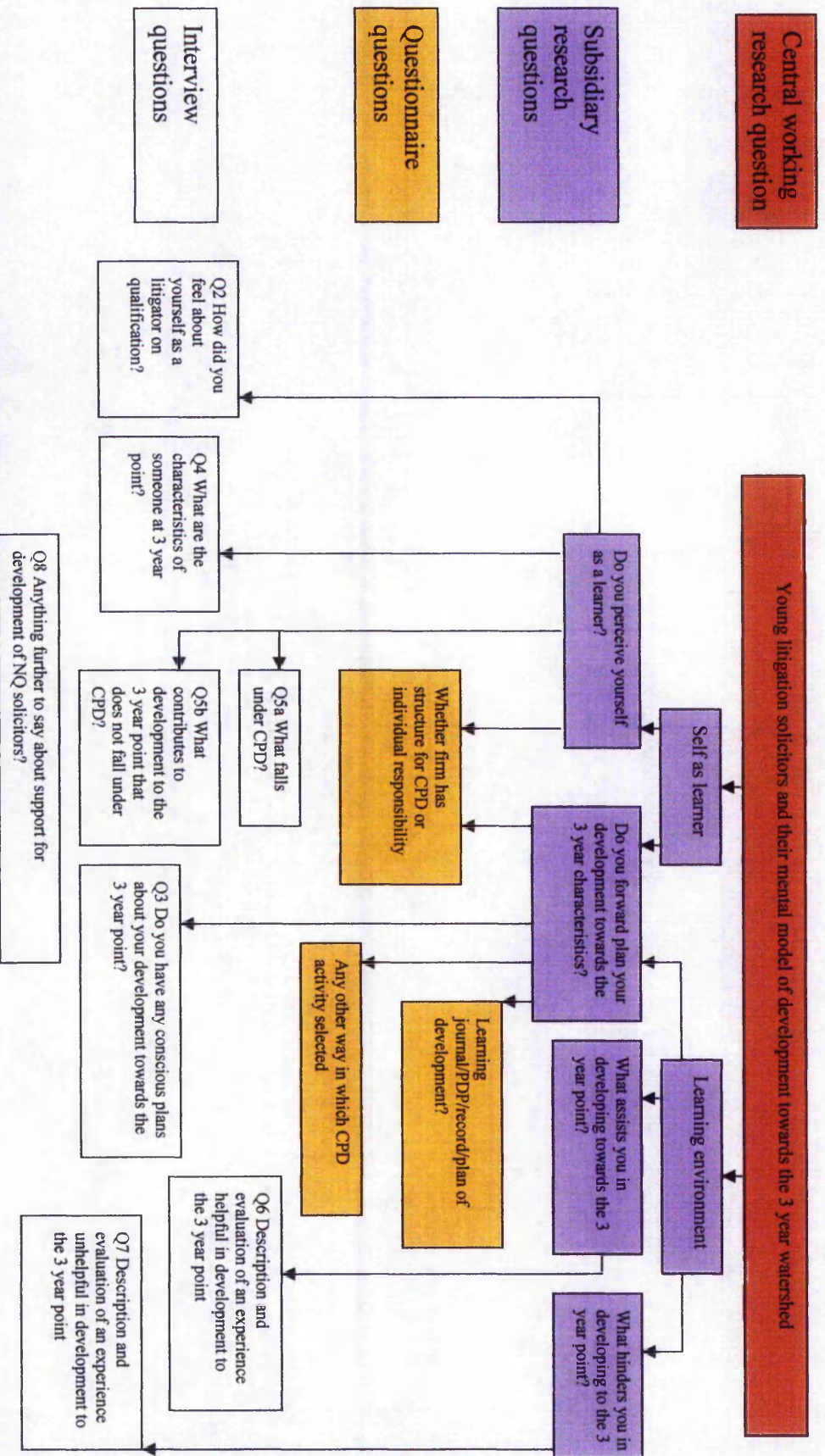
Figure 9 Developed title, research questions and articulation in questionnaire and interview

Central working research question

Subsidiary research questions

Questionnaire questions

Interview questions

Young litigation solicitors and their mental model of development towards the 3 year watershed

Self as learner

Learning environment

Do you perceive yourself as a learner?

Do you forward plan your development towards the 3 year characteristics?

What assists you in developing towards the 3 year point?

What hinders you in developing to the 3 year point?

Whether firm has structure for CPD or individual responsibility

Learning journal/PDP/record/plan of development?

Any other way in which CPD activity selected

Q2 How did you feel about yourself as a litigator on qualification?

Q4 What are the characteristics of someone at 3 year point?

Q5a What falls under CPD?

Q5b What contributes to development to the 3 year point that does not fall under CPD?

Q3 Do you have any conscious plans about your development towards the 3 year point?

Q6 Description and evaluation of an experience helpful in development to the 3 year point

Q7 Description and evaluation of an experience unhelpful in development to the 3 year point

Q8 Anything further to say about support for development of NQ solicitors?

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such as "asking questions". Nevertheless, whatever my own speculations as to an appropriate epistemological stance – constructivist, reflective – the whole point of this study is to identify the, possibly very different, epistemological stance of the individuals in the interview group.

I was, consequently, drawn to the phenomenological approach to research for two reasons; first that it legitimised detailed description as an output of research activity, and second, that it demanded that I put aside my own assumptions.

As a philosophical stance, derived from the work of Edmund Husserl and Martin Heidegger, phenomenology involves "the study of human experience and of the way things present themselves to us in and through such experience" (Sokolowski, 2000:2) and developed in the early part of the 20th century as a reaction to extremes of "scientific" empiricism and the Cartesian dualism which distinguishes between consciousness and being. In phenomenology, at least for Husserl, consciousness cannot be divorced from phenomena: all consciousness or perception is, by necessity, of an object ("intentionality"). The objects of perception are validated by that perception, rendering a phenomenological approach peculiarly appropriate to a study of, in this case, a particular kind of experience as experienced by those directly participating in it. Put another way, I had come to the study in the first place as a result of recognising that my own perception was at odds with that of the students, prompting a desire to uncover the experience as it was perceived by the young lawyers themselves:

> [f[or a phenomenologist, an *a priori* decision is made that he or she will examine the *meaning* of *experiences* for individuals. Thus an individual starts into the field with a strong orienting framework, albeit more of a philosophical perspective than a distinct social science theory, although both provide explanations for the real world.
> Creswell (1998: 86)

A number of traditions within phenomenology as a philosophy have emerged, of which the most persistent are perhaps the transcendental phenomenology of Husserl focussing on the "essence" of consciousness in particular, and the existential phenomenology of Heidegger in search of a more fundamental ontology, albeit one still based on the individual within, rather than divorced from, experience in the world. It is, nevertheless, a broad church:

> … in general [phenomenology] never developed a set of dogmas or sedimented into a system. It claims, first and foremost, to be a radical way of

doing philosophy, a practice rather than a system. Phenomenology is best understood as a radical, anti-traditional style of philosophising, which emphasises the attempt to get to the truth of matters, to describe phenomena, in the broadest sense as whatever appears in the manner in which it appears, that is as it manifests itself to consciousness, to the experiencer.
Moran (2000:4)

As a research methodology, phenomenology tends to draw on Husserl, and in particular on his related concepts of "bracketing"; "epoché" and "reduction", by which the phenomenologist excludes:

… all sciences relating to this natural world no matter how firmly they stand there for me, no matter how much I admire them, no matter how little I think of making even the least objection to them; I make absolutely no use of the things posited in them …
Husserl (in Welton, 1999: 65)

In a research context, these amount to the researcher's suspending prejudgment whilst engaged in the research process: "we become something like detached observers of the passing scene or like spectators at a game … onlookers" (Sokolowski, 2000:48). This concept aligns with a fundamental of grounded theory, which I discuss at 8.4 below. Clearly, however, where as in my own case, the researcher has some initial knowledge of the subject area, bracketing may not be complete and the researcher must surface and acknowledge circumstances in which it may have been partial. Moustakas, who takes a consciously Husserlian approach to "human science" research, translates this bracketing into methods of investigation and analysis involving:

…[c]onducting and recording a lengthy person-to-person interview that focuses on a bracketed topic and question. … Organising and analysing the data to facilitate development of individual textural and structural descriptions, a composite textural description, a composite structural description, and a synthesis of textural and structural meanings and essences.
Moustakas (1994: 104)

Nevertheless, Norman warns that [my italics]:

… people may state, (and actually believe) that they believe one thing, but act in quite a different manner. … If you ask people why or how they have done something, they are apt to feel compelled to give a reason, even if they did not have one prior to your question … Having then generated a reason for you, they may then believe it themselves, even though it was generated on the spot to answer your question.
Norman (in Gentner and Stevens, *op. cit.*: 11)

I acknowledge that my study, having initially borrowed Gentner and Stevens' term "mental model", was to use it on a working basis in a less absolutist sense to the extent that, as I described at 8.2, it has finally been replaced with the more generic and less weighted "perceptions".   My request, in question 4a, for example, for an immediate "top of the head" answer, was a deliberate attempt to obtain an unevaluated and instinctive response. In pursuit of a phenomenological account, I sought, without pre-judgment, to obtain description rather than the "reasons" about which Norman is concerned.   Phenomenological study must always – unless the researcher is investigating his or her own experience – in any event be subject to the mediation of language and the interaction between interviewer and interviewee. But the meaning of experience is necessarily expressed in language and by choices. My results may, therefore, be of an espoused model rather than an actual model; whether espoused or actual, the effect is the same as far as the resistance to the particular kind of learning activity which had instigated the study in the first place, is concerned. Similarly, the recounting of experience on which I have relied is divorced from and chronologically later than the experience, such distance possibly distorting recollection but accurately recording the meaning of the experience that the individual carries with them. There is, therefore, the potential for a form of what is conventionally known as the "Hawthorne effect" (Roethlisberger and Dickson, 1939; explained in Merrett, 2006) such that on occasion, I was aware that the fact of interview itself prompted new thoughts in the interviewee:

> … by looking at the questionnaire that you've given to me it's obvious there
> should be a deeper process there but I'm not sure how that works.
> Cairo, 2 months PQE, para 20 (see also Vienna, para 42)

and that I might, by some interviewees, be being given, on occasion, the "party line" (perhaps the employer's line) in a different sense to the personal justification that Norman criticises, or the response the individual thought I wanted to hear. The number of respondents, the general level of candidness they displayed and careful analysis of recurring themes does, I suggest, militate against the worst effects of this latter difficulty.

Because the phenomenological description that I seek is of an opinion, and an opinion in an educational context at that, the spur that branched from the phenomenology tree in the 1970s and 1980s to become the research discipline of phenomenography,

developed by Marton (*e.g.* 1994), Entwistle (1972, 1981, 1997) and others (see Marton, Hounsell and Entwistle, 1984) also falls for discussion. As shown in Fig. 10, both phenomenology and phenomenography seek understanding of the individual within the experience through a recounting of perceptions of that experience. The underlying distinction between the two is significant in terms of my attempt to create a phenomenology of an opinion:

> [p]henomenographers do not claim to study "what is there" in the world (reality) but they do claim to study "what is there" in people's conceptions of the world. This retains, at the second level, the essentially Husserlian view of the pristine nature of perception and the ability of the researcher to "bracket" his or her own socially and historically "contaminated" conceptual apparatus.
> Webb (1997:200)

In fact, however, phenomenographic research seems to have coalesced into a particular field – higher education – and a particular aspect of that field – the deep/surface learning dialectic. Consequently, it is also conceived of as distinct from phenomenology – which seeks to synthesise a (single) essence – by deliberately exploring *variations* in perception, here on a scale from "surface" to "deep". The clarity about what elements of personal presupposition are to be bracketed is helpful:

> ...the issue is this: it is the *student's* experienced world that phenomenographic research bases itself on, and therefore steps must be taken – at the beginning and throughout the research – to bracket anything that would lead us from the student's experience.
> Ashworth and Lucas (2000:200)

Whilst I am interested in the scope of the individual's orientation to learning – tacit only; CPD only; incorporating deliberate engagement with experience; including aspirational activity – which might be consistent with these deep/surface learning investigations, I have more difficulty with the tenor of phenomenographical research as it is implemented in this respect. There appears to be an underlying assumption in this aspect of phenomenography that "deep" (as defined by the researcher) is good and "surface" (again as determined by the researcher) is bad:

> [i]n practice, phenomenographic studies usually concern students being asked to describe their understanding of a concept, a text or a situation, with the researcher then sorting the descriptions into a "handful" (very often five!) categories ... Invariably one of the categories displays "correct meaning, correct knowledge or correct understanding" whilst the others are recapitulations of earlier, now supposedly discredited accounts.

Whilst this view has been criticised on the basis that the deep/surface dichotomy is a valid measure found elsewhere outside the field (Entwistle, 1997) and as no more than a "crude" representation of phenomenography (Ekeblad, 1997), the fact remains that evaluating and using such labels inevitably, I suggest, betrays the researcher's stance. Although I am conscious that I am guilty of a small degree of such labelling myself, in my attempt, in Chapters 10 to 13, to map some of the experiences, particularly of the effectiveness of CPD activity, against Bloom's taxonomy (11.3.1 to 11.3.4) and have compared responses with Knowles' andragogy as it intersects with the competence for development (Chapter 13); in principle, like Rogers (2003), I wish to accept that individuals in the interview group construct themselves as learners differently from the way in which I might wish them to construct themselves and have in the past assumed that they do. Whilst adopting from phenomenography the legitimacy of a "second order" descriptive phenomenology of "a conception", I do wish, essentially, to describe – against the background of the group of descriptions and theoretical constructs that might be assumed to apply - rather than to evaluate. Phenomenography, it also appears, may operate without consideration of the *context* which might lead an individual to adopt a "surface" rather than the implicitly desirable "deep" approach. In circumstances of professional adolescence where considerable stress may be imposed by any deficit between training contract and qualification role, that context may be of enormous significance.

I am also more interested in the commonalities of the individuals' experience than the variations, a consideration that again leads me back to a more strictly phenomenological approach. However, again, I recognise that the concept of repetition became, as will become apparent at 12.3.2, important to acquisition of tacit knowledge and skills. Variation of repetition may be more significant in the context of critical and forward-looking reflection (see Linder and Marshall, 2003). However, I do recognise that there may be variations, and explanations for such variations, a reflection that leads me to consider the extent to which I really wish to generate description as opposed to theory.

Active participation in
the research (heuristic,
action research)

Phenomenology (through
the individual(s) to the
essence of the experience)

Phenomenography –
variations in
understanding of
experience

Hermeneutic
research (intention
and meaning of
the text as defined
by the researcher)

Recounting of
Experience

Individual

Experience

Biography,
conversation
and discourse
analysis

Observation:
participant
observation,
ethnography,
case study

Figure 10 A range of methodologies as they manifest themselves in relation to the topic studied

8.4   Grounded Theory

If phenomenology involves bracketing of the researcher's prejudgments prior to and during the research activity, the grounded theory approach originally developed by Glaser and Strauss in the 1960s – whilst taking no particular philosophical standpoint - operates on the basis of a similar suspension throughout and *after* the research:

> [o]n the continuum, I place phenomenology at the "before" end … At the most extreme end of the continuum, towards the "after" end, I place grounded theory.
> Creswell (1998: 86)

Like action research, it shades from methodology into method. Its discipline of coding, deriving codes from data and constant comparison of codes, data and back again, roots the output in the data, although the extent of the bracketing of the researcher's context may be less rigorous than in phenomenology:

> [i]t is not that we use experience or literature as data but rather that we use the properties and dimensions derived from the comparative incidents to examine the data in front of us
> Strauss and Corbin (1998:80)

Insofar as I wish to compare the espoused model of development against other models (specifically the competence for development enshrined in the day one and work-based learning outcomes), this would require a more deductive approach than the classic grounded theory model would permit.

Distinctly unlike pure phenomenology, however, the focus of grounded theory is on the endpoint as generation of theory rather than description. This theory is validated by its source in the data:

> [t]heory derived from data is more likely to resemble the "reality" than is theory derived by putting together a series of concepts based on experience or solely through speculation (how one thinks things ought to work). Grounded theories, because they are drawn from data, are likely to offer insight, enhance understanding, and provide a meaningful guide to action.
> Strauss and Corbin (*op. cit.*: 12)

Data, generally, in the form of interview transcript, is subjected to a process of microanalysis, identifying concepts and categories arising in the data (represented by "codes") and reinforced by a process of constant comparison between new data and the growing list of codes and categories. Although Creswell points out that (*op. cit.*: 58)

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"[d]espite the evolving, inductive nature of this form of qualitative inquiry, the researcher must recognise that this is a systematic approach to research with specific steps in data analysis", I suspect that it is more tempting for the beginner to be seduced into seeing the process as an end in itself, betraying his or her own technical rationality (7.6.1).

"Open coding" is the initial process of categorisation and of itself, may, insofar as codes represent phenomena rather than "conditions, actions/interactions or consequences" (Strauss and Corbin, *op. cit.*: 129) assist in identification of phenomenological essences and development of the necessary detailed description. It is in the use of the codes identifying explanations of the phenomena and in the second stage of axial coding where interactions between categories and sub-categories are compared, that theory is developed. Whilst, as I have indicated, the rigorous discipline of grounded theory was adopted in support of what was originally a purely phenomenological approach, the question remained whether I expected or wished to seek to generate theory in any event. As it happened, it was impossible to avoid doing so, first because the interviewees offered and substantiated theories of their own. Second, variation in the experiences recounted led me to deeper exploration of the bases for the variation such as the implication of the immediate prior experience on feelings of confidence (10.3.3.3) and competence (10.3.3.4) at the point of qualification and third because of linkages that emerged from the data, such as the replacement of advocacy as a useful learning environment by giving presentations and seminars (12.5.4.1) and the important of the "slight senior" (12.6.3.2).

8.5   *The synthesis*

In suiting the methodology to the problem, therefore, I find myself borrowing, on an informed basis, from a number of sources. I take from phenomenology the underlying philosophical stance and legitimation of an exploration of the meaning of experience and from phenomenography the educational context and permission to treat of the second order perceptions of learners, whilst retaining some suspicion of its apparently positivist and judgmental leanings. From grounded theory I take, within the practical constraints that I discuss further in Chapter 9, the systematic and disciplined procedures of coding and the necessity for all results to be firmly founded in the data. It is from that source, too, that I gained confidence to generate a few small theories of my own.

8.6　*The information required to answer the research question*

As will become apparent at 9.3, this study was, of necessity, planned within a number of significant pragmatic constraints: of access, professional privilege and confidentiality and time. Solving of hypothetical problems was considered as a possible method that would avoid some aspects of the problems of privilege and confidentiality described at 9.3.1.3 and 9.3.1.4 and would have been comparable with the studies seeking to identify expert heuristics described at 6.2. However, by their very nature, hypothetical problems would have had to be set by the researcher, representing a particular prejudgment of the type of potential learning experience that might occur within an individual's professional life. Problems, in contrast to open questions, might suggest that correct answers might exist, a problem that seems to be inherent in some of the phenomenographic studies. Problems would tend to identify what an individual might do but not necessarily why or what value they might place on doing so. I was interested in individuals' *selection* of real life incidents of value and their evaluations of such value: what was, or what they were prepared to describe as, a valid learning experience. For that reason, as well as the pragmatic reasons that would allow the study to proceed at all, I favoured an interview approach in which open questions would be used to explore a wider picture of this crucial phase of development than a more conventional experimental model would allow.

As I have indicated at 8.2, it seemed to me that the impediment or resistance I suspected could be the product of an *espoused* theory as to how development should be achieved. What I therefore needed as a starting point was a picture of the opinion, as the individual was prepared to articulate it, rather than a fact; the evaluation as well as the description.

8.7　*How to obtain that information*

The method was, therefore, to a great extent, defined by

a)　　the nature of the research question, focussed on articulation of an espoused theory; and

b)　　pragmatic constraints.

Action research would have gone further than I intended at this stage, in not only diagnosing the underlying problem but also experimenting with its treatment, and would have caused increased problems of access and continued participation in order to carry out its experimentation phase. A longitudinal study, comparing the espoused

model at differing stages of an individual's progression from qualification to the three year watershed, was highly attractive, but logistically impracticable (although since the interview group itself represented the whole of that spectrum (Appendix VI), I was able to draw some tentative conclusions about different stages in that progression such as a shift in the way in which the "asking questions" strategy was employed: 12.6.3.3). Case study of a single case or small number of cases might be particularly susceptible of criticism on the basis of individuals telling me what they thought I wanted to hear, which was ameliorated by a larger interview group. Non-participant observation would have been unlikely to uncover the full picture, even if individuals were observed in a learning environment, and would not allow for articulation of the espoused theory in which I was interested. Nelson rejected an ethnographic non-participant observation for pragmatic reasons (which I address at 9.3.1.3):

> [l]awyers have an obligation to preserve the confidentiality of their clients'
> affairs and will not permit a researcher to observe and record their work if
> there is a risk that that element of confidentiality might possibly be breached.
> Nelson (1993: 49)

8.8   Limitations

A number of pragmatic issues arising in data collection is described at 9.3 and a retrospective review of the qualities of interviewer and interviewee appears at 9.4.1. In this section, however, I focus on two groups of limitations in particular:

8.8.1   Researcher as "insider"

I set out in the introduction (1.3) a number of factors which, naively, could be perceived as benefits of my sharing a profession and field with the interviewees: a sharing of language leading to rapport, speeding up on the interview process and an aid to transcription. I have to admit to a personal and emotional involvement in the underlying issue which had brought me to the study in the first place: as an educator trying hard to provide what was wanted and needed in an involving and effective way, all of which, it might seem, was susceptible of being rejected in favour of an epistemology which I did not share. That emotion was, for me, necessary, in order to sustain the years of work on this investigation but brought with it the risk of my own response in potentially creating a research instrument which would extract what I wanted to hear; hearing and analysing the data so that I heard from it what I wanted to

hear, or in what I would subsequently choose to do with the data (treating the interviewees' perceptions as "wrong" and to be corrected in the way that Brookfield (*op. cit.*) treats the passivity of his students). That said, and acknowledging that there are potential advantages in the insider approach, a completely external, outside approach is not without pressures of its own:

> [f]or an outsider, the danger is the imposition of the researcher's values, beliefs and perceptions on the lives of participants, which may result in a positivistic representation and interpretation. For an insider bias may be overly positive or negligent if the knowledge, culture and experience she/he shares with participants manifests as a rose-colored observational lens or blindness to the ordinary ...
> Chavez (2008: 475)

I have sought to describe, both in this chapter and in Chapter 9, an approach designed to ameliorate this difficulty: the use of a focus group closer in time and place to the interviewees than I was myself (9.3.2); bracketing of such personal perceptions and prejudgments inherent in the phenomenological approach at the point of data collection; the rigorous extraction of theory from the data and only from the data at the point of analysis of grounded theory and, in Chapter 9, a method relying in principle on open questions. More directly, as educator, I deliberately excluded from the study (9.3.16) anyone who could, as a participant in courses where the challenge had first been identified, have been a direct recipient of that emotional and epistemological response.

A shared language (9.4) was significant in rapport building and in the time-saving inherent in, for example, my not having to have "arbitration" or "the Woolf Reforms" explained to me. Both time and place prevented my being, however, fully an insider in the research. I had last practised in the field ten years prior to the earliest interviews and much – the Woolf reforms themselves, for example – had occurred in the interim. I had not worked for the firms employing any of the interviewees, or for any firms very much like them. Whilst, as I identify at 9.4, such insider-status as I possessed had its benefits, I could not afford to treat it as absolute, using the disciplines of bracketing; grounded theory analysis; open questions (8.6) and, most pragmatically, a mental note at all times of the degree of time that had passed. This question of "time having passed" operated, in fact, as a personal benchmark for my bracketing at times when it was at risk of being compromised.

Nevertheless, *j'accuse*. In any case where there is existing knowledge of the subject area, bracketing may be incomplete (8.3: Moustakas 1994:104) and whilst I may have taken care, for example, to ask interviewees to unpick the concept of "talks", for example, there is the potential that my failure to do the same in respect of concepts such as "drafting" or "advocacy" has a deleterious effect on the results despite having "speeded-up" the interview.

If bracketing may be incomplete, then interviewing may be flawed. I have noted a tendency to lead, particularly in follow-up questions which might betray a bias towards, for example, an approach to learning that prioritises engagement with experience over tacit acquisitional learning. The same may be true when asked to clarify questions. Whilst either could be appropriate (9.4: Kvale, *op. cit:* 158), any leading runs the risk of carrying the interviewer's, rather than the interviewee's, opinions into the response. This may particularly be the case where the interviewer, as I might well have been, was perceived as older (9.4), more experienced, and knowing about education to a group who, as the analysis indicates (10.3.3.), were often uncertain of their own competence.

The risk of incomplete bracketing resulting from insider-ness, and of over-leading then follows through into transcription where the transcriber is, as I was also the interviewer (9.5). Mis-perceptions and biases may be perpetuated and, as I indicate at 9.4, my transcription of both questions and answers at least allowed me to endeavour to separate "pure" responses to open questions from responses to potentially more leading questions (see, for example, 13.3.4, which records the response but also the epistemologically-marked question "Do you have sort of particular steps you take to try and achieve your marker?")

Coding may also be flawed by incomplete bracketing; adversely affected by the coder hearing what he or she wanted to hear or attributing greater significance than is justified to items appearing briefly or tangentially in the data, or, conversely, by "blindness to the ordinary" (Chavez, *ibid.*) from which an outsider might draw different conclusions. I sought to distance myself to some extent by deriving my "start list" of codes from a focus group rather than from my own experience (9.6), but the risk, particularly of over-emphasis remains, and this is why I have occasionally resorted to a more quantitative or quasi-quantitative form of analysis (*e.g.* 10.3.3.2; 12.5.4.1) to satisfy myself of a more objective significance of what I thought I had detected.

From an educator's perspective, I have potentially prejudiced the purity of the final analysis by seeking to compare the results against existing theoretical models (8.3)

rather than letting it stand on its own terms, although I would argue that, it is, in the context of this study, the extent to which the perceptions recorded align with or differ from such accepted canons which is relevant, rather than any qualitative value of the "correctness" of either; the latter reflecting a reservation of my own about some forms of phenomenographic endeavour (8.3: Webb, 1997:200/201).

The study is, therefore, at risk at all stages as a result of insider-ness. Once identified and evaluated (for, for example, likelihood and impact), I have made such provision as was pragmatically possible to reduce the effect of such risks, if it remains impossible to avoid them altogether.

8.8.2   *Limitations in the research instruments employed: questionnaire and interview*

Consequently I was left with two means of obtaining the articulation I sought: questionnaire and interview. One problem in broadcasting a questionnaire would be the perennial one of obtaining responses, exacerbated by the natural suspicion of the profession and their ignorance of qualitative research in the first place (Genn *et al*, 2006: 3). There would also be, as I discuss at 9.3.3, difficulties in using publicly available databases to locate members of the appropriate group. A face to face interview, structured sufficiently to ensure coverage of all the subsidiary research questions, but one in which a personal rapport could be developed and with scope for clarification and follow up questions, was, albeit by something of a process of elimination, the solution. It is, nevertheless, the case that "long interviews with up to 10 people" is typified by Creswell (1998:65) as the data collection method most allied with phenomenological studies (grounded theory approaches typically involving twice or three times the number of interviewees).

Particular limitations that can be envisaged at the outset are inherent in this approach: it assumes that interviewees possess and can articulate a response to the phenomena being researched (8.3, Norman, in Gentner and Stevens, *op. cit.* 11); that responses articulated are legitimately the opinion of the interviewee (and not of his or her influential colleagues or employer or perceived as a "correct" response or the response likely to please the interviewer; demanding in Kvale's view a "criticality" in conducting the interview: Fig 16) and that the fact of the interview itself is neutral to the data (despite the personal attention and the apparent significance of the phenomena being researched: 8.3, Roethlisberger and Dickson, 1939). Other limitations would be difficult or impossible for the researcher to detect accurately as, for example, the

emotional state of the interviewee at the point of the interview (*e.g.* how they felt about their careers on the day); internal politics (*e.g.* how they felt about the gatekeeper) or background inhibitions and pressures (*e.g.* a desire to finish quickly to get back to the desk).

That decision made, other more specific problems and issues in the design of the questionnaire and interview format are discussed at 9.3 (*e.g.* time; internal politics; client confidentiality and privilege; privacy, confidentiality and anonymity, informed consent *etc.*) and limitations in the overall study identified in the course of and following analysis at 13.2, some of which lead to suggestions for further studies in the field..

CHAPTER NINE- METHOD AND TECHNIQUE

> "I don't know. It's just that ... there's something I don't know, and I don't
> know because I can't find the right question to ask you because I don't know
> what to ask. What is it that I don't know?"
> Sir Humphrey feigned innocence.
> "Minister," he said, "*I* don't know what you don't know. It could be almost
> anything."
> Lynn and Jay (1989:163)

9.1   Introduction

Building on the preceding discussion of methodology, this chapter considers the
implementation of the research project from 2002, taking its structure from Kvale's
(1996:88) seven-stage model of an interview investigation, the first phase of which
("thematising") fell more naturally into the discussion of methodology in Chapter 8.
The final three phases occurring in 2007 and 2008, ("analysing", "verifying" and
"reporting") are largely dealt with in Chapters 10 to 13, although there is, necessarily,
some element of reporting – insofar as it relates to the implementation of the study – in
this chapter.

9.2   Background

As indicated in Chapter 8, a very down-to-earth approach was deliberately taken to the
design and implementation of the project. The interview group could be assumed to be
largely ignorant of qualitative research (Genn *et al*, 2006) such that one was dealing
with an inexperienced, professionally suspicious and possibly hostile audience.

9.3   Designing: problems and issues in obtaining the information

Kvale considers the design phase to be a balance between obtaining knowledge and
"taking into account the moral implications" (*ibid*: 88).

9.3.1   The moral implications

A considerable number of possible areas of resistance to participation other than simple
unfamiliarity with the concept presented themselves. Not the least was the question of
a) time: all the participants would have targets of chargeable time to meet and
participation did not fall into any obvious time code. Had I in fact been charged for
interviewees' involvement at client rates the study would have cost many thousands of

pounds and I am grateful to all the gatekeepers and participants that this was not at any stage even suggested.

A further issue that might inhibit participation was that of b) internal politics. Asking for perceptions of learning experiences contained the potential for interviewees to comment positively or negatively on in-house training or workplace supervision within their firms. The use of firm gatekeepers to obtain access to nine of the 13 interviewees probably improved participation and provided "permission" to participate from a presumably trusted individual. Equally, however, my approach through the firm might carry with it an implication that the firm's activities were to be directly evaluated and that results or even transcripts might be returned to the firm. In addition, c) the possibility of interviewees describing activity within ongoing cases raised the possibility of breaches of client confidentiality and solicitor-client privilege (SRA, 2007, r. 4) and, in a worst case scenario, the transcript itself becoming a disclosable document in the course of those proceedings (C.P.R. r. 31.6)

Beyond these difficulties peculiar to working with the particular group, the inherent ethical principles involved in research interviewing can be grouped as d) anonymity and confidentiality, e) destination of data and f) informed consent.

Early on I decided to group all these issues together in a "brochure" that could be provided simultaneously and in advance to potential interviewees and to gatekeepers, including the questionnaire and consent form - drawing on some of the *pro-formas* constructed by Moustakas (1994) - described in the sections which follow. I was fortunate that, shortly before the first stage of interviews, the *Revised Ethical Guidelines for Education Research* (BERA, 2004) were published, enabling me to check the brochure against their precepts. Whilst a complete copy of the brochure appears in Appendix IV, I incorporate my solutions to each of these issues as extracts from it in the discussion below. Extracts, unless otherwise indicated, are from version 6.

9.3.1.1 Time

I could not afford to lose potential interviewees because they were being asked to invest too much of their time in participation. In addition, it was only fair to firm gatekeepers for them to understand how much generosity they were being asked to extend.

The questionnaire, then, captured basic personal data (name; PQE; field of practice and some idea of the individual's understanding of the extent to which they took or were expected to take personal responsibility for developmental activity), enabling best use to be made of the limited time available for interview.

9.3.1.2 Internal Politics

Providing an identical brochure both to participants and to gatekeepers (it is explicitly entitled "Brochure for participants and gatekeepers") was a simple way of ensuring that all stakeholders had full and identical information about the interview protocol. This also made clear what information employers could expect to receive about participation in the project (if interviewees chose to tell the firm more about their participation, that was a matter for them):

Whilst this approach could not entirely avoid concerns about participation and content of data being provided to firms, it was, I felt, the most practical method of managing expectations on the part of both potential participants and their gatekeepers.

9.3.1.3 Client confidentiality, privilege and related issues

This was, potentially a serious professional matter for firms, participants and for myself. The professional obligation to preserve client confidentiality (SRA, 2007) has few exceptions but conventionally solicitors do speak about cases, adopting many of the protocols as to anonymity as that I describe below. Further, information given to me during the course of the research could not be assumed to attract the protection of solicitor-client or litigation privilege and the transcript – a copy of which would be in the hands of the interviewee – could be disclosable as evidence in court proceedings (C.P.R. r. 31.6). Whilst it was unlikely that a recounting of an episode from practice would be probative in the litigation described, there remained the possibility of such a document being probative in subsequent negligence proceedings if the interviewee had described circumstances amounting to negligence on his or her part or that of the firm (such as, potentially, a serious uncorrected mistake or inadequate supervision). This latter problem is not be confined to lawyers but could cause a similar difficulty in studies of the workplace activity of any professional, unless, in most cases, the incident took place more than six years ago (Limitation Act 1980). Consequently the interview guide described below became an essential protection, allowing interviewees to select, in advance, episodes to recount that were not only of significance to them but also would not cause them such difficulty.

Disclosure, privilege and client confidentiality

Learning experiences may occur during day-to-day practice as well as in formal "classroom" situations. In discussing workplace learning, participants are asked to maintain normal conventions in respect of case-anonymisation. Questionnaires, tapes, transcripts of interviews and other similar communications do not attract legal privilege and information contained in them could conceivably (although this is unlikely) fall within the definition of standard disclosure. Clients should not be referred to by name or in any other way that could identify them in respect of information that is not in the public domain or in any way that might result in a breach of client confidentiality. The researcher is a solicitor and understands and will respect the ethical limitations on colleagues. In addition, the research will be conducted in accordance with the ethical framework of the Revised Ethical Guidelines for Educational Research (2004) of the British Educational Research Association.

9.3.1.4 Privacy, confidentiality and anonymity

Cohen, Manion and Morrison (2000: 60-61) use as an umbrella principle a right to privacy similar to that embedded in European Convention of Human Rights, art 8,

given direct effect in this jurisdiction through the Human Rights Act 1998. Their principle relates to sensitivity of information, privacy in the interview setting and as to the dissemination of the data, all of which can be sustained by anonymity (such that participants cannot be identified, even by the researcher); confidentiality (restricting access to identifying factors to the interviewee and researcher), or both. Wengraf (2001: 187) proceeds directly to anonymity and confidentiality, although his definitions differ: "anonymity" aligning with Cohen, Manion and Morrison's idea of confidentiality and "confidentiality" amounting to non-release of data either at all or in part. Kvale's (*op. cit*.: 114) usage of "confidentiality" is similar to that of Cohen, Manion and Morrison and the BERA *Revised Guidelines* appear to incorporate the Cohen, Manion and Morrison definition:

> [t]he confidential and anonymous treatment of participants' data is considered the norm for the conduct of research. Researchers must recognise the participants' entitlement to privacy and must accord them their rights to confidentiality and anonymity …
> BERA (2004: 7)

As I describe below at 9.4, I was also concerned to allow for privacy and security in the interview venue.

> Interviews will take place at the participant's workplace or, if preferable to the participant, at a nearby neutral venue.

In the context of a face-to face interview, complete anonymity was, of course, not possible. At the other end of the spectrum, confidentiality in Wengraf's sense would have entirely frustrated the study. I was, however, particularly concerned that, despite my best efforts at redaction in pursuit of confidentiality, I might inadvertently retain details that could identify participants or their firms to a colleague, superior, member of a firm in the same field or location and so on. It was, therefore, essential that participants should be able to review their own transcripts explicitly with that in mind and that I must be strict about redacting anything that I was asked to, however painful that might be and up to and including removing the complete transcript from the corpus of data for the study.

> **Confidentiality and anonymity**
> Firms and individual participants will be allocated (or may choose) a pseudonym[37] as soon as logistically possible in the life of the research project. Quotations from transcripts of interviews or other communications may be used in the research report. There may be concerns that such quotations whether direct or in summary, might, despite the use of pseudonyms, allow identification of an individual or a firm or that other aspects of detail provided by participants might result in an identification being made. Any such concerns should be discussed with the researcher and steps will be taken to present material in such as way as to avoid as far as possible any prejudice to the anonymity of participants or their firms or other employers.
> ...
> Transcripts will be sent to participants as soon as possible after the interview and participants may comment on the transcript and in particular whether it has been sufficiently anonymised.

As correspondence not marked "private and confidential" (and in some cases, even that) is routinely opened and perused by a partner in law firms, I also deliberately offered participants the opportunity to communicate by email or to have transcripts and correspondence sent to a different address for the purpose of review, redaction, correction or addition. In the event the vast majority of interviewees were happy to communicate by email and even (after a specific enquiry whether it would be acceptable reiterated at the end of the interview and shortly before sending over the transcript) to receive the transcript by email. In one case the interviewee preferred to receive the transcript at home and was sent two copies – one to return with corrections – and a stamped addressed envelope to facilitate this.

> If participants wish, transcripts will be forwarded to them (marked private and confidential, or to their home or other nominated address) for comment after the event.

9.3.1.5 Destination of data

Clarity as to destination of the data was essential. Individuals were interested in the results, as were my own colleagues, gatekeepers and, from informal conversations I had had, the relevant department of the Law Society. It was also entirely possible that any of the interviewees might be familiar with the provisions of the Data Protection Act 1998, (see BERA, *op. cit.*: 8) a statute which I therefore felt bound to research.

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[37] I subsequently used non-consecutive numbering to identify transcripts and then applied a pseudonym taken from a list of cities which disguised gender, age, ethnicity and workplace context.

> **What will happen to the data?**
>
> The project will generate completed questionnaires, transcripts of interviews, other correspondence entered into with participants following interview, including comments on transcripts and a summary of findings. Transcripts will be sent to participants as soon as possible after the interview and participants may comment on the transcript and in particular whether it has been sufficiently anonymised. The summary of findings will, as set out above, be made available to participants and, where relevant, to firms and employers and comment may be generated on that summary.
>
> Data collected will be synthesised into a final substantial thesis that will be submitted for assessment (including review by external examiners) within the School of Education of the Nottingham Trent University and will, assuming successful submission, thereafter be retained in the university's library. It should be said that an article or longer paper derived from the research may be published and/or that the results of the research in a form similar to an article or paper, or to the summary of findings may be submitted to, for example, the Law Society to assist in its thinking about supporting development in this 0-3 PQE period. Synthesis may include some quotation in an anonymised form from questionnaires, interview transcripts, and correspondence. Completed questionnaires, tapes, transcripts and other correspondence will be destroyed both in hard copy and electronically on completion of the research project described above.

9.3.1.6 Informed consent

Cohen, Manion and Morrison (*op. cit.*: 51) synthesise four aspects of informed consent:

a)   Competence – clearly not an issue in this case.

b)   Voluntarism – Cohen, Manion and Morrison point out (*ibid*: 51) that this includes knowing and voluntary exposure to any risks involved. In the circumstances, I perceived the most compelling risks being the professional issues described at 9.3.1.3 above although, as Kvale points out (*op. cit.*: 120) the risks also include the subsequent *consequences* of participation in the study. One possible consequence that occurred to me at the outset was that of interviewee/students fearing "reprisals" or anticipating "favouritism" as a result of their participation. I intended in fact to recuse myself from moderation and exam board in respect of interview subjects. As a result of the risk that the project and my involvement in it might lead interviewees to assume consciously or otherwise that I wanted to evaluate NLS CPD provision in particular, I later made a decision not to approach firms involved in NLS courses so the issue did not arise.

> ***I am a student on an award-bearing course NLS is running. Will participation or otherwise affect my marks?***
> No. Whilst you or the researcher might choose to postpone participation in the research until you have completed your course in any event, all award-bearing courses involve systems of script anonymisation, first and second-marking, moderation and review by independent external examiners before marks are awarded to students.

Voluntarism also involves clarity as to the right to withdraw (see BERA *op. cit.*: 5: "Researchers must recognise the right of any participant to withdraw from the research for any or no reason, and at any time, and they must inform them of this right"). I could not assume that those who wished to participate at the outset would continue to do so (one potential interviewee who presented him/herself as a result of a local law society appeal ceased to respond to requests to make an interview appointment and has been treated as withdrawing).

> ***Participation is voluntary***
> Participation by firms or other employers and by individuals is entirely voluntary. Whether the approach is by a firm or employer allowing access to the researcher to conduct the research or whether the contact is directly with the interviewee, it remains entirely open to an individual to elect not to participate in the research or, having participated, to withdraw his or her consent by notification to the researcher. The participation or otherwise of any named individuals will not be transmitted to a firm or other employer although, by necessity, the number of participants at any one firm may need to be identified to the firm and in the final research (although firms will not be named).

c) Full information - informing about "the overall purpose of the investigation and the main features of the design" (Kvale, *op. cit.*: 112) or such information as is "relevant to subjects' decisions about whether to participate" (Silverman, *op. cit.*: 201). Kvale, however, (*op. cit*: 113) points out that unplanned follow up questions during the course of an interview cannot, by definition, be cleared in advance and that concepts of "full information", insofar as they assume that it can be provided *in advance*, are therefore faulty. On the suggestion of a supervisor, I included an outline of the interview structure ("interview guide"), warning of the possibility of follow-up questions and, as described at 9.3.1.3, allowing the interviewee to select examples that would not offend against professional obligations.

> In order to help you in preparation for the interview and to assist in reassurance about the nature of the interview, an outline structure is given. Follow-up questions not listed here may be asked to help the researcher to clarify responses.

I was entirely open to the possibility of an interviewee declining to answer a question:

> A   ... so talking about specific cases, I'm not sure if I can really.
> Q   Well, if you can't, that's no problem.
> Rio, 2 months PQE, paras 45, 46

although I recognise that the power dynamics of the situation were such that the "willing to please" interviewee might have been reluctant to do so.

d)   Comprehension – "making sure that subjects understand that information" (Silverman, 2000: 201). Silverman's example involves provision of details in participants' familiar languages. The problem here was less that of the interview than seeking to have individuals understand the "language" of participating in a qualitative research interview.

It is only fair to say that, with hindsight, the brochure may have been too voluminous and that I over-compensated for a feared level of suspicion and demand for explanation that did not materialise. Nevertheless, I was content that it was at least comprehensive and that it addressed all the issues that I could anticipate might be raised by lawyers. The questionnaire (ultimately moved to the back page for ease of separation so that interviewees could retain the rest of the brochure after the interview) also acted as a consent form for signature:

> I consent to participation in the research described in the brochure and to use of the transcript and resulting data as described in it and in accordance with the provisions governing research data contained in the Data Protection Act 1998. I also grant permission to audio-recording of the interview.

Beyond issues of information, confidentiality and consent, however, one returns to the further ethical dimension identified by Kvale and indicated at the beginning of this section, in asking what are "the beneficial consequences" of the study (*op. cit.:* 119). Kvale sees this as a question of cost/benefit: measuring the risks and potential loss of privacy of the participants against the overall utility of the study. Clearly and in the

light of the Ph D regulations, I hoped that its utility was as a general contribution to human knowledge and, more specifically as asking a question that appeared never to have been asked of representatives of this group. It seemed only fair (or, more cynically, likely to promote participation) to seek to identify some benefit for the participants themselves.

> **What is in it for participants?**
> It is genuinely hoped that by giving up a small period of time to consideration to the way in which you are learning and developing as a solicitor in that crucial 3 year period you may have insights which will be of direct value to you as an individual. Beyond that, it is hoped that the conclusions of the research can be used to assist and support those in the early years of post-qualification experience (this being a significantly under-researched period) in the future.

One interviewee was generous enough to acknowledge an importance in the investigation on a wider basis:

> I think, I think that the research you're doing is really valuable because I do,
> as I'm now experiencing it myself, I do think it's a bit of a black hole.
> Berlin, 2 months PQE, para 45

9.3.2   Design to obtain knowledge

The link between the central research question and subsidiary research questions in both the stage 1 and stage 2 formats of the project are set out diagrammatically in Figs. 8 and 9. In this discussion, however, I consider the emergence of the interview study in more detail.

The questionnaire was an integral part of the study and, although versions 1 to 5 had assumed an initial postal survey and required the questionnaire to be self-standing, as the brochure evolved, was ultimately incorporated into it. My initial plan had been to seek a broad range of initial response to get a picture of:

a)   the range of and level of support for post-qualification learning activity (the structure, PDP and selection of CPD activity questions); and

b)   to allow individuals to present a brief picture of their own conceptions of themselves as learners.

This would provide a sample from which a smaller group of subjects for a detailed interview could be identified.

In parallel with the development of this questionnaire, other resources were used to obtain a better and more up to date picture of the post-qualification experience of the target group and to identify themes or subsidiary research questions that might be valuably incorporated in the interviews or questionnaire. Consequently, I conducted a focus group meeting (25th September 2003) with three individuals who had recent experience of practice (the most senior having six years' PQE) and certainly much more recent experience than mine (it was important, in any event, to bracket my own experience). Discussion with the focus group (who might be thought to be less likely to be politically constrained in their response as they had all left practice altogether) was loosely guided by me to cover the topics I was considering for the questionnaire, all of which were derived from the overarching research question:

a)   feelings about first qualification and the transition into qualification (Q2 in the stage 2 interview: 10.3.3);

b)   what kind of knowledge individuals might feel they were lacking at that stage (implicit in Q2 of priority of the interview by stage 2) (10.3.3.4-10.3.3.6);

c)   recommendations for supporting the first year post-qualification (incorporated in Q8 in the stage 2 interview (pervasive in Chapters 12 and 13 but set out in a list in the narrative summary of results at Appendix XIV);

d)   how far (if at all) individuals were forward-planning their development at that stage (Q3 in the stage 2 interview: 13.3.3 and 13.3.4); and

e)   examples of positive and negative learning experiences (Qs 6 and 7 in the stage 2 interview: pervasive throughout Chapters 12 and 13).

Members of the focus group had been provided with a copy of version 2 of the questionnaire.[38]

I had ambitiously hoped that a final page of the questionnaire could be used to obtain a preliminary indication of each respondent's perceptions of him or herself as a learner to be used as a starting point for selection for interview and for the interview itself. I tried a number of formulations for this question, including suggestions that the indication could be pictorial. All were roundly criticised by those reviewing the questionnaire. A further difficulty in devising such a question was that I could not find a form of words that did not include a presumption that the individual did in fact perceive him- or herself as a learner or that it would be "better" to do so. Finally, and

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[38] The stage 1 interviewees had version 5 and the stage 2 interviewees version 6.

given my reservations whether a postal survey would be practicable, this question would take an appreciable amount of time to answer and might have resulted in non-response to the remainder of the questionnaire. A picture of the individual's orientation to learning emerged adequately, however, from the interview and is evaluated in detail in Chapter 13.

A pilot of the interview was carried out on 26th November 2003, to allow me to test my own interviewing technique, recording equipment and transcription abilities as well as the comprehensiveness or otherwise of the questions. This followed the stage 1 interview guide and identified, on my part, a tendency to longwindedness of Henry James' proportions in questioning, which I discuss at 9.4.2. The data from the pilot and details of that interviewee have not been included in the overall data analysed in this study.

At this stage I had to consider the practicality of the questionnaire followed by interview format. As described at 9.3.3, the size of the target demographic was only possible to estimate. Data protection legislation impeded direct access to databases. One might, therefore, have to circulate the almost 100, 000 solicitors in the country in order to locate the estimated 20,000 in the zero to three year PQE group and, within that, what I speculated to be 3,000 identifying themselves as litigation specialists. A postal questionnaire would have, therefore, to be cast extremely widely before it reached any of the desired interview group. Further, it would be a questionnaire without the sponsoring imprimatur of, say, the Law Society, that might encourage participation. Whilst Nelson comes to the conclusion that "legal practitioners would be more likely to complete a questionnaire than agree to an interview" (Nelson, 1993:49), his survey did have the advantage of obvious sponsorship by the Law Society of New South Wales (which provided him with a list of all those with practising certificates who were, therefore, within their first three years at the time of his study (*ibid*: 58)). In my own case I suspected the opposite: that solicitors would be unlikely to respond to an unexplained questionnaire reaching them out of the blue.

Whilst I discuss the difficulties of sampling at 9.3.3, it appeared early that, in order to obtain any data at all, it would be necessary to find a more direct method of approach (*via* employers, as discussed below). In that case, if individuals could be found prepared to participate in a questionnaire, they might also be assumed to be prepared to participate in an interview. From assuming that the detailed interview sample would

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have to be co-extensive with the questionnaire sample, it was a short move to focussing on the interview as the best method of obtaining information.

9.3.3 Sampling

A condition of approval of my plan at an early stage in the PhD process was to identify the size of the "population" (Burns, 2000:84) from which my sample was to be drawn. The obvious method of producing such a figure was to take from available Law Society statistics the number of individuals qualifying that year, multiply it by three (representing the 0-3 year group) and then estimate – after enquiry of colleagues who had recently emerged from practice - that about a quarter of that number would practise litigation in some form.

Cohen, Manion and Morrison, (2000:92) suggest that there are four significant factors in sampling: size of sample; representativeness of sample; access to the sample and sampling strategy. The starting point, both in terms of size of sample and assessment of its representativeness is, therefore, to determine the size and nature of the population from which the sample is to be taken: the "sampling frame" (Oppenheim, 1992:38). Whilst I accept that, in qualitative study, the representativeness of the sample is not critical for the purpose of generalisation, if the sample was reasonably representative, I anticipated it would add to the credibility of the results.

Calculating the number of solicitors in practice in England and Wales is straightforward. At 31st July 2004, the point at which I began to conduct interviews, there were 96,757 solicitors in England and Wales with practising certificates (Law Society, 2005a).[39] The sub-population of relevance for this study was defined by two factors: 0-3 years qualified and practising in (civil) litigation.

9.3.3.1 The 0-3 year group in 2004

7,247 new solicitors were admitted to the Roll in 2003/4 (Law Society, *ibid*) of whom 56.7% were women; 17.8% from ethnic minorities and with an average age of 30.3 (43.1% aged 25-27). A total is not given for those in the 0-3 year bracket but 36,609 (48.8%) of those in private practice had been qualified for 0-9 years, of whom 65.9% were women (Law Society, *ibid*).

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[39] Of these, 39,199 (40.5%) were women (a percentage which had increased by 112.8% since 1994). 37% of all solicitors in private practice were employed by the 1.5% of firms with 26 or more partners. 27.1% of all private practice firms were located in London in 2004, 42.2% of all firms being in the south-east (including London).

It is not possible from the available data to correlate period of qualification against type of firm. A third[40] of those qualifying at the relevant time completed their training contracts in the 31% of all firms with 81 or more partners, in effect with the City or largest national firms. It would have been useful, with hindsight, to obtain representatives not only from an appropriate spread of firms but also to be able to include an appropriate proportion of those who were still with their training contract firm or who had moved on or shortly after qualification, both factors that might have an effect on their experiences of and perceptions about their own development.

Interviewing ultimately took place in both 2004 and 2005, so potentially including some of the 2004/5 cohort, whose data were not then available. This estimate assumes, of course, that no-one in the earlier years of admission had left practice, an assumption very unlikely to be true.

Year of admission	Men	Women	Total
2001/2	2,949 (44.4%)	3,697 (55.6%)	6,646
2002/3	2,991 (43.2%)	3,933 (56.8%)	6,924
2003/4	3,137 (43.3%)	4,110 (56.7%)	7,247
TOTALS	9,077 (43.6%	11,740 (56.4%)	**20,817**

Law Society, (*ibid*: 48)
Figure 11 Individuals in 0-3 year PQE category:

9.3.3.2 Those of the 0-3 year group practising litigation in 2004

Identifying the percentage of solicitors undertaking a particular area of practice was more difficult. Some identifiable fields, such as employment, straddle the contentious/non-contentious divide. Some solicitors practise in more than one field. On annual renewal of the practising certificate, however, individuals are asked to identify the field(s) in which they practise and on that basis (Law Society, 2005b), as at 31st August 2005, 14, 328 identified themselves as practising commercial litigation and 19,651 as practising general litigation.[41] Consequently it is possible to produce an

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[40] Of the 5,371 training contracts in private practice in 2003/4, 31.4% were with firms with 81 or more partners (Law Society, 2005d).

[41] This excludes other categories of contentious work such as matrimonial and professional negligence as well as fields such as employment and intellectual property that could be either (or both) contentious or non-contentious.

estimate of the relevant population at the point of interview on available figures as follows:

Individuals practising *commercial* litigation as percentage of all those with practising certificates:

$$\frac{14.328}{96,757} \times 100 = 14.8\%$$

Estimated percentage of 0-3 year PQE category (total taken from Fig. 11) practising *commercial* litigation:

$$20817 \times 14.8\% = 3080$$

Individuals practising *general* litigation as percentage of all those with practising certificates:

$$\frac{19.651}{96,757} \times 100 = 20.31\%$$

Estimated percentage of 0-3 year PQE category (total taken from Fig. 11) practising *general* litigation:

$$20817 \times 20.31\% = 4228$$

Estimated total of 0-3 year PQE category (total taken from Fig. 11) practising litigation

$$3080 + 4228 = \textbf{7308}$$

Figure 12 Estimated percentage of 0-3 year PQE category practising litigation

One might estimate, therefore, the minimum population size as in the region of 3,000 individuals practising commercial litigation.[42] The maximum, however, and depending on the extent to which the Law Society categories overlap or were treated as overlapping by individuals[43] might be a much greater proportion of the 20,817 in the target demographic at the relevant date. There is, therefore, considerable difficulty in identifying the sub-set of that group practising litigation with any degree of useful accuracy.

9.3.3.3 The sampling frame and the sample

Oppenheim suggests that, in circumstances where the sampling frame cannot be fully identified, individuals who can be identified as falling within the target population cannot constitute a meaningful "sample":

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[42] Some or all of those practising commercial litigation might also have identified themselves as practising general litigation.

[43] The information provided by this route presumably informing the "choosing a solicitor" search engine available to the public on the Law Society website, there must be a considerable temptation to count oneself as practising within as many categories as possible.

> ... because we cannot state what their relationship is to their relevant populations since these are unknown. Without this knowledge, we cannot draw any more general conclusions from such interviews because they represent no-one but themselves
> Oppenheim, (1992: 38)

Krejcie and Morgan (1970, quoted in Cohen, Manion and Morrison, 2000:94) suggest that for a population size of 3,000 or so, the size of an appropriate random sample would be in the region of 341 cases. Given the resources available (one part time researcher) and the possible suspicion of the target population about the process as a whole, it was extremely unlikely that such a number could be persuaded to participate or be interviewed within a realistic timescale. Further, the quality of the interview was more important in the phenomenological sense than the quantity of interviews. Oppenheim (*op. cit.*: 43) concludes that "[a] sample's *accuracy* is more important than its size"; whilst Cohen, Manion and Morrison (*op. cit.*: 93) recognise the pragmatic constraint of cost "in terms of time, money, stress, administrative support, the number of researchers and resources". Size of sample was, in the circumstances, highly constrained and I ultimately rely on Kvale's more holistic approach:

> [t]o the common question, "How many interview subjects do I need?" the answer is simply, "Interview as many subjects as necessary to find out what you need to know."
> Kvale, (*op. cit.*: 101)

If the size of sample was to be determined on a pragmatic basis, what of the remaining matters identified by Cohen, Manion and Morrison (*op. cit.*: 92) as "key factors" in sampling: representativeness and parameters of the sample, access and sampling strategy?

Representativeness was also adversely affected by lack of clarity about the sampling frame. "0-3 years qualified practising in civil litigation" is self-determining: any individual solicitor can say whether or not he or she falls into this category (although the extent of civil litigation within individual practices might differ). Other variables - men; ethnic minorities; mature students; FILEX entrants; non-law degree entrants; those who qualified into the firm where they had done their training contract and those who had changed firm; the amount of litigation covered during the training contract; whether the last seat prior to qualification was or was not in litigation; different sub-fields within litigation and so on – could not be identified remotely without, again,

searching the entire database or (as with the variables relating to change of firm and training contract) could not be found in publicly available data at all.

I had to work in reverse, casting the net as widely as possible to locate subjects within the target demographic and to recognise which variables had shown up within that group and which had not. In fact, the group of interviewees did, between them, include men and women (Appendix VII), mature students, non-law graduates (Appendix XI) and variations as to change of firm and extent of litigation experience during the training contract.

My sample was, ultimately, an opportunity (Burns, 2000:92) or convenience sample (Cohen, Manion and Morrison, *op. cit.*: 102) of those who could be contacted and were prepared to volunteer to participate. The sampling strategy created a non-probability sample determined by the availability of access. Those interested in education *per se* or in the politics of the profession as a whole, those with an axe to grind, those wishing to please the relevant gatekeeper and those with a sentimental attachment to the Law School might then be over-represented in the group.

By comparison, it might be noted that the Law Society Cohort Study (Duff *et al*, 2000) had to resort to special tactics to encourage respondents and that the precursor studies to which I have referred in Chapter 3 have tended to involve concise samples. So, for example, Boon and Whyte (2002) interviewed 22 solicitors; Fancourt (2004) seven trainees and seven training managers and Boon (2005) interviewed 15 solicitors.

Because the sample was determined by availability of access, it then becomes significant to report how that access was obtained:

> [i]n whatever way you find and select your informants, in your analyses and reporting you do need to make clear how you did seek out or come across them and specify and direct or indirect relationship you have with them or they have with each other. In this way you and your reader can allow for how non-interview relationships might impinge on the interview data that are generated in the interview.
> Wengraf, (2001:96)

As is apparent from Fig. 13, a gatekeeper approach seemed much more effective than direct approaches to individuals. A simple reason for this may well be that a request for volunteers from a partner or training manager within the employer, as well as being more immediate and from a known and presumably trusted individual rather than a stranger, also creates permission to participate and not only permission but permission to expend the firm's time in doing so.

Date	Approach to gatekeeper	Participants thus sourced
2003/4	Stage one: approaches made to known partners/training partners of a number of (generally London) firms	6 volunteers from one firm (1 man, 5 women)
2004	Advertisement in the newsletter of the national Young Solicitors Group	No volunteers
2005	Stage two: approaches to known partners/training partners of a number of firms	3 volunteers from one firm. One firm elected not to participate. 1 volunteer from another firm
2005	Advertisements in the newsletters of three regional Law Societies located outside London[44]	3 volunteers, 1 from each region (1 of whom did not proceed after initial contact)
2005	"Snowball effect"	1 volunteer sourced by an interviewee on the day of interview

Figure 13 Chronology of acquisition of interviewees

9.3.3.4 Comparison of the sample with known statistics of the sampling frame

A number of attributes of the sample are set out in Appendices VI to XIII. As I have indicated, some aspects of the sampling frame were not possible to calculate but it is only right at least to try to evaluate whether the final convenience sample has any representativeness when compared with publicly available statistics (Law Society, *op. cit.*). The one FILEX, non-solicitor interviewee and the solicitor who, by the time of interview, was in his/her fourth year of qualification have been included in the statistics at this stage.

Attribute	Overall population[45]	Sample	Appendix
Number in total 0-3 year category	20,817 (estimated)	13 (0.06% of estimated total population; 0.04% of	

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[44] Contact with individual law societies who publicised my request for assistance at meetings or in their newsletters could not be specifically directed to the target group. So, in one case, 500 flyers provided for insertion in a newsletter resulted in 1 volunteer.

[45] These figures are shown for the general population of solicitors, rendering the comparison not entirely helpful unless one assumes an even spread of those in litigation practice across all genders, locations, types of firm and educational sectors. However, as demonstrated above, the "litigation population" is difficult or impossible to determine accurately.

		estimated minimum litigation population)	
Gender distribution	Men: 43.6% (estimated) Women: 56.4% (estimated)	Men: 23% Women: 77%	VII
Interviewee by type of firm[46]		Large City: 46% Regional firm: 31% Firm in regional city: 23%	VIII, IX, X
Interviewee by type of degree institution[47] (academic stage)		Oxbridge: 8% Redbrick: 30% Post 1992: 23% Non law plus CPE: 23%	XI
Interviewee by type of institution[48] (vocational stage)	Post 1992 university: 49.2%	No LPC: 8% Post 1992 university: 46% (50% if FILEX interviewee omitted)	XII
	Commercial institution: 50%	Commercial institution: 46% (50% if FILEX interviewee omitted)	

Figure 14 Comparison of sample with overall population (where possible)

9.3.3.5 The final interview group: make up

Ultimately 13 individuals were interviewed - not including participants in the focus group or pilot interview - 12 solicitors and one FILEX. The six interviewees in stage 1 (all solicitors, one man and five women), interviewed in the summer of 2004 were all employees of the same large City firm. The remaining interviewees (six solicitors and one FILEX, two men and five women), interviewed in the winter of 2005, represented a variety of firm. Although I had determined that I would exclude students on current

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[46] The description of type of firm is not, apart from the use of "City" a term of art. In my terms a "regional firm" is one with several offices spread across the country, including perhaps one in London, whereas a "firm in a regional city" would be more likely to have one main office in that city rather than a substantial regional spread. No interviewees were obtained from "High Street" practices or from employing organisations – such as local authorities – outside private practice.

[47] As with "type of firm" this is a somewhat idiosyncratic delineation.

[48] 2002/2003 places, including both part and full-time totalled 9,181 of which 4660 were with the two commercial providers and the remaining 4521 with post-1992 universities.

NLS CPD or other courses, any other connection with NTU or NLS (such as having completed the LPC here) are set out in Appendix XIII.

9.4   Interviewing

The protocol adopted required the brochure to be distributed to the potential interviewee in advance. As indicated, the final version of the brochure (Appendix IV) contained an outline of the interview structure and at least one interviewee had taken the opportunity to read this in advance and to prepare notes of his/her thoughts. The signed consent form was received at the beginning of the interview (except in one case, where the interview proceeded expressly on the basis that a signed form would be forwarded later: had the form not been received I would have had to relinquish the interview data). The interview was taped using a small battery-operated Sony recorder (TCM-450DV) placed on the table between interviewer and interviewee. Interviewees were invited to choose the location for the interview. I would have been happy to carry out interviews off the premises of the interviewee's employer. In fact, all interviews apart from one took place in a conference room on the firm's premises, which provided a degree of privacy and allowed for some relaxation whilst also being on the interviewee's familiar territory. The exception took place in the interviewee's own office in the absence of his/her roommate. I discussed a telephone interview with one participant although the interview took place face to face: knowing that participants might work in open plan offices or at least were unlikely to have individual offices, I had some concern about the effect of one or more eavesdroppers either actually or psychologically on the data provided during the interview.

In attending for interview I deliberately dressed formally (given the current penchant for dress-down offices this was occasionally more formal than the dress of the interviewee) and had my interview kit (notebook, pens, tape-recorder, tapes, spare batteries, spare brochures, back-up digital recorder) in a briefcase. As far as the receptionist was concerned, therefore, I rather hoped that my mission was not entirely obvious and that some degree of anonymity as to the interviewees' participation could be maintained.

I had made it clear in the brochure that I was a solicitor in the same field as their own and all but one of the interviewees seemed to have registered this. They did not generally explain terminology or concepts – and were naturally articulate in any event – and this served, I think, to smooth the interview process in two respects: assisting with

rapport and saving time that could be expended in dealing with deeper issues. There is a risk, of course that I could have assumed that I understood matters from my own prior experience some years ago. There is also a risk that this link between us prejudiced the bracketing inherent in the phenomenological approach. That bracketing, as I suggested at 8.3, may in the field, particularly where it is a field already known in some way to the researcher, be less pure than the philosophical modes of phenomenology would demand. I have sought, throughout analysis and reporting, to bear in mind the benefit to the study of "speaking the same language" as the participants whilst seeking to avoid the disbenefit of drawing assumptions from my own experiences that would prejudice the quality of the data. The use of grounded theory techniques of analysis, requiring the discipline of drawing results directly from the data and only from the data (in my own professional terms, advocating only propositions and theories for which there was evidence) assists, I suggest, in avoiding such preconceptions infecting the results. With hindsight, I see that excluding for other reasons students in NLS courses, of which I would have my own experiences and opinions, has assisted in maintaining a proper distance in a similar way.

More than two-thirds of the interviewees were women, creating an "older woman: younger woman" dynamic which I think, with our shared prior experience assisted in establishing rapport and understanding in those interviews in a way that perhaps was not or was less likely to be the case in the minority of interviews with an "older woman: younger man" dynamic. Yet I have, without any conscious reason for doing so, coded the transcripts not only by type of firm and period since qualification but also by gender. In pursuit of the phenomenological distance, I must also consider whether I am making assumptions about the similarity of my experience to that of a young woman solicitor now (which is of itself heterogenous, see examples in Cruickshank, 2003). This sympathy has been described in research terms as "the danger of aligning myself with the participants' lived, but critically unexamined, life experiences" (Hurd and McIntyre in Wilkinson and Kitzinger, 1996: 79). Kvale, similarly, asks "How can the researcher avoid or counteract over-identification with his [*sic.*] subjects, thereby losing critical perspective on the knowledge obtained?" (Kvale, *op. cit.*: 120). In addition to the protections already described at 9.3 and 9.4 in respect of sample and interview, at least some distance was also achieved by working, after a considerable break from the time of the interviews, with the transcripts as the source of primary data. Whilst this was not in the best traditions of grounded theory, where analysis is in

parallel with and iteratively informs further data collection, the results of stage 1 interviews did inform the follow up questions in particular in stage 2 interviews, as themes, even if not formally coded at that point, emerged.

After initial courtesies and explanation (not recorded), by way of establishing rapport, the interview proceeded according to the "interview guide" (Kvale, *op. cit.*: 129) in the brochure (a hard copy of which I had to hand) with follow up and clarificatory questions. Sometimes interviewees answered a subsequent question in their response to an initial question ("It is a sign that things are going well when your interviewees anticipate your questions …", Rubin and Rubin, 1995: 167). Whilst the content of the questions remained the same in all interviews and in some cases word usage was significant (*e.g.*, "experience") I did not attempt to ask questions in identical wording on each occasion, and could not have done so without it appearing highly contrived and potentially alienating interviewees. My intention, since I was concerned to obtain "top of the head", instinctive responses in relation to many of the questions, was to commence each stage with as open and non-leading a question as possible so as not to prejudge or skew the response. More leading questions would then be appropriate in "funnelling" towards clarification as follow up or in which a response was tested:

> [a]lthough the wording of a question can inadvertently shape the content of an answer, it is often overlooked that leading questions are also necessary parts of many questioning procedures; their use depends on the topic and purpose of the investigation. … The qualitative research interview is particularly well suited for employing leading questions to check repeatedly the reliability of the interviewees' answers, as well as to verify the interviewer's interpretations. Thus, contrary to popular opinion, leading questions do not always reduce the reliability of interviews, but may enhance it; rather than being used too much, deliberately leading questions are today probably applied too little in qualitative research interviews.
> Kvale, (*op. cit:,* 158)

Over-enthusiasm, particularly after a long journey or a series of interviews on the same day (particularly in the hot summer of 2004), may have led me to lead more than I intended, and this is one of the reasons (the other is described below at 9.5) for my having deliberately transcribed all the questions as well as all the responses.

I also sought to employ active listening techniques (see Kvale, *ibid*: 132, "active listening … can be more important than the specific mastery of questioning techniques") and frequently tried to mirror expressions used by interviewees in the

follow-up or subsequent questions so as to maintain the integrity of their choice of descriptive words:

> A   And you sort of think because you're too close to something and, but it was invaluable, absolutely invaluable, that process, I thought, and [name] said so at the beginning, he said "You know, you will find you need to do this and then we'll go through it and you should view it as a learning process." And, yeah, he was dead right.
>
> Q   Good. You said it was invaluable and you've kept the notes, are you still using them?
>
> Kyoto, 2 years PQE, Paras 34-35

Interviewees sometimes indicated ambivalence towards their answers: was this the "right answer"?

> A   I'm not sure I can't think imaginatively enough about what should be included.
>
> Q   That's quite all right. As I say one of the things that I'm interested in is what people's views are, without sort of any suggestion that there's a right answer: what people think. So your views are as valid as anyone else's.
>
> A   Right, OK.
>
> Madrid, 1 year PQE, paras 43-44

I generally sought to express thanks or indications of the usefulness of the data as we went along (I note however that the effect of transcription has rather flattened what I hoped was the encouraging effect of doing so) but sometimes found it necessary – or was directly asked – to explain further:

> Q   OK. Almost final question is to look at the other side of the coin to see if you can think of - I'll just say "an experience" so not prejudging it - that was less effective and less helpful and we'll see if we can identify what made it so.
>
> A   What, you mean something that's knocked me back a bit or ..?
>
> Q   Well, at the very least that you've found wasn't productive.
>
> Oslo, 1 year PQE, paras 38-40.

The final very open question allowed both for the collection of any further information thought relevant by the interviewee and also led into the important closing of the interview. With hindsight, my final question turned out to be very similar to that used by Nelson (*op. cit.*: 159): "Do you have any comments or suggestions in relation to any other aspects of the educational needs of newly admitted solicitors or the provision of CLE activities for them?"

At the end of each interview I reiterated thanks and the destination of the data and my intentions in relation to the transcript including the option for the interviewee to correct, redact or add any other comments (see Wengraf, *op. cit.:* 205 and a similar suggestion by Kvale, *op. cit.:* 128). There was frequently a more detailed discussion once the tape recorder had been turned off (and fascinating data thus lost) in this final phase described by Kvale (*ibid:* 128) as "debriefing". The sacrifice of such data was, however, in my view, fair if the final discussion served, as I hope it did, to send interviewees away feeling positively about the experience and to the validity of their own approaches and conceptions.

9.4.1 *Quality of the interview and the interviewer*

After coding but before engaging in the full analysis of data, that is, whilst the experience of interview was comparatively fresh in my own mind, I tested myself against Kvale's criteria (*ibid:* 145, 148) both for the quality of the interview and for the interviewer.

Whilst I would not consider myself an expert in this form of interviewing, for this purpose, I note that Kvale pragmatically suggests (*ibid:* 150) that there are circumstances in which "an experienced interviewer" might deliberately break the rules. The review set out in Figs. 15 and 16 against Kvale's criteria took place some months after my final interview and I see that I have not entirely kept to his precepts. I am, however, relieved that I am able consciously to rationalise the approach taken.

Criterion	Response
The extent of spontaneous, rich, specific and relevant answers from the interviewee	I balance the pragmatic constraints of viable interview length against the value of particularly focussed, articulate interviewees. The value of the responses remains to be tested in the analysis stage and there will, no doubt be follow up questions I wished I had asked.
The shorter the interviewer's questions and the longer the subjects' answers the better	Whilst I am conscious of a tendency to use lengthy, slightly colloquial introduction to questions as a means to reduce the intimidation factor, the length of the responses far outweighs my own longwindedness.
The degree to which the interviewer follows up and clarifies the meanings of the answers relevant aspects of the answers	I sought to do so either when I had not fully understood the response, when the response had not fully answered the question or to get at examples and detail. The extent to which there remains information I wish I had asked will emerge from the analysis.
The ideal interview is to a large extent interpreted throughout the interview	I think it is a fact that themes emerged both for interviewer and, on occasion for the interviewee during the course of an interview. I was also conscious of those occasions on which "good data" was emerging during the course of the interview.
The interviewer attempts to verify his or her interpretations of the subject's answers in the course of the interview	This I sought to do by follow-up, more leading, question.
The interview is "self-communicating" – it is a story contained in itself that hardly requires much extra descriptions and explanations	I hope to have achieved this on my own terms. Certainly there will need to be some extra description and explanation in the final reporting of the data, but this will be to explain the context that interviewees and I held in common.

Figure 15 Evaluation of the quality of the interview against Kvale's criteria

Criterion	Response
Knowledgeable	As I have indicated above, the shared context was helpful in a number of respects in allowing the interviews to proceed effectively.
Structuring	Structure was a significant component of the interview design from the beginning. I sought to link (sometimes longwindedly) one question to another.
Clear	As emerges from the transcripts, although the questions were intended to be short, the links between and introductions to them were not always. There are occasions on which interviewees asked for clarification of the question. Whilst this gave me concern at the time, on review, such occasions tended to be when the question was itself "projective" (Oppenheim, op cit, 71) and intended to be susceptible of different interpretations.
Gentle	I hope so. I consciously sought to allow interviewees to finish what they were saying and to allow for a pause before launching into the next question.
Sensitive	Given the nature of the target population it was possible to be quite robust on the face of it. However, as discussed above in the design stage it was recognised that asking individuals about learning experiences and particularly poor learning experiences there was the possibility of personal losing face ("I made a mistake"), political loss of face ("my firm dealt with this badly") as well as problems with client confidentiality. Some reduction in problems in this respect was, as described above, allowed for by allowing interviewees to select the examples they recounted (the questions being in the brochure allowed interviewees to plan for this in advance). During the interview, care was taken, when an interviewee demonstrated reluctance to respond to a question, a pause allowed for a reframing of the answer or, where necessary, a positive reinforcement that it was acceptable not to answer the question or to stop there was offered.
Open	This criterion envisages an understanding of what is important for the interviewee and an openness to new matters introduced by the interviewee. As the design of the interview was to ask interviewees to identify precisely what was important to them within the parameters of the topic of the study, such openness
Steering	This criterion would appear to be the reverse of the preceding topic. Whilst I was clear in my own mind that I knew what it was I wanted to find out and used the interview guide to control the sequence of questions, I do depart from Kvale's suggestion that it is a positive attribute of the interviewer to control digressions. Some digressions cast an important light on the context and act as "thinking time" allowing the interviewee to return to the main topic with renewed insight. An incomplete answer to a question can be remedied by a suitable follow up question.

Criterion	Response
Critical	Kvale suggests that a good interviewer "questions critically to test the reliability and validity of what the interviewees tell". Whilst conscious of temptations on the interviewee to tell stories reflecting well on him or herself or his/her firm, and the possibility of interviewees seeking to conform to some other perceived norm (e.g. the "conscientious student"), the study is of interviewees' (espoused) perceptions and the recounting, as described in Chapter 8, is therefore necessarily taken to some extent at face value.
Remembering	Knowing that the interview was being securely taped, taking the minimum of written notes and having a clear interview guide to hand was a deliberate technique intended to allow me (as someone who takes in material visually much better than orally) to devote all my attention to what was being said by the interviewee and to make the best use of follow-up clarificatory questions.
Interpreting	Kvale suggests that the interviewer interprets the data as the interview progresses, providing "interpretations" to be confirmed or disconfirmed by the interviewee. Whilst I did occasionally present summaries to the interviewee, I sought to do so by using words already used by the interviewee, I was reluctant to offer more elaborate interpretations that could be misplaced but nevertheless interpreted as "the right answer" by interviewees.

Figure 16 Evaluation of the quality of the interviewer against Kvale's criteria

9.5   Transcribing

I carried out my own transcription, in each case after an unavoidable break which also provided a certain distance from the interview and therefore, I think, tended to reduce problems of prejudgment. Both questions and responses were transcribed and line numbers inserted for later reference with a broad right hand margin allowed for annotation and comment (see Wengraf, *op. cit.*: 213). After some practice a painstaking but reasonably accurate first draft could be completed in, depending on the length of the interview, several evenings' work. The print of this first draft could then be efficiently emended in manuscript prior to creation of the final version. Final versions were then sent, with thanks, to interviewees (other demands on the time of the part-time student meaning that this was often two or three months after the interview) for correction (the delay in being able to provide transcripts meaning that it was unlikely that interviewees would have an accurate recollection of what they had said although one interviewee did ask for correction of a phrase used); for the opportunity to identify matters that might identify themselves or their firm (see Kvale, *op. cit.*: 172) and with an invitation to add further information. In accordance with the procedure set out in the brochure, interviewees (and gatekeepers) were offered a summary of the results of the research (Appendix XIV), finally provided in 2008.

Transcription of the first stage interviews was comparatively literal and prosaic, names of individuals,[49] firms and locations being redacted in the working transcript during its creation from the tape. The vast majority of merely phatic, active listening noises on my own part were not transcribed to allow smooth reading but otherwise the false starts, pauses and vocal tics of interviewees and on my own part were retained. The latter informed my choice deliberately to transcribe the questions as well as the responses: if I was prepared to confess my own inarticulacy, it seemed less harsh to insist on a complete transcript of the interviewees' responses.

Despite my care in redaction, one of the first stage interviewees asked for the deletion of the whole of an incident s/he had recounted, and, inevitably, one of particular interest, on the grounds of anonymity. The request was complied with but I was sorry to lose the incident. At stage 2 I therefore took greater pains to redact, losing even indications of fields of practice, my hope being that if a, possibly useful or significant,

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[49] My solicitude in doing this, however, then effectively prevented me from approaching individuals mentioned as contributing to an interviewee's development for a triangulation interview.

incident could be anonymised by me, I was less likely to be asked to remove the whole of it.

An additional consequence of the removal of indications of fields of practice in particular was later to assist analysis by decontextualising the accounts as stories told by solicitors about their experiences, as opposed to stories told by employment, professional negligence or commercial litigation solicitors. At stage 2, my attitude to transcription had mellowed to the extent that it no longer felt necessary to transcribe every "sort of" and "you know" (and would have been desperately time-consuming to do so) although I am conscious – and relieved – that aspects of each interviewee's idiolect remain apparent in the transcripts and that changes of tack and second thoughts are retained (this is a consciously less hardline approach than that advocated by Wengraf, *op. cit.:* 213). Paraphrasing such as that described by Kvale (*op. cit.:* 163) in which different transcribers rendered the same question as in the one case "Because you don't get grades?" and in the second "Of course you don't like grades?" was avoided by my undertaking my own transcription and by paying attention to verbatim rendition of actual words and word order used. Fig. 17, then, is an extract from an initial raw transcription.

> So on phone calls I would be able to go in and talk about the different stages of them then go away and make a call. For sort of general marketing purposes we went through a phase of every Friday morning I would give a really short presentation to [coach] and to the partners if they were around On an idea I had be it big-scale or small scale on what we could do for profile raising so I mean that was good for presentation skills and just having to sit and think you know even for just 20 minutes one day or something or you know an hour whatever because it wasn't something that I'd ever considered as part of my job. [Right] At all. Ever. [Yes] Either and you know even on qualifying I didn't think that was part of my job because it happens at some point [Mm] and I know partners do it [Mm] and I know senior associates do it but I'm not one of them and at some point surely it just happens to me and I didn't really actually click into the fact that I should be and you know it would be easier to just ease myself into it gradually rather than just suddenly waking up one day in 6 years' time and just thinking Oh my God I'm expected to bring in work how on earth do I do that?

Figure 17 Transcription of tape

Perhaps the most significant factor in refining transcription was the attempt to render appropriate punctuation, emphasis and paragraphing. Particularly by stage 2 I was concerned that raw transcript, including every "erm", "I mean", "sort of" and "you

know" could give the impression to interviewees of a patronising approach apparently emphasising their own inarticulacy:

> [s]ome subjects may experience a shock as a consequence of reading their own interviews.[50] The verbatim transcribed oral language may appear as incoherent and confused speech, even as indicating a lower level of intellectual functioning.
> Kvale, (*ibid.:* 172)

Treating my own inarticulacy in the same way in my transcription of the questions no longer appeared a sufficient concession. Lawyers, it might be noted, have, historically, been very resistant to the use of punctuation at all in formal documents, so that possible meanings of the words used are not limited by the punctuation, as is seen, in for example, some leases.[51] Many will, possibly during the Writing and Drafting course of their LPC, have been told of the story of Sir Roger Casement, "hanged by a comma" in Treason Act 1351, where "if a man be adherent to the King's enemies in his realm giving them aid and comfort in the realm or elsewhere…" was read by the court as "if a man be adherent to the King's enemies in his realm giving them aid and comfort in the realm, *or elsewhere*…" (see Clark, 2007 for other examples).

It crossed my mind therefore simply not to punctuate the transcripts at all, but this produced an unreadable and therefore unusable result. Punctuation, ultimately, was done with the recording at ear, and an overall aim of doing as much justice as possible to the emphases of the interviewee without demanding the very detailed paralinguistic notation employed by those involved in techniques such as conversation analysis (*e.g.* Silverman, 2000: 298). There is, as Wengraf points out, (*op. cit.:* 221) a "mediation" between the speaker and the reader and all such "tidying" activity furthers an inevitable transformation of the data between oral conversation and printed page that, of itself, involves some level of interpretation of the data on the part of the transcriber. Consequently, I added paragraphs, punctuation and emphasis, resulting in examples such as Fig. 18:

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[50] And one interviewee in the stage 2 group did indeed comment to me in a similar vein on seeing the transcript.

[51] In the context it is at least ironic to note that solicitors taking witness statements for use in civil litigation, which frequently stand in place of oral evidence in chief at trial - and despite the dictat that they represent the "witness' own words as far as practicable" (PD 32, para 18) - would be unlikely to take as much care to produce a transcript or consider it necessary to have a verbatim transcript or recording at all. The process of creating a witness statement is, however, probably the closest activity to my own interviewing process with which the interviewees would be familiar.

So, on phone calls, I would be able to go in and talk about the different stages of them, then go away and make a call. For general marketing purposes we went through a phase of: every Friday morning I would give a really short presentation to [coach] and to the partners if they were around, on *an* idea I had, be it big-scale or small scale on what we could do for profile raising; so that was good for presentation skills and just *having* to sit and think. You know, even for just 20 minutes one day or something, or an hour, whatever, because it wasn't something that I'd ever considered as part of my job. At *all*. Ever. Either: and, you know, even on qualifying I didn't think that was part of my job because it happens at some point and I know partners do it, and I know senior associates do it, but I'm not one of them and, at some point, surely it just happens to me and I didn't really actually click into the fact that I should be, and it would be *easier* to just ease myself into it gradually rather than just suddenly waking up one day in 6 years' time and just thinking "Oh my God, I'm expected to bring in work! How on earth do I do that?"
Toronto, 18 months PQE, para 37

Figure 18 Final transcript including punctuation and emphasis.

For my purposes, however, the working, tidied, literate transcription was sufficient, the tapes remaining available in the event that any ambiguity of tone fell to be resolved. Kvale's pragmatic question (*op. cit.:* 166) "What is a useful transcription for my research purposes?" is, I suggest, ultimately the determining factor. The purpose of this interview study was not to investigate conversational or linguistic interaction but to encourage individuals to express their (espoused) conceptual model of professional development within a particular envelope and to allow for immediate clarification in a way not available by questionnaire alone. Complete and accurate transcription of the way in which this model was described, I concluded, was not necessarily - in that mediation between interviewee, interviewer, readers and examiners - the most "loyal and objective" (Kvale, *ibid*: 173) method of proceeding.

9.6   Reading and annotating;

An initial group of codes, a "start list" (Miles and Huberman, 1994:65) was created from the focus group data, one of the purposes for which the focus group had been convened. The initial ideas emerging from the focus group could be loosely grouped into factors involving either the individual or involving the individual's interaction with the firm/employer:

Individual	Individual and firm/employer
Responsibility	Conflict
Commerciality	Status
Integrity	Transition
Attitude to development	Time/firefighting

Experience Level Desire for control Gaps in knowledge Confidence/mistakes	Support/lack of support Instructions/feedback Supervision

Figure 19 Initial start list of codes

A feature of the focus group results was that the codes could be identified as being opposed to each other: "status v experience"; "integrity v commerciality"; "lack of support v responsibility" and so on. A significant theme of conflict emerged from the members of the focus group – possibly more liberated and certainly possessing the benefit of hindsight –that was not, later, as apparent in the interview group proper.

A second "start list" was identified at the point of coding the bulk of the data with the intention of refining and adjusting this inductively as the analysis proceeded (Miles and Huberman, *ibid*: 61). This incorporated the themes which had emerged from the focus group as well as, I anticipated, further factors derived from the focus group experience that might emerge from the interview. Shown as a series of networks (Bliss, Monk and Osborn, 1983), the anticipated codes are set out in Fig. 20. This diagram shows delineation by levels of increasing delicacy (*ibid*: 12) moving towards the right hand side. It should, however be noted that it does not attempt to follow Bliss *et al*'s further delineation into BARs (mutually exclusive categories) and BRAs (groups of variables that are necessarily all present) at all stages. Whilst some categories (*e.g.* informal/formal) are necessarily mutually exclusive and others (*e.g.* feelings) represent groups of variables that might be present in their entirety or in combination, it is a feature of my search for a subjective espoused model that it might contain results that might objectively seem mutually exclusive (a positive finding for "status" with a negative finding for "confidence", for example) and that partial presence of lists of variables might be found. Fig. 21, then, shows an initial mapping of the start list codes against the questionnaire and interview structure.

Figure 20 Second start list of codes

Question	Related codes
Questionnaire	
Does your firm have a required structure for CPD or are you individually responsible for selecting CPD activity and ensuring you comply with Law Society requirements? If there is a structure, please give an outline.	Employer/support Interactions/formal
Does your firm require you to keep a learning journal or engage in personal development planning ("PDP")? If it does not, do you personally keep any record/plan of your learning/development? Please describe in outline any such journal, record or plan that you use.	Employer/support
Please identify any other way in which you identify or select CPD activity.	Individual/needs Interactions/formal
Interview	
2 Please think back to the period during which you first qualified. How did you feel about yourself as a litigator during that period?	Individual/feelings Individual/needs
3 What are the characteristics, do you think, of someone who has 3 years PQE? Are there any particular threats or challenges to the profession or your field of practice that you anticipate before you reach that point?	Individual/feelings Individual/needs
4 Did you have/do you have any conscious plans about your development towards the 3 years PQE characteristics? (If so, please describe them. If so, were/are there any particular steps or strategies you were/are using to reach those goals? Have you seen the Law Society's training plan and SWOT analysis templates or an equivalent? Why do you have a plan/not have a plan?)	Interactions/formal Interactions/informal Employer/support Individual/plans
5 Please think about the period from qualification until now. What kind of activities, events or material first come to mind under the heading "CPD"? Are there any other kinds of activities, events or material that you consider as contributing to (or intended to contribute to) your development towards the 3 years PQE characteristics during that period?	Employer/support Interactions/formal Interactions/informal

Question	Related codes
6 Please think of an experience that you consider to have been effective in helping your development towards the 3 years PQE characteristics since you qualified. (Please describe it. What are the factors that made it effective? Were you conscious of those factors at the time or did you carry out that analysis later on (or even for the first time during this interview)? What use did you make of what you had learned later on? Do you/did you employ any positive strategies for making the most of what you have learned?)	Individual/feelings Individual/needs Individual/plans Interactions/formal Interactions/informal Employer/support Employer/individuals Employer/feedback
7 Please think of an experience that you consider to have been less effective in helping your development towards the 3 years PQE characteristics since you qualified. (Please describe it. What are the factors that made it less effective? Were you conscious of those factors at the time or did you carry out that analysis later on (or even for the first time during this interview?) What use did you make of anything you had learned later on? Do you/did you employ any positive strategies for making the most of what you have learned?)).	Individual/feelings Individual/needs Individual/plans Interactions/formal Interactions/informal Employer/support Employer/individuals Employer/feedback
8 Is there anything you would like to say about the ways in which development towards the 3 years PQE characteristics can be helped to be effective for newly qualified litigators?	Potentially all categories

Figure 21 Stage 2 interview structure mapped against start list codes

Given a fairly structured interview schedule, it is, of course, possible to map questions against codes (Fig. 21): particular types of data being likely to emerge in response to particular questions. Nevertheless, data later emerged in unexpected places and some interviewees made particularly effective usage of the final, sweep-up question to communicate data relevant to a number of codings.

A further mapping can be made between the list of codes and the overall conceptual framework (incorporating the competence for development) underpinning the study. The main subtopics can be represented against the preliminary codings as follows:

Concepts	Related codes
Self-knowledge/strategies	Individual/needs Individual/plans Interactions/formal/planning Interactions/informal/planning
CPD	Interactions/formal Employer
Workplace	Interactions/informal Employer
Engagement with experience/enhancement of quality	Interactions/formal/reflection/application Interactions/informal/reflection/application
Aspiration	Individual/needs Individual/plans

Figure 22 Conceptual framework mapped against start list codes

This "start list" of preliminary codes was, of course, in Dey's terms (1993, 63-64), part of "finding a focus". Further codes would emerge from the coding and analysis phases, as they had from the focus group and pilot interview, until the categories were saturated:

> [a] category is considered saturated when no new information seems to emerge during coding, that is, when no new properties, dimensions, conditions, actions/interactions, or consequences are seen in the data
> Strauss and Corbin, (1998:136)

I continued, therefore, to mediate between absolute prejudgment - where working from general concepts to more "delicate" sub-categories may tend to result in codes that are descriptive rather than analytical - and the absolutist rejection of prejudgment seen in classic forms of both phenomenology and grounded theory (Strauss and Corbin, *ibid*). On the other hand, the fact that the initial start list was "grounded" in data obtained

during the focus group and pilot interview was essentially consistent with grounded theory and the ongoing analysis inherent in it.

9.7   *Assigning categories*

With 13 transcripts comprising in the region of 55,000 words (questions included), a manual cut and paste approach to categorisation was by no means impossible. A database, on the other hand, would require investment in learning to use the technology, a dilemma that is by no means unique (Basit, 2003).   After some consideration (Dey, *op. cit.*; Gibbs *et al*, unknown date; Lewins and Silver, 2005), in particular whether anything more than a straightforward "code and retrieve" mechanism allowing for selection of all data attributed to a particular code, would be necessary, I obtained a demonstration version of ATLAS.ti and conducted a trial coding of transcript 014 with it. This proved successful.

An initial manual coding had taken place of a sample of six transcripts, all but one from stage 1 (transcripts later, when placed in order of PQE, provided with the pseudonyms: Oslo, Madrid, Toronto, Nairobi, Delhi and Sydney). This generated a number of additional codes (such as "attitude", "point counting") as well as refinements of the start list preliminary codes (content as "relevance", and process as "delivery"), a result that is not only inevitable but desirable in grounded theory approaches. Ultimately, however, it was unsatisfying, principally because of the initial fragmentation of the coding network into factors involving the individual, the employer and interactions. This created frequent repetition or overlap (planning, for instance, appeared both separately under interactions and in a more generic sense, under individual). The collection of codes tended merely to identify attributes or topics and failed to engage fully with the individual's own evaluation or meaning of those attributes or topics. This later problem was, however, comparatively easily resolved by incorporating what I thought of as "marker" codes flagging instances of evaluation and interpretation (in Strauss and Corbin's terms, the "dimensions" of the phenomena). Finally, the analytical approach to be employed required the possibility of measurement of the interviewees' espoused model against Knowles' andragogical assumptions and the corresponding elements of the competence for development. The mapping of the codes at this stage against those two benchmarks (competence for development in parenthesis) was as shown in Fig 23.

	Q2 Feeling on qualification	Q3 Plans for development	Q4 Characteristics to which aspire	Q5 Concept of CPD	Q6 Characteristics of good learning experience	Q7 Characteristics of poor learning experience
Need to know (2a strategy for development/ 3a enhancement of existing practice)		N, S PLAN	N ATT, N KNOW, N SKILL, F CON, F RESP		I, E, N (fulfilment of), S (implementation of)	I, E, N (fulfilment of), S (implementation of)
Self concept (1 self knowledge/ 3b aspiration beyond existing practice)	F, S PLAN, S ATT		F CON, F STATUS, F RESP, N ATT, N KNOW, N SKILL		I, E, F	I, E, F
[Self direction] (2a strategy for development/ 2b engagement with experience)		N, S			I, E	I, E
Prior experience (1 self knowledge/ 3a enhancement of existing practice)	F (F EX)			S PLAN, S POINT, N	I, E	I, E
Readiness to learn (2a strategy for development/ 3b aspiration beyond existing practice)		F, S ATT, S POINT, S REFL	F, S ATT, S POINT, S REFL		I, E	I, E
Orientation to learning (2b engagement with experience)				S ATT	I, E, S ATT	I, E, S ATT
Motivation (1 self knowledge/2a strategy for development/ 3b aspiration beyond existing practice)		N, S ATT			I, E	I, E

Figure 23 Initial codes mapped against Knowles' andragogy and competence for development

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This mapping proved very useful in clarifying my ideas about the way in which different concepts might fit into the final selection of codes. I adjusted the coding system to refocus on the individual and on the themes of self-knowledge and strategy; aspiration and engagement with experience whilst also dividing responses into those relating to the formal CPD context or to the informal workplace context. By this stage, however, the trial with ATLAS.ti (whilst in itself generating additional codes or reformulation of codes) had demonstrated that a computerised coding method (which would allow for separate codes for this workplace/CPD dichotomy) would be the most appropriate means of dealing with the emerging complexities and the need to be able to view the data from a number of different perspectives.

This list, whilst more manageable and refined from the original, can also be mapped – but now more concisely - against the various framework structures of the study, for example, the questionnaire and interview. During the course of coding at this final stage, however, the naming of codes was further refined and made more user-friendly and further additional codes emerged from the data. The fact that the ultimate collection of codes was detailed and complex is mitigated by the fact that I was able to group them, shown in Fig 24, into (to some extent overlapping and interlocked) "families" under six headings: activities, evaluation, feelings, interactions, needs and strategies.

	activities	evaluation	feelings	interactions	needs	strategies
3 Year PQE Characteristics		■			■	
Admin/Billing/Targets/Time Management	■					
ADR	■					
Advocacy	■					
Appraisal	■			■		■
Asking Questions	■					■
Aspiration Beyond Current Activity			■		■	■
Attitude/Orientation To Learning/Development		■	■			■
Balance				■		
Competence			■		■	
Confidence			■			
Cost				■		
CPD Formal Activity	■			■		■
CPD Point Counting	■					■
Delivering Lectures And Seminars	■			■		■

	activities	evaluation	feelings	interactions	needs	strategies
Delivery/Process/Learning Environment		▓			▓	
Desired Information (Knowledge)		▓			▓	
Desired Skills		▓				
Developmental Planning/Goals	▓					▓
Discussion At Course	▓			▓		▓
Drafting/Writing	▓					
Evaluation/Meaning		▓				
Expectation		▓	▓		▓	
Experience	▓					▓
External Factors	▓			▓		
Feedback/Criticism	▓		▓	▓		
Gender			▓			
Hierarchical Structure			▓	▓		
Induction	▓					
Marketing/Networking	▓			▓		▓
Meetings	▓			▓		
Negative Emotion/Frustration		▓	▓			
Non CPD Learning Activity	▓	▓		▓		▓
Positive Emotion		▓	▓			
Pre Qualification Experience	▓		▓			
Procedure/Precedent/CPR	▓			▓		
Professional Organisations	▓			▓		
Professionalism/Clients			▓			
PSL/HR/Training Dept				▓		▓
Reading Books/Journals/Websites	▓					▓
Reflection/Application/Engagement	▓	▓				▓
Relationships - Colleagues				▓		
Relationships - Juniors				▓		
Relationships - Partners				▓		
Relationships - Peers				▓		
Relevance/Level Of Activity		▓			▓	
Repetition Of Activity	▓					▓
Responsibility (Job)			▓			
Responsibility (Development)			▓			▓
Status (Transition)			▓	▓	▓	
Supervision/Management	▓			▓		
Telephone Calls	▓			▓		
Time Pressure/Availability	▓		▓	▓	▓	
Trial/Litigation	▓			▓		
Updating/Knowledge Of The Law	▓				▓	▓
Whole Of Transaction/Case	▓					▓
Workplace Learning	▓			▓		▓
Writing Articles	▓					▓

Figure 24 Final list of codes showing allocation to code families

A mapping of these families might be expected to emerge from the matrix showing Knowles' andragogical assumptions; the questionnaire and interview and the conceptual framework set out in Fig. 25. It will be noted, however, that the treatment of the twin families "activities" and "interactions" is rather different from that of the

other families, principally because they are susceptible of appearance at any stage, and therefore occupy a distinct, benchmarking role in the analysis.

When considering the questionnaire, interview and conceptual framework, however, it is possible to set out , in addition to the code families, a set of particularly significant individual codes related to the themes of self-knowledge and strategies (principally responsibility for development but also for one's job); aspiration beyond current activity and engagement with experience ("reflection/application/engagement") as well as a series of specifically educationally related codes such as "CPD formal activity"; "Updating/knowledge of law" and "attitude to learning/development". These appear in Fig. 26 as to the questionnaire and interview and in Fig 27 as to the conceptual framework.

	Q2 Feeling on qualificati... which aspire	Q3 Characteristics to development	Q4 Plans for development	Q5 Concept of CPD	Q6 Characteristics of good learning experience – Needs, feelings and evaluation	Q7 Characteristics of poor learning experience/ learning – Needs, feelings and evaluation
Need to know (2a strategy for 3a development/ 3b enhancement of existing practice)		Evaluation and needs	Strategies	Needs / Activities /interactions	Needs / Activities /interactions	Needs / Activities /interactions
Strategies and needs/ activities and interactions						
Self concept (1 self knowledge/ 3b aspiration beyond existing practice)	Feelings	Evaluation and needs	Strategies	Strategies and needs	Feelings and needs	Feelings and needs
Feelings and evaluation/ strategy and needs						
[Self direction] (2a strategy for 2b development/ engagement with existing practice)		Needs	Strategies	Strategies and needs / Activities /interactions	Needs / Activities /interactions	Needs / Activities /interactions
Strategies and needs/ strategy, interactions and activities						
Prior experience (1 self knowledge/ 3a enhancement of existing practice)	Feelings	Evaluation		Activities /interactions	Feelings / Activities /interaction	Feelings / Activities /interaction
Feelings and evaluation/ activities and interactions						
Readiness to learn (2a strategy for 3b development/ aspiration beyond existing practice)		Needs	Strategies	Strategies and needs	Needs	Needs
Strategies and needs/ strategy and needs						
Orientation to learning (2b engagement with experience)			Strategies	Activities /interactions	Activities /interactions	Activities /interactions
Strategy, interactions and activities						
Motivation (1 self knowledge/2a strategy for development/ 3b aspiration beyond existing practice)	Feelings	Evaluation and needs	Strategies	Strategies and needs	Evaluation, feelings and needs	Evaluation, feelings and needs
Feelings and evaluation/ strategies and needs/ strategy and needs						

Figure 25 Final code families mapped against Knowles' andragogy and competence for development

Question	
Questionnaire	
Does your firm have a required structure for CPD or are you individually responsible for selecting CPD activity and ensuring you comply with Law Society requirements? If there is a structure, please give an outline.	Developmental planning/goals; CPD formal activity, PSL/HR/Training Dept; cost; responsibility(development); CPD point counting; supervision/management
Does your firm require you to keep a learning journal or engage in personal development planning ("PDP")? If it does not, do you personally keep any record/plan of your learning/development? Please describe in outline any such journal, record or plan that you use.	Developmental planning/goals; PSL/HR/Training Dept; responsibility(development); attitude/orientation to learning/development; reflection/application/engagement
Please identify any other way in which you identify or select CPD activity.	Developmental planning/goals; responsibility(development); CPD point counting; CPD formal activity; supervision/management; appraisal; cost; PSL/HR/Training Dept
Interview	
2 Please think back to the period during which you first qualified. How did you feel about yourself as a litigator during that period?	Competence, confidence, expectation, responsibility (job); status (transition); pre-qualification experience
3 What are the characteristics, do you think, of someone who has 3 years PQE? Are there any particular threats or challenges to the profession or your field of practice that you anticipate before you reach that point?	3 year PQE characteristics;
4 Did you have/do you have any conscious plans about your development towards the 3 years PQE characteristics? (If so, please describe them. If so, were/are there any particular steps or strategies you were/are using to reach those goals? Have you seen the Law Society's training plan and SWOT analysis templates or an equivalent? Why do you have a plan/not have a plan?)	3 year PQE characteristics; Attitude to learning/ development; Developmental planning/goals; Responsibility (development); Reflection/ application/ engagement; Strategies; Needs; Aspiration beyond current activity

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Question	
5. Please think about the period from qualification until now. What kind of activities, events or material first come to mind under the heading "CPD"? Are there any other kinds of activities, events or material that you consider as contributing to (or intended to contribute to) your development towards the 3 years PQE characteristics during that period?	CPD formal activity, CPD point counting, non CPD learning activity, workplace learning; activities, interactions, needs, updating/knowledge of law
6. Please think of an experience that you consider to have been effective in helping your development towards the 3 years PQE characteristics since you qualified. (Please describe it. What are the factors that made it effective? Were you conscious of those factors at the time or did you carry out that analysis later on (or even for the first time during this interview)? What use did you make of what you had learned later on? Do you/did you employ any positive strategies for making the most of what you have learned?)	3 year PQE characteristics; Attitude to learning/ development; Developmental planning/goals; Responsibility (development); Reflection/ application/ engagement; Strategies; Needs; Aspiration beyond current activity; delivery/process/learning environment; desired skills; desired knowledge, discussion – at course, evaluation, meaning, positive emotion, relevance/level of activity
7. Please think of an experience that you consider to have been less effective in helping your development towards the 3 years PQE characteristics since you qualified. (Please describe it. What are the factors that made it less effective? Were you conscious of those factors at the time or did you carry out that analysis later on (or even for the first time during this interview?) What use did you make of anything you had learned later on? Do you/did you employ any positive strategies for making the most of what you have learned?)).	3 year PQE characteristics; Attitude to learning/ development; Developmental planning/goals; Responsibility (development); Reflection/ application/ engagement; Strategies; Needs; Aspiration beyond current activity; delivery/process/learning environment; desired skills; desired knowledge, discussion – at course, evaluation, meaning, negative emotion/frustration, relevance/level of activity
8. Is there anything you would like to say about the ways in which development towards the 3 years PQE characteristics can be helped to be effective for newly qualified litigators?	Needs, Evaluation, Feelings

Figure 26 Stage 2 interview structure mapped against final list of codes

Concepts	Related codes
Self-knowledge/strategies	Strategies Needs
CPD	CPD formal activity, CPD point counting, non CPD learning activity, workplace learning; activities, interactions, needs, updating/knowledge of law
Workplace	workplace learning; activities, interactions, needs
Engagement with experience/enhancement of quality	attitude/orientation to learning/development; reflection/application/engagement; responsibility (development); workplace learning
Aspiration	Aspiration beyond current activity; attitude/orientation to learning/development; reflection/application/engagement; responsibility (development);

Figure 27 Conceptual framework mapped against final list of codes

9.8   *Corroborating*

Corroboration would prove to be a challenge. I have not indicated, principally for reasons of confidentiality, which of the interviewees came from which kind of firm; which of them are colleagues and which of them are not. The picture that emerges is not one that indicates that individuals in a City firm think or experience this whilst individuals in a regional firm think or experience something else. Differences emerge more clearly in the resources available to them, particularly that of a strong training department, and the specialism or otherwise of the work they do. There is, therefore, an element of internal corroboration or triangulation involved in my – knowing myself which interviewee works for which kind of organisation – finding that background information to be, in the end, irrelevant. Nevertheless, I had promised and always intended to find a way of reporting my findings back to the individuals, the gatekeepers and the focus group and to invite them to comment on the generality of the picture created. As this picture had been created, through the vicissitudes of part-time study, some three to four years after the interviews, any comment would now be with the benefit of a considerable amount of hindsight. However, some of the interviewees at the beginning of their careers would now be at or approaching the 3 year threshold and those close to it would now be long past it and perhaps now supervising young lawyers

themselves. If or to the extent that the pattern emerging was still recognisable it adds generalisability to my study: not only is this a picture of the views of an opportunity sample of some lawyers in the early stages of their careers but the picture remains relevant years later and with the benefit of their greater experience and exposure to the profession.

Practically, however, I was able to send the narrative summary of results (Appendix XIV) only to a comparatively small number of interviewees, having to track down several who had changed employment. Several of the female respondents, who proved impossible to find on the Law Society database, had probably changed their names on marriage. One of the firm gatekeepers had certainly left and the replacement had to be tracked down. My initial aims of discussion of the results, therefore, washed up rather badly on the shores of pragmatism.

9.9   Conclusion

The challenges of robust research design for this study involved taking particular care to navigate through Kvale's "moral implications" (9.3.1) so as to deal appropriately and comprehensively with issues of anonymity, consent and destination of data and drawing on themes, previously identified research questions and the output of the focus group in such a way as to obtain responses to the main research question simultaneously smoothed by my own understanding of the interviewees' context whilst permitting an appropriate degree of bracketing of any prejudice on my part derived from the same experience which would imperil the impartiality of the data.

Sampling (9.3.3) caused difficulties but a comparatively representative sample was, fortuitously, obtained by a combination of use of gatekeepers, advertisement and snowballing. I would have wished for a larger sample but, as with many elements of this research project, pragmatism and mediation between competing imperatives of my own, of the examiners, of the precepts of qualitative study and of the interviewees and their employers held the day. The breadth of the sample across gender, prior experience and type of firm militated against bias in the results caused by possible tendencies to protect the employer or to tell me what it was thought I, as a representative of the university or of the employer wanted to hear. The prior experience that caused me to think carefully about the implications for phenomenological bracketing nevertheless promoted rapport and trust in the interviewing process. I do not pretend that I have perfected the art of interviewing for

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qualitative research. Having spent years practising and teaching client interviewing and examination in chief, the actual techniques were familiar and that familiarity itself may have caused me to fail immediately to step back and consider how deliberately to apply them in this different context. Use of Kvale's criteria has, however, permitted a depth of subsequent critique and reflection as to the overall effectiveness of my interviewing techniques. However successful the interview, further care had to be taken in transcription so as to mediate between retention of the "voice" of the interviewee whilst seeking to avoid undue embarrassment on the part of the interviewee reading the transcript.

My concerns about the rigour of my personal bracketing were, finally, ameliorated by employment of aspects of grounded theory discipline such that emerging results could be clearly tracked back through the coding process to the original data, so demonstrating the utility of the synthesis described in Chapter 8.

The data, then, as will be discussed in Chapters 10 to 13, provided a combination of responses I was expecting as well as surprises.

CHAPTER TEN - ANALYSIS AND REPORTING: BENCHMARKS

> ...an articled clerk of only two years' standing ...trusted to do little more than write out documents in fair copy ...[52]
> Barnes, (2005: 49)

10.1   Introduction

Having covered, in Chapters 8 and 9, reading and annotating and categorizing, as well as – slightly out of sequence – corroborating, this chapter covers the final aspects of the iterative process described by Dey (1993) as linking and connecting towards the production, in this case, of a detailed phenomenological account of the perceptions espoused by the interview group and, as I indicated in Chapters 8 and 9, some partial elements of theory generated in analysis of the data.

10.2   Linking and Connecting

It quickly became a feature of both coding and analysis that, despite the careful mappings set out in Chapter 9, topics would not neatly separate out for individual dissection; nor would a simple two-dimensional Venn diagram serve to demonstrate the links between topics. So, for example, the role of others, captured largely under the "interactions" family of codes, proved to be of relevance to developmental planning, participation in formal CPD activity and to evaluation of non-CPD activity. Chapters 10 to 13 follow the following structure:

a)   Chapter 10: setting the benchmarks of the point of qualification and the 3 year PQE watershed. Evaluation of the feelings of confidence and competence that emerged in response to question 2 of the interview provided an opportunity to consider the impact of prior experience on the point of qualification.

b)   Chapter 11: the impact of CPD, both as an "off the top of the head" concept (question 5) and an evaluation of it (questions 6, 7, 8) including its contribution to enhancement of the quality of existing practice and as aspirational activity;

c)   Chapter 12: the place of learning outside the CPD context (questions 5, 6, 7, 8) including, again, its contribution to enhancement of the quality of existing practice and as aspirational activity. Evaluation of this context has allowed again for some generation of theory in relation to the place of giving

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[52] The direct modern equivalent is, of course, photocopying them. See Boon (2005: 242).

presentations and seminars and the role of the "slight senior" as part of the spectrum of engagement with experience.

d)   Chapter 13: covers the remaining aspects of the conceptual framework and the competence for development, encompassing strategies and self-knowledge and engagement with experience in the sense of reflection.

10.2.1 The code family "feelings"
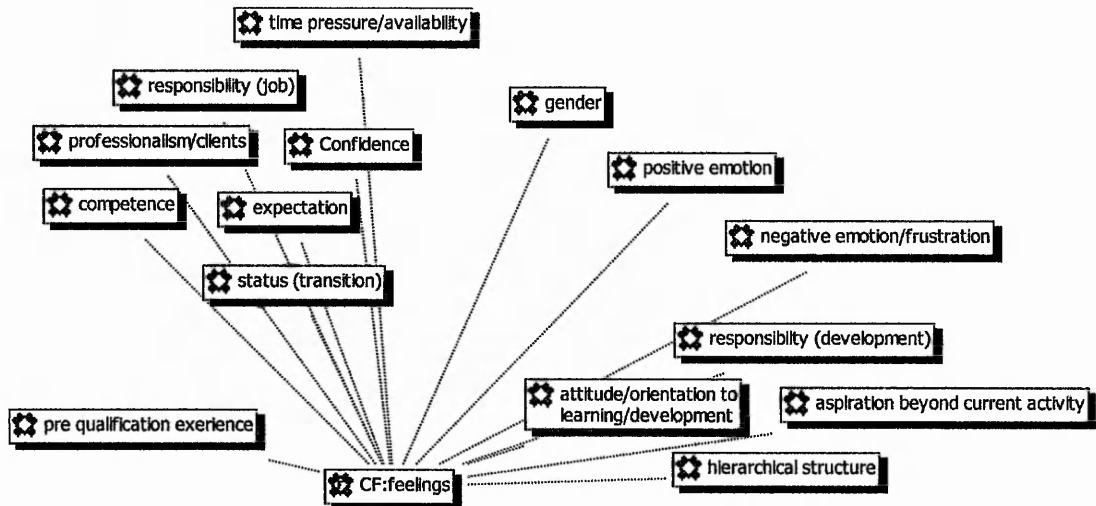
Figure 28 The code family "feelings"

I am conscious that, given the complexity of the picture I am necessarily creating, attribution of one or more of the overall code families to each topic within this sequence of chapters betrays a desire for tidiness and a wish not to waste the time expended in drawing up the codes and code families in the first place. Nevertheless, it is precisely because the final shape of the discussion in this sequence of chapters draws heavily on the framework of the interview that it is, I think, important also to see the broader picture provided by the families of codes not divided up question by question. I have already discussed the fact that Illeris (5.1) sees the emotional context as irretrievably linked into his model of learning; that Mezirow and others treat times of emotional crisis as a trigger to "transformative learning" (7.6.2.1) and that Boud in particular (7.6.2.1), of the writers on reflective learning, treats an emotional debrief as a significant part of the reflective learning process. Whilst I acknowledge the importance of emotion, I have speculated that an emotional crisis of professional adolescence (2.8.2, 2.8.3) might, on the contrary, lead to a mental battening down of the hatches and

deliberate constraining of boundaries that might inhibit aspirational learning in particular. It was clear at *all* stages that the interviewees were emotionally and personally involved in their work, their workplace and in their development. The group of "feelings" clustered in this diagram at top left behind the code "status (transition)" are related to the critical period of first qualification. Nevertheless, I discern both positive and negative emotion as well as distinct attitudes towards learning and development derived from an emotional response.

Two codes, for which no convenient place occurs in the main body of the analysis, are considered here by way of further contextualisation.

10.2.2 Gender

The interview group was composed of ten women and three men and I am female. There are considerable complexities in interviewing on topics of sexual discrimination (and Sommerlad, 2007, 2008 sees this as a significant factor in professional socialisation: 2.8.2) such that it is impossible for me to say whether the issue of gender was raised only twice because a) it was seen as irrelevant to an interview about learning; b) in the context of learning gender discrimination barely occurs or c) interviewees simply chose not to raise it. The two references (both made by women)[53] merit reporting as, in the first case, betraying a perceived difference between the genders in managing the transition to qualification ("status/transition") or period of professional adolescence (a conclusion consistent with that of Bryans, 1999 and with Sommerlad, 2008):

> I don't know if it's more for women than for men. Certainly women accept more that they need the confidence at the very beginning, it is all very, very overwhelming whereas a bloke might not necessarily admit to that.

and in the second, demonstrating a perceived "glass ceiling" that has implications for the way in which women might manage aspiration:

> ... but partnership, yeah, I don't know whether that'll be here because [firm] doesn't fit in with how I see things working. Here you have to do [ ] years' service and be a man ...

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[53] Because this may be a particularly sensitive issue I have deliberately omitted pseudonyms on this occasion.

10.2.3 Hierarchical structure

I indicated at 2.8.4 that individuals' status in this context is defined by the employer and discussed at 4.4.3 and 5.3.1.2 the possible effects of the employer in defining or constraining learning activity both as CPD and otherwise and, particularly in the early stages of the career, as defining or occluding the individual's own developmental goals (see also 13.3.3 and 13.3.4). Terminology within law firms for status less than partner is by no means consistent and expectations of being offered partnership at anything between five and ten years' PQE will differ from organisation to organisation. Whilst the position is therefore highly subjective and complex, what is common is a very clear consciousness of the place of oneself and others within the hierarchy:

> Q   This was the partner?
> A   Senior associate actually...
> Toronto, 18 months PQE, paras 27-28

a hierarchy which may act as a supporting framework for development, or constrain or define an individual's approach to CPD activity or in the workplace, and informs the concept of the "slight senior" which I explore at 12.6.3.2 as well as contributing, I suggest, to the emotional and other issues arising at the point of the significant transition of status from apprentice to journeyman which I discuss at 10.3.3.

10.3   Benchmarks

10.3.1 The code family "activities"
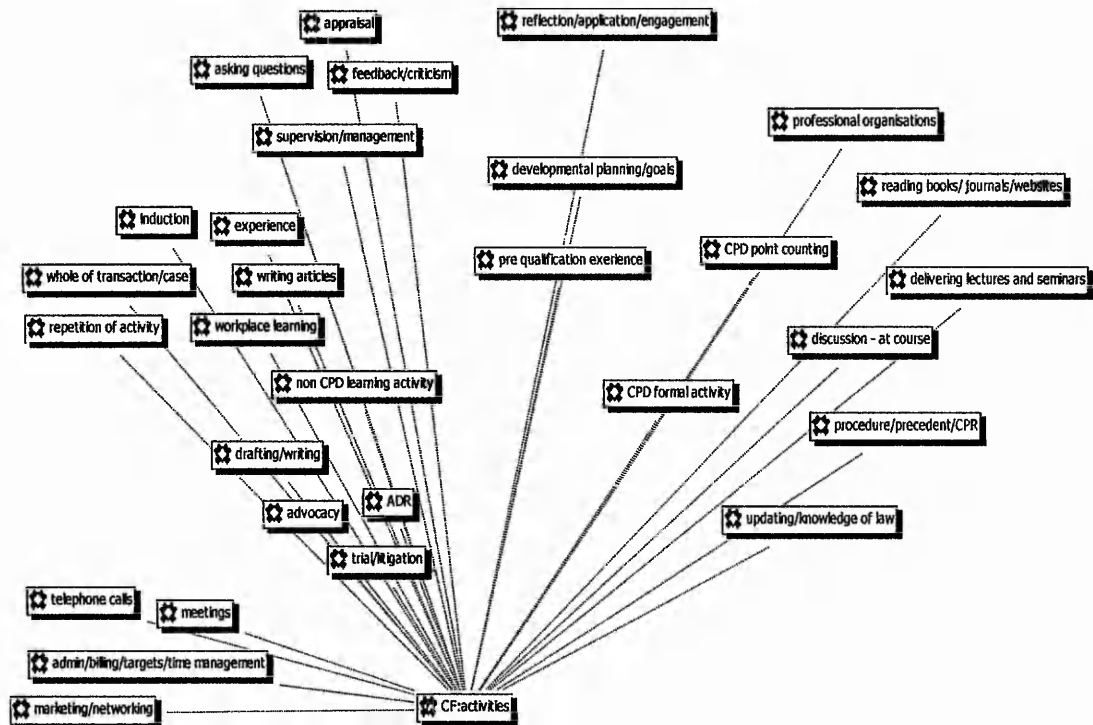
Figure 29 The code family "activities"

The code "activities" was applied to all tasks mentioned by interviewees, whether specifically in a learning context or otherwise. Given the context, however, one might expect a bias towards activities thought of as more "learning rich" than others; activities might be mentioned in passing; by way of aspiration; as tasks for which the individual felt unprepared or as impediments to learning. In terms of expertise, beginners might find it easier to identify discrete tasks than to categorise activity on a more transferable, conceptual level (6.2.1.2).

The "activities" results describe the "existing practice", achieving competence in which might represent the limit of the individual's learning strategy at the point of qualification.   Secondly, that description of existing practice, insofar as it is a description of the point of qualification, informs the benchmark for the starting point for development, to the extent that individuals were describing deficit arising from incompleteness of the training contract as legitimate peripheral participation or apprentice piece. Finally, the range of activities represents the spectrum of formal CPD and informal workplace learning environments in which the individuals find themselves.

10.3.2 Benchmark 1a – existing practice

By way of setting that benchmark for the "existing practice" which individuals might seek to enhance or beyond which they might aspire, then, I have provided, in Appendix IIA, a tabulated comparison of the list of "activities" (I have omitted the pre-benchmark code "prequalification experience") against the Boon taxonomy and against the day one outcomes and in Appendix IIB of the day one outcomes against the work-based learning outcomes which are intended to nest beneath them, both described at 3.7 as potential benchmarks for the scope of the workplace context.

The obvious initial difficulty in attempting this comparison, of course, is that the "activities" coding[54] reflects just that: tasks engaged in (input), whilst all the remaining taxonomies represent competences (output). The work based learning outcomes (Appendix II) do on analysis contain a set of hidden assumptions: that, in Client Relations and Workload Management individuals are working comparatively autonomously (with, therefore, limited reference to "supervision/management" by others: see "Working with Others"); on complete transactions and with considerable client contact ("Client Relations"). The place of knowledge of law and procedure ("keeps up to date with changes in law and practice"), filed separately from all the other "Self-awareness and Development" criteria perhaps betrays an assumption that the one is addressed largely by CPD updating and the others by a strategy of deliberate engagement with experience and avoidance of negligence. In addition, it will become apparent that although the keeping up to date criterion implies that individuals are passive consumers of a defined body of professional "knowledge"; and individuals maintain a strong focus on CPD-updating, their involvement in "writing articles" (12.5.4.2) and "delivering lecture/seminars" (12.5.4.1) is considerably more active.

The description of additional responsibility, of new expectations as to time management and cost responsibility, of involvement in the whole of a case all as new expectations and activities on qualification described by interviewees supports my speculation at 7.2.1 above that there may be a – in some cases quite considerable – degree of discontinuity and deficit between the end of the training contract and the point of qualification. It seems, for current purposes, then, that the work-based

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[54] Some of the "activities" sub-codes have been deliberately omitted from this attempt at comparison, because they in fact represent learning activity ("induction"); generic overview or evaluation ("pre-qualification experience") or activities signalled by interviewees as being engaged in only after qualification ("marketing/networking").

learning outcomes may not of themselves provide a realistic benchmark as to the kind of work carried out by those on the point of qualification. This contrasts with my adoption of the competence for development I have extracted from the same outcomes (see 3.8 and Fig. 2), specifically because it does betray a number of assumptions about the perceptions of development used by this group, and such a comparison is a purpose of this study. The discontinuity, however, whilst perhaps promoting a learning strategy focussed on its immediate remedy (see 7.2.2), may, as with the nurses in the LINEA project, result in a crisis of confidence (10.3.3.3).

10.3.3 Benchmark 1b - Feelings on qualification

A more useful benchmark from which to calibrate the perceptions of development onwards, then, is that of individuals' actual subjective evaluation of the point of qualification, underlying question 2. Responses here not only described activity and expectations, but also the emotional context, of, in particular, feelings of preparedness or unpreparedness for the new role. Feelings on qualification engage (see Figs. 3 and 4 above) aspects related to the andragogical assumption of self-concept (categories 1 and 3b of the competence for development) and the prior experience of the training contract (categories 1 and 3a of the competence for development).

The overall impression one has is that the time of transition from training (trainee) to qualification is, as I suspected it might be, one of the uncertainty and stress which I have drawn on in my concept of professional adolescence. Interviewees show great consciousness of their new status ("status/transition") within the "hierarchical structure" of the firm and discuss new "expectations" now imposed on them both in terms of new tasks ("admin/billing/targets/time management") and of increased responsibility ("responsibility (job)") and workload. Their "confidence" may be battered and they may doubt their "competence". I go on to consider the factors which contribute to this.

10.3.3.1 Pre-qualification experience

By application of axial coding techniques borrowed from grounded theory, comparing codes with and against each other, I am able to demonstrate what might otherwise be suspected, that individuals' feelings of competence and confidence were related to the way in which they felt their training contract had prepared them for qualification and

any deficit which they considered needed to be remedied. The quality of the training contract was significant both negatively:

> … I don't think that my training contract has really prepared me for - fully -
> for what I'm now doing on a daily basis.
> Berlin, 2 months PQE, para 8

and positively:

> …when I qualified, I had spent 9 months as a trainee in the [field] litigation
> team at that firm. … I felt that [the partner] was a *fantastic* role model as a
> litigator: very experienced, a very good lawyer in every respect and manager.
> So I felt the training I had received from that firm was second to none.
> Vienna, 2 ½ years PQE, paras 10 -11

Even where the training contract was positive in a generic or socialisation sense, a substantial step change in expectation still took place on qualification:

> … I learned a huge amount in my training but the nature of the sort of cases
> that I tend to work on with the partner, [name], that I mainly work for are very
> complicated, huge cases, so when I first qualified I felt very, well, not very
> confident in some ways in terms of being able to look at a case and know,
> analyse it in any sort of comprehensive way.
> Toronto, 2 years PQE, para 8

What was also important was any similarity between the "last seat" of the training contract[55] immediately preceding qualification and the field of practice in which the individual worked after qualification. In some cases this transition was so smooth, consistently with the findings of Boon and Whyte (2002) cited at 7.2.1 above, as to make the moment of qualification something of an anti-climax:

> … I qualified into the seat I was already in and I'd done that for a whole year,
> so I just carried on at my own files, … So on qualification … nothing
> changed. You expect somehow everything to be different overnight but apart
> from your pay, nothing's different overnight at all.
> Madrid, 1 year PQE, para 9

> … there was no magical transformation for me on qualification, in fact. It did
> feel a bit of a let-down, in fact, because I don't know what I expected would
> happen - to break open butterfly-like and fly away, or what. There was a

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[55] For those in the interview group, the minimum extent of litigation experience during the training contract that would satisfy professional requirements might be a "seat" of three to six months. This seat might be in any type of contentious work and could, therefore, be quite specialised (*e.g.* employment work).

> significant hike in salary but in terms of my knowledge or my ability to do my
> job I didn't feel a great change overnight.
> Sydney, 4 years PQE, para 8

To produce this effect, however, the congruence with the "last seat" has to be very close. The first factor I identified which detracted from that congruence was movement on qualification into a specialised field, governed by specialised procedures, rules and commercial drivers.

> ... I was really told that I'd be looking at doing [field] litigation. I had *no*
> experience of [field]; I hadn't done a seat in [field]. ... So when I first
> qualified I really had no expectations at all, although I *was* terrified, of course.
> Thinking, you know, this is a practice area I've never heard of.
> Nairobi, 2 ½ years PQE, para 8

Even if the field of litigation remained constant, a second factor was a change of focus from claimant to defendant:

> I moved from doing claimant work to defendant work. So just upon
> qualification, I was moving from one side to the other. So it was a little scary
> ...
> Accra, 2 years PQE, para 10

The fragility of any sense of being prepared for the post-qualification role by the training contract can be exacerbated by a third factor: not all individuals will qualify into the organisation with which they trained. Such a change adds a layer of complication, not only in moving into a new field (which may have been the reason for changing employer) but also in dislodging security in established working methods and working environment, the socialisation into the firm described at 2.8.2 and, at 3.7.1, in the Boon taxonomy:

> I hadn't had the experience of someone who would have joined my team had
> they been a trainee at this firm. So, from my particular point of view I was an
> NQ, although for all intents and purposes I may as well have been a trainee in
> my department. So my own feelings of being an NQ were very much not
> knowing really what was expected of me; not knowing very much about the
> type of work that I was going to be doing ...
> Oslo, 1 year PQE, para 9

The new firm might be more hierarchical or permit less autonomy than that experienced during the training contract :

> I remember thinking initially that [the working method of a new supervisor] was almost suffocatingly methodical and I got very frustrated and, again, this may be because of my experience, I felt very frustrated that I wasn't being given the sort of free rein I thought I had earned with my experience and having qualified. But I suddenly found myself in a new firm being treated more like a junior or a trainee than I had previously.
> Sydney, 4 years PQE, para 14

However, a positive induction experience, re-energising dormant knowledge from the LPC and contextualising it for the actual (as opposed to potential) workplace can rescue the situation:

> ... certainly before I went on our [relevant field] course and we also do [a relevant field] course, I felt slightly out on a limb but, I mean, that came along very quickly and after that I felt very much more confident about the rules.
> Delhi, 2 ½ years PQE, para 8

Although my study invites interviewees to look forward from the point of qualification, and I am here considering the relevance of the training contract experience rather than poorly supervised or difficult training contracts themselves, Boon and Whyte in their survey of 22 individuals mostly in their third year PQE point out that a difficult training contract may be seen as a valuable learning experience with hindsight

> ... participants' experience of the training contract varied considerably, with a significant distinction between relatively unstructured and highly structured training. ... Surprisingly, such experience is often appreciated with hindsight as assisting with developing independence, self-sufficiency and confidence, although, obviously, this is the view of those who survived the experience.
> Boon and Whyte (2007: 176)

The point is, perhaps, that the training contract as currently formulated, looks forward (as may the individual) only to the point of qualification and not beyond, and does not necessarily, therefore, provide individuals with the transferable skills to manage what may appear, to their seniors, comparatively slight changes of emphasis in the post qualification job. In fact, even if one assumes that there is no inherent quantitative difference between training contract and expectations on qualification (see 10.3.3.5 and 10.3.3.6), such comparatively slight variations between the last seat and the qualification job have a significantly negative effect.

10.3.3.2   Status (transition)

Whatever individuals felt about the relevance of their "last seat" and whether they felt confident or competent in it, they were very definite about the status (an identity and not just a role, see 2.8.4) achieved within the hierarchical structure at the point of qualification. That status is critical:

> … it's quite satisfying really to have achieved your goal. As soon as you start
> you're motivated by goals to qualify as a solicitor or barrister whatever you've
> decided to be.
> Accra, 2 years PQE, para 10

Despite the achievement of the desired status, it should be added that Accra did not see that achievement as precluding further development. In the absence of clear professional markers operating after qualification, some interviewees treated qualification very explicitly as the first stage in a personal journey:

> Well, I think it was quite exciting, qualifying. Because you suddenly felt that
> you could properly be involved in cases on an ongoing basis and you weren't
> going to be moved off to a new seat and you had a role to play. But certainly
> as a litigator, it's quite frightening in the sense that there are so many rules,
> [the] Civil Procedure Rules, really, about which you have no real experience
> and you're suddenly responsible for this, for applying all those rules.
> Delhi, 2 ½ years PQE, para 8

In addition to subjective change in status, there might be an expectation of some positive change in others' perception of oneself:

> … I don't like the way I was treated as a trainee … as a trainee the first
> assumption is that you don't know what you're talking about...
> … It was … just the end to the assumption that you were stupid until proven
> otherwise whereas you were now considered to know what you were talking
> about unless you proved otherwise. So that distinction, which was not really a
> relief, just [pause] certainly a change in other people's attitudes.
> Paris, 1 year PQE paras 11-12, 14

So a tension potentially emerges between a) status and personal confidence (derived from the training contract); or between b) status and quality of tasks allocated:

> … you are now a fully fledged solicitor apparently, but I was still, I suppose,
> carrying out a trainee role and that was; it was quite kind of false in a way, it
> didn't feel that real. You know, you weren't kind of treated any differently,
> you were still charged out at trainee rates, you still performed trainee tasks.
> Cairo, 4 months PQE, para 10

This potential mismatch between, on the one hand, professional status with its attendant high expectations and responsibilities and, on the other, feelings of a lack of confidence and competence that belie that status supports my concept of professional "adolescence" in which identity, status, autonomy, confidence are all fluid and to be worked out by the individual for him- or herself. In such circumstances, crisis might, as I speculated at 7.2.2, prompt defensive survialism as much as, or more readily than transformative or aspirational learning, particularly if the individual feels lacking in confidence or competence at the outset.

Tabulation of the "last seat" against descriptions (Fig. 31) emerging from the data of confidence and competence at the point of qualification is helpful to gain a picture of the extent of the crisis, with the caveat that the precise quality of the contribution of the last seat or other prior experience to the quality of subjective confidence or feeling of competence at the point of qualification is outside the remit of this study. I have attributed a scale to the narrative descriptions given as follows:

E	D	C	B	A
Very low	low	neutral	good	very good

Figure 30 Evaluation scale

Clearly, of course, factors other than the extent and relevance of pre-qualification experience to the post-qualification job will impact on individual feelings of confidence and competence (see, for example, Paris) and those with more extrovert personalities may respond differently. I have treated the "minimum compliance" litigation experience during the training contract (3-6 months at some point during the two years) as C as even this, as shown at 10.3.3.1, could be adversely affected by changes of field or firm on qualification or positively affected by being the last seat or of direct relevance to the job undertaken on qualification.

Interviewee	Pre-qualification experience		"confidence" on qualification		"competence" on qualification	
Berlin	2 months PQE at time of interview, no other specific information	C	I feel very unconfident in my fully qualified abilities.	E	It's, you know, it's a strange process that, you know, you've qualified but nothing actually happens: you're just suddenly expected to have a lot more knowledge and, although we are supervised - I've not been left on my own to get on with things largely - although the level of work that you give back is suddenly expected to be a lot better.	B
Rio	3 months PQE at time of interview FILEX	A	The point that I'm at now I feel very confident technically with the CPR. But it's tactics that I still struggle with. …. So I feel quite confident that I can pick up the White Book and suss out any situation, really. It's actually knowing what to do, what's the best thing to do tactically in a case that I still struggle with.	B	So my team leader has actually said that I've probably got the best knowledge of the CPR in the team.	A
Cairo	4 months PQE at time of interview Last seat not in litigation	C	So you end up feeling; I think you end up feeling very out of your depth and I feel, I felt quite stupid at times to be that.	D	[Clients] expect a certain level and you don't always feel that you can, are naturally able to perform to that level, well I don't feel I'm actually able to perform to that level. Everything takes me a very long time, …	D
Paris	12 months PQE at time of interview Not clear whether last seat in litigation	C	[it] didn't make a great deal of difference and the transition from being a trainee then going on client secondment was more of a transition in terms of how I felt about myself. Because I was treated as a lawyer whilst I was on client secondment. So it wasn't really a big deal for me to qualify because I had already been being treated like a lawyer as opposed to a trainee.	A	I don't like the way I was treated as a trainee, rather than it was good to be treated as a lawyer. Because I was treated like a professional, like I know what I was talking about, whereas as a trainee the first assumption is that you don't know what you're talking about; which is a shame because, although you may not have the experience, you are perfectly capable of finding out what it is you need to say.	B

Interviewee	Pre-qualification experience	"confidence" on qualification		"competence" on qualification	
Oslo	12 months PQE at time of interview. Trained at a different firm and changed field of litigation on qualification	So my own feelings of being an NQ were very much not knowing really what was expected of me; not knowing very much about the type of work that I was going to be doing and just being thrown in at the deep end and relying on people in my team who were more experienced than I was to kind of guide me through. … So, yeah, that was me, really, back in September 2004. I was very, very unsure; not very confident in my own ability as a litigator at all.	E / D	So, although it was very exciting and although I felt, if you like, it was within my capability of doing it, it was - I mean it still is - a vertical learning curve, really. It's taken me - what am I now, I'd say just over a year qualified - it's taken me this long to even start to feel like I'm getting my feet as to what it is that I'm doing.	B
Madrid	12 months PQE at time of interview. Qualified into last seat and had done 12 months litigation prior to qualification	I think perhaps people who qualify into a different seat would probably struggle the first few months, but I didn't really notice any difference.	A / A	so I just carried on at my own files, so I probably already had a year to get used to it. So on qualification nothing - that was what was the weirdest thing [Really?] - nothing changed.	A
Toronto	18 months PQE at time of interview. 4 months of litigation during training contract, not clear when	I felt, I've written it down here: "out of my depth".	C / D	when I say "out of my depth" I mean I didn't feel that I had *any* knowledge, really, to back up what I was meant to be looking at. I think that feeling was very bad for 2 months, quite bad for 6 months and has slowly gone away over time.	E

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Interviewee	Pre-qualification experience		"confidence" on qualification		"competence" on qualification	
Kyoto	24 months PQE at time of interview. Had done two seats in litigation but had noted increased complexity of caseload on qualification	B	when I first qualified I felt very, well, not very confident in some ways in terms of being able to look at a case and know, analyse it in any sort of comprehensive way.	D	Well, I would say [pause] I never, I was very [pause]. I felt very inexperienced, for one, and I guess the best way to put it is I felt very much at a point-and-shoot stage. So, you know, you tell me what to do and I will do it and in 2 years I feel much, much more confident in that sense.	C
Accra	24 months PQE at time of interview. 12 months of litigation experience during training contract but changed side on qualification	B	I'd been doing [field] work for at least a year of my training contract, so I felt quite confident. But I had changes in: I moved from doing claimant work to defendant work. So just upon qualification, I was moving from one side to the other. So it was a little scary … So, yeah, it's exciting yet a little daunting; or in my case it was because I was changing to a different area. But, yeah, it was good.	B	So it was a little scary and, I guess, as a trainee you can always hide behind your training principal and he or she is ultimately responsible for your files, but, once you qualify, you know the responsibility rests with you. So you do feel the added responsibility but, yet, it's quite satisfying really to have achieved your goal.	B
Nairobi	30 months PQE at time of interview. 12 months litigation experience but changed specialised field on qualification	B	So, I, to be honest when I first qualified, I had no idea what to expect because [field] litigation. … So when I first qualified I really had no expectations at all, although I was terrified, of course. Thinking, you know, this is a practice area I've never heard of.	E	The very first day I got a phone call from a client with a question about [specialist] claims, which now is bread and butter, but back then I was: "I have no idea".	E

Interviewee	Pre-qualification experience		"confidence" on qualification		"competence" on qualification	
Delhi	30 months PQE at time of interview General positive statements about training and in particular a course possibly at qualification	A	I think before, certainly before I went on our [relevant field] course and we also do [a relevant field] course, I felt slightly out on a limb but, I mean, that came along very quickly and after that I felt very much more confident about the rules. …Because it just focuses your mind back on litigation itself and the procedure.	B	But certainly as a litigator, it's quite frightening in the sense that there are so many rules, [the] Civil Procedure Rules, really, about which you have no real experience and you're suddenly responsible for this, for applying all those rules.	C
Vienna	30 months PQE at time of interview 9 months of litigation within training contract had changed firm to move into different field of litigation	B	I felt comfortable and confident as a solicitor. I felt that during my training contract I had learned how to apply the academic subjects of law in practice. … So I felt the training I had received from that firm was second to none.	A	I think the first comment I would make is that I realised I had an awful lot still to learn.	C
Sydney	48 months PQE at time of interview Mature entrant with 10 years experience in legal practice	A	… there was no magical transformation for me on qualification, in fact. If did feel a bit of a let-down, in fact, because I don't know what I expected would happen - to break open butterfly-like and fly away, or what.	A	There was a significant hike in salary but in terms of my knowledge or my ability to do my job I didn't feel a great change overnight.	A

Figure 31 Evaluation of competence and confidence on qualification

10.3.3.3   Confidence

Consistently with what went above but despite the years of preparation (and perhaps because of the lack of coherence of the academic stage (2.3.1, 2.3.2), the generality and exam-focus of the vocational stage (2.4.2) and the *ad hoc* nature of the training contract, see Boon and Whyte, 2007, *op. cit.*, 2.5), an admission of low or very low confidence at the point of qualification was expressed by almost half the interviewees:

> I was very, very unsure; not very confident in my own ability as a litigator at all.
> Oslo, 1 year PQE, para 10 (Oslo described, above, a significant change of context on qualification as a result of both changing employer and field of litigation)

> ... I guess the best way to put it is I felt very much at a point-and-shoot stage. So, you know, you tell me what to do and I will do it and in 2 years I feel much, much more confident in that sense.
> Kyoto, 2 years PQE, para 8

Almost half the interviewees (Rio, Madrid, Accra, Delhi, Vienna and Sydney) reported good or very good prior experience closer to the Lave and Wenger "apprenticeship" model and all of them expressed good or very good levels of confidence at the point of qualification.[56] Equally, those with less positive pre-qualification experience tended also to describe lower levels of confidence.

Good (A or B) pre-qualification experience and positive (A or B) confidence	*Neutral/lower (C, D, E) pre-qualification experience and positive (A or B) confidence*
Rio, Madrid, Accra, Delhi, Vienna, Sydney	Paris
Good (A or B) pre-qualification experience and neutral/lower (C, D, E) confidence	*Neutral/lower (C, D, E) pre-qualification experience and neutral/lower (C, D, E) confidence*
Kyoto, Nairobi	Berlin, Oslo, Cairo, Toronto

Figure 32 Matrix showing pre-qualification experience against feelings of confidence

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[56] Kyoto had also had positive prior experience in quantity at least but expressed a lack of confidence on qualification as a result of a very significant change in the complexity of the caseload encountered on qualification. Nairobi also had good prior experience but was similarly adversely affected in confidence by a change to a very specialised field of litigation on qualification. Paris is marked as having neutral prior experience but very good levels of confidence, simply because the quality of prior experience was not clear from the interview.

Rio is, perhaps, the best example of this, as a legal executive whose training more closely followed a pure apprenticeship model, closer to a complete period of legitimate peripheral participation, than the trainee solicitor's limited and atomistic training contract:

> I think it's something that it, it takes years to build up the confidence. The point that I'm at now I feel very confident technically with the CPR. But it's tactics that I still struggle with. So probably technically, the amount of years I've been working and having to use - virtually I started litigation when the Woolf Reforms came in. So I started at that point which I think was really quite helpful.
> Rio, 3 months PQE, para 8

10.3.3.4   Competence

Of the eight interviewees who reported good or very good prior experience, half (Rio, Cairo, Paris, Madrid) reported a similar level of feeling of competence and half (Kyoto, Nairobi, Delhi and Vienna) – notably and somewhat counter-intuitively those reporting from a perspective further away from the point of qualification - a lower level of feeling of competence.[57]

Good (A or B) pre-qualification experience and positive (A or B) competence	*Neutral/lower (C, D, E) pre-qualification experience and positive (A or B) competence*
Rio, Madrid, Accra, Sydney	Berlin, Paris, Oslo
Good (A or B) pre-qualification experience and neutral/lower (C, D, E) competence	*Neutral/lower (C, D, E) pre-qualification experience and neutral/lower (C, D, E) competence*
Kyoto, Nairobi, Delhi, Vienna	Cairo, Toronto

Figure 33 Matrix showing pre-qualification experience against feelings of competence

Of the three interviewees who reported low or very low evaluations of competence, all also reported low or very low feelings of confidence:

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[57] Of this group of four, two (Kyoto and Nairobi) reported low or very low feelings of confidence whilst two (Delhi and Vienna) reported good or very good feelings of confidence.

Good (A or B) confidence and positive (A or B) competence	Neutral/lower (C, D, E) confidence and positive (A or B) competence
Rio, Paris, Madrid, Accra, Sydney	Berlin, Oslo

Good (A or B) confidence and neutral/lower (C, D, E) competence	Neutral/lower (C, D, E) confidence and neutral/lower (C, D, E) competence
Delhi, Vienna	Cairo, Toronto, Kyoto, Nairobi

Figure 34 Matrix showing feelings of confidence against feelings of competence

one (Nairobi) reporting, in addition, quantitatively good prior experience marred by a complete change of field on qualification.

Whilst clearly individual personality cannot be excluded as a factor, of the seven interviewees who reported good or very good levels of confidence, five (Rio, Paris, Madrid, Accra, Sydney), also, not unsurprisingly, reported good or very good evaluations of their own competence. Oslo did not feel particularly confident (having changed both firm and field on qualification) but did report a positive response in respect of competence. Indeed, Berlin, Oslo and Vienna, all of whom reported more positively on competence than on confidence and whose pre-qualification experience differed wildly in quality, seemed able to do so on the basis of self-identification as, in effect, competent beginners rather than confused professional adolescents, detaching "confidence" from anticipated expectations of expertise and, therefore, proceeding from a sufficiently secure basis to employ a possibly even aspirational learning strategy:

> It was all just completely new. So, although it was very exciting and although I felt, if you like, it was within my capability of doing it, it was - I mean it still is - a vertical learning curve, really. It's taken me - what am I now, I'd say just over a year qualified - it's taken me this long to even start to feel like I'm getting my feet as to what it is that I'm doing.
> Oslo, 1 year PQE, para 10

> And, on qualification, how did I perceive myself as a litigator? I think the first comment I would make is that I realised I had an awful lot still to learn. I felt comfortable and confident as a solicitor.
> Vienna, 2 ½ years PQE, para 11

By way of emerging theory derived from an exploration of this data then, a positive last seat operates not only as pragmatic real preparation for the new role, but also allows for

a greater degree of realism in the confidence levels of the individual. Individuals with positive last seats may, then, be more emotionally grounded, more objective and readier for aspirational activity, having been closer to completion of the apprentice piece in that last seat. I contrast the newly qualified solicitor who is:

a) a confident beginner, secure in some activities and tasks (perhaps by virtue of a positive last seat) and confident in his or her abilities to learn to meet new expectations; from the individual who feels

b) ill-prepared, incompetent and unconfident in all things, including, perhaps, abilities to learn from and in the new role.

10.3.3.5   *Responsibilities (job)/ relevance/level of activity*

Whatever the individual feels about and as a result of his or her prior experience and the extent of disorientating qualitative changes in field, side or firm, then, I have already noted a quantitative change in the scope of the activities in which the newly qualified solicitor may be expected to engage. These are new expectations which engage the fundamental problems identified by Miller and Blackman in Fig. 6 at 7.2.2: not knowing where to start, what to look for or what help is needed to prioritise successfully. Such activities, not encountered during the training contract because the "apprentice piece" is incomplete to that extent, may include being expected to make decisions about the tactics, management and budgeting of a case:

> ... it is a step up compared to, you know, the work you do as a trainee and the responsibility. I'm very aware that that's on you, you know: actual case management, matter management, billing matters, but just I think, clients are asking you questions that, you know, the client doesn't know how qualified you are.
> Cairo, 4 months PQE, para 12

Most interviewees who commented on such a change reported it in terms of new expectations of responsibility ("responsibility (job)") both in the scope of tasks and autonomy allocated to them by their employers as well as a result of direct client contact (see also 12.4) that they had not previously experienced:

> ... it's a strange process that, you know, you've qualified but nothing actually happens: you're just suddenly expected to have a lot more knowledge and, although we are supervised - I've not been left on my own to get on with things largely - although the level of work that you give back is suddenly expected to be a lot better. And I think it's with clients as well. You know,

they don't know that you've just qualified two days before when you're speaking to them on the phone.
Berlin, 2 months PQE, para 8

I suppose the buck stops with me as opposed to the buck stopping with whoever was giving me work before. … And the type of tasks, really that you're asked to do rather than just could you research this point, could you research that; it's can you draft this, can you talk to this person, …
Toronto, 18 months PQE, para 14

Some interviewees wondered if there was an element of subjective professional conscience and self-imposition in their perceptions:

I thought there was a huge increase in responsibility from being a trainee to being qualified and I don't know if I made a lot of that up myself.
Toronto, 18 months PQE, para 12

I guess, as a trainee you can always hide behind your training principal and he or she is ultimately responsible for your files, but, once you qualify, you know the responsibility rests with you.
Accra, 2 years PQE, para 10

I conclude, therefore, that unless pre-qualification experience is sufficiently positive to create a sense of security, confidence and competence on qualification, the individual will, as I speculated at 7.2.1 and 7.2.2, have to address this deficit before being able to engage in aspirational activity (13.5).

10.3.3.6   *Expectation*

Expectations of competence in the new role were most frequently seen as being externally imposed by colleagues:

… there are people coming and saying "Well, you're qualified now, you should know" … But I think other people's expectations within the firm and from the clients change as well and, you know, I don't quite know how you suddenly make yourself up to that standard within a couple of weeks or a couple of months.
Berlin, 2 months PQE, para 10

or unconsciously imposed by clients:

… clients are asking you questions that, you know, the client doesn't know how qualified you are… they expect a certain level and you don't always feel that you can, are naturally able to perform to that level, well I don't feel I'm actually able to perform to that level.
Cairo, 4 months PQE, para 12

but occasionally as self-generated by the individual:

> ... I'm, you know, conscious of the time and I think it's probably more the
> pressure I'm putting on *myself* really now that's the difference. But I'm not
> sure if the training adequately prepares you for how you're going to feel or
> how other people are going to expect you to act.
> Berlin, 2 months PQE, para 12

The combination of activity, expectation, competence and confidence - as well as providing a benchmark for development – might usefully be compared with the picture at this stage with the Dreyfus model of the precursors to expertise described at 6.2 where I speculated that the majority of interviewees might be only at "advanced beginner" stage. Those with prolonged and very relevant prequalification experience (Benner, 1984, suggests two to three years) might potentially be categorised as "competent", possessing an ability to engage in "conscious, deliberate planning" (Benner, *ibid*: 27). Nevertheless, Kyoto described "a point and shoot stage" on qualification suggesting a lack of discrimination similar to the lack of knowledge of interrelations between variables (also demonstrated by Ned); not knowing what information is relevant and not knowing what to do and when to do it identified by Salthouse and shown at Fig 5 in 6.2. Many interviewees complained of this significant step-change on qualification: to the extent that the individual is still being presented with tasks or expectations that are new, this supports my contention in Chapter 6 that individuals are unlikely to attain competence in this sense despite the two years of the training contract. I conclude, therefore, that the best fit, then, on the Dreyfus scale, for the point of qualification is indeed that of the "advanced beginner" with sufficient prior experience to begin to recognise recurring situations. Benner (*ibid*), by contrast, describes the "novice" as having *no* experience of the workplace situation. However, a concatenation of limited pre-qualification experience, followed by change of firm and moving into a very specialist field might preclude the individual from beginning to recognise situations to the extent that they are at or have regressed to "novice" stage (witness Oslo, who had experienced change on qualification to the extent of feeling that "for all intents and purposes I may as well have been a trainee in my department"), consistently with the studies discussed at 6.2. Similarly, that regression may manifest in terms of motivation to learn (see 5.3.1.6) being focussed on immediate remedying of the deficit.

10.3.4 Benchmark 2 - 3 year PQE characteristics

The other benchmark is, of course, the interviewees' perception of the characteristics of those at the 3 year PQE watershed (which I have identified as approaching proficiency on the Dreyfus scale: 6.2). Clearly, given the range of respondents, that benchmark was seen from the distant perspective of the seven very newly qualified interviewees (Berlin, Rio, Cairo, Paris, Oslo, Madrid, Toronto); the proximity of five interviewees (Kyoto, Accra, Nairobi, Delhi, Vienna) who were two or two and a half years beyond qualification and, in the case of the single four year PQE respondent (Sydney) retrospectively.

Nevertheless, particularly in the case of the stage 2 interviews where the interviewee's mind had been explicitly directed to the point, comments relating to the benchmark also arose elsewhere in the interviews. At 6.2.1 and 6.3, I identified a number of traits of expertise that might be identified by the interview group in the 3 year PQE group: speed and accuracy; depth and focus on qualitative analysis of the problem. At 6.2.1.2, however, I also drew on studies about expert and novice categorisation of problems to suggest that the beginners might have difficulty in perceiving transferable and more conceptual aspects of problems in the way that experts do, which might indicate that, for example, time spent by experts on qualitative analysis as an overarching strategy might not be perceived by beginners..

In fact, the principal attribute mentioned by interviewees is that of "confidence", to be contrasted with the extreme lack of confidence identified by so many at the moment of qualification (10.3.3.3), shading across the three year period, described by Berlin and Oslo (both of whom described themselves as lacking in confidence on qualification) in the following terms:

> We all feel quite unsure of ourselves and I think that sort of is true of people
> up to a year, 2 years qualified.
> Berlin, 2 months PQE, para 39

> I think, from what I've been told anyway, when you're 0-3 years' qualified
> the learning curve is such that, … you're not really aware of, the knowledge
> you have isn't that great, it's only until you get to like 3 years' qualified that
> people start to feel, I suppose, confident in the areas that they're doing,
> because they've been doing it for that period of time.
> Oslo, 1 year PQE, para 14.

This confidence is explained, for interviewees, as a product of "experience", that is, of having dealt with some of the mundane tasks attached to the new expectations and

responsibility (principally the mundane one of managing the file: 12.3.2) so as to have attained a level of production proficiency and successful prioritisation in the terms set out in Figs. 5 and 6:

> So, I think that the people who have been qualified sort of 1, 2 years, they've got all that bit under their belt, they've got their own systems in place, by then, to work and then I think that gives - it seems to give - the confidence to sort of deal with the legal stuff because they've got that system and procedure in place.
> Berlin, 2 months PQE, para 17.

but also of acquisitional learning through repetition leading to tacit knowledge and recognition of "large meaningful patterns" derived from the quantity and quality of experience (see 6.2.3 and Salthouse's elements of knowing what information is relevant and knowledge of interrelations between variables described in Fig. 5); articulated (and coded) as repetition and completion of the whole of the transaction (that is, the missing element of the incomplete apprentice piece provided by the atomistic training contract):

> I think especially maybe in work types that are a lot more repetitive - in terms of you get similar cases or similar transactions - I think that their confidence is a lot greater.
> … Because I've found very much when you're doing your training contract you get a snapshot of files that you're working on. … So, in that time, you sort of do odd tasks and whereas now I think you're seeing the process through from day 1 of a client coming in and then potentially through to the end of the matter and you've done everything in between.
> Berlin, 2 months PQE, paras 14-16

Insofar as the specific expertise traits identified at 6.2.1 are concerned, only an ability to see "the bigger picture" – including variables and implications – as opposed to a focus on procedural niceties (a similar distinction that that between stages in the Dreyfus scale) was explicitly mentioned: the elements of depth and analysis focusing on an ability to combine information and variables (see Fig. 5). Individuals did not, however, articulate a belief that acquisition of such traits could be accelerated by transmission of expert rules, in contrast to the acquisition of quantity and quality of experience. They did, however, have recourse to experts (12.6.3) as sources of information and for assistance in the "AC" bridge between reflection and application in the Kolb cycle (Fig. 7).

Discussion of the extent of the expert domain or identification with the field (6.2.2.1) was not mentioned, although patently "knowing what to expect", in Salthouse's terms,

mapped against domain specificity in Fig. 5, must be a precursor underpinning the more visible expert-like attributes actually identified. Understanding the implications of actions, derived from having seen cases all the way through and so knowing what to do and when to do it (see Fig. 5), became a substantial theme and was coded accordingly (see further 12.6.3). Vienna's description bears a remarkable similarity with the approach of Ella in Blasi's example (see 6.2.1.1) and merits quoting at some length:

> And however, what I *would* expect, perhaps, is someone who's perhaps got three years post-qualification experience would *perhaps* be able to look at the bigger picture right from the outset. To know, having had the experience of dealing with cases that have gone all the way through to trial, or settled or otherwise; to perhaps just look at it in a slightly broader sphere, a slightly broader spectrum and say "OK, this is where we're at now, what are we trying to achieve?"
>
> And I'm not saying necessarily that a newly qualified wouldn't do all this but perhaps just in terms of dealing with this better and saying "What are we trying to achieve? What are the client's objectives? What other factors are going to prevent us getting to that objective? What are the costs going to be?" and just perhaps have a better feel for all of it generally. To be able to say to the client, right at the outset; you know, in giving that advice, perhaps, just to look at all of those options in a much more - I'm reluctant to say "balanced way" - but certainly perhaps a little bit more in depth and have a better feel for how that case is going to run, what are the obstacles that are going to be standing in the way. Whereas somebody who's perhaps newly qualified, who's not been through all of those stages: perhaps they've never been through a disclosure exercise, they've never been through case management conferences at which a case is settled where you never thought it was going to possibly settle.
>
> Vienna, 2 ½ years PQE, paras 23-24 .

However, the three-year watershed was also viewed critically. First of all the "confidence" might be perceived as more ostensible than real; proceeding perhaps from the expectations of others or even as an assumption derived from the hierarchical structure (see 10.2.3) of the firm:

> I think with these things it's often a perception of how you view *yourself* in a way that you don't view other people. So you automatically think "Oh well, that person must know an awful lot more than me or comes across as knowing an awful lot more than me", even though they maybe don't. And I think, you know, maybe when someone is two or three years' qualified, you think that being that much older and being in the firm that much longer, they're inevitably going to have more experience than you.
>
> ... I look to the 2 and 3 years' qualifieds as having more experience than I do. Whether or not, how they feel in themselves, I don't know, but that's just the way that I view them. ... So, I don't look upon them as knowing everything and me not knowing anything, if you're with me.
>
> Oslo, 1 year PQE, paras 12, 14.

> I find it really annoying actually, I have to say. I've heard lots of people say things like "Oh, you haven't got a clue what you're doing until you're two or

three years qualified" or "you suddenly know when you're about two or three years you wake up and realise what it's all about". Which I find really insulting, actually. ....
Madrid, 1 year PQE, para 11.

Second, it was not assumed that those who were more qualified were necessarily at or moving towards expertise in the sense employed by Bereiter and Scardamalia (see 6.2.2.2) to which a commitment to learning at the "growing edge of expertise" is critical. Those at the watershed might not be seen as employing a more advanced deliberate learning orientation, particularly when compared to the urgent motivation of their juniors at least to remedy the deficit:

I suppose when you're in your first three years you're really keen, aren't you? And you do read all the updates that come round and go on all the training courses. Perhaps it's after the three years; you get a bit complacent and think "Oh, I don't need to bother with all this so much".
Madrid, 1 year PQE, para 75

Sometimes I find that people post three years sometimes appear to be less challenged; sometimes a little bored; certainly more confident in what they're doing. They can just simply get on with it. You don't find them carrying out legal research as often as you find yourself sometimes checking references, etc.
Accra, 2 years PQE, para 12.

Indeed, the additional stresses and workload of the more senior lawyer could be seen as inhibiting rather than promoting learning, or allowing for a freedom to focus more on aspirational activity:

... as you go on the responsibility just increases. And sometimes you find that they actually are more stressed because they have more work and more difficult work if you like. So it seems like it's just a steep learning curve, to an extent. But I think, especially in terms of the sort of research you're doing, I find that as a newly qualified you're more keen to attend courses. Whereas people who are past the three years, they find it more of a nuisance rather than something they look forward to.
Accra, 2 years PQE, para 12.

In contrast to the "confidence" acquired tacitly, it might be noted that the learning orientation here is evaluated in terms of visible updating and attendance at CPD courses. Nevertheless, Vienna, close to the watershed, did relate the "bigger picture" to a deliberate learning strategy, not necessarily confined to CPD (although in common with others, Vienna did not articulate strategies for *achievement* of these objectives):

I think you also would perhaps expect a three-year qualified solicitor in a litigation team to be looking at other aspects of the position. So, perhaps marketing; client relationship management; seeking new clients; rainmaking. All of that sort of thing is perhaps something that you would be starting to think about in terms of your own career development, if you were looking to progress within the legal world.
Vienna, 2 ½ years PQE, para 19.

One might, however, wonder about the extent to which the perception of the confidence (and implicitly competence) of those at the watershed is related to the individual's perception of him- or herself in those areas. I have already shown, for example, (10.3.4, see also Fig. 35) that Berlin and Oslo, unconfident themselves, rated those of three years' PQE as significantly higher in confidence. Clearly this analysis suffers from the fact that only the stage 2 interviewees were explicitly asked to describe those at the upper benchmark.

Rio, Madrid, Accra and Sydney, with positive pre-qualification experience and positive perceptions of their own confidence and competence on qualification, described those at the watershed in more neutral or negative terms: as demonstrating no real difference to themselves; as subject to greater stress, bored and less challenged; as over-confident or as finally having achieved some degree of "common sense". Cairo, with comparatively less good pre-qualification experience and lower personal assessment of personal confidence and competence at qualification, clearly looked up to a specific colleague of four years' PQE.

Berlin, Oslo (who described neutral or limited pre qualification experience, lower personal confidence but good personal competence at qualification) and Vienna (with good pre qualification experience, good personal confidence but neutral personal assessment of competence at qualification) were those who identified the length of time to the watershed as permitting repetition of tasks and involvement in the whole of the transaction which in itself led to greater (ostensible) confidence and competence (albeit not infallible). Vienna's description of the ability of those at the watershed to see "the big picture" by virtue of the exposure to complete transactions and the opportunity to repeat tasks, suggests that what is being described falls towards the "proficient" marker on the Dreyfus spectrum where individuals "understand a situation as a whole because they perceive its meaning in terms of [tacit] long term goals" (Benner, *op cit*: 27) or, at worst, its immediate predecessor of "competent" where such long term goals or plans are more conscious and explicit. As I have described at 6.2, however, and borne out by a number of interviewees who described not only a step-change for their own activity

on qualification but an increase in the complexity of tasks throughout the three year period, the Dreyfus model tends to suggest that novices to experts are assessed in performance of identical tasks whereas what is in fact required is the three-dimensional vector of Fig. 1, taking into account the increments in complexity of tasks required.

10.3.5 Conclusion

The benchmark of qualification, as expressed by the interview group is, then, frequently one of stress apparently caused first by the interaction of prior experience which may not be felt to have been adequate preparation (10.3.3.1), and in which qualitative changes (such as from claimant to defendant) can dislodge confidence (10.3.3.3) and, implicitly, inhibit transfer of such generic skills as have been acquired. The second factor is the range of new expectations (10.3.2, 10.3.3.6) arising on qualification, where the individual is suddenly asked to manage the whole of files or take on tasks such as marketing, which did not feature in the training contract experience at all. Insofar as this is the case, the training contract, as a means of "legitimate peripheral participation" in Lave and Wenger's (*op. cit.*) terms, is inadequate, as this deficit demonstrates that it does not necessarily proceed incrementally to "full participation" or in my terms, create a completed "apprentice piece". Feelings of confidence are linked to those of competence (10.3.3.4) and inform whether or not the individual possesses sufficient personal security (as a "competent beginner") to move on to aspirational activity in particular. Individuals did, however, consistently with the andragogical assumptions and category 1 of the competence for development, show a considerable degree of self-knowledge (10.3.3).

The picture of the three year watershed that emerges (10.3.4), then, is by no means one of unattainable expertise, or, indeed, entirely positive. It is perceived in terms of confidence gained through exposure to the quality and quantity of experience (repetition; whole of transaction) that contributes to "expert" pattern creation and to an ability to see the increased range of variables and implications that constitutes the "bigger picture". Aspirational activity beyond the benchmark is invisible to the interviewees, but in terms of more obvious CPD activity, the learning orientation of those at the watershed is, in fact, seen as depressed, perhaps by increased stress, increased workload, boredom or complacency. A rejection of CPD activity may, of course, in fact represent a sophisticated response to the largely updating content of CPD provision, rather than a rejection of learning *per se*. If the interview group tends,

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however, to assume deliberate professional learning (as opposed to the largely unconscious gaining of "experience") to be synonymous with learning-conscious CPD, that would be by no means an inexplicable result.

Interviewee	Rating for pre-qualification experience	Rating for own confidence on qualification	Rating for own competence on qualification	Assessment of those with 3 years' PQE	
Berlin	C	E	B	I think that even the people that are now 1 year qualified, I think they also acknowledge that they've had quite a steep learning curve, but I think it's the confidence of just gaining experience and I think especially maybe in work types that are a lot more repetitive - in terms of you get similar cases or similar transactions - I think that their confidence is a lot greater. ... But, you know, it is, a lot of it is, just experience of dealing with it and seeing things through and I think that's one of the big learning curves as well.	Experience and creating confidence
Rio	A	B	A	A I think I can give you 2 opinions really because I obviously see a lot of trainee solicitors coming down. Personally I find that they're often very good academically and with research and things like that, but actually with more common sense and practical decisions, I think that's where someone who's been on the job for a few more years has a vast advantage on that. Because I've worked with a lot of trainee solicitors and they haven't really sort of grasped that yet. So I suppose that 0-3 years, I would imagine that the aspect of their role that they're really building up is sort of practice. Q Common sense? A Common sense approach, really. Which I think you do need for litigation.	Experience creating "common sense"
Cairo (stage 1 interview)	C	D	D	I sit in, I share an office: [name]'s not here to day, he's 4 years qualified. I always consult on matters to see how he does things, I ask him questions: he's fantastic in that way.	Experience creating personalised practice?
Paris (stage 1 interview)	C	A	B	No specific data	
Oslo	E	D	B	A I think with these things it's often a perception of how you view *yourself* in a way that you don't view other people. So you automatically think "Oh well, that person must know an awful lot more than me or comes across as knowing an awful lot more than me", even though they maybe don't. And I think, you know, maybe when	Experience and repetition creating ostensible

					confidence and personalised practice	No difference
Madrid	A	A	A	A		

someone is 2 or 3 years' qualified, you think that being that much older and being in the firm that much longer, they're inevitably going to have more experience than you. But then I've spoken to people who are 2 or 3 years' qualified and they say that, you know, until you are 3 years qualified then they, looking back, it was only then that they really started to reach a kind of level where they were able to build on from there, if you're with me?

Q   Can you explain or give me an example?

A   I think, from what I've been told anyway, when you're 0-3 years' qualified the learning curve is such that, obviously because such you're not really aware of, the knowledge you have isn't that great, it's only until you get to like 3 years' qualified that people start to feel, I suppose, confident in the areas that they're doing, because they've been doing it for that period of time. But then, obviously, with me being 1 year qualified, I look to the 2 and 3 years' qualifieds as having more experience than I do. Whether or not, how they feel in themselves, I don't know, but that's just the way that I view them. I mean, the 2 and 3 year qualified members in my team are still going through the same motions with the partners that I would go through. So, I don't look upon them as knowing everything and me not knowing anything, if you're with me.

...I'm close to people who've been doing this job for a fair few years and it's just helpful to me to be able to see how they conduct themselves. Even if it's just a telephone conversation with a difficult person or I can see them working through documents and putting stuff together. Or, you know, just their general manner if you like, which gives me something, you know, so. ....

I find it really annoying actually, I have to say. I've heard lots of people say things like "Oh, you haven't got a clue what you're doing until you're 2 or 3 years qualified" or "you suddenly know when you're about 2 or 3 years you wake up and realise what it's all about". Which I find really insulting, actually. I don't know if in a year's time I'll feel so much better than I do now or whether other people struggle or not; because of the team I'm in I haven't struggled. But I have to say I can't see a difference really between myself and other people in my team.

Interview				Data	Theme
Toronto (stage 1 interview)	C	D	E	No specific data	
Kyoto (stage 1 interview)	B	D	C	No specific data	
Accra	B	B	B	Yes. Sometimes I find that people post 3 years sometimes appear to be less challenged; sometimes a little bored; certainly more confident in what they're doing. They can just simply get on with it. You don't find them carrying out legal research as often as you find yourself sometimes checking references, etc. ...But sometimes, it's easy to say sometimes that the more experience you have the easier it gets and you can just get on with the job, because I think as you go on the responsibility just increases. And sometimes you find that they actually are more stressed because they have more work and more difficult work if you like. So it seems like it's just a steep learning curve, to an extent. But I think, especially in terms of the sort of research you're doing, I find that as a newly qualified you're more keen to attend courses. Whereas people who are past the 3 years, they find it more of a nuisance rather than something they look forward to.	Experience creating confidence but greater stress, boredom and depressing desire to engage in learning activity
Nairobi (stage 1 interview)	B	E	E	No specific data	
Delhi (stage 1 interview)	A	B	C	No specific data	
Vienna	B	A	C	Right, I think the first comment I would make in respect of that is "confidence". I would expect and I feel that as a 3-year qualified litigator you have - hopefully through experience depending on the area of specialism that you deal with - but come up with a number of files that you have dealt with, just simply through being involved in the litigation - in the sphere of litigation - for that period of time. So, one of the things that I certainly feel is that, on qualification, I felt that, as a qualified solicitor, people would expect you to know everything and, if they came to you for advice, that you were no longer a trainee and that you should know the answer immediately. Now one of the things that's clear to me is that that isn't the case, even at partnership level, although now as a 3-year qualified I feel much more able to deal with clients with clients' queries, even those where the answer is perhaps not	Experience, repetition and whole of transaction creating confidence and ability to see the wider picture but not infallible competence

| Sydney | A | A | A | immediate and one would need look at it in more detail. …

…And, if you like, all of the other matters that come with dealing with a litigation caseload and you are more confident in dealing with it from start to finish. Case management generally, perhaps case planning, case analysis, getting a feel for the workload. That's something that all comes with experience and one would expect a good 3-year qualified litigator to be able to deal with those far better than perhaps a newly qualified would deal with them. I think you also would perhaps expect a 3-year qualified solicitor in a litigation team to be looking at other aspects of the position. So, perhaps marketing; client relationship management; seeking new clients; rainmaking. All of that sort of thing is perhaps something that you would be starting to think about in terms of your own career development, if you were looking to progress within the legal world.

… but, I would expect to find that actually - and again I'm generalising here and I certainly mean no disrespect to anyone who's just qualified - but if you're given a fairly complex case, perhaps something that's going to result in some High Court Chancery litigation, … what I *would* expect, perhaps, is someone who's perhaps got 3 years post-qualification experience would *perhaps* be able to look at the bigger picture right from the outset. To know, having had the experience of dealing with cases that have gone all the way through to trial, or settled or otherwise; to perhaps just look at it in a slightly broader sphere, a slightly broader spectrum and say "OK, this is where we're at now, what are we trying to achieve?" To be able to say to the client, right at the outset; you know, in giving that advice, perhaps, just to look at all of those options in a much more - I'm reluctant to say "balanced way" - but certainly perhaps a little bit more in depth and have a better feel for how that case is going to run, what are the obstacles that are going to be standing in the way

…Not really. I can't say, I can't point to a particular characteristic or trait that I would say they had that I didn't have. I suppose, if pushed, perhaps confidence, although, on reflection, I'm starting to think that perhaps I was over-confident at the time myself. Yeah, perhaps confidence. | Ostensible confidence |

Figure 35 Assessments of those with 3 years PQE.

CHAPTER ELEVEN - ANALYSIS AND REPORTING: CPD

> His dispute ... had been resolved, at least temporarily, like other crises in his
> ... life, by sending him on a course...
> Lodge (1980:131)

11.1 Introduction

The obvious framework for the perceptions of development present in the interview group is the CPD system described in Chapter 4. In this chapter, then, as I indicated at 4.5, I explore first the concept of CPD described by interviewees (which may be informed by their experiences of classroom activity at earlier stages: 2.3.2), and then go on to consider the implications of that sanctions model as providing a message that prioritises input over output ("point counting"). If the self-directed competence for development means anything, it must, I suggest, also allow for individuals who find what is offered by way of formal CPD activity unhelpful: what I have referred to as "point counting" might in fact be a sophisticated self-directed response to regimented, information-focussed CPD provision. At 4.4.3, I identified the place of other stakeholders in the shape of CPD activity, and I go on to consider, second, what emerged from the data in relation to the place of the employer as stakeholder in an individual's CPD activity (contrasted, perhaps, with the assumed self-directedness of the adult learner). Third, I take a more phenomenographic turn in an attempt to see how engagement with the experience and the process or learning environment for CPD (coupled with constraints such as cost or pressures on time) manifests itself in the learning derived from CPD. Finally, I consider how interviewees evaluated learning in the workplace when compared with CPD.

An overview of the conception of CPD activity held by the group is seen very clearly by looking at the subset of codes branching out to the right in the diagram of the "activities" grouping in Fig. 30. This suggests that the concept – involving point-counting; literature and updating as to the law or as to procedure – will be found to follow what I described in Chapter 4 as a deficit "CPD-updating" model aimed at the dissemination of information and pandering to the lawyer's understandable obsession with keeping up to date as to the law. Nevertheless, reference to the individual's own delivery of lectures and seminars (12.5.4.1) and to discussion at courses (both falling within the "interactions" family of codes) might also suggest the presence of a greater degree of engagement with the CPD experience towards understanding of relevant

information (as opposed to its mere recall) in the first case and its evaluation, application and possible synthesis into a more personalised practice in the other.

11.2 What comes to mind when I say "CPD"? The concept

Question 5 was deliberately designed to uncover an instinctive response and reduce the likelihood of a response framed in terms of what interviewees thought I wanted to hear. The following provides a flavour of the many similar answers:

> A   Um, well you know, it's just training.
> Q   OK. Any particular kind of training?
> A   Yeah, talks.
> Paris, 1 year PQE, paras 24-26
>
> ... also you can get videos and just watch a video but that, at the end of the day, that's a talk, it's still a talk. I mean any training really is going to be a talk isn't it, someone talking at you?
> Nairobi, 2 ½ years' PQE, para 20

This comparatively unconsidered response is precisely what one might expect from participants in a sanctions model, CPD-updating format: a consciousness of method of delivery above content - and certainly above attributes higher up the hierarchy of Bloom's cognitive taxonomy - so as to typify the "talk" over activity promoting engagement with the experience or the problem-solving preferred in the andragogical model. Exploration of the concept of CPD engages aspects related to the andragogical assumption of prior experience (categories 1 and 3a of the competence for development) and of the orientation to learning by way of engagement with experience defined as category 2b of the competence for development. Even interviewees who were peculiarly well-informed nevertheless typified CPD content as updating of knowledge (see 4.3.2 and 4.4.2) with limited reference to, for example, skills:

> CPD? Anything like the in-house training or attending external seminars. *Anything that, if you like, is updating your knowledge of the law on a day-to-day basis.*
> Oslo, 1 year PQE, para 24 [my italics]
>
> ... you can contact publishers and review books and articles, you can do all sorts of reading and preparation work and it be counted as it. *As your actual main points come from learning, learning new law or refreshing yourself on areas of law.* [my italics] I mean there's loads of weird and wonderful ways to get points aren't there, ...
> Madrid, 1 year PQE, para 34 [my italics]
>
> Q   Right. So CPD that is about your professional development would be what form of activity? What would you put under that head?

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A   Well, *updating on developments in my field and refining the skills that I use daily to do the job.* [my italics]
Sydney, 4 years PQE, para 26

Having said that interviewees' usual concept of accredited CPD activity was "talks" and updating, a number of factors were identified as contributing to the effectiveness of such activity. Such evaluation might emerge in the response to question 5 or in the descriptions of good or less good learning experiences given in response to questions 6 and 7. Questions 6 and 7 were deliberately not phrased as being confined to CPD activity but, particularly given the sensitivity of much workplace activity or internally provided CPD activity both in respect of clients and colleagues; it would not be surprising if individuals chose to discuss externally provided CPD. Some interviewees mentioned more than one experience and it was not always apparent whether a formal CPD "talk" was internally or externally delivered. Where "attributes" were mentioned, the attribute in question was generally confidence or presentation (advocacy) skills. It is also remarkable, and a subject with which I will deal in more detail at 12.5.4, how often a positive informal workplace activity was in itself giving a lecture or seminar to clients or colleagues, combining knowledge with presentation (advocacy) skills and the attribute of confidence. Figures in Fig. 36 represent the number of references occurring in the entire cohort.

	Formal CPD			Informal workplace learning (including delivering lectures/writing articles)			Informal workplace learning (appraisal and coaching)		
	K	S	A	K	S	A	K	S	A
Question 6 (positive)	6	1	2	3	12	5		2	2
Question 7 (negative)	11			2	3	3			

K = knowledge
S = skills
A = attributes

Figure 36 Occurrences of knowledge, skills and attributes in the transcripts

11.2.1 CPD point counting,

Interviewees were particularly conscious of their professional obligations as far as the number of hours required (see 4.3.1) was concerned, several conceptualising CPD initially and prior to further discussion as a point-counting activity (4.3.1), demonstrating the potential for, as I speculated in 5.3.1.6, a compliance-based motivation divorced from learning:

> CPD to me was literally pick up CPD points: the Law Society require you to, you know, fulfil the quota and if you've done that, you're done.
> Cairo, 4 months PQE, para 20

> I mean CPD, it's a funny thing, it's almost as though you have to tick the box. You have to go to a certain number of talks, a certain number of hours and then you tick the box.
> Nairobi, 2 ½ years PQE, para 14

None, however, themselves identified difficulties in meeting that threshold (see 4.3.4), frequently - in those interviewed at least - because of a plethora of accredited activity available to them and training personnel responsible for providing CPD opportunities and ensuring compliance, this apparent generosity in fact defining the CPD activities in which individuals participated (see 4.4.3 as to the role of the employer as stakeholder):

> Because there's so many courses run internally that you do way in excess of those 16 hours. I mean, I think by the end of next week I'll have done my 16 hours pretty much and ... it's only November.[58]
> Berlin, 2 months PQE, para 26

> So to me, CPD points has never ever been an issue really because when I look down at the - I don't know the total that you're supposed to have - but I have a *zillion* CPD points ...
> Kyoto, 2 years PQE, para 16

Although colleagues – including, as I have shown at 10.3.4, those at the three year watershed - seen as not having a particularly strong learning orientation might be in a different position:

> [pause]. I think, I know a lot of people in the profession see it as a thorn in the side.
> Berlin, 2 months PQE, para 26

> But I do so much stuff like that that I don't worry too much about it. I can see if I didn't - you always hear about people scrabbling for points, don't you? - and perhaps a lot of people here would be in that position. ... It's helpful for

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[58] The CPD "year" starts in November.

them to just to be able to, every so often, be forced to sit through something to get their points.
Madrid, 1 year PQE, para 27

11.2.2 The role of others in choice of CPD activity

Individuals, then, might see the involvement of others within the firm, whether supervisors or PSL/HR/Training personnel as being primarily in compliance rather than, for example, any form of developmental planning of selection of appropriate activity. Nevertheless, there was evidence of CPD activity being affected (or constrained), particularly where supervision or a training department were strong, either by decisions made for individuals (for example, mandatory induction courses) – belying the self-direction andragogical assumption (see 4.4.3 and 5.3.1.2) - or in the course of evaluation or appraisal, a point to which I will return later. Such strong involvement of the employer might also supplant any need for the individual to take responsibility for planning CPD activity (4.3.5, 13.3.4, and section 7 of the work-based learning outcomes in Appendix II). This is a significant factor, particularly identified by those in the very early stages after qualification.

So I know that, you know, there is a vast array of courses so you can pick things. I mean, here it's more the firm tailor to what they think you need, rather than the other way round.
Berlin, 2 months PQE, para 26

So I think when you're asked to go on something and someone else thinks it's going to be really helpful for you. But the person who's making that decision probably doesn't really have a clue what you actually do day-to-day and so that's quite unhelpful.
Rio, 3 months PQE, para 49

11.3 Analysis of what is learned through CPD

The perceptions of development in the CPD context, even if involvement in particular courses is dictated by others, involves consideration of the way in which individuals approach and evaluate "talks" and what they get out of them, particularly given the possibility of a regression towards a "novice-like" demand for passively transmitted "right answers" (see 4.4.2 and 5.3.1.1) perhaps produced by the stresses of the period of transition but inhibiting more sophisticated engagement with experience. Taking, as I have said (8.3), a more phenomenographic turn, I measure the CPD activities and outputs described against the recognised hierarchy of cognitive engagement provided

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by the revised version of Bloom's taxonomy (Bloom, 1956; Anderson and Krathwohl, 2001).

11.3.1 Remember and understand

At 4.3.2 and 4.4.2 I describe CPD activity as being focussed on the transmission of conceptual knowledge, and this would be a comparative sterile ground for evaluation: transmission of information to be recalled is precisely the aim of CPD updating activity. Consequently I focus here on the code "relevance/level of activity" as an evaluation of the bounds of the information transmitted and which it is envisaged will be recalled and understood: relevance of content to an individual's actual current practice (or to aspects of practice to which they aspire) and the level at which CPD activity is pitched.

11.3.1.1 Relevant content

It is an axiom of the andragogical assumptions that individuals determine what it is seen as necessary to learn and how (see 5.3.1.1), and that resistance to CPD activity may be a response to lack of relevance in the content. Even if attendance is mandated by the CPD system or by the employer, the individual may nevertheless evaluate the relevance of the activity on a personal basis. Whilst Salthouse (Fig. 5) identified "not knowing what information was relevant" as characteristic of the beginner, these interviewees, in the perhaps more familiar classroom context, were in fact very specific in their assessment of relevant CPD content. Those working in small or specialist teams in particular found it difficult to obtain appropriately targeted CPD:

> … the team I'm in is a very small team …So there's a [number] of us still working on [field] stuff who don't really get any in-house updates or training because it's just [number] of us doing it. So we tend to look out for external courses and things like that.
> Rio, 3 months PQE, para 25

> [Firm] doesn't have that many talks specifically aimed at [field] litigators because my boss is, you know, the partner I work for is *the* [field] litigation partner and I am *the* [field] litigation associate. So unless [*s/he*] sits down and gives *me* a talk. …
> Nairobi, 2 ½ years PQE, para 14

Appropriate targeting, as might be expected given the insecurity of the point of qualification, involved a very tight definition of the "relevant" domain tied closely to

the scope of the individual's current practice (such control being an aspect of their readiness to learn: 5.3.1.4):

> Or even as you're going through the course when something really stands out as "This will be really useful to my clients", three stars next to it and "Oh, this is nothing I'm either interested in or relevant *at the moment*" you switch off then.
> Madrid, 1 year PQE, para 63 [my italics]
>
> I tend not to associate information technology with my professional development, the way I do my job, which I suppose - now I say it - sounds like it could be to do with professionalism but I - perhaps it's narrow-minded of me, …
> Sydney, 4 years PQE, para 24

Madrid (with positive results for pre-qualification experience, and for confidence and feelings of competence on qualification) at the opposite extreme, had unusually now rejected CPD activity of direct relevance to his/her existing practice in favour of aspirational activity:

> I tend to pick courses that I find interesting as well; not ones that are necessarily relevant.
> Q   Right so topics that you're not doing at the moment?
> A   I certainly don't go on courses of things I'm doing at the minute because in the past I just found them not particularly helpful, really. You might learn one or two things that you didn't know during the day but I find generally they're quite basic; … So I don't think I probably do any courses that are about what I'm doing anyway but when I did [third topic] I would go on the [third topic] updates and they weren't, I didn't think they were aimed high enough really and so that's why I tend to pick "weird and wonderful".
> Madrid, 1 year PQE, paras 37-39

and a number of individuals at around the two year PQE point, having successfully negotiated the extreme pressures of the immediate post-qualification period and remedied the deficit of the training contract, were able to take a more broad-minded approach to the question of relevance, perhaps also implicitly reflecting a more aspirational view of the benefit of storing information up against possible future relevance and seeing past immediate updating (4.4.2):

> It's hard to think of a course that doesn't have *some* use. I mean, it's hard to fit a course into your daily practice because you may go on a course or you may go to a talk ….
>   I mean, I don't know, maybe that's being unfair, because in some ways you go on these courses and, as I was saying, they are useful background knowledge, they are not necessarily useful day in, day out, it just depends on what you're facing …
> Kyoto, 2 years PQE, paras 46 and 50

> I think, good or bad, you do learn something from everything. ...
> Accra, 2 years PQE, para 40

a result which is at odds with the perception described earlier, in particular by Madrid (1 year PQE) and Accra (2 years' PQE), of a disinclination to engage in CPD or learning-conscious activity in those at the three years' watershed.

11.3.1.2   *Appropriate level*

Whilst individuals reported attending some courses in advocacy, drafting, and negotiation skills as well as induction, the greatest problem with level was in the CPD updating arena (coded as "procedure/precedent/CPR") which, as described at 4.3.2, is the default concept of CPD activity:

> ... I sometimes think that some of the courses I've been on, they're being pitched at a level of experience that we haven't got at that stage. ... They'll still, for example, talk about pre Woolf reforms and we weren't even studying law when that happened so no relevance at all to us of that!
> Berlin, 2 months PQE, para 47

One can imagine the question of level and the need or otherwise for "introductory" CPD activity might engage particularly fragile susceptibilities in the target group, particularly those in the midst of the transition on qualification with significant pressures on their time. If one admits to a desire for "introductory" activity, does that compromise one's qualified status as far as more senior colleagues are concerned? If the employer-stakeholder (whom the individual may wish to impress) demands "introductory" activity, particularly if perceived as repeating material covered during the LPC, is that necessarily a waste of time or "remedial"? Is the appropriate level for a newly qualified whose final seat was in litigation the same as for an individual who has moved field and firm?

Positive factors as to level, however, included possession of a degree of prior knowledge (prior experience: 7.2.1, 10.3.3.1) as to the subject matter (and so, perhaps, "readiness to learn" more, so as to enhance existing performance within category 3a of the competence for development):

> [i]t helped that I'd read something about it beforehand, knew it was a topical issue, went along to a good training session.
> Cairo, 4 months PQE, para 31

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and the unthreatening and supportive environment ("motivation") provided by a cohort of students of a similar level of qualification to oneself:

> ... and I think also the being trained with your contemporaries as well, I think that's really important.
> Berlin, 2 months' PQE, para 45

> But I think because there were also people in there who I felt, you know, were either at my level or slightly below my level of qualification, then I could relax.
> Nairobi, 2 ½ years PQE, para 27

Negative factors were focussed around the question of relevance as so tightly defined on an individual basis by those of less than about two years' PQE:

> ... training sessions that are pitched at the wrong level. ....
> ... And you just have to accept, I suppose, going along to some of these things that it's either going to be too much of a noddy guide or it's just going to have too much [specialist field] jargon in it. ...
> it's only really recently that I've ever gone to a couple of these sessions that I've really thought there's no point in my going because I already knew it. And they've been very specific and on areas that I've either just been involved in ... But you'd still go for updates at the end or something. But it has only been one or two and I've been amazed when I've walked away: I thought I actually knew it all and it wasn't like I needed reminding of that.
> Toronto, 18 months PQE, paras 47-51, 54-55

Clearly – although one might contrast the views expressed above from Kyoto and Accra at 11.3.1.1 at around 2 years PQE prepared to be somewhat more open–minded - the question of level is not susceptible of a simple solution, particularly as, unlike relevance of content, it can be difficult to identify in advance the level at which a particular training session is going to be pitched.

11.3.2 Apply

Applicability, which might otherwise be considered as part of the delivery or process (see 4.4.2, 4.3.3) of the learning activity also contributes to the issue of relevance. The question of applicability, of transfer into practice as an output of CPD was identified at 4.3.5 as a facet of engagement with experience (category 2b of the competence for development). Material that might otherwise be seen as relevant is seen as irrelevant if it cannot be applied (Mezirow's *praxis* (7.6.2.1) and the concluding curve of the Kolb experiential learning cycle at Fig. 7), a phenomenon operating across the zero to three year spectrum:

... I think a lot of legal training that we get focuses too much on the theoretical and not enough on the practical. And it doesn't answer the question that you have that, if I want to actually do that, then how do I do it? What are the steps that I need to follow? How do I go about doing that?
Berlin, 2 months' PQE, para 41

I got very useful handouts, that I took away [which] have been useful since but only now am I actually beginning to understand what I was taught then. But of course I wasn't taught it: I only understand it now because I've been doing it since ...
Nairobi, 2 ½ years PQE, para 34

If it's something that I can see myself using; if it's something I wish I'd known that two weeks ago; then I regard the course as having had significant use for me. But if ... something which I might only actually want to be able to do once in every blue moon, then no. Because I know that when it comes when I do have to use it, that I'm just going to have to sit down and learn it again anyway. Because I won't have retained this knowledge because I won't have been using it regularly.
Sydney, 4 years PQE, para 44

Although some interviewees discussed participation in "workshops" and forms of skills training in advocacy and negotiation, the underlying focus on CPD as updating remained pervasive and inhibiting (4.4.2 and 5.3.1.1), to the extent that there was some doubt about the existence or utility of formal learning-conscious activity in other spheres (as opposed perhaps to learning in the workplace or tacit acquisition):

That I think, in terms of those skills, I think are *only* skills that you can develop through gaining experience. I'm not sure that - well, you *could* be taught them, no doubt - but certainly, I think that is just something that you perhaps can only gain through experience.
Vienna, 2 years PQE, para 25

11.3.3 Analyse and evaluate

Whilst the general code "evaluation/meaning" was allocated to dimensions of individuals' questioning, weighing or judging their experiences, what I focus on here is the contribution of analytical interactivity ("discussion – at course") as engagement with experience as well as to a broader understanding of what "works" as a strategy for useful CPD activity. The code "discussion – at course", then, describes the mode of interactivity most often identified by interviewees:

... if you attend a course it gives you an opportunity to delve into it a bit deeper and analyse how that's going to affect the wider picture; discuss it with other people from other firms as well; rather than just discuss it within your

firm. So you get an understanding of other views and perspectives on the matter. So I think it's quite useful.
Accra, 2 years' PQE, para 14

Discussion also promotes applicability of the material covered:

> So I think it's just nice to get out from the office environment and to discuss issues, to discuss hot topics … that affect your area of work and sometimes internally or sometimes externally, I think it helps. … it becomes more relevant for you and we sometimes tailor them so they are more relevant to the sort of work you do or the sort of clients you have.
> Accra, 2 years' PQE, para 43

as well as a consolidation of recall and understanding:

> …we'd sit round and discuss the case studies and, you know, I felt they were very, very complicated and I couldn't contribute very much. But you know it was more useful, I got more out of that than, you know, an hour talk or so. That's, and I think what it is about that that's so beneficial was that you're sitting and discussing issues with other people and to talk about something intelligently you have to have understood first and then you remember it when you next come to deal with it.
> … I mean it's all about interaction isn't it? If you can actually talk to people about what you're listening to and it helps it go in, I mean that's the main thing isn't it really? And then have a discussion over lunch.
> … You see, those talks, I'm not saying talks aren't useful; I think they are, but provided you can get the reinforcement of discussing the issues that come up.
> Nairobi, 2 ½ years PQE, paras 27, 36

At least in terms of discussion, then, interactive CPD activity (5.3.1.5) was not resisted but welcomed. However, even the concept of discussion raises issues of confidence, level and hierarchy. Nairobi, for example, found discussion with peers at an external event useful consolidation as well as a confidence booster:

> … to take part in that discussion you have to have understood all the papers that you'd been handed. … I wonder if one of the main reasons I found it useful was because it reassured me that there were *so* many people there who equally felt totally out of their depth, had no idea of what they were doing and so that relaxed me and I was able to get to grips with this training.
> Nairobi, 2 ½ years PQE, para 25

Others, however, found limitations in discussion because of the difficulty of provoking useful discussion in a group of beginners (but the desire to deal with the topic interactively is, I suggest, signified by the use of the word "spoonfeed" to describe the didactic alternative described at 4.3.3):

> ... a lot of times when if it's just 0-3 qualified, none of us have a huge amount of experience in a relevant sense, so it's hard to get useful conversations, debates, discussions going and yet a lot of times it's just a spoonfeed.
> Kyoto, 2 years' PQE, para 52

The presence of those with more experience in the field could be stimulating:

> ... there were quite a few people in the room who were quite knowledgeable about the actual area and there was discussion. It just made you think: yes, this helps. It's a training session I actually remember.
> Cairo, 4 months' PQE, para 31

or the reverse:

> Because obviously you go to these things and there could be partners right down to paralegals and sometimes the discussion takes a turn and you think "Um, OK?" and sometimes it's quite technical as well.
> Rio, 3 months' PQE, para 32

Nevertheless, as with skills, some subjects were perceived not even to be susceptible of discussion because the objective of the session is – as at 4.4.2 - one of such pure information transfer:

> ... it's funny isn't it because some of the things solicitors have talks on are so boring, so dry, like [topic], you know, it's like a list of the requirements for a [formality] blah, blah, blah and it's just I mean really there's no point going to a talk like that because that you find in a book. It's not an issue, it's not like something debateable which is what I think makes a talk interesting where you've got something where there's a specific issue and it's the arguments for and against - but where it's just you need a, b and c and they are this and this and this ...
> Nairobi, 2 ½ years' PQE, para 38

or discussion is seen as unnecessary in promoting understanding because of the exposition skills of the speaker:

> ... I've been to quite a few talks at chambers and, you know, they've been useful because barristers are so good at speaking. You know they really are good at presenting the information and there was one in particular I went to last week from [name] chambers, 2 weeks ago, about the [redacted] Act about the changes and it was, I mean that it was really, really good. There I didn't discuss the issues with anybody because if you've got a really good speaker who really engages you and who kind of debates, who is very, very clear.
> Nairobi, 2 ½ years PQE, para 38

Evaluation, then, in the form of discussion as a developmental strategy within CPD, is valued as a form of engagement with experience, provided the familiar susceptibilities about confidence and relevance particularly pointed in the case of the newly qualified, are addressed.

11.3.4 Create?

It is perhaps fair to say that if CPD activity is essentially confined to raw updating on the law, it is unlikely that the ultimate cognitive level of creativity (which might be aligned with Schön's professional artistry) will be derived from it. Even where something more is offered, if, as Berlin suggested above, applicability ("how do I do it? What are the steps that I need to follow? ") – the "AC" aspect of the Kolb cycle (Fig. 7) - is missing, it is unlikely that any subsequent creativity – even if "expert-like" creativity can be expected from individuals at this level - in such application can be demonstrated.

Responses that could be categorised under a code ("reflection /application/engagement") that might even tend towards creativity were not applied to CPD activity but to workplace learning and, in particular, to individuals giving lectures and seminars themselves, rather than attending them, a topic I discuss below.

11.4   Process and learning environment

In addition, matters coded as "delivery/process/learning environment" (see 4.3.3), "cost" (see 4.4.3), and "time pressure/availability" provided an additional variable affecting the value of the experience for the individual and perhaps also contributing to the individual strategy adopted. Again, CPD updating is taken as the norm, albeit clearly recognised as an inefficient method of promoting learning by an interviewee with a more interactive orientation to learning:

> And I think that is the format: it's just being talked to for a whole day, in a room in a hotel with no windows where you don't know anybody and maybe if you're in a, if you go in a group it's better. I mean it's all about interaction isn't it? If you can actually talk to people about what you're listening to and it helps it go in, I mean that's the main thing isn't it really? And then have a discussion over lunch.
> Nairobi, 2 ½ years PQE, para 36

11.4.1 Internal v External

Nelson (1993, discussed at 4.3.3) found internal staff development to be preferred over external non-participatory lectures. Trespassing again into the "interactions" code family, I have already described perceptions of the benefits of the presence of colleagues or strangers of the same level contributing to feelings of confidence as well as to the utility of the discussion. Some interviewees found internally delivered activity allowed for appropriate tailoring of discussion or, on the contrary, that the involvement of people from other employers could enhance debate:

> You always take something slightly more seriously when it's not just your friends and colleagues that are right here, ... maybe if you had external people coming in, they'd have different experiences than we have and that can be a learning process through that.
> Kyoto, 2 years' PQE, para 52

> Internally, it's good because there are certain things about the structure of your firm that you get to discuss and it becomes more relevant for you and we sometimes tailor them so they are more relevant to the sort of work you do or the sort of clients you have. Whereas, with external ones, sometimes some parts of it are completely irrelevant to you, but yet you get to speak to others and sometimes you can take up with something useful or they can - whilst in discussion or whatever it may be - you can find out how other people work. I think you can learn from that.
> Accra, 2 years' PQE, para 43

11.4.2 Cost

Whilst internal provision and the contribution of internal training personnel in ensuring compliance was identified as a positive, a number of interviewees recognised expense (a variable imposed by the employer-stakeholder: 4.4.3) as a factor potentially inhibiting a strategy of participation in external CPD activity over more cost-effective internal provision:

> I think it's, if it's going to be something that, if it's viewed by all concerned as very important then it has to be supported by employers, basically. And I think that means running courses, if it's not a big enough firm, you have to invest money in sending people on external courses.
> Kyoto, 2 years PQE, para 52

> ... I'm at a firm where training is encouraged. They like to do it economically, so that rather than everybody go off individually and have a course if it can be dealt with four or five people need it, then they can bring it in-house perhaps
> Sydney, 4 years PQE, para 48

and as potentially therefore involving some form of competition for places:

> If people wanted to go and they cost money and, fair enough, it's going to be taken by the more senior person.
> Toronto, 18 months PQE, para 41

> Yes, of course, there are financial constraints but there are ways round that. One can get the course notes relatively inexpensively, at least. So, that sort of thing. If people want to do that, they should *not* be discouraged from doing so.
> Vienna, 2 ½ years PQE, para 79

Cost, perhaps as a result of an employer's emphasis on cost-effectiveness (contrasted with learning-effectiveness) of CPD activity, was also a factor in the evaluation of activity in which individuals had participated:

> It was a total waste of money, it was like a whole day and you might come away, you might come away thinking there are four things I've learned today, 750 quid or something.
> Nairobi, 2 ½ years PQE, para 3

11.4.3 Time pressure/availability

A pressure on the individual's time proceeding partly from a difficulty in predicting how long any task will take, precisely because tasks now required are new (see Miller and Blackman's "Knowing what help is needed to prioritise successfully: the art of delegation" criterion in Fig. 6) adversely affects the newly qualified generally:

> … suddenly you are conscious of how much time you are spending on things, whereas when you're training it doesn't matter too much if you spend a whole day doing something because it's expected of you. Whereas now, I'm, you know, conscious of the time ….
> Berlin, 2 months' PQE, para 12.

This general pressure in its turn places pressure on the less easily prioritised place of learning-conscious (as opposed to fee-earning) activity, particularly where that is reading (*i.e.*, updating), adding an evaluation of time/effectiveness to the variables relating to relevance, level, degree of interactivity and cost/efficiency:

> I think for example I said the firm is very good at sending out newsletters but I know if I'm very busy I don't read them. I store them in my folder and they're not always used. And you might think three weeks later, oh, I'll come to read this but then you already have three more stacking up so there can be things that you miss. And I think it would be good: I always thought when I started, I thought, "Right, OK, you're going to have put maybe an hour, 2 hours aside and say I'm going to catch up on knowhow and build up my knowledge". I haven't got round to doing that yet …

Cairo, 4 months' PQE, para 39

And that the information would be circulated in advance so you could read it
through and that would help if you ever had time to read it through.
Toronto, 18 months' PQE, para 49

Constraints of time are even more pressured when attendance at a course is concerned, even for those around and beyond the 2 years PQE mark where a more tolerant (or aspirational) approach to relevance is found:

I think it's the fact that it's during your lunch break and you don't want to be
there, partly because either you've got work to do or you'd rather have a - me,
personally, I'd rather have a break at lunchtime. I feel it's my own time and I
don't necessarily like to do these things unless they're going to be interesting
... I find them often a waste of time.
Paris, 1 year PQE, para 44

And that was just totally, totally worthless. I mean it really was when you get
to 50 minutes through and you think what on earth am I doing here? I've got
so much to do, blah blah ...
Nairobi, 2 ½ years' PQE, para 21

I certainly know I've walked out of rooms thinking "Well, that was a waste of
time. That's an hour I could have spent better elsewhere." ...
Sydney, 4 years PQE, para 42

unless the time-cost/benefit calculation produces a more balanced result:

But, then again, it's only going to be a lunchbreak, so what have I lost? Not
that much unless I'm really busy in which case I probably wouldn't go
anyway.
Toronto, 18 months PQE, para 53

11.4.4 Poor delivery

I have already discussed the importance of good exposition skills (see 4.3.3) and use of discussion as positive factors in evaluation of CPD provision, engaging interest and the more interactive learning orientation. The reverse is also very much the case (see Ament, 1991), and frequently complained of:

... I think it's scary how just the way the presentation is done, is presented, in
fact makes such a difference. If someone's a bad speaker, you know; they're
not necessarily sure about what they're saying, you turn off. .
Madrid, 1 year PQE, para 39

Isn't it something like the human concentration span is like 15 minutes or
something, but people still talk to you for an *hour* and they *know,* they know
that people are dozing off after 15 minutes and losing the train and once
you've lost the train of thought then it's difficult to get it back again.

11.5   Learning Outside and Beyond the CPD Context

The final question that I set out in 4.5 was an enquiry as to the relative value placed by interviewees on CPD when compared with learning in the workplace. At 4.4.2 I had wondered whether the accessibility and passivity of much CPD activity inhibited an orientation to more diffuse, or "harder" learning in the workplace or absolved the individual from attempting other learning (4.4.1).   The contrast was framed in terms of cost/benefit of the time expended on the different activities:

> I think the on the job training is really the most valuable rather than … going
> to training sessions where you might only get one or two useful things from
> that and you've spent a couple of hours. And things go over your head.
> Rio, 3 months PQE, para 51

> I suppose just doing the job day to day and living it is different to being able
> to put that on to some kind of … you can't put that on an hour scheme,
> although I suppose it goes towards the one year PQE, two year PQE thing.
> Oslo, 1 year PQE, para 26

even though learning in the workplace and not in the classroom seemed to occupy a lower ostensible status:

> That kind of thing, I think is much more valuable but that's just general
> learning, isn't it? Why, that should mean, if you got CPD points you'd get
> 1700 hours by the end of the year! You know, that's just general work but I
> think that's taken as read by the Law Society, presumably, that's what
> everyone's doing. Then everyone's [doing] it so what you think about that,
> what really does CPD add …?
> Nairobi, 2 ½ years PQE, para 21

11.6   Conclusion

Not unsurprisingly, given the model described in Chapter 4, CPD activity is largely perceived as a question of updating, often passive (and therefore at the mercy of the exposition skills of the speaker) but enhanced by discussion, particularly perhaps with peers. The motivations to engage in CPD (the "pay-off") might be seen as a question of point-counting compliance (11.2.1) or as a question of satisfying the employer. However, whilst individuals were very conscious of the need to fulfil the CPD requirement, this necessity was not regarded as also being sufficient: individuals positively wanted to get something out of their CPD activity.

The principal stakeholder in CPD activity aside from the individual was seen as the employer. CPD participation might be opportunistic or planned for individuals by that

employer (11.2.2). Issues of cost (11.4.2) for the employer transmitted very clearly to individuals as did a tension between use of working time for CPD as against fee-earning activity (11.4.3 and 11.5). Whilst not stakeholders in a technical sense, the presence of others at a CPD courses, their seniority and readiness to participate in discussion was highly significant (11.3.3 and 11.4.1). The role of the client as stakeholder in the potential enhancement of existing practice through CPD (category 3a of the competence for development) was not explicit, although it does appear in the discussion at 12.4.1 of non-CPD activity.

Individuals were prepared to express views critical of the CPD choices made for them by their employers, suggesting the beginnings, at least of a strategy for development divorced from the opinions of the employer.

Engagement with the CPD experience (category 2b) of the competence for development) was not confined to considerations of the attractiveness or otherwise of delivery (11.4.4). It demonstrated itself first by a consciousness of relevance, level, and of interactivity (11.3.3) requiring evaluation and analysis as well as practical applicability (11.3.2) as consolidating learning and assisting with the transfer of what might be raw propositional knowledge into operational knowledge of utility in the workplace and completing the Kolb cycle (Fig. 7). Such interactivity was positively welcomed (11.3.3) belying the suggestion at 4.4.2 that new knowledge transmitted by an expert to a passive audience would inhibit more introspective engagement or that (5.3.1.5) there might be a "non-adult" orientation to learning.

A second aspect of engagement relates to the question whether CPD was used only to enhance existing activity or whether it was used as a trigger or strategy towards aspiration (category 3b of the competence for development). In the early stages, where survival is critical and individuals perhaps feel the need to remedy the deficiencies in the training contract as preparation for the specific job now in hand (the self-knowledge based on prior experience that forms category 1 of the competence for development), relevance (11.3.1.1) and level (11.3.1.2) were not only seen as critical but also as tightly defined, perhaps suggesting the kind of self-direction and control by narrow definition of the domain to be mastered that I discussed in Chapter 5.

After about 2 years PQE, there was, however, evidence of more aspirational activity and a tolerance to tangentially relevant activity (11.3.1.1), also present in individual cases (*e.g.*, Madrid) who had particularly high perceptions of confidence and

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competence derived from a last seat closely aligned with the qualification job, that is, who had no deficit arising from the training contract to remedy.

The categorisation of CPD activity as "just talks" (11.2) forming part of a compliance requirement, then, belies a possibly tacit understanding of CPD as something at least potentially - when all the variables of content, level and delivery are in place – of considerably greater value, if remaining less directly valuable than the learning in the workplace that I now turn to discuss.

CHAPTER TWELVE - ANALYSIS AND REPORTING: NON-CPD ACTIVITY

> The self-respect that people can earn by being good craftsmen does not come easily. ... Too often we imagine good work itself as success built, economically and efficiently, upon success. Developing skill is more arduous and erratic than this.
> Sennett (2008)

12.1 Introduction

Drawing on discussion in Chapters 6 and 7, the workplace may provide an environment for unconscious acquisitional learning through practice and repetition (see 7.2.2 and 7.3) leading to the tacit knowledge (6.2.3) that seems to underpin the description of the "confidence" of those at the 3 year watershed and perhaps may also begin to create a deeper understanding of the variables and implications that are unfamiliar to Ned. There is also, however, scope for a more active learning orientation and one might consider the workplace not only as a context for "learning to" draft documents, conduct litigation or engage in forms of ADR (3.4, 3.7.3.1) but also in a broader sense where the workplace experience is a foundation for "learning from". Some aspects of the spectrum of engagement with experience appear here by way of deliberate acquisition of learning (see 6.2.2 and 7.4) *via* interactions with colleagues: including such mechanisms as appraisal, feedback (which is linked to "deliberate practice", 7.5), and asking questions (7.5). The workplace may act (arguably) positively as a means of socialisation into the profession (2.8.2) or less positively (arguably, particularly in the modern andragogical paradigm) as the individual, at the outset, aligns his or her own objectives with those of the employer (7.2.1). The client as stakeholder in the individual's learning did not appear explicitly in discussion of CPD, but appears here with some significance, as the individual's personal concept of professionalism also begins to emerge.

The second part of question 5, then, having elicited an unconsidered view about what CPD was, sought to find out a) whether individuals considered activities *without* that label to contribute to their professional development at all and b) if so, to find out what kind of activity in particular was thought of as being "learning rich", whether unconscious or unconscious and by way of learning to or learning from. In terms of the Bloom taxonomy, knowledge and understanding are subsumed in, and perhaps preceded by, task-conscious application, particularly where learning was acquisitional and the results tacit. Analysis, synthesis and evaluation represent themselves along a

spectrum of more deliberate activities which fall under the umbrella "engagement with experience".

12.2   What contributes to your development that doesn't fall under the CPD label?

Activities falling into this discussion are shown in the left hand side of the diagram of the "activities" family of codes at Figure 29. I divide these into four broad categories, all of which fall under the definition "workplace learning":

a)   learning-rich activity (induction, experience, whole of transaction, writing articles, repetition of activity, workplace learning); setting out the scope of the workplace as a learning environment;

b)   professional and client care activity (telephone calls, meetings, marketing/networking, admin/billing/time management);

c)   "litigation" activity (drafting, advocacy, ADR, trial/litigation, procedure/precedent/CPR); and

d)   supervisory activity (appraisal; asking questions, feedback/criticism and supervision/management).

12.3   Learning-rich activity in the workplace

As described at 11.5, all the interviewees, despite the status apparently conferred on qualification and despite apparently according a higher status to CPD as classroom, required and therefore perhaps "proper" education, were conscious of still being in a learning phase and of finding learning rich activity within the workplace.

12.3.1   Workplace learning

Whilst evaluations of the workplace as against CPD appear at 11.5, it should however be mentioned at least in passing in consideration of an evaluation of workplace learning *per se*, that two interviewees mentioned workplace-like experience not only from the LPC or direct pre-qualification experience but from related extra-curricular activity ("professional organisations"[59]) sufficiently similar in nature to allow for ease of transfer into their day to day fee-earning work. In contrast to many of those discussing the training contract, this additional "prior experience" (7.2.1) was reviewed positively:

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[59] Other references to such organisations, apart from Madrid's writing of articles discussed below at 12.5.4.2 were to them as providers of CPD activity.

... I've been [position within organisation], so that's been very commercial. And I think things I've learned through that have been really, really helpful and quite easily translatable skills.
Berlin, 2 months PQE, para 29

The workplace is seen as an environment in which to gain the confidence derived from length of experience that individuals saw as the hallmark of those of 3 years PQE (10.3.4) although exactly how it is acquired and how experience can be more than a prolonged exposure (resulting in tacit pattern recognition), is not explicitly articulated:

I don't know, I don't think there's been much explanation really of how you move on to the next stage other than you just do because you've been here long enough. I mean I'm sure there *is* more to it than that, but, I mean, "after a couple of years you'll move to this; after another X years you'll move on to that"
Berlin, 2 months PQE, para 22

Whilst the opportunity to ask questions is valued, a gap in personal developmental strategy was identified by Berlin in being able to identify developmental steps to improve working practices (the bridge to the "application" element of both Kolb's cycle (Fig. 7) and Bloom's taxonomy (1956; Anderson and Krathwohl, 2001) and a characteristic of the more sophisticated and forward-looking critical reflection described at 7.6.2.3 and 13.4.1):

Well, how do I translate "Well, I know I'm impatient, I'll try and be more patient" but how do I translate that into being more effective at work? It's that gap, how to link it, that I wouldn't know.
Berlin, 2 months PQE, para 24

The picture of workplace learning is, however, tempered by a persistent view that certain "soft skills" are not susceptible of being taught in the classroom in any event (see 11.3.3 for the same phenomenon appearing in discussion of CPD):

And it's those kind of training things that kind of slip between the net. I mean, you're not really going to go to a course that's going to tell you how to have an effective meeting, yet that probably is one of the most important things for your job and being able to do your job all right. How to speak to people effectively on the telephone and things like that. You know, those sorts of skills.
Berlin, 2 months PQE, para 32

And just the experiences that you have of dealing with certain things like, maybe, a particularly stressful litigant in person or, I don't know, you know, a claim that's gone well, or arguments that you've used in one case that you

think might apply to another, that can't really be, if you like, streamlined into some kind of training, if that makes sense?
Oslo, 1 year PQE, para 26

which is clearly allied to individuals' experience of CPD provision as largely about updating. Given some of the concerns expressed about the relevance and level of CPD (11.3.1.1 and 11.3.1.2) and its perceived constraint as "knowledge" rather than skills or attitudes, it is hardly then surprising that individuals conceived of workplace learning as more valuable than CPD:

... it sort of comes back to this key point about experience. I think that, of course, you can learn all sorts of things from training and from other means of development but certainly, it seems to me that with litigation, experience is vitally important. Vitally important. It's not the be-all and end-all but certainly it's vitally important.
Vienna, 2 ½ years PQE, para 63

when contrasted to the passivity and problems of level recognised as inherent in CPD activity and, of course, more constant:

I think, I mean I don't know if this is a very obvious comment but I think you learn, I'm learning every day in the office. I mean that literally.
Cairo, 4 months PQE, para 24

But, there are obviously all sorts of other sources of development that can be used and experienced. For example, I think I develop every day, simply by working with the partners and the other members of my team.[60] I develop every day, because of the fact that I'm dealing with new matters; different matters; different experiences; different cases; different clients.
Vienna, 2 ½ years PQE, para 50

This brings me, then, to further evaluation of the quality and quantity of that experience.

12.3.2 Experience, whole of transaction, repetition of activity

I have grouped these three codes together as elements of a coherent idea, that of prolonged exposure to the job of litigation, such prolonged experience allowing for:

a)   tacit acquisition of patterns through repetition (6.2.2 and 7.1);

b)   recognition of the "bigger picture" variables and the implications of individual actions (6.2.1.1 and 6.2.2) obtained through completing the whole of a transaction, increasing the repertoire of solutions and processes;

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[60] This example is close to that of Vygotsky's "zone of proximal development" (1978) discussed at 7.5.

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c)   both of these as a basis, discussed below at 12.6 and in Chapter 13, for forms of engagement with experience as part of a strategy for development.

The opportunity to repeat is identified as highly significant, surfacing very frequently:

> I'm getting to the stage where the same principles are coming round again and again
> Oslo, 1 year PQE, para 19

The antithesis of the comfort and recognition provided by repetition is anxiety engendered by the unknown:

> So it's not just - going back - it's not just the actual nine to five, it's thinking about coming in to work and the anxiety that maybe "Oh, what's going to happen today?" which, I suppose, with time and experience, I'm hoping that that will get better ...
> Oslo, 1 year PQE, para 27

Quantity of experience is also seen as providing greater opportunity for exposure to a greater number of problems and acquisition of a repertoire of potential solutions (in fact although not articulated as such, the variables or expert checklist) on an *ad hoc* basis:

> I would expect and I feel that as a three-year qualified litigator you have - hopefully through experience depending on the area of specialism that you deal with - but come up with a number of files that you have dealt with, just simply through being involved in the litigation - in the sphere of litigation - for that period of time.
> Vienna, 2 ½ years PQE, para 18

The learning curve in the first three years was regarded by some as particularly steep, an implicit recognition of the vector of development (Fig. 1) involving an exponential increase in complexity of task and ultimately both good and bad experiences can (as seen with some of the responses to CPD activity around two years' PQE at 11.3) be seen as learning-rich:

> I'm just trying to think, because a lot of the time even when I've thought that it hasn't been, or that I haven't learned from it then, looking back, even if an experience is good or bad it then ends up being just an experience that you've learned from.
> Oslo, 1 year PQE, para 41

> Mm. [Pause]. That's a very good question to ask. I mean I don't, I can't immediately think of, any factor or experience which I found totally detrimental to progression and development. Not sure. [Pause]
> Vienna, 2 ½ years PQE, para 70

The discipline of dealing with both good and bad (or the acquisition of a sense of perspective) could be seen as being a learning outcome in itself:

> As I say, I think the experiences or the days that I've had when I've thought "Oh, I haven't really had a very good day today", have only been because, so far, because I haven't got used to that feeling of things not working out all the time. ... You know someone who's more experienced than you will say "Oh, you just have to get used to that because that happens all the time". Whereas yet coming in to it, I feel that that was a bit, a feeling of being hard done by, if you like, that you have to get used to. ...
> But I think with hindsight on a lot of these things that have happened, it is the experience that you've gained since then that has maybe made you think "Well that's all part of the learning process" and even though that wasn't a particularly nice experience, it's almost like "Well at least I've been through that now, because I'll be prepared for it the next time".
> Oslo, 1 year PQE, paras 41, 43

Completing the whole of a transaction – the completion of the "apprentice piece" frequently not possible prior to qualification - occupies a similar crucial status to that of repetition, a means of learning to see, as does Ella, the "bigger picture":

> But, you know, it is, a lot of it is, just experience of dealing with it and seeing things through and I think that's one of the big learning curves as well.
> Berlin, 2 months PQE, para 16

> And however, what I *would* expect, perhaps, is someone who's perhaps got three years post-qualification experience would *perhaps* be able to look at the bigger picture right from the outset. To know, having had the experience of dealing with cases that have gone all the way through to trial, or settled or otherwise; to perhaps just look at it in a slightly broader sphere, a slightly broader spectrum and say "OK, this is where we're at now, what are we trying to achieve?"
> Vienna, 2 ½ years PQE, para 23

This effect is enhanced if the transaction itself has the additional quality of complexity and engages a number of different skills:

> I have one very big file which I took on almost immediately I joined this particular firm. It's High Court, complicated Chancery litigation and it's just, as it so happens it's basically touched upon a lot of different skills; different scenarios; different problems that have cropped up as we're going through it. So, that I would identify as being a case and a matter that I have dealt on that has probably allowed me to learn a *huge* amount. A *huge* amount. I mean, we're talking about case management, case planning, all those sort of things. Academically, it's been a challenge. It's looked a bit, I suppose it's something that immediately I sort of thought "Yes". That's certainly something I could identify and I could almost say - without going overboard - that having dealt with that one case is just massively increasing my

confidence, my ability to think about complex matters and so on and so forth.
...
And I just learned masses through learning through experience myself and also having feedback from a very senior partner in the firm as to all of these different issues, how one can deal with it and it's just made me, another thing is, hopefully, I'll be able to run it all the way through to a trial. That's rapidly where we're going and that, I think, is just for a litigator is just a really key learning experience. ...
I know that I will be able to take all of the skills that I've learned in dealing with that file, *every* different aspect, you know; client relationship management - yeah, all of them - dealing with counsel; dealing with complex issues of law or of fact; whatever else, all of that. I've been through all of that and I will take that away with me and say "I've got that under my belt".
Vienna, 2 ½ years PQE, paras 56, 59, 61

Even without articulating sophisticated strategies of engagement with experience and in particular critical reflection (7.6.2.2) then, individuals were able to perceive the value of the practice and repetition that embeds tacit knowledge and the importance of seeing a transaction through which permits a clearer understanding of variables and implications (whilst not explicitly suggesting that this process could be short-circuited by deliberate provision of an "expert checklist").

12.3.4 Induction

Finally in this part of the discussion, a number of interviewees would have welcomed a formal induction into their new role, principally as preparation for the new tasks and responsibilities. Such induction would assist in remedying the deficit created by their not having been prepared for these activities:

... when we started as a trainee intake, we had so many talks about life at [firm]: what it is you were expected to do, what role you were expected to fill. I think something like that would have been very helpful when we become associates. I know other firms do it and I know I would have felt a lot more secure in having had that.
Cairo, 4 months PQE, para 42

as well as resolving contradictions or ambiguities in the status now achieved:

I think, one thing I felt I could have benefited from was some kind of formal induction course into the department. ... but I think that coming in as a newly qualified solicitor it's helpful to have a formal induction. ...
Yeah, I just think it would save time if they were a bit more structured about it, you know, they chuck you in and you can pick these things up yourself and it's not difficult. But I just think it would be more helpful if there was something structured and they, because I think it would focus their minds on what it is they want from their newly qualifieds and I think if everyone was clear on what that was, it would be helpful to everybody.
Paris, 1 year PQE, paras 46, 48

The existence of such ambiguities, of course, is related to the question of socialisation into the ethos of the profession (2.8.2), to which I now move.

12.4 Professional and client care activity

Whilst aspects of learning to and learning from appear in this section, the client and the individual's response to the client as a stakeholder or recipient of the individual's learning and competence is manifested in a way in which it was not explicit in the discussion of CPD in Chapter 11. The role of the employer as a stakeholder in CPD activity was described there (and at 4.4.3) principally in terms of its control over the individual's participation in CPD but appears here more clearly in the interviewees' socialisation (2.8.2) into their new roles.

12.4.1 Professionalism/clients

This code, allocated to the code family "feelings", involves an overlapping group of concepts. Interaction with clients, or networking and marketing with potential new clients in a professional capacity, was a significant factor in the description of the new tasks arising, perhaps for the first time, on qualification. This change in responsibility and becoming a participant in the business of the firm was a marker for the "deficit" to be remedied on qualification:

> I think I was really quite surprised that when I qualified, when we qualified as an intake, that there wasn't any general talk about "OK, you've been trainees for two years, you know how the firm works but you're now associates: this is what is expected of you in terms of workload, this is what's expected of you in terms of billing, this is how we expect you to maintain your training record, this is what we expect you to do". That didn't happen and I think so much is expected of you: Friday you're a trainee, Monday you're an associate.
> Cairo, 4 months PQE, para 41

This change to servicing clients more directly rather than, as a trainee, servicing one's colleagues, may contribute to the sense of personal professionalism that informs the status achieved on qualification:

> ... one is always striving to get what it is that the client wants in the light of your advice and so on and so forth.
> Vienna, 2 ½ years PQE, para 67

That status, as discussed at 10.3.3.6, may be perceived in terms of the expectations of others imposed on the individual. It is, however, also a contributor to what is emerging as a typical early strategy (category 2a of the competence for development) for survival, remedying the immediate deficit and enhancing the quality of performance (category 3a of the competence for development) towards a basic level of competence in the tasks allocated to a newly qualified:

> I think sometimes if you're not sure what to do there's the temptation of just not doing it or just putting it to the bottom of the pile. So reviewing everything monthly really does stop that from happening and it sort of does stop those sleepless nights where you think "Oh God, I've got that to do!"
> Rio, 3 months PQE, para 37

whilst also defining the scope of the knowledge that they feel they should possess:

> But I know there's a whole profession in costs, it's not just something ... It's something you dread at the end and you - I mean, probably in some ways you're probably a bit negligent in the fact you just kind of ... I don't know, you're aware there's lots of things you could be doing: negotiating costs throwing case law at them and probably missing lots of points to get money knocked off. I worry about that, a bit really.
> Madrid, 1 year PQE, para 74

In some cases, the newness of the new tasks might trigger activity bordering on the aspirational (as described at 12.4.4 marketing and networking for some was a new expectation arising on qualification but for others a delayed expectation. See also 13.5) tied either to marketing and business development or to quality of service provided:

> Just interesting facts that make you think: wow, this is something could really impact on your work and for, I mean, for me, I'm just coming into this area of work and this might be something that really takes off. So you start reading into that and learning about that and that could be an area that you know you really work on.
> Cairo, 4 months PQE, para 31

A sense of personal professionalism is a facet, not only of the desired result of learning but of the learning orientation or strategy itself:

> Because I think when you qualify it's sometimes scary thinking "This is it, I've been taught everything I need to know. They think, the view is now that I'm capable of standing on my own two feet and just going out there and just doing the job, because all the learning now stops". But in effect it doesn't, because *I* think, to be honest, it just *starts* when you've qualified because that's when you are sort of given your workload as a qualified solicitor and I

> think with this job you learn something new every day. It's a learning curve,
> a steep learning curve and I think that's what makes it enjoyable as well.
> Accra, 2 years PQE, para 43

independent of the point-counting nature of the CPD requirement:

> We're aware that, you know, you have a minimum requirement each year,
> which will be the 16 hours, currently.
>   What does it mean? I perceive it as meaning that one should be very aware
> of the fact that, once you've qualified as a solicitor, that should not be the end
> of the learning process. It shouldn't be the end of your training. ... we are
> expected to undertake the minimum requirement *at least* in continuing one's
> development as a lawyer. And it's a very important aspect of one's
> development, you know, this should be embraced; you should involve
> yourself in it. That's what I think it means.
> Vienna, 2 ½ years PQE, paras 45, 46, 47

Indeed, individuals within the target group who perceived that full involvement in the profession involved something other than fee-earning activity demonstrated a hunger for any induction (12.3.4) to include participation as a member of the business:

> I would have liked to have more guidance in terms of my role as an associate
> and how I'm to develop myself and what I'm supposed to be contributing to
> outside of fee earning.
> Cairo, 4 months PQE, para 42

There was also a great consciousness – perhaps arising from the perceived deficits in competence and confidence - of the impact of mistakes or professional negligence:

> ... obviously on a day to day basis, the biggest fear is getting something
> wrong. I mean it must be the same for all lawyers, because that really is,
> that's what we're employed to do is get it right.
> Nairobi, 2 ½ years PQE, para 32

Indeed, so strong were some of the assertions of professionalism as part of the new status and identity that one interviewee was conscious of the same ethical tension between the workplace as a learning environment and the workplace as a provider of services as described at 7.4 (Lingard *et al*, 2003: 608):

> ... hopefully, I'll be able to run it all the way through to a trial. That's rapidly
> where we're going and that, I think, is just for a litigator is just a really key
> learning experience. And, don't get me wrong, I'm not suggesting for one
> minute that any of this has detracted from dealing with the client and the
> client's objectives. You're almost distancing yourself from that and,
> certainly, I feel very strongly about that.
> Vienna, 2 ½ years PQE, para 59

Clearly, the client as consumer of the output of one's competence (or otherwise) is present not only in individuals' considerations of enhancement of existing practice but also as a constituent of their strategy for development, exemplifying the tension that can arise between the workplace as service provider and as learning environment Having set this background, I now move on to consider the impact of specific workplace activities marked out by interviewees falling within the "professionalism/clients" code because involving interaction, as representative of the firm., with clients or potential clients.

12.4.2 Telephone calls

Telephone calls do not allow the time for thinking and pre-emptive checking by a senior colleague involved in the drafting of documents or the protection of one's work being filtered through or presented to the client by that senior colleague. Spontaneity and instant response by the individual solicitor is a given. In addition, whilst a telephone call is necessarily a person-to-person contact it is one which is devoid of the cues sighted people employ both to transmit information and to assess how that information is received in face-to-face encounters. Once the context is understood, it is not surprising that the making of telephone calls to *clients* figured comparatively frequently as learning-rich. To some extent this is an issue of confidence and a new level of responsibility (particularly significant then for those who have less than positive pre-qualification experience):

> ... then I think now I'm finally getting to the [point]: when the phone rings,
> I'm not terrified. I don't think "Oh my goodness, what's he going to ask me?"
> Now, you know, when the phone rings I think "Oh, that's nice, I wonder who
> that is?"
> Nairobi, 2 ½ years' PQE, para 28

but there are also issues of technique, thought of as best learned acquisitionally by "experience" rather than in the classroom:

> Also, you know, telephone manner and things like that. ...
> If they knew how to deal with people, perhaps speak to people on the
> telephone and I know a lot of that comes with confidence anyway. But I think
> if you have worked in an office environment you just pick up those skills,
> don't you, and someone who hasn't ever perhaps; I think they struggle.
> Rio, 3 months PQE, paras 22 23

Only Toronto, who had been selected by his or her employer for a formal coaching relationship with a more senior colleague, described a more deliberate strategy for learning to interact on the telephone:

> … primarily I learn so much by sitting in a call with someone, with a person I do work for: them making a call and me just listening or contributing little bits and seeing how they deal with situations. …I also wanted help on making telephone calls and sort of talking to clients or the other side over the phone so that was all mixed into one. I suppose I had informal training on all of that, in that we would discuss something and I would go away and do it and if I have a phone call I'm not happy about I can go and talk it through, and then …
> We could focus directly in on those and there were lots of different aspects to it. So, on phone calls, I would be able to go in and talk about the different stages of them, then go away and make a call.
> Toronto, 18 months PQE, paras 26, 37

12.4.3 Meetings

Meetings (with clients) raised similar issues to those arising from making telephone calls, perhaps again because of the spontaneity of the interaction, and again were seen as involving skills to be learned primarily in the workplace by way of remedying the training contract deficit:

> I think, especially when you're doing your training contract, you don't get to go to meetings by yourself. You go along and you take notes but you're not steering the meeting …
> But I know some of my other recently qualified people, you know, colleagues, they're quite scared of going into meetings because they don't feel that they've really been given the skills of - I know you do get some training on it on your LPC, but it's all a bit, it's all a bit make believe … I mean, you're not really going to go to a course that's going to tell you how to have an effective meeting, yet that probably is one of the most important things for your job and being able to do your job all right.
> Berlin, 2 months PQE, paras 31, 32

In comparison with telephone calls, however, a deliberate strategy of observation of a more senior role model (see 12.6 below) could be adopted comparatively easily and even without the need to confess any lack of skill to that role model:

> I've been to client meetings with a supervising partner. I don't contribute very much vocally but I'm there taking notes. You learn, I think, I learn so much from them.
> Cairo, 4 months' PQE, para 24

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12.4.4 Marketing/networking

Full involvement in the operation of the employer as a business has already appeared in the context of the developing professionalism of the individual (12.4.1). Because it appears to be a distinct expectation which did for the majority of interviewees arise for the first time on qualification, they often expressed substantial feelings of lack of preparedness and confidence for it:

> But when you're there in a work function and you're recently qualified it's hard to, you know, go up to people and have that being able to sell your product of yourself when "yourself" has only worked on a handful of cases.
> Berlin, 2 months PQE, para 43

although at least one interviewee welcomed involvement as representing the full spectrum of professional legal activity:

> ... I am involved in everything right from, you know, the marketing. ...
> Nairobi, 2 ½ years' PQE, para 12

However, for an interviewee at a different firm, marketing and networking was, rather than a marker for qualification, a characteristic of the three year benchmark:

> I think you also would perhaps expect a three-year qualified solicitor in a litigation team to be looking at other aspects of the position. So, perhaps marketing; ...
> Vienna, 2 ½ years PQE, para 19

This was unusual; most interviewees were expected to become involved in this aspect of the legal business at an early stage (and it is also represented, at least at the level of awareness of the employer as a commercial entity, by 4.1 of the work-based learning outcomes, Appendix II):

> ... building up that relationship with clients and getting used to, if you like, taking the lead from the partner but not wanting to be seen to be over-, not "over-anxious" - but not overly keen to please the client. When you're not actually, when you're in a social kind of environment rather than a "Oh, here's my letter" or "Can I have your instructions with regard to this?".
> Oslo, 1 year PQE, para 27

In Toronto's case, it was incorporated into a distinct and deliberate strategy for development because of the formal coaching relationship, initially to remedy the deficit on qualification. However, as the later part of this quotation indicates, some attempt

was also being made on an aspirational level to accelerate Toronto's progression along the vector of development in this domain, implicitly by articulation of an expert checklist:

> ... the elements that we decided to focus on were, I suppose, being aware of the non-work side of things, the non-billing side of work: so marketing and general awareness of opportunities. ...
> And yes, so, like I said, the aspect he wanted to focus on was making me understand the marketing side and profile-raising internally within the firm and externally as well. ...
> ... because it wasn't something that I'd ever considered as part of my job. At *all*. Ever. Either: and, you know, even on qualifying I didn't think that was part of my job because it happens at some point and I know partners do it, and I know senior associates do it, but I'm not one of them and, at some point, surely it just happens to me and I didn't really actually click into the fact that I should be, and it would be easier to just ease myself into it gradually rather than just suddenly waking up one day in 6 years' time and just thinking "Oh my God, I'm expected to bring in work! How on earth do I do that?" ...
> I'm glad I managed to make little changes now rather than suddenly finding I had to make a big leap ...
> Toronto, 18 months PQE, paras 26, 37

12.4.5 Admin/billing/time management

The general description of the role of the trainee is, as shown at 2.5 and 7.2.1 that the trainee has frequently been asked only to undertake discrete tasks. Consequently, not only is experiencing the whole of a transaction (12.3.2) seen as a vehicle for learning *from*, it is the mundanity of learning *to* run the file as a whole project which strikes interviewees as arising unexpectedly, on qualification and as contributing to their feelings of lack of preparation:

> ...I've certainly found that it's some of the more administrative tasks rather than the legal tasks that actually you're not quite prepared for. Because, actually, when you're training, people, they get you to do research or they get you to draft a particular letter, but they don't necessarily get you to reply to the day-to-day business or do things like making sure you've remembered the deadlines. Because they're doing that because it's their file. ...
> Berlin, 2 months PQE, para 16

Again, there was a hunger for pre-emptive assistance by way of induction (12.3.4) in taking on these new activities effectively:

> ... you need to know about what you're expected, I think, reminded what you're expected to do in terms of billing, what your responsibilities are and to get some overview of what you're expected to know and how you go about, you know, in terms of practice development and professional development. Whether you're expected to take the initiative, whether, you know, there are things like that. ... even if it's half a day for someone to explain the billing

system to you; for someone to explain what's expected of you; what the team
targets are in terms of billing - that sort of stuff - what the file management
should be and so on.
Paris, 1 year PQE, para 46

There was, however, some evidence of more after-the-event support within the appraisal system (12.6), which, when effective, could assist in future-oriented development.

It is particularly noticeable in the context of the work-based learning outcomes' significant emphasis (outcomes 5.1 to 5.4 inclusive) on competence in use of time and meeting of deadlines at the point of qualification; that, at least insofar as they are dealing with tasks that fall into the deficit, they inevitably struggle with time management:

... I never know how long anything is going to take me and that's because I
am so inexperienced and things can run on, things can be very, very short. It's
stressful, it's [inaudible] stressful for me. I'm not so fantastic at estimating
how long things will take me so I'm not planning myself properly yet.
Cairo, 4 months PQE, para 39

In fact the stress of the time management can be seen as prejudicial to the early years of practice as a learning environment (in a similar way to that in which time pressure was described at 11.4.3 as having a negative impact on effective engagement in CPD activity):

Although the past experience that I had, that's how I feel, if you like, because
[of] just being 1 year PQE but then it's having the extra responsibility of
having your own files, being expected to keep your target and all those other
things that are at the back of your mind while you're trying to learn on the job
as well.
Oslo, 1 year PQE, para 20

Again, however, Madrid, who had scored highly on positive pre-qualification experience and (consequently) on confidence and feelings of competence at qualification was able to take such new responsibilities in his or her stride perhaps simply because effort did not need to be expended on remedying a deficit:

So you've got to be able to, for example, work unsupervised, you have to do
lots of marketing, bringing clients in, lots more chargeable hours. So those
are all kind of the goals I've set myself. I want to be doing this many hours
by this stage and I've brought in some new work, so I think I'm on the right
track.
Madrid, 1 year PQE, para 20

On qualification, then, the majority described greater interaction with clients, increased responsibility for transactions and within the firm as a commercial enterprise, which did not necessarily form part of their training contract experience. Neither did taking responsibility for the overall project management of a transaction. However, and perhaps because both aspects – client services and the need to make a profit – strike at the heart of what legal practice in the private sector is for, these activities also seemed to act as a focus for thoughts about professionalism which did not materialise in the (more remote, artificial and "updating" focussed) CPD arena. This emerging personal professionalism seemed also, at least for some people, to trigger a more personal and self-directed learning orientation.

12.5   Litigation activity

I have already compared the available taxonomies against the activities mentioned by the interviewees as part of Benchmark 1a and 1b (3.7, 10.3) and displayed at Fig 30 in the code family "activities". The aspects of "learning to" conduct litigation and of "learning from" this litigation may, here, operate at different levels. Ostensibly, the individual is already in command of the black-letter law that underpins the legal case (from the academic stage: 2.3.1) and has a working knowledge of the rules and procedure (from the LPC: 2.4.2). The categorisation, again, (consistently with 6.2.1.2, shows a tendency to focus on tasks rather than concepts or for example, overarching analytical techniques that might form the basis of expert checklists). Some additional knowledge of non-standard areas of law or procedure may have been acquired during the litigation seat in the training contract (2.5). One might think, therefore, that "learning to" in this context, involves the conversion, consciously or unconsciously, of propositional knowledge into operational knowledge and operational knowledge acquired only in simulation during the LPC into operational knowledge functioning in reality. It is apparent from Ned's example, however that the variables and complexity of "real" litigation render such transfer incomplete and that a comparatively simple shift of focus in, say, field of litigation, can dislodge transfer into operation very substantially, as far as individuals are concerned (10.3.3.4). This, then, shades into "learning from" the experience so as to increase the repertoire of variables, to understand the real implications of real decisions and, thereby, to increase both competence in the aspirational sense as well as the negligence-avoiding bottom line

sense endorsed by the profession (3.5) and the personal confidence which is frequently absent at the point of qualification (10.3.3.3).

12.5.1 Drafting

Drafting of letters and other documents[61] is, of course, a fundamental component of the solicitor's professional output, by which competence is externally measured:

> And I've seen trainees and newly-qualifieds produce letters that are either, you know, very complicated and you think well "No, the client won't have a hope in hell of understanding that". So letter writing.
> Rio, 3 months' PQE para 21

The extent to which an individual generates documents him-or her-self, with or without discussion and intervention from a senior colleague, is a marker for the development of professional competence beyond the training contract, passing through a considerable degree of supervisory intervention in the early stages until a point of autonomy and full responsibility is reached as the watershed is approached:

> I don't know at what point I stopped feeling that frustration; at what point my letters started going out without coming back to me at all and at what point they started going out without being checked at all, unless I felt as though they ought to be checked. It might have been two years in, but it was a great development realising that I must have satisfied [the supervisor] enough to be able to have that trust.
> Sydney, 4 years' PQE, para 14

Drafting is, then, a means of learning analysis and clarity of expression:

> I'd contributed bits before and so it was given me to do and then to do the first draft and then I worked with a ... senior associate, ...someone with more experience and who'd done this several times *knew* slightly better where the strength of an argument, your strongest argument, should appear in the pleading and where you need to, I don't know, sort of, *how* you should structure it so that it's, so that you're going in with both guns blazing if you want to.
> Kyoto, 2 years PQE, paras 28, 30

However, drafting was most often mentioned in the important context of interaction with senior colleagues as a means both of "learning to" (implementing and possibly reflecting on the suggestions made by the senior individual for future implementation)

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[61] In the LPC, "writing" might be related specifically to letters, emails and similar communications with "drafting" reserved to more legal documents such as contracts, leases and statements of case.

but also of developing a self-directed strategy for development (the autonomy to ask questions and seek advice at the point when the individual deems it appropriate: 12.6). The draft document was a significant focus for such conduct.

> I think most of [his/her] assistants and people who are more senior, … would agree with that, just the day-to-day bouncing ideas off or taking a letter in and saying "What would you change to this?"…
> But I find [him/her] as a resource invaluable because, our friendship, basically: as you know it's very nice for it to be comfortable to be able to go in and say, "[Name], I don't have a clue what this client is talking about", or "Here's my letter of advice that I've drafted, what do you think?" "Change this, change that" and there you go.
> Kyoto, 2 years PQE, paras 24 and 54

12.5.2 ADR

The alternative dispute resolution described at 3.7.3.1 occupies an odd but illuminating position in the spectrum described by the interviewees. Arbitration and mediation will only have been covered by way of outline during the LPC. Negotiation, as I explained at 2.4.2, was removed from the LPC and does not appear in the work-based learning outcomes. Existing knowledge from prior experience may be absent such that all "learning to" is conducted in the workplace or by way of CPD. Almost any learning in this area might, then, be described as aspirational at the point of qualification. Nevertheless, a number of interviewees had developed sufficient interest in ADR that it formed part of their personal development plans, at least in the larger firms:

> I wanted to do international work and I wanted to do arbitration and alternative dispute resolution as well as pure litigation.
> Paris, 1 year PQE, para 20

or personal concept of professionalism:

> … the idea is that you try and reach a settlement that's best for your client … and that's usually done not by going to court but by sorting things out and by resolving the dispute and I think that's best done if people are civil.
> Paris, 1 year PQE, para 16

Perhaps because of the lack of prior knowledge, this is an unusual area in which individuals spoke of learning both in the CPD formal arena delivered externally:

> We have had training, we had some training on negotiation that was very, very good.
> Berlin, 2 months PQE, para 43

...so he recommends, you know, "why don't you go on a negotiation course?"
...
Toronto, 18 months PQE, para 20

as well as in the workplace and as part of the overall landscape of workplace activity;

> I think, to be honest, that a case that I became involved in as soon as I
> qualified and am still involved in have probably been the biggest learning
> experience simply because we've gone through so many stages with that case.
> ... I feel that I've been through the whole ambit of procedure and also
> settlement negotiations, we've got a mediation, we've tried everything!
> Delhi, 2 ½ years PQE, para 22

12.5.3 Trial/litigation

By contrast one might expect litigation itself to be an environment largely for contextualisation of existing propositional knowledge and for "learning from" (and changes to procedure being catered for by CPD-updating activity). I have suggested at 7.2.1 that there is the potential for the period of legitimate peripheral participation to be incomplete at the point of qualification and for the training contract not to provide the opportunity to for the creation of a complete "apprentice piece". Even though being involved in the whole of a transaction was identified by interviewees as a valuable tool (12.3.2), finding suitable cases to permit of such responsibility and to act as a post-qualification "apprentice piece" can be a challenge:

> It's not like you know we have this run of the mill [work]. There's no-one
> down in court every day how things used to be years ago.
> Rio, 3 months PQE, para 36

Part of the problem of transition to qualification, as I demonstrated at 10.3.3, is that experience of generic "litigation" delivered by the LPC or in the training contract is also not seen as enough, part of the deficit related to problems of lack of confidence and feelings of competence on qualification being a change in the *specialised* type of litigation involved. That mismatch may need to be addressed by deliberate survivalist learning strategies:

> ... So I knew that for me personally there was going to be a lot of, you know,
> just reading such because [field] litigation is so specialised and that I knew
> there would be a lot of groundwork to do before I could even start.
> Nairobi, 2 ½ years PQE, para 10

As with ADR, some individuals had focused on conventional litigation as part of their development plans:

> So, I knew I was working in the right team in terms of litigation; I knew that I enjoyed the court work and everything that comes with being a litigator and that was it really.
> Vienna, 2 ½ years PQE, para 14

whilst others had more mixed views about it (individuals might find themselves allocated to a career in litigation as a result of wishing to stay with or work for a particular firm, rather than as a vocation: 2.8.1, 2.8.2):

> Q   OK. When you got into litigation, when you arrived there, how did you feel about approaching that?
> A   Fine. I was very much looking forward to it and slightly, slightly sad to be leaving the commercial side of my work … because I do really enjoy that side.
> Paris, 1 year PQE, paras 15-16

Revision of the procedural rules was seen as desirable (and not pejoratively "remedial"), but for the CPD classroom rather than in context in the workplace:

> And the other thing I thought of was: [pause] a basic revision course for newly qualifieds on just basic principles, principles of law, contract law or court procedure. I don't actually do that much court work … but just some one day overview: just really basic so it refreshes all the points in your mind,
> Toronto, 18 months PQE, para 65

However, the fact that there is already some level of procedural understanding, workplace learning contextualising existing procedural knowledge about litigation not only adds to the overall confidence level:

> I've got one very big case, …And I've been to really quite complex applications with counsel all on my own and when you're the person that just has all the information, you know, and you go to something like that you have quite a responsibility … So something like that is quite satisfying when I've been to something like that and I've found it quite nerve wracking, quite difficult, but actually it's really increased my confidence in the long term because I've gone along and, you know, had the responsibility.
> Rio, 3 months PQE, para 47

but also adds to the repertoire of solutions on a micro-level (rather than, as with ADR, a macro-level) by improving tactical sophistication:

It's actually knowing what to do, what's the best thing to do tactically in a case that I still struggle with.
... It's not just a case of following the CPR or sort of going by the book in every situation. It's really when to make a decision and how to do it, really. I suppose that's still where I struggle.
Rio, 3 months PQE, paras 8-10

Q   What kind of things do you find you are picking up? Techniques, or tactics...?
A   Yeah, ways of dealing with people or, yeah, tactics because I initially, certainly when I started, I would see, well, this is the issue; but how do we want to play it, or maybe we want to phrase it this way because this is a slightly different impression we want to give out and that kind of thing, which I think you can only really learn on a bit by bit basis.
Toronto, 18 months PQE, paras 29-30

The implications of decisions (and an element of professional pragmatism) can also be explored in this context:

I've thought of a costs order against a litigant in person and we've had to write off, we're not going to pursue [him/her] for the costs order because it's not just economically viable to do so. And yet there's that person who's brought the claim against us and obviously we've successfully defended it and now [s/he's] just walking away and you know nothing's happened.
Oslo, 1 year PQE, para 21

Yeah, of course, I mean, one would always look at each stage in any given file. I'd always look and think "Right, OK, we didn't get the result this time, could we have got a result?" Perhaps, you know, of course you don't always necessarily get the result your client wants and that is part and parcel of litigation. Clearly, one is never going to achieve that the whole time.
Vienna, 2 ½ years PQE, para 67

And techniques such as case analysis, which may have been introduced during the academic stage or LPC can be contextualised:

... when I first qualified I felt very, well, not very confident in some ways in terms of being able to look at a case and know, analyse it in any sort of comprehensive way. That's still an ongoing learning process.
Kyoto, 2 years PQE, para 8

As with the increased interaction with clients and with the business discussed at 12.4, increased involvement in litigation in the real world appeared to trigger a personal professionalism and strategy devoted to the avoidance of negligence:

I mean, in this profession, you can't afford to make all the mistakes yourself. I think you have to learn from others: even nightmare stories when your colleague says "Oh, well, this happened and this happened", is something that sticks with you because, like I say, you can't afford to make the mistakes yourself, you have to really take on board what others tell you.

As with drafting (12.5.1), that strategy appeared in the first instance to involve interaction with more experienced colleagues (much as Ned approaches Ella):

> we used to spend a lot of time discussing cases, issues etc, and I think that was, I probably learned more than I ever had with [him or her], spending time with [him or her] going through things. Because it's fair enough attending a course but practically it wouldn't help you as much as sitting one-to-one and discussing things so …
> … Yes. Discussing files with colleagues I think really helps more than anything.
> … I think that really helps because you get an opportunity to discuss what they've done in a certain situation, or how they' dealt with a particular case. And I think this sort of gives you an idea how you should take it forwards in your particular case and I think you do learn from them more than anything.
> Accra, 2 years PQE, para 29, 31-33

12.5.4 Advocacy

Whilst a degree of advocacy activity remains a requirement of the LPC and the PSC, it is, as I discussed at 3.7.3.2, an area of particular sensitivity for solicitors. Some may have based a decision to enter the solicitors' rather than the barristers' profession on a desire to avoid having to stand up in court. Some may feel that there is an element of black magic about what advocates do (perhaps informed more by fictional courtroom drama than reality) or that advocates are necessarily born rather than made. In a learning context, however, advocacy was a particularly good example of an activity involving both "learning to" do advocacy as a presentation and document management skill and confidence-builder in the workplace

> The other thing that I would say was a useful experience was the first time I went to court and was an advocate. It was county court, very straightforward, it was a mortgage repossession. I was *terrified*. I had no idea what to expect. I knew I was going to be up against a barrister, which happens more and more and the rest was solicitors, but I went and I had all my preparation done and it was all right. I didn't get eaten by the judge and I made it home again. …
> Nairobi, 2 ½ years PQE, para 28

but also "learning from" advocacy experience other skills of tactics and analysis that inform – through an understanding of the ultimate implications of the way in which the pre-court activities generally conducted by the solicitor rather than the barrister are carried out:

It's really difficult if you're advising the client about a hearing and you've never been to one; that's just impossible because you feel as though you're a bit of a fraud, really. You feel: how can I be giving you my opinion on this when I don't, when I've never been to one?
Rio, 3 months PQE, para 36

I've also got a *pro bono* case that I've been doing for the last six months or so, which is a county court case on which I'm doing the advocacy and so forth. Which is incredibly useful because it makes you really focus on the legal issues, it teaches you a lot about how to approach when you're an advocate. I think it teaches you a lot about how to approach cases when you're not the advocate as well because you focus on the specific issues you want to talk about in court.
Delhi, 2 ½ years PQE, para 28

As with litigation *per se*, as the number of claims issued has fallen (Ministry of Justice, November 2007), so, however, has the opportunity for individuals to engage in the archetypal formative activity of appearing regularly in local courts in routine interim applications in small cases.

Although individuals would have some ostensible prior experience of advocacy in the classroom during the LPC, advocacy, was – like the new topic of ADR - seen as a "soft skill" that could in part be taught in a classroom context, essentially because of the existence of the higher rights course:

Something I'm also very interested in is advocacy; I'm very keen to do my higher rights, that's something I'm still keen to do.
Vienna, 2 ½ years PQE, para 13

but also perhaps because of the dearth of opportunity to develop such skills in the workplace. However, at least as a presentation skill, it would seem that a replacement forum is developing by default.

12.5.4.1 *Delivering lectures and seminars as a replacement for advocacy*

The delivering of lectures and seminars was, unexpectedly, a learning rich activity mentioned and engaged in by nine of the interview group. The fact that they chose to discuss this might indicate, of course, no more than that it was a comparatively neutral activity, not raising issues of confidentiality, criticism of the employer and so on. The fact remains, however, that almost 70% of the sample, without prompting, recorded such activity, and in some cases analysed it in some detail as a positive learning experience.

In fact, however, the delivering of lectures or seminars that might provide CPD for colleagues is recognised as CPD for the presenter as well, a point occasionally recognised:

> And now, I suppose, as I've become more senior, I am more involved in giving some of those lectures or giving talks, at which point all of your preparation and research becomes part of [CPD] as well.
> Delhi, 2 ½ years PQE, para 18

but not by all, perhaps because some lectures and seminars are delivered not to colleagues but to clients or potential clients as part of a marketing initiative. This is in contrast to the GMC precept of teaching as part of one's professional obligations (GMC 2006:14, discussed at 7.4). The experience is learning rich to an extent that merits lengthy quotation, including an element of aspirational activity (assimilating a new field of black letter law):

> Then the other day I held a seminar for [number of employees of client] and did them a full day's training on [topic] law to make them think we were experts. [Laughs] And that's really paid off, really well, …
> …The most recent example [of a helpful learning experience] is going to be this [topic] seminar. Because I absolutely was just so worried about it, talking to [number of] experienced [topic professionals] on a subject they've been doing for the last ten years.
> …But preparing for that, certainly is probably: I am definitely an expert in [topic] now! I've read everything there was to read, just to cover anything I might be asked. Weird questions. And learned it off by heart as if it was an exam. So that when I spoke - because I hadn't really done a lot of public speaking before - so that when I spoke I just could do it and answer any questions. But, yeah, it was like practising for an exam, learning it off by heart, everything about it. And now certainly that really did help, so having to give a speech to people about it, really is …
> Well the next thing I'm doing, it's helped me. I've got to on [date] go and speak at a masters' course, a lecture for two hours, again on something I know nothing about. But doing that has given me the confidence thing as long as I practise it over and over and over again, by the time I come out I will, actually will have: by speaking to them it will have helped me learn a new area of law really, really in detail and well: so that's got to be good, hasn't it?
> Q   Mm. So, in terms of things that you learned from that experience, you learned about [topic] …
> A   I learned the Act, yes, inside out! [Laughs]
> Q   You learned something about public speaking skills?
> A   Yes.
> Q   And about how to get on top of the topic you didn't know anything about?
> A   Yeah, certainly. I just learned about just pulling things off, I suppose in marketing, just give me the confidence to think that: people just look at you and assume because you're a solicitor that you know what you're talking about. And I was just horrified by how nice, I mean everyone was so nice to me and rang me and thanked me and said it was so interesting, they learned so much. I think psychologically they must have read about all these things before but it's just because someone's telling them confidently: "this is the

law". Yes, that was really one of the best things I've done this year, I think, in terms of learning something new really well.

Q And you're putting all of that - maybe not the [topic] but a lot of the things from that into practice in terms of this other lecture you've got to do?

A Yeah, I'm not so worried about that at all now. Perhaps I should be because they might be a bit more demanding! Than a roomful of [topic professionals] just interested in the lunch! [Laughs] But, yeah, certainly I'm not so worried at all about it now. I've just got to pick what I'm going to speak about. Read about it and practise and practise and practise. But coming out the other side, it'll be, I know I will have gained from doing it. So I don't think I'll mind signing myself up to a few more of those. At the start I thought "Oh what have I done?" This is - the seminar especially- I just, it took so much time out of my day that was non-chargeable so I was having to work twice as hard to fit all that in, I really at the time didn't think it was going to be worth the amount of time- chargeable time- it took. But it think it has been worth it now especially if we get some work- new work - from it hopefully. [Absolutely] Ah, that would be the best thing, if I do manage to get some new work from it. But if not there'll be something else that comes up and I'll perhaps be able to speak for longer than two hours now I've done it, maybe.

Q That's great. Now did you think of that as being a good learning curve while it was happening?

A No. No. I don't think of it as that either, it was going to be beforehand, I just thought it was a marketing thing just to get new work. But afterwards, now, I think I've realised it was a helpful learning curve but at the time I just felt sick. I just felt sick thinking about what I'd taken on was just too much. I was worried that I was going to be embarrassed and it would be really awful and nobody would turn up and I'd be really criticised for the amount of effort it had taken for then zero results. So afterwards now I think it has just given me confidence I could do it again.

Q And you're putting this into practice

A Yes.

Madrid, 1 year PQE, paras 22, 46-58

As a learning experience, then, the delivery of a lecture or seminar may have come to occupy the same space in an individual's development in terms of knowledge and research; responding to questions and presentation skills as routine appearances in court did for my generation. Clearly, if only because the dynamics of power in a lawyer to client interaction are different from those in a lawyer to judge interaction and the outcome of the lecture is perhaps not as significant as that of a court application, the element of persuasion may not be as significant, but there does seem to be some element of synergy between the two activities.

At this stage therefore, I re-examine the responses coded under "advocacy". For completeness, whilst only four interviewees explicitly described having appeared in court themselves, a number referred to CPD activity in the form of courses on advocacy skills, including the higher rights courses.

Interviewees did identify a number of factors peculiar to actual court advocacy. Clearly the etiquette differs (Rio is here discussing a CPD course on advocacy skills):

> ... he went through about how you should address different judges and whether you should say "good morning" and things like that and no-one would ever think to tell you that. But that's something as a newly-qualified person that you would really worry about, going into court, because you know your case and everything and you've put in the work, but it's just this formality to things.
> Rio, 3 months PQE, para 32

Document handling in the advocacy context is a more significant challenge than in lecture delivery:

> I don't know quite how else to explain it but just little things like that kind of thing or, I don't know, a court hearing where you haven't been able to find the document you want, even though you're sure you've seen it before.
> Oslo, 1 year PQE, para 41

Finally, the intellectual challenge involved in making a persuasive case on evidence, law and facts is of a different order to that of providing a lecture on a defined section of one's knowledge base (even if it is an area that has had to be learned for the occasion). Nevertheless, on the whole the description of involvement in advocacy and its outputs in terms of learning are remarkably similar to the descriptions of delivering lectures and seminars. Compare this description of the emotion experienced by Madrid, preparing a seminar for clients, with that of Nairobi appearing in court:

Seminar	Court appearance
Because I absolutely was just so worried about it, talking to [number of] experienced [topic professionals] on a subject they've been doing for the last 10 years. So as it got nearer and nearer the day I really started to panic and thought "What have I done? I'm not going to be able to pull this off, This is mad" and I was really tempted to get a barrister to come and do the – I would organise it and he could come and do the whole speech. Madrid, 1 year PQE, para 46	The other thing that I would say was a useful experience was the first time I went to court and was an advocate. It was county court, very straightforward, it was a mortgage repossession. I was *terrified*. I had no idea what to expect. I knew I was going to be up against a barrister, which happens more and more and the rest was solicitors, but I went and I had all my preparation done and it was all right. I didn't get eaten by the judge and I made it home again. Nairobi, 2 ½ years PQE, para 28

Figure 37 Comparison of emotional response: seminar v. appearance in court

and similarly, Madrid's evaluation of the seminar experience with Nairobi's evaluation of an experience in court:

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Seminar	Court appearance
Yeah, I'm not so worried about that at all now. Perhaps I should be because they might be a bit more demanding! Than a roomful of [topic professionals] just interested in the lunch! [Laughs] But, yeah, certainly I'm not so worried at all about it now. I've just got to pick what I'm going to speak about. Read about it and practise and practise and practise. But coming out the other side, it'll be, I know I will have gained from doing it. So I don't think I'll mind signing myself up to a few more of those. At the start I thought "Oh what have I done?" ... I'll perhaps be able to speak for longer than 2 hours now I've done it, maybe. Madrid, 1 year PQE, para 54	... And then you know, again, at court, when I'd finished and was on the train home, I thought "Ooh yes, heavens, I'm relieved, I've done it" ... And I went to court a couple of times on that same case and by the end of it you get almost quite blasé, obviously not too blasé, but just to the point where you're more comfortable talking to the clerk and talking to the judge. And you know that if you don't call him the right title you're not going to get: it's not the end of the world. Nairobi, 2 ½ years PQE, para 32

Figure 38 Comparison of evaluation: seminar v. appearance in court

12.5.4.2   Writing articles

The "getting up" of a topic for a lecture is a similar activity to that of researching a topic for the purposes of publication (generally in a professional publication rather than a scholarly journal). Three interviewees mentioned the writing of articles but their attitude to them as a learning experience was very different to that of the lecture or seminar. For Madrid, who had otherwise a rather aspirational approach to development, the writing and publication of articles was a marketing chore rather than linked to professional development:

> Q   One of the reasons you go into writing articles *is* to learn about something new?
>
> A   No. I think you write articles just because it's one of the marketing things you have to do, don't you? Everybody has to do them.
> Madrid, 1 year PQE, paras 68-69

Toronto, however, when the idea was introduced as part of a formal coaching experience, took a contrary view:

> And the chance to do articles and things like that and because I wouldn't ever want to - or not just yet - throw myself out and say "Oh, I'll just do an article on this"; it's in tandem with [coach], so that's good for me that I have someone else to work with.
> Toronto, 18 months PQE, para 41

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as did Vienna,:

> I wouldn't label any of that necessarily "CPD".
> What else? Reading around subjects, reading articles, writing articles, …
> Vienna, 2 ½ years PQE, paras 50-51

Writing articles, then, unlike the giving of lectures and seminars, is less likely to be identified as a contribution to professional development, but, where it is raised, is of ambivalent status.

12.6   Supervisory activity

The role of the employer has pervaded discussion throughout this study. From the outset the question of the individuals possibly requiring a significant degree of normative alignment with their employer as a means of resolving some of the inconsistencies and mixed messages provided by the ostensible status of qualification (2.8.2). The employer occupied a considerable role in defining the CPD activities of individuals, both as to content and on an economic basis (4.4.3, 11.2.2) and the employer's objectives and requirements as to self-direction (5.3.1.2); aspiration (7.1); acquisition of a personal expertise (7.2.2) and demands for the employee to participate fully in the business (7.2.2) may affect not only the learning orientation of the individual (for or "against" the employer's objectives: 7.2.3) as well as what it is considered important to learn (to achieve the employer's expectations as to productivity and efficiency). The involvement of the employer, as supervisor or colleague, in allocation of (developmental) work and the more formal activities of feedback, coaching and debrief representing deliberate practice with the possibility of evaluative and even critical reflection, even if prompted by another, will be more fluid. Patterns of reported involvement with colleagues are shown in the code family "interactions".
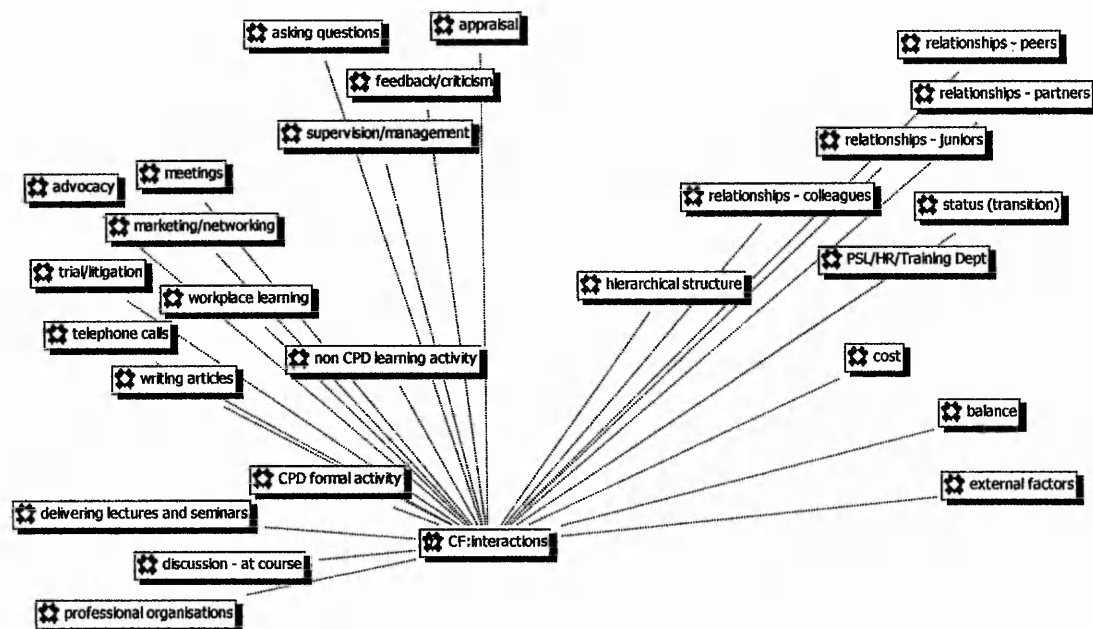
12.6.1 The code family interactions

Figure 39 The code family "interactions"

Interactions is largely a sub-set of "activities", marking those tasks and activities in which there is contact with others, specifically colleagues (hierarchical structure; the subgroup of codes labelled "relationships" and "status/transition") and, as explored at 12.4 above, with clients ("professionalism/clients"). The management of competing factors outside the workplace is recognised by the addition of the codes "balance" and "external factors". The code "cost", frequently mentioned as a factor in choice of formal CPD activity or type of formal CPD activity, represents aspects of both relationships with colleagues (training budget holders) and "balance" as cost/benefit in choice of CPD activity. More detailed discussion of this group of codes then measures the role of other individuals in helping or hindering development or in contributing to the model of development held, particularly in determining the threshold between learning by osmosis, unconsciously acquiring tacit knowledge and some for of deliberate analysis and evaluation in Bloom's (1956, Anderson and Krathwohl, 2001) terms, by way of forms of engagement with experience other than the reflection discussed at 13.4.1.

12.6.2 Cost, balance and external factors

At 5.2.2, I explored the "life stages" theory of adult learning and Illeris' (2004) synthesis of the social environment into a model of adult learning. The impact of establishment of an adult role outside the workplace (*e.g.*, relationships with marriage partners and actual or potential children) was mentioned by only two interviewees, both of them in terms of demanding an accommodation to be reached between such factors and the personal strategy for career and development:

> I mean there's other areas of my life that would impact on my work-life and things that I want to do outside as well and I've got more of a development plan in my mind for that, actually.
> Berlin, 2 months PQE, para 22

> My other half has sometimes, [she/he] has felt that I'm, you know, well, let's put it this way: that that is perhaps a factor that could be detrimental to development, you know. If you've got to try and weigh in the balance all of those other things as well, all sorts of aspects and facets of your life. And I hold those important to me as well, so they're things that I don't want to give up or for them to suffer as a result of career progression. So, that's things you've got to balance up.
> Vienna, 2 ½ years PQE, para 72

Cost was acknowledged as a constraint on CPD activity, but also formed a consideration in the more learning-conscious activities in the workplace, particularly the giving of lectures that has come to replace advocacy experience (12.5.4), where a similar cost/benefit analysis is involved, articulated in terms of cost to the firm and to the individual in terms of time spent as against benefit both to the firm (in gaining clients) and to the individual:

> This is - the seminar especially- I just, it took so much time out of my day that was non-chargeable so I was having to work twice as hard to fit all that in, I really at the time didn't think it was going to be worth the amount of time-chargeable time- it took. But it think it has been worth it now especially if we get some work- new work - from it hopefully. [Absolutely] Ah, that would be the best thing, if I do manage to get some new work from it. But if not there'll be something else that comes up and I'll perhaps be able to speak for longer than 2 hours now I've done it, maybe.
> Madrid, 1 year PQE, para 55

12.6.3 Relationships

As I outlined at 7.5, the role of colleagues in an individual's learning is significant and, according to Cheetham and Chivers (2001) occupies a spectrum from the unconscious and acquisitional to strategies of deliberate engagement with the experience of working

with the colleague. Interactions with peers and seniors played a role in issues of relevance and level appearing in the discussion of CPD activity at 11.3.3. The expectations of colleagues and seniors within the firm similarly contributed, not necessarily positively, to the feelings of the individual on qualification (10.3.3.6). The existence of juniors and the consciousness of one's own place in the hierarchy similarly contribute to questions of status (10.2.3). Individuals drew on peers as part of their own support network within their own firm (a similar level of reassurance being reported in CPD activity from meeting peers outside the firm):

> Yeah, but, I mean, you stop thinking, "Oh, it's not just me". ...
> I can't imagine working in a place where you didn't get on with the people you are working with. Because you *have* to work *with* them. Horrific. It's a good retention tactic as well. You're not going to go and I mean my intake; my friends in my intake; everyone says the same: there's no way they'd leave to go and do the same work in another big firm because they'd be getting the same work but they wouldn't necessarily have nice people to work with so why on earth? I mean some say they'd like to work for an American firm and earn a lot and retire really early, but you know ...
> Toronto, 18 months PQE, paras 65, 67

What is more significant for this discussion is the relationship between the individual and his or her seniors. Officially, perhaps, the individual's formal supervisor will be the busy and perhaps somewhat intimidating partner. Supportive and less intimidating seniors, perhaps only a few months or years in advance of the interviewee, were quickly identified and strategically used by the newly qualified who, in their unconfident state, might not be sure that the question they wanted to ask was "silly" or would show them in a bad light (the partner also being the employer, see Lingard *et al*, 2003, discussed at 7.4):

> I think there's always this feeling that, when you're working for a partner, you're very aware of what you are and aren't asking and you want to present to them in the best possible way you can. And very often, I think, at my stage, I think it's difficult to know what's a stupid question and what isn't.
> Cairo, 4 months PQE, para 46

> I think, from what I know of a lot of my contemporaries, ... that there are a lot of partners, particularly in city firms, ... there's a distance there ... [a lot of my friends are?] intimidated by who they work for sometimes and I would find that very difficult anyway. I don't see why you should feel that way for who you work for, or you should get out.
> Kyoto, 2 years PQE, para 54

At 7.5, I explored the role of senior mentors and coaches as well as "slight seniors" as they emerged in particular from the LiNEA project. I was interested to see whether this stratification between the "formal" but preoccupied and intimidating partner who might be the official mentor, and the "informal" available and less intimidating "slight senior" would be reflected in the experiences of interviewees. This links, too, with the codes "asking questions" (of whom?) and "feedback/criticism" (from whom? How developmental?) to create a picture of the strategy actually employed by individuals in relation to deliberate learning from their seniors ("supervision/management") within the workplace; a strategy which might operate beneath or in parallel to the more formal structure of "appraisal".

12.6.3.1   Relationships   (seniors);   asking   questions,   feedback/criticism; supervision/ management,

Just as the employer is the defining stakeholder in CPD activity, the employer can exert constraint on the individual's development in the workplace, including his or her overall aspiration (7.2.3):

> ... the partner in charge of the team - has one idea of what [he or she] would like me to specialise in, but I think it's a bit early for me to say whether or not that actually will be in the long term.
> Berlin, 2 months PQE, para 21

> They have, I'm aware that - I'm sorry it sounds very Big Brother - but, you know, the partners in my team have a very, very clear focus about where the team is going and the role each individual will take and that's, obviously, they have got an idea of my development, my career progression that they want for the team. Hopefully the two will merge and will be one and the same ...
> Vienna, 2 ½ years PQE, para 51

The (expert) partner or supervisor has an obvious impact as role model, dictating the style (a form of normatisation, see 2.8.2) and, within the structures of the firm and the rules of professional conduct, the extent of supervision:

> But when I moved across to the team that I'm in now, it was sort of made clear that they worked quite differently. They worked quite closely and the partner's view is that it's in the best interests [to have] supervision, then obviously you sort of - well - reap the rewards, don't you? Being in a small team, the difficulty is sometimes you are in the situation where you're the only one in the office, ...
> ... because the firm have a policy where letters should be signed by a partner. So my post is checked every day: sometimes they'll pick something where they say "Oh, why have you done this?" You know perhaps about [inaudible] it and that's what I call on the job training.

Rio, 3 months PQE, paras 34, 35

> ... the partners in my team are, because of the nature of the work we do, do supervise us quite heavily. It's being reliant on them, well not reliant on them, but they are good in letting you know what they think that you should be doing or where you should be reading for that particular, I don't know, say, "Was that [client] in breach of duty on that particular point?" And, first of all, you'd say "I don't know", but then, obviously, you'd know to go to a certain book and read about it. And that kind of thing, I think, if I was doing that in a firm where I didn't have that person saying that to me; I'd feel even more kind of "Oh, where do I go from here?". I'd feel a bit more alone. But, definitely, where I am the training and the supervision is constant; such that you know I am being kept in line to an extent. And it's helpful to me because I don't ever feel like I'm on my own. Like "Oh God, what do I do with this because I'm on my own and there's no-one here to help me?" It's finding that balance of using your own initiative once you've been given the guide and building on that. ...
>
> ... the partners in my team are approachable as well. So I don't feel scared of them to the extent that I can go to them and say "I've got this problem, I don't really know how I'm meant to deal with it; what do you think is the best way?" And, obviously, they expect you to go having already thought about it but recognising that some of the time it's a judgment call and if you've got that much more experience then it's obviously best to have a word with someone who's got more experience than you.

Oslo, 1 year PQE, paras 35, 45

> If you could have a partner or a supervisor who cares a great deal about the quality of work that goes out as well, that helps, but again I don't know whether that is something you can legislate for or whether it's down to luck and the firms and who they employ.

Sydney, 4 years PQE, para 49

The level of supervision can, then, be quite intrusive, if one assumes the newly-qualified to be in an "andragogical" state of independent self-direction and to be exercising "professional" autonomy. I had anticipated finding that those who had positive results for feelings of competence and competence on qualification would react badly to such supervision, at least in its manifestation of letters being automatically checked as opposed to the exercise of their autonomy to choose to approach the partner for assistance. Whilst tensions and contradictions are present in the individuals' descriptions of their feelings about status on transition (10.3.3.2), this was not the case in respect of supervision.[62] Although a high level of supervision might address (or more pejoratively, pander to) lack of confidence and a Dreyfus (1986) beginner-like demand to be told the "right answer", individuals positively welcomed it:

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[62] A legitimate caveat is, of course, that all interviews took place on employer's premises and that access to individuals was obtained through employer gatekeepers. Individuals were not, however, afraid to criticise more generic aspects of their employer's support mechanisms such as training and induction.

> I think nought to three year qualifieds, probably most of us need to be managed and probably have a *right* to be managed. I know sometimes that's very difficult to achieve, for all sorts of different reasons, but that's something that certainly should be put in place or, where possible, that's certainly something that's going to assist nought to three year qualifieds to develop.
> Vienna, 2 ½ years PQE, para 79

In addition, perhaps over the course of time, the relationship could mellow into something less hierarchical

> I find [supervising partner] as a resource invaluable because, our friendship, basically: as you know it's very nice for it to be comfortable to be able to go in and say, "[Name], I don't have a clue what this client is talking about", or "Here's my letter of advice that I've drafted, what do you think?" "Change this, change that" and there you go. And it's always, [s/he] always has a minute, [s/he] always makes [him/herself] available. That is very, very useful
> Kyoto, 2 years PQE, para 54

Whilst much supervision seemed to be *ad hoc* or focussed on the reviewing of letters and draft documents or responding reactively to questions, some supervisors do act as positively-oriented mentors in supporting development, and will become involved in more pastoral responsibilities:

> … you know the first time that you've sat in the partner's office and said "Oh, I'm really sorry, I've done this and it's the wrong thing to do" and burst into tears …
> Nairobi, 2 ½ years PQE, para 32

12.6.3.2   The phenomenon of the "slight senior"

The "slight senior" (7.5) then, makes an appearance as a filter between newly qualified and partner either as a specific individual:

> … if I've got an issue or a problem and I need to discuss that I have a word with … a senior solicitor - and we review all my files every month actually. We sit down, just go through the billing guide and stuff on each one and if I've got any problems I'll say "Oh, this is bubbling away on this, what do you think I should do?" and we'll discuss it and that's really, really useful.
> Rio, 3 months PQE, para 37

> I sit in, I share an office: [name]'s not here to day, [s/he's] 4 years qualified. I always consult on matters to see how [s/he] does things, I ask [him/her] questions: [s/he's] fantastic in that way. …
> … very often, I think, at my stage, I think it's difficult to know what's a stupid question and what isn't. So you talk to someone who's more on a level and is someone who you share an office with day to day and you get to know on a personal level …

> [Name] is another associate, [s/he] works next door, [s/he] predominantly
> works for the same partner I do. [S/he's] been very, very helpful in terms of
> "This is how [partner] works and how [partner] likes things to be done". ...
> I think it just helps because the partner's not always around and you don't,
> partners are never going to be as approachable as associates or your peers ...
> Cairo, 4 months PQE, paras 24, 46, 48

or a generic strategy:

> And it also kind of helps to talk to people who are six months more qualified
> than me or so, and say: "Oh God, have you come across this issue? What you
> do think about it?"
> Cairo, 4 months PQE, para 48

> ... although you hope that if you were maybe to go to someone with that little
> bit more experience than you ,that they would be able to help you out, if you
> had a particular problem. But obviously it's just dependent on whether or not
> that particular person has come up with that particular problem before.
> Oslo, 1 year PQE, para 14

In one case, the phenomenon was deliberately fostered by the employer:

> ... they *try* here or within the litigation department to have associates with
> another associate so you're never in an office by yourself. They tend to have
> one senior and one junior so that ... you still have someone you can just turn
> to with silly questions or just pick up how they deal with things so it's a
> learning by osmosis in the office.
> Toronto, 18 months PQE, para 32

Whilst I can see circumstances in which the self-selected slight senior might suffer in
the role which, although it might operate to filter problems and potential negligence
away form the partners, places pressure on their own workload, targets and career
progression, it appears to be so valuable to individuals, however, that it could
realistically, as I suggested at 7.5, be formalised.

12.6.3.3   *Asking questions*

The slight senior was used, then, principally for the purpose of asking questions
(Nelson's, 1993, interviewees' first choice: 4.3.3). Such questions represent both a
degree of self direction in that the individual chooses when and of whom to ask
questions. Questions might be directed at solving current problems or, in more explicit
engagement with experience, assimilating or accommodating learning for the future
(*e.g.*, why is that important?), or both. The frequent asking of questions might,
however, betray a lack of autonomy and responsibility in the individual, particularly if

the individual frequently asks the *same* questions or if the asking of questions betrays an assumption that "right answers" can only be supplied form the expert authority being asked. Consequently, positively declining the opportunity to ask questions, as with an apparent resistance to CPD in some forms, should not necessarily be taken as a negative:

> So, if I'm sat there not really knowing, I know that there are a number of places that I can look in order to try and get the answer myself, rather than having to ask anyone else for it.
> Oslo, 1 year PQE, para 37

Individuals described asking questions not only to solve immediate problems:

> ... the first time you have a particular problem situation; you think "Crikey, how am I going to deal with that?" and perhaps someone will suggest to you "Have you thought of doing this?" or "Perhaps the best thing to do is this",
> Rio, 3 months PQE, para 12

but, as I suggested above, as part of a developmental strategy:

> I've asked my supervisor what advice they ... you can't really just go away and read every book and find out everything in advance.
> Berlin, 2 months PQE, para 16

Responses might exacerbate, rather than ameliorate, the individual's lack of confidence, particularly if, unlike Ella, the questioned is too unconsciously competent to explain:

> I've asked whenever I was *learning* about costs, I always said "Where do you find out all this information?"; "Where are the books on it?"; ... And people kind of give you really random anecdotes: "Oh, you just ask for this and you take a third off this and you do this percentage with that ..." You're scribbling all this down thinking "How do you know this?"
> Madrid, 1 year PQE, para 74

Questions are also asked of the technical specialists described at 7.5 who might initially be seen as lower in status but whose specialist knowledge comes to be recognised:

> Our court clerk is the font of all knowledge to do with [inaudible] and just chatting to him and other people who've got cases on at the moment I think is incredibly valuable.
> Delhi, 2 ½ years PQE, para 20

The most extreme example of the urge to ask questions and the urge to find a respondent is, however, provided by Madrid's example of the desperation of those driven by a lack of internal support to direct their questions to the lawyer *on the other side of the case*:

> Sometimes [friends at other firms] say things like "You don't even know to look up the answer in a textbook, you just ring the other side up and ask them 'What should we be doing at this stage?'" As awful as that on huge, huge files.
> Madrid, 1 year PQE, para 77

As individuals approached the watershed, and at about the same point as I had detected signs of a less constrained approach to CPD activity (11.3.3), the role of such problem-solving questions seemed to change, shifting from seeking *an* answer to the problem to seeking a range of alternatives or views (perhaps marking, in King and Kitchener's (1994) terms, a greater tolerance for ambiguity) from which the individual might select:

> I always find it helpful speaking to others. Sometimes you think, you know, "I think this way". You don't necessarily go with the way they do it, because you see that you could do it this way then this may come up or whatever. But I think it's really helpful, I think it's really good to talk to others and learn from them as well as yourself.
> Accra, 2 years PQE, para 35

In addition, it was by no means unknown for Socratic questioning to be employed by supervisors and for supervisors, rather than answering the question, to direct individuals to resources from which they could answer the questions themselves (Nelson's second choice: 1993):

> And, first of all, you'd say "I don't know", but then, obviously, you'd know to go to a certain book and read about it. And that kind of thing, I think, if I was doing that in a firm where I didn't have that person saying that to me; I'd feel even more kind of "Oh, where do I go from here?". ... And it's helpful to me because I don't ever feel like I'm on my own. Like "Oh God, what do I do with this because I'm on my own and there's no-one here to help me?" It's finding that balance of using your own initiative once you've been given the guide and building on that. ...
> And if I get to the stage where I've been through all the options that I think "Oh well, I'm still really stuck here", I can still go and talk to someone about it who, more often than not will know the answer, or if they're not willing to tell me the answer as such they'll be able to point me in the right direction. ...
> Oslo, 1 year PQE, paras 35, 37

12.6.3.4   Feedback/criticism

Where feedback was concerned, however, there was an assumption – again grounded in the default position of a feeling of lack of confidence and competence on qualification – that it would be negative in nature (even if ultimately positively developmental). The primacy of mistakes as a basis for learning may, however, be inevitable. Argyris, for example, identifies a potential problem arising from the high level of success previously experienced by such individuals in other contexts:

> [p]ut simply, because many professionals are almost always successful at what they do, they rarely experience failure. And because they have rarely failed, they have never learned how to learn from failure.
> Arygris, (1991: 6)

The primacy of mistakes is also perpetuated in the work based learning outcomes ("reflect on experiences and mistakes", Appendix II):

> ...you're never going to be sort of told: "Oh, that's brilliant, it couldn't possibly be better" because there always [are] things you could do, because you're still at the early stage of learning and it's so complicated work. But it can be, you know, you can have days, weeks, where it feels like everything you've done is being criticised and I think that kind of external, you know, "No, actually you're doing very well and that's normal. Things improve and set yourself goals", I think that's useful.
> Berlin, 2 months PQE, para 37

and (in contrast to the situation in which the individual chooses to ask a question or the acceptable formal appraisal structure) – perhaps significantly at the two year point at which I had detected a change in learning strategy (11.3.3) even frustrating or difficult to accept:

> ... at the time I just found it intensely annoying! [Why was that?] No, it wasn't intensely annoying but it's when you work on something and you think "Oh, this is great" then you show it to someone else and you can see when they say "Um, that's good, that's very good but we can make it better". And you sort of think because you're too close to something and, but it was invaluable, absolutely invaluable, that process, I thought, and [name] said so at the beginning, [s/he] said "You know, you will find you need to do this and then we'll go through it and you should view it as a learning process." And, yeah, [s/he] was dead right.
> Kyoto, 2 years PQE, para 34

Whilst most feedback described seemed to be *ad hoc*, or sought by the individual, some was part of a more formal reviewing system of files or appraisal:

It makes you focus on what you're trying to do, what you're good at, what you're not good at. You get some feedback which is, I think, vital to one's progression, development, and so on and so forth. So, all of that's looked at. ... one has got to be able to get feedback and have a steer from those that are perhaps more experienced and to learn from them. To learn from one's mistakes; one's experiences; one's successes. ...So, I don't know if that's really the answer to the question, but those are the things I think we need; we *should* get and, you know, in order to progress. At the very least, we need to be aware that all those things are out there if you need them, if you want them.
Vienna, 2 ½ years PQE, paras 55, 80

12.6.3.5   *Supervision/ management*

Appraisal, then, is the most formal of the structures involving interactions with others available to support development within the workplace, shading through a spectrum ranging from the individual's asking of questions (or not) through informal or *ad hoc* feedback and review meetings and the specific coaching experience mentioned by Toronto. One might expect it not only to be retrospective (aligned to evaluative reflection), but also forward-looking (aligned to critical reflection), setting objectives, assessing training needs to be addressed by CPD and perhaps beginning to focus the individual on aspirational learning (if one assumes that it is in the interests of the employer to encourage aspirational learning). However, where there is a very strong personal aspirational goal, the power of the situation is not entirely with the employer:

Yeah, I think generally I'd say I was quite probably, my boss would say my ambition scares [him/her] a little bit! At my appraisals: "you're so scary"!
Madrid, 1 year PQE, para 17

In one sense, appraisal necessarily being an after the event experience, as a forum for dealing with the challenges of qualification, it might come too late:

On the second page [of the questionnaire] you ask about training programmes and whether the firm is in charge of organising CPD and all of that? I had *no* idea. I had to phone up our training administrator and ask [him/her] those questions in order for me to fill in that questionnaire. I didn't know that, and apparently I should have but haven't yet been invited to a [development meeting].
Cairo, 4 months PQE, para 51

Nevertheless some appraisal was clearly very grounding and useful developmentally, not only setting objectives but also identifying for the individual means of achieving those objectives (as discussed at 12.3.1, with some of the new activities such as

marketing and time management, whilst individuals see the need for the end, they struggle with the means they might employ to achieve it). Whilst appraisal might be seen as an abnegation of the individual's self directed personal strategy for development, Oslo and Vienna, at opposite ends of the qualification spectrum, both chose an appraisal as their example of a good learning experience. The interaction between the individual still seeking to impress (Lingard *et* al's (2003) "proving competence" and "deflecting criticism") and the supervisor with a different viewpoint, and within the context of the employer's objectives, is still seen as personally valuable:

> Yeah, I think when I'd had my six-month review, I was keen to create an impression that I was, although I was happy in my work and felt as if I was happy with the way things were going, it was then necessary, if you like, for someone who had that much more experience than me to bring to my attention that these specific areas needed addressing. ... for them to actually to have come to me and said "Well, we think these particular aspects of the job, you know, need improvement and this is how we think you're going to, we'll assist you in doing that"..
> Oslo, 1 year PQE, para 22

> ...it's great when one has the opportunity, I suppose, of sitting down and talking about it in a bit more detail - but it's not something day-to-day that is a thought process I go through or consider my development, where am I going career-wise, etc, etc. ...
> It makes you focus on what you're trying to do, what you're good at, what you're not good at. You get some feedback which is, I think, vital to one's progression, development, and so on and so forth. So, all of that's looked at. You know one would look at every single facet of it so, you know, time-recording; target-hitting; academically how is one getting on; marketing-wise how is one getting on? And, from that, of course, you know, it's certainly the case that while I've been at this firm we're obviously set very clear targets for the next year; targets for the next six months; whatever it may be...
> So, I think, certainly, we talked about appraisal: I think that's key. I think that's something that should be put in place, that should be made available to 0-3 year qualifieds and, in fact, probably I'd go further than that and say it's something they should *have* to do. You know, those that are managing them should be putting that in place.
> Vienna, 2 ½ years PQE, paras 54-55, 79

Toronto evaluated the formal coaching experience in much the same way:

> And I found it was effective because it was focussed exactly on the areas that I felt I needed and it was only me, so it was any questions I had, things I wanted to concentrate on. We could focus directly in on those and there were lots of different aspects to it.
> Toronto, 18 months PQE, para 37

The picture of supervisory interaction provided by the interviewees, then, across their various firms and areas of practice, carries with it a number of desiderata. It is implicit

from some of the responses that a careful line needs to be trodden between appropriate support (both for the individual and for the avoidance of poor service or negligence) for the individual and recognition of their hard-won and somewhat tender feelings of status, confidence and competence and their professional adolescence. The "slight senior" might be a suitable means of providing such support in a non-threatening but accessible way. As to competence and confidence, of course, such support needs to accommodate the considerable variants (10.3.3.1) I have already suggested might be the result of deficits in the individual's pre-qualification experience.

The asking of questions occupies a spectrum of purposes for the individual questioner, from, I imagine, laziness, through the search for *any* solution towards a more "expert" and self-directed exploration of alternative solutions which may or may not be accepted. The key word, then, is balance, between over-regulation potentially frustrating the development of self-direction, creativity and aspiration and lack of support undermining the fragile competence and confidence of the individual. Interviewees themselves recognised this question of balance within the workplace:

> Yes. And also it's finding a balance of wanting to get on and have the experience of doing those things, but then it's almost like a cart before the horse, in that you don't want to be given too much, but at the same time it's getting that balance between being given enough that you're able to work on those areas and, if you like, build on those things; but not being given so much that you feel completely kind of "Oh, where do I go with this from here?" and building on it that way. …
> It's finding that balance of using your own initiative once you've been given the guide and building on that. If that makes sense?
> Oslo, 1 year PQE, paras 33, 35

12.7   Conclusion

The picture of learning in the workplace is complex, particularly as some things, particularly, skills, were perceived as not being susceptible of delivery by CPD. Crucial factors in remedying the deficit apparent for many at the point of qualification were repetition and the possibility of completing the whole of a transaction (12.3.2) although quite what was learned through these processes beyond the rather circular concept of "experience" proved difficult to articulate. A more specific desire was for the transition and new expectations to be addressed by a formal induction into the new status (12.3.4) which would not only reinforce and define those expectations but provide guidance on how they were to be met: the desire for checklists inherent in the Dreyfus (1986) beginner stage.

In a more diffuse context, interaction with clients (12.4.1), perhaps for the first time but almost certainly with a much greater degree of responsibility, was a trigger for learning with a bottom-line focus on the avoidance of negligence which allowed aspects of self knowledge by way of professionalism and professional self-directed responsibility to emerge. This contributed to a learning strategy perceived to operate in the new contexts of running the administrative aspects of the file, marketing, networking and in the direct and autonomous interactions with clients afforded by meetings and telephone calls.

Whilst drafting operated as a focus for learning, particularly from and with others, ADR represented a form of aspiration beyond the range of existing competences (in a context where aspirational activity was limited). The basic activity of litigation (12.5), founded on an LPC benchmark, was seen as potentially permitting involvement in the whole of a transaction, so seeing the implications of decisions, including the avoidance of negligence. Whilst the work based learning outcomes insist on a level of competence in advocacy, advocacy in practice was all but invisible. Nevertheless, as far as the underlying skill set was concerned, a substitute was emerging to fill the vacuum in the form of giving lectures and presentations. Something about the immediacy and spontaneous interaction seemed to be significant, as the more passive and thoughtful activity of writing articles was not seen as learning rich in the same way.

The close involvement and investment of the employer in the individual's learning (12.6) could manifest not only as defining the individual's development plan (much as the employer, discussed in Chapter 11, defined the scope of CPD activity) but also on a more personal level, as defining the "style" of one's performance. Whilst, consistently with the bottom-line assumption about the avoidance of negligence demonstrated above, feedback was assumed to be directed at the individual's mistakes, more formal appraisal, like the desired induction, was valued as showing how goals (even if defined for the individual by the employer) could be achieved. As a learning strategy, however, individuals might apparently subvert the employer's influence by finding their own quasi-mentors in the less intimidating "slight senior" prepared to act as a recipient of their questions. As with CPD, however, a shift was, I suggest, becoming apparent at about the two year point when the individual's attitude to asking questions (like their attitudes to CPD) showed a greater degree of tolerance of uncertainty and the possibility not only that there might not be a single "right answer" but also that there

might be several possible answers from which to select, and with which to compare one's own response.

CHAPTER THIRTEEN - CONTEXTUALISATION AND SIGNIFICANCE OF THE STUDY; DEVELOPMENTAL PLANNING, REFLECTION, SELF-DIRECTION AND AUTONOMY; IMPLICATIONS FOR PRACTICE, POLICY AND FURTHER STUDY

> The job was his third since graduating in the top half of his class at Georgetown University Law School. He had started his career working for a big company in New York ... [b]ut after six years there, he felt as if his life was passing him by. He had no sense of accomplishment. He'd looked at the people around him, people who'd spent their lives working for the company, and he'd realized that if he didn't leave soon, he might never get away. ... Conway had decided to go into practice for himself.
> Harr (1995:70)

13.1. Introduction

This concluding chapter begins with a manifesto setting out the significance of this study and suggestions for further study arising from its constraints and limitations. Following discussion of the further contextual constraint confining the study to practitioners in civil litigation, it then proceeds by blending analysis of those codings related to manifestation of specifically learning-oriented strategies with conclusions drawing both on the overall themes of the study:

a) the perceived contribution of CPD activity;

b) the place of self-directed planning and forms of engagement with experience (including reflective learning) as strategies;

c) the place of aspirational learning activity; and

d) the place of unconscious acquisitional learning in the workplace leading to largely tacit knowledge;

- particularly, in this chapter, items b) and c) - and on the competence for development which itself is connected to the andragogical assumptions (Fig. 3). The analysis of the shape of the competence for development in this chapter operates as a framework as well as a context for my conclusions drawn from phenomenological description of the perceptions, and, derived from a grounded theory approach, implications of the perceptions, of this group of their development from and after the point of qualification. That analysis and those conclusions lead, then, into concluding comments setting out consequences for the policy and practice of the profession as a whole.

13.2. *Significance, constraints and limitations of this study; suggestions for further studies*

Comparisons with the LINEA study demonstrate both similarities and distinctions between the situation of the newly qualified litigation solicitor and those of three other professions. Whilst this study was not intended to repeat the LINEA investigation, the question that it does pose: how do young lawyers think that they get from the point of ostensible qualification to the point they are eligible to be unleashed on the general public with no supervision (2.6) is, particularly in the current political context where the status of the profession, its competence and its need to compete against others providing similar services, critical. Whilst I am able to build on and refer to other studies examining the role of the academic and vocational stages and the training contract as preparation for qualification, (Boon and Whyte, 2002 and 2007; Fancourt, 2004, Boon, 2005), in considering learning *forward* from that point in the early stages of the solicitor's career, the fact that I have had to draw on studies in other disciplines, demonstrates very simply the significance of this study as a supplement to what is already known. It sought to ask a very straightforward question, but one that had apparently never before been asked of this group or indeed this profession and one that has demonstrated that, in the minds of a group of those embedded in it, that the final, crucial phase of professional development towards a point where their profession regards them as able to operate autonomously as sole practitioners (2.6) is, at present, *ad hoc*, inconsistent and contradictory and demands attention. The phenomenological approach described in Chapter 8 legitimates the description of those perceptions by this group but could usefully be supplemented by, for example, a triangulating study of the perceptions of 0-3 year PQE lawyers by others who interact with them: their colleagues, supervisors and clients.

The adoption of a phenomenological stance (8.3) permitted, in the first instance, an assumption that the perceptions of the interview group were valid; enhanced by an interview approach based on open questions and establishment of rapport, both personally and professionally, allowing - in a way that observation or hypothetical problem-solving, for example would not – the interviewee to select examples of importance to him or her so as to demonstrate those perceptions and to explore the emotional context that Illeris (*op. cit.*) and Boud *et al* (*op. cit.*) regard as critical. The face to face interview (8.6) , in addition, permitted follow up questions and clarification to take place both on the part of the interviewer and the interviewee. Retaining that

focus on the interviewee as core to the study, the use of grounded theory techniques (8.4) enabled me to work with *only* what was in the data set but also to explore – by working until codes were saturated – *everything* that was in the data set, enabling new conclusions (the lack of apprentice piece, for example: 12.3.2) and comparisons (the replacement of advocacy with the delivery of seminars: 12.5.4.1) to be made.

I have addressed limitations of the methodological approach and method and of the researcher as "insider" in Chapters 8 and 9. Additional constraints on this study, derived from its size and its approach, lead themselves to suggestions for further studies. Investigations by non-insiders prepared to question assumptions about practice that I took for granted, might uncover further horizontal layers of uncertainty about development. Research that explicitly examines – as I did not – evaluations against type of firm, of specialist field of practice or against gender – might uncover vertical stratifications of difference or similarity in perceptions of development. Longitudinal studies could explore differences in those perceptions over time and, shifting to a different methodology, action research could evaluate the effect on them of different types of intervention. Such interventions might include not only the specific lists of desiderata suggested by interviewees (13.5.1, Appendix XIV) and attempts to distil lists of expert rules for application by beginners, but also, as I suggest at 13.6.1 and 13.9, a deliberate structure promoting not only reflection but forward-looking and critical reflection focussed on future practice.

Clearly there will be considerable scope to explore any changed effect of the proposed replacement of the training contract by the outcomes-based period of work-based learning on perceptions at the point of and after qualification. Finally, the voice of those at the three year watershed could legitimately be heard in a parallel phenomenological investigation of their own perceptions of confidence, competence and deficits at the point when the profession decrees that they are ready to fly solo.

13.3. *Contextualisation: civil litigation*

It should not be overlooked that this study was consciously focussed around practitioners in civil litigation only, a context explored in Chapter 3. This of itself has introduced some variables which may not be present for – and therefore could be investigated in – other fields of legal practice. The civil litigation context, rewarding pessimism, frequently adversarial and a distress purchase for clients (2.8.3) may create a particular emotional context. A lack of large transaction teams (7.2.1), the presence

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of a hostile opponent and the need to use procedures tactically may increase the significance of evaluation of variables and implications as well as the need for flexibility. The presence of the opponent changes the implications of actions from case to case and may make circumstances in which the desired repetition perceived by interviewees as promoting development (12.3.3.2) is present difficult to identify. Changes in the law, particularly case law, render that need for flexibility one of being up to date with the law (by comparison procedures in, say, conveyancing may remain static for longer periods of time) (13.5.4). That greater need for response to changes in the law and for use of tactics (12.5.3), however, increases the scope for creativity. The final irony is, of course that in the current climate, the practice of civil litigation is emerging from the state of flux I described at 1.3 as a practice of *avoiding* litigation, either altogether (by use of, for example, mediation: 3.3, 3.7.3.1, 12.5.2) or at least the "whole transaction" to trial which the young lawyers saw as an important contributor to their own development (12.3.2). The ability to cope with further change may be seen as concomitant with the overall responsibilities of a professional (3.7: Cheetham and Chivers: 1996:21). The perceptions of a group of young lawyers in a different field of practice might, then, hold different emphases from those of the litigators whilst raising entirely new factors invisible in this study.

Having set the scene, I move on to exploration of the competence for development as manifested in the data.

13.4. *Self knowledge (category 1 of the competence for development)*

Whilst the individual categories of the competence for development may tend to shade into each other, the principal aspect of "self-knowledge" is an understanding of one's strengths and weaknesses. This engages the andragogical assumption of "self-concept" as well as those related to prior experience and consequent motivation to learn. Those who participated in the study demonstrated a generally positive motivation towards learning generally (shown in results coded under "attitude/orientation to learning/development"), an optimism extending, perhaps, to their willingness to participate in the first place. As discussed at 10.3.3.3 and 10.3.3.4, the most significant factors perceived by individuals about qualification were depressions in confidence and feelings of competence proceeding from a mismatch between the training contract experience and the expectations arising on qualification. Such mismatches could be objectively slight, but this emotional response which I have embodied in the concept of

"professional adolescence", not necessarily recognised in Knowles' work (1994, 1998), might, as with the LINEA nurses (Miller and Blackman, 2002), result in an inappropriate self-concept, where individuals' understanding of the level of competence now expected of them could be inflated (at least in the comparatively supportive firms in which most of the interviewees were working), although expectations of colleagues and clients were perceived to shift substantially simply by reason of the individual's having passed the threshold of qualification. This question also confuses individuals' self-concept; in a hierarchical profession, a status has been acquired, even if the individual perceives him- or herself not yet to be competent in it. The deficit, then, is, except perhaps for those such as Madrid and Vienna, with both positive training contract experiences and, it has to be said, robust and extrovert personalities, seen not only as one of competence in tasks to be performed, but also as an emotional deficit in confidence. The nature of this professional adolescence, in terms of its implications for the profession, is discussed further at 13.8.

It is not surprising, then, that what is perceived in those of 3 years PQE is comparatively unsophisticated: an achievement of the confidence (and implicitly bottom-line competence) that the perceiver lacks, achieved, it is assumed, largely by repetition leading to tacit knowledge. If individuals at this stage do not necessarily perceive their seniors as using more elaborate forms of analysis or expert heuristics, or their ability to do so is occluded by immediate issues of confidence, then one might conclude that they are not yet ready to learn such techniques (assuming, of course, that they are susceptible of being passed on by others in any event). I suggest that the emotional issues and remedying of the apparent deficit in competence are more significant for individuals at this stage although there is, of course, some evidence of individuals' understanding that there is significance in having seen the whole of a transaction and that variables and implications are relevant to an enhanced performance. It is notable, however, that individuals clearly perceive their seniors differently when it comes to their own learning strategy, particularly in the more obvious and familiar classroom context provided by CPD: by comparison, perhaps, with those who have an urgent need to remedy the deficit in their prior experience, the more senior lawyers' own motivation to learn appears depressed. The implications of this perception for the profession and its attitude towards those at the watershed, is discussed further at 13.8 and 13.9.

13.5. Strategies (category 2a of the competence for development)

It is that deficit and those emotional responses, then, which seem to inform the individuals' perceptions of what it is that they need to know and their readiness to learn it. This aspect of the competence for development involves not only, in the words of the proposed work based learning outcomes, "identification of areas where skills and knowledge can be improved, and plan and effect those improvements" but also of "keeping up to date" (Appendix II). The separation between skills and updating is present in individuals' conceptions, stratified into conceptions of skills as being learned (only) in the workplace (and to a large extent unconsciously) and updating being the role of (conscious) CPD. One can see, as a result, why conflation of the two by use of complex simulation (workplace-like) in a classroom (CPD-like) might be resisted.

13.5.1 The code families "Needs" and "Evaluation/Meaning"

Discussion in chapters 11 and 12, then, has identified a number of desiderata, broadly outlined in the code family "needs", described as influencing individuals' personal development towards the perceived 3 year PQE characteristics.
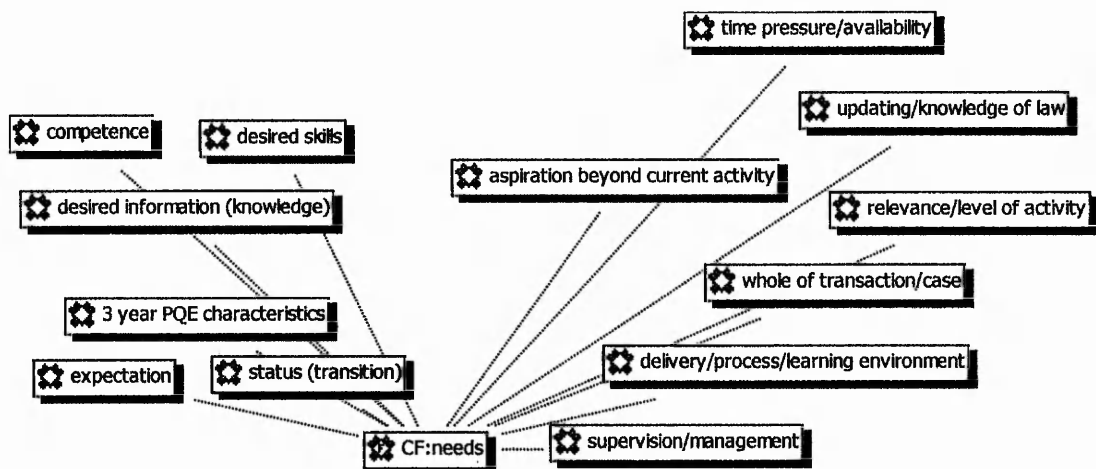

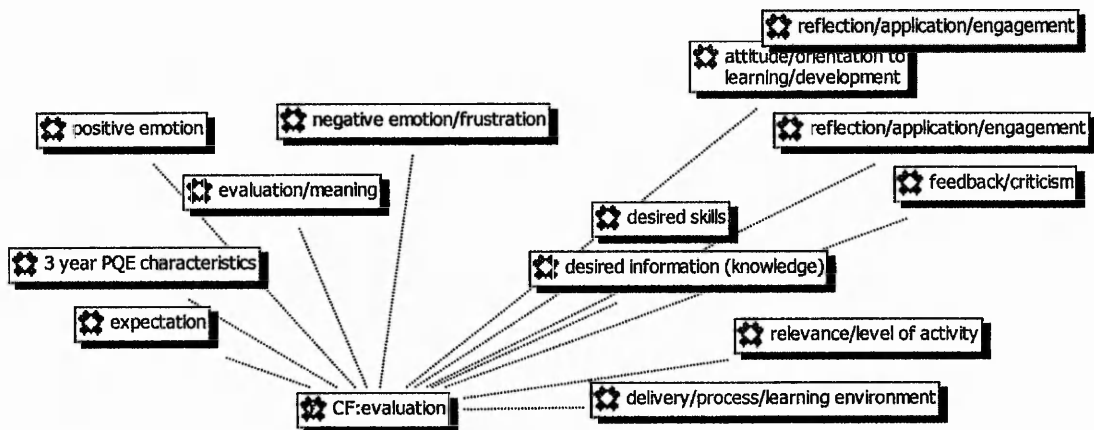**Figure 40 The code family "needs"**

Figure 41 The code family "evaluation/meaning"

These, derived also from examination of the code family "evaluation/meaning", can be divided into:

a) Management of the period of transition with appropriate, accessible support and supervision (12.3.4, 12.6) (which both provides a framework but also permits development of some autonomy) recognising the effect of the training contract on feelings of confidence and competence and its failure in many cases to provide a complete "apprenticeship", resulting in an immediate perceived deficit (10.3.3.2, 10.3.3.3., 10.3.3.4).

b) Desired knowledge: principally acquired by updating at an appropriate level, with a comparatively tightly defined content related to immediate concerns (including remedying of that deficit), within an appropriate learning environment and without undue pressure of time (11.3, 11.4).

c) Desired skills in telephone calls (12.4.2); meetings (12.4.3); networking and marketing (12.4.4) and tactics (12.5.3).

d) The acquisitions of strategies to remedy the deficit and to meet new expectations in terms of responsibility, marketing and client contact (12.4.4).

e) The significance of conducting the whole of a transaction and repetition of activity (leading to increased tacit knowledge) as learning-rich experiences (12.3.2).
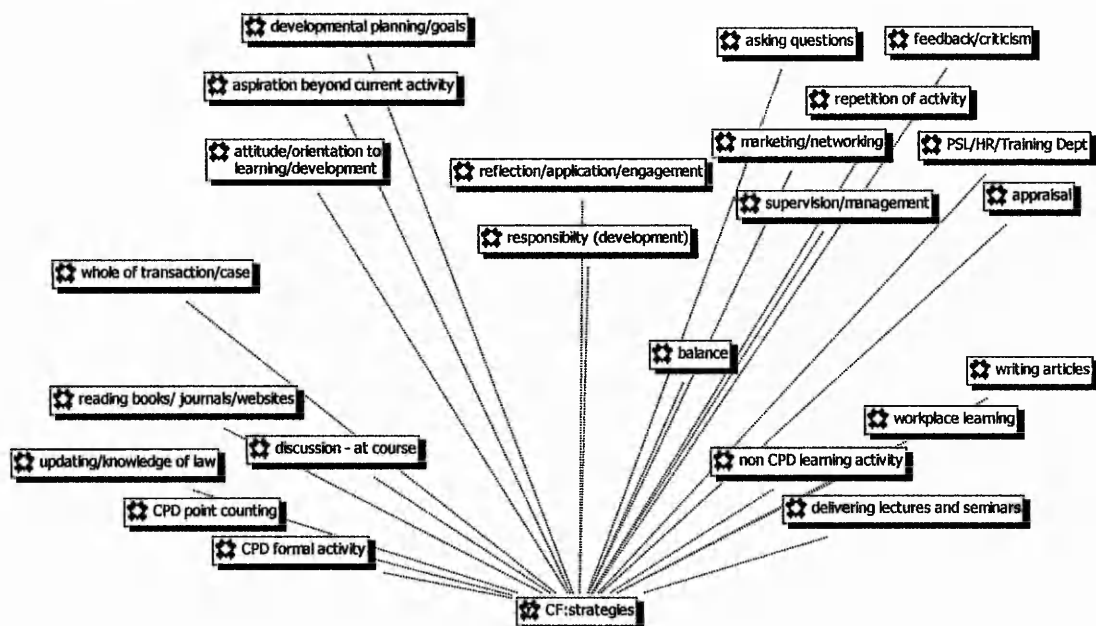
13.5.2 The code family "Strategies"

Figure 42 The code family "strategies"

The code family "strategies" then, ties together the aspects of CPD (Chapter 11) and non-CPD activity (Chapter 12) already discussed together, centring around the codes in the centre and top left of the diagram which remain to be considered. The main aspects of strategy, then, involve the codes "developmental planning/goals" and "responsibility (development)", the latter evaluating the degree of andragogical self-direction which individuals might consider it necessary to possess at this stage. As for both CPD (11.2.2) and workplace (12.6), the influence of the employer is substantial in both discussions.

13.5.3 Developmental planning/goals

The second part of the questionnaire was designed to obtain a preliminary view about the extent to which explicit developmental planning was engaged in or expected of interviewees and, as a second limb to question 3 of the interview, I also sought to find out from the stage 2 interviewees the extent to which they were aware of the planning support suggested (then) by the Law Society (as opposed to planning mechanisms used within their own organisations or using no analysis at all). The Law Society SWOT analysis was almost entirely unknown to the interview group, although some had been exposed to similar mechanisms designed to assist in developmental needs analysis:

> I didn't know it was on the Law Society website but we have done one of
> those internally.
> Berlin, 2 months PQE, para 24

The conventional goal of "making partner", at the other end of the scale, was a factor for some but by no means all interviewees:

> I always think that the career path of lawyers is very strange because you're
> just an associate forever then, OK you become a partner or you decide you
> don't want to do it and you do something else, basically. You know, when
> you're not chosen or whatever.
> Kyoto, 2 years PQE, para 10

A similar lack of consistency was shown in terms of other goals and, in particular, whether individuals had identifiable strategies to achieve them. Whilst one might question which was cause and which effect, both Madrid and Vienna, (the latter having changed firms on qualification to further his/her own objectives and both of whom had scored highly for pre-qualification experience and confidence on qualification) had both very specific goals and strategies to achieve them. Vienna was, perhaps helped by the conventionality of his/her objectives:

> And so, really, I feel I've, right from the outset, I've been relatively ambitious
> in terms of what I want to achieve, and how I want to achieve it and how
> quickly I want to achieve it. ...
> And then I think obviously after that, actually, what then happened was for
> me, it was more about "Right, I want to specialise more, I think that's the way
> that one should go, I don't want to be left as a general litigator". I mean we
> were obviously doing commercial litigation, which is, obviously, a recognised
> practice area, but I decided, you know, I think niche was the way to go and
> [second field] was the way to go. So that was kind of the next focus for me:
> "Right, OK you're qualified now, comfortable as a solicitor" so the
> opportunity was presented to me "So let's move that forward". So, that was
> the next step to take. And it's actually, probably only been far more recently
> that all of these other things have started to come into the equation in terms of
> perhaps slightly more of a focus on "Right, I want to, now the next step is
> senior solicitor". So I suppose I very easily, I fitted the mould in the sense
> that, you know: trainee, qualified, specialised, senior, partner. Which I
> suppose *is* the mould and perhaps I'd like to think I'm slightly, yeah, it's as
> though I've sort of got on the treadmill and just carried on without really
> thinking about it. But in that regard I suppose career development for me is
> pretty clear-cut. That's what I'm going to do.
> Vienna, 2 ½ years PQE, para 36

Not all felt able to articulate developmental plans at all, alternatively they expressed a conscious view (rather like Rogers' (2003) deliberately dependent students) that it was too early to do so:

... I think, when you first qualify it's very difficult because it's all so new, it's very different. You know I think that, to be honest, people who say they do have a concrete plan, I think that's a bit false anyway because until you've done your first year effectively when you actually know what it's all about. ... I mean obviously, the ideal is I want to work hard and I want to learn. In my own particular situation, it was I want to find out what on *earth* this is all about because I have no idea.

So, I mean, there's the obvious "I want to be a partner in, you know, X many years' time" but that's a very, this is a very far-off objective and I don't really see as a lawyer what kind of objective you can have. I mean apart from the specific: "I want to be on the Law Society Council" or something like that. I know that I want to get more involved in the world of [field] litigation and become, you know, a "name" in that field but I'm 2 ½ years qualified, so at the moment it's just completely wildest dreams but that's very [much in the future?] which, I'd imagine, is pretty similar to most people, if they're taking it seriously.
Nairobi, 2 ½ years PQE, paras 9, 10, 12

The interaction between individuals and their employers in controlling or defining CPD and other learning activity, including defining whether aspirational activity was desirable, has been drawn together to a large extent at 12.6. Similarly (see 7.2.3), some interviewees were not yet able to separate or articulate personal development plans from the plans their employer might have for them:

[a]t the start of qualifying I didn't have any sort of training-type aspects in mind at all. The only thing that I was aware of is that [firm] has a policy where all their litigators will gain [specialist qualification], so I knew I would be doing that, but I didn't really have any other plans on training or what I might need.
Q Has that changed?
A Yes and no, I suppose in that after - I don't know if it's a year - we have a meeting sort of tied in with our appraisals. We have a meeting with someone from the [relevant] department and they go through what we have done in the last year and any requirements that we have to do within the first three years or something, and schedules us in for those sessions.
Toronto, 18 months PQE, paras 17-20

Where personal goals were expressed, as with some of the material transmitted in theoretical form in CPD activity, there might be problems in implementation:

But I think, but I've certainly got ideas in my mind of where I want to go but no real plan of how to get there. ...
Berlin, 2 months PQE, para 19

Perhaps consistently with the comparatively depressed personal feelings of competence common on qualification and for a period thereafter, plans, where they existed, tended to focus, rather than on achievement of a particular status within the firm, on achieving a level of competence either generally:

> ... I think my primary sort of aim at that point on quite a low key level was to
> be involved in some high quality litigation - I also do a fair bit of financial
> services - and I wanted to really push the whole court experience, going to
> court and build on my advocacy skills as well. So that really my sort of
> primary goal at that stage.
> Q   Is that a goal you still have or are following through?
> A   Yes, I think it is actually.
> Delhi, 2 ½ years PQE, paras 12-14

or, more frequently, within a defined (expert) domain, such definition at least
permitting the individual to seek to select experience fitting within the scope of that
domain:

> Q   And when you say you've got ideas about where you want to go, is this
> about types of work or types of transaction or ..?
> A   I think at the moment with work type I'm keeping a reasonably open
> mind because I would like to have a specialism. I would like to have an area
> where I do feel I've got expertise in that particular area within our broader
> practice area. But at the moment I don't know what that is.
> Berlin, 2 months PQE, para 21

> Yes. In terms of specialisation I had a very clear idea of where I wanted to
> go. I wanted to do [field] work. I wanted to do international work and I
> wanted to do arbitration and alternative dispute resolution as well as pure
> litigation. So, yeah, I think I've got a very clear idea of where I want to go in
> terms of professional development.
> Q   And are there particular steps that you're taking in order to carry that out
> or is that too early?
> A   [pause] There are insofar as I'm making it known to the people I work
> with what type of work I want and making sure that I work on those cases that
> I want. And also in terms of my own contacts I'm making sure that I maintain
> in contact in the sectors that I want to continue working in.
> Paris, 1 year PQE, paras 20-22

An alternative approach was, rather than defining goals without, perhaps a clear means
of achieving them, to concentrate on the process of learning, which might be expressed
as a desire simply to accumulate "experience" with its connotations of valuable
repetition:

> Goals that I have? I think, I don't want to be unrealistic I think just the more
> cases and experience that I get, the more scenarios that I come up with, the
> more research that I have to do. I'm getting to the stage where the same
> principles are coming round again and again, ...
> And goals: I just want to be as realistic as possible, just take things, you
> know, one stage at a time really. Not be "Well, I'm only 1 year qualified!"
> but then at the same time not be "Well, I'm getting to know everything now"
> because I know that I don't. So it's, it is that in-between stage of, you are in
> limbo, aren't you, because you can't say "Oh, well I'm a trainee, I don't
> know". ... it's having the extra responsibility of having your own files, being

> expected to keep your target and all those other things that are at the back of
> your mind while you're trying to learn on the job as well.
> Oslo, 1 year PQE, para 19-20

A third approach was to focus on accumulation of knowledge (information), perhaps unconsciously replicating familiar techniques acquired during the academic stage of training:

> I think I first started off, I don't think I have a strategy, I think when I first, as
> I was coming to the end of my training contract I think - would you count
> knowhow as training, collation of knowhow? I collated all that together, made
> sure I had that stored in email folders or whatever, thought that was a good
> way of starting, had certain hard copy folders. In as far as training, I think
> really I hadn't thought about training events I was attending, about a
> programme for myself until I decided to take part in this survey, I really
> hadn't.
> Cairo, 4 months PQE, para 18

> And I suppose that's all more to do with personal development, whereas,
> initially, before I started really thinking about this interview, I thought of, oh,
> training I should do is more learning about law, or learning about an industry
> rather than sort of me-specific.
> Toronto, 18 months PQE, para 20

Allied to this was an opportunistic approach tied in some respects to CPD point counting (11.2.1, which could, less pejoratively, be taken as a very open approach to acquiring all information on offer prior to finalising any personal goals):

> ... I think the knowledge comes in depending on what you're working on,
> depending on what training matters are being offered to you through the firm.
> You know they offer external lectures as well but it's very much an
> opportunist approach as it were, there hasn't been any real plan there.
> Cairo, 4 months PQE, para 18

> But, so, yes, I mean I could probably actually think about it more in advance
> and tailor it to be more choosy about which I go to. I have become more
> choosy because we get so many of these talks coming round and also for that
> first 6 months it's "Oh, my goodness, I *have* to go to them all; I have to be
> seen to go to all of them"; and now I really do just pick up industry-specific
> ones because that's an area that I really don't feel I know anything about, or
> know a little bit but not really; and then the know-how meetings which are
> really useful because they're specific to our department.
> Toronto, 18 months PQE, para 55

The results, then, occupy a spectrum which, despite the ostensible priority of CPD activity as a familiar process of learning which can be planned and is defined, extends albeit with less clarity, into learning in the workplace:

a)   no developmental goals at this stage;

b)   opportunistic use of CPD;

c)   developmental goals based on achievement of competence with plans based on acquisition of good *quality* "experience"; and

d)   developmental goals based on achievement of competence with plans based on selection of *scope* of work tasks.

Those individuals who were able to articulate more personal and specific goals seemed more likely to be taking steps outside the CPD system to do so such as asking to be involved in certain kinds of work or, in Vienna's case, changing firm.   The question then arises, particularly in the context of the competence for development, with its emphasis on autonomy and personal responsibility, exactly how this responsibility might manifest itself, particularly for those working in organisations with a strong internal training department (11.2.2).

13.5.4 Responsibility (development)

A spectrum was shown with, at one extreme, those who saw and took a large proportion of the responsibility for their own development, with personally set goals as a deliberate strategy:

> But that's kind of like, I don't know, all through while you're training you always have markers, don't you? Where you've achieved something. Then all of a sudden you qualify and it's kind of "Oh, right. Now what?" So I've found I've set myself markers: quite tough ones, really. I'd like to be an associate after two years, but partnership, yeah, I don't know ... yeah, I see myself doing that. I don't know: going about doing it is a different matter.
> Q   Do you have sort of particular steps you take to try and achieve your marker?
> A   Well here it's not that ... I know other firms are quite clearly defined as to what the steps are to achieve it. So I kind of go along with what I've learned from other firms of how to achieve those. ... So those are all kind of the goals I've set myself. I want to be doing this many hours by this stage and I've brought in some new work, so I think I'm on the right track. Certainly picking new areas of work to do for existing clients.
> Madrid, 1 year PQE, paras 18-20

Whilst Madrid is an unusual example, others were able to exercise self-direction and responsibility in the more easily defined and controlled updating arena:

> Q   ... are there any other things that are going on, or activities you get involved with or materials you see that you think are, that positively contribute to your professional development that you wouldn't put the label "CPD" on?
> A   I think reading journals like the *Solicitors' Journal*, the *New Law Journal*, and various other ones that get circulated. I wouldn't really, when I think of

CPD, I'm thinking more of courses or internal updates but I think that the journals are really helpful and I try and make sure that I do have time to read those. I mean, I'm not hugely busy at the moment so that helps; that I have got the time to allocate to it at the moment, but it's really important.
Berlin, 2 months PQE, paras 27-28

The middle ground encompassed those who were making use of the employer's mechanisms and opportunities to achieve their own personal goals either positively:

... I've found that they listened as well when I've said that I want to take on a case that's going to be sort of High Court litigation as opposed to another [field] investigation. They listen to me and I've been found things that do interest me. ... identified that as an area I was particularly interested in and I was able to find myself a course, go on that, I've now given a talk to the rest of the department on [field] generally, having done a few cases now, and I find that to be really useful.
Delhi, 2 ½ years PQE, para 38

or were able to identify the absence of such mechanisms:

... expectations change: your own and other people's. But you're not given the training - but I really would reiterate that it isn't the legal training because that comes with experience and in theory we've got that knowledge: in theory! - it is the practical training, and I think there's loads of different areas that ...
Berlin, 2 months PQE, para 45

The other end of the spectrum was represented by those who were, at this early stage at least, essentially dependent on internal mechanisms both for goal-setting as described at 13.5.3, and for the (external) process by which they might achieve such goals:

I think *I* view myself as being particularly lucky being at this firm, that a lot of the training that is organised and a lot of the information that the professional support lawyer provides, means that I'm not having to think about that a lot myself in order to, if you like, make any kind of progress. ...
... they're keen for us to have regular chats with objectives to work out how I'm going to get better and achieve those objectives. ... Which, you know, is good, because I understand that at other firms the appraisal system isn't that much at that particular level; they're not really done as frequently: it's quite good to have that kind of, you know, every 6 months or so, talking with a partner or whoever.
Oslo, 1 year PQE, paras 18, 22

I think maybe when the call went round or the request that can we have contract law revision sessions, I think it might have been the juniors wanting that type of overview. I mean not that, you know, we're completely clueless and can't remember it but, just a sort of "Oh, I just remember this point" or "I just remember that point". Maybe, that's me anyway, maybe if I was really worried I could buy a contract book and flick through it as bedtime reading, although I don't particularly want to.
Toronto, 18 months PQE, para 65

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The significance of the employer's contribution to development – either by way of CPD or in the workplace – could, however, be so great as to cause doubt whether self-direction and personal responsibility for development was expected at all:

> ... you need to know about what you're expected, I think, reminded what you're expected to do in terms of billing, what your responsibilities are and to get some overview of what you're expected to know and how you go about, you know, in terms of practice development *and professional development.* Whether you're expected to take the initiative, ...
> Paris, 1 year PQE, para 46 [my italics]

> I know you are obviously supposed to be personally responsible - I don't know how much of that is the case or whether firms help you a bit by reminding you!
> Madrid, 1 year PQE, para 30

One interviewee justified dependence on such a system on the basis that he or she would not necessarily be in a position to identify matters that needed attention:

> ... it was then necessary, if you like, for someone who had that much more experience than me to bring to my attention that these specific areas needed addressing. ..." for them to actually to have come to me and said "Well, we think these particular aspects of the job, you know, need improvement and this is how we think you're going to, we'll assist you in doing that".
> Oslo, 1 year PQE, para 31

The interviewee who had been the subject of a personal coaching experience, however, had been able to use it not only to articulate personal objectives but also to work, with the coach, on processes and strategies designed to achieve them

> And then I tied into that, well, I want to be able to feel more comfortable dealing with people generally in awkward situations. So that was all joined into one really. And I found it was effective because it was focussed exactly on the areas that I felt I needed and it was only me, so it was any questions I had, things I wanted to concentrate on. We could focus directly in on those and there were lots of different aspects to it.
> Toronto, 18 months PQE, para 37

Others, however, and particularly the peculiarly confident and self-directed Madrid and Vienna were able to express a recognition that ultimate responsibility rested with them:

> I think here unless you volunteer yourself for things, if you volunteer for things then you can learn lots, develop a lot. If you just hide away in your corner, nobody will bother you or insist you go on a course or insist you turn up to *any*thing really. ...If you have a weak area nobody's ever going to come: I suppose because you work on your own. Nobody's ever going to know really, are they? [Maybe not] That worries me, I suppose, and certainly

> areas that I could be better, I've not done anything to make myself better at them.
> Madrid, 1 year PQE, paras 25, 74

and the fact that learning, at least in the form of updating, was ongoing was – at least within the group of those who offered themselves for interview – a given:

> I perceive it as meaning that one should be very aware of the fact that, once you've qualified as a solicitor, that should not be the end of the learning process. It shouldn't be the end of your training. One, obviously, is going to gain experience through being a litigator, being a solicitor, post-qualification. But, you know, the Law Society deem it appropriate to impose this on us, to make sure that we continue to learn; continue to be aware of developments in the law; that it's not a static subject, it's constantly changing, evolving; there are new Acts; there are new procedures; there are new facets to it and that it's very important that as a profession, in best serving our clients, it's important that you obviously do continue to learn, to take that seriously.
> Vienna, 2 ½ years PQE, para 46

In the context, then, of the possibility of extreme levels of support or lack of support by the employer, category 2a of the competence for development manifests, where it manifests at all, in a variety of ways. Because CPD updating is a known factor; bears considerable relationship to strategies learned at the academic stage (reading books and articles, use of law library, taking notes in a classroom) and is more obvious than other forms of learning, individuals may find it easier to adopt an explicit strategy for, in the words of the work-based learning outcomes "keep[ing] up-to-date with changes in law and practice relevant to his or her work". I have already noted at 11.3 and 12.3. an apparent relaxation, for some, in very constrained definitions of what is learned from CPD at around the two year PQE point. This extends to a similar approach to non-CPD activity (12.3.2) and a change in strategy for asking questions (12.6.3.3).

Ability to, in the words of the day one outcomes, "develop strategies to enhance professional performance" in the medium or long term outside CPD and updating beyond selection of a favoured domain or the unconscious process of gaining "experience" through repetition is more difficult without mentoring or coaching help. Again, the immediate need to remedy any deficit on qualification may preclude the individual adopting more elaborate long term plans at this stage. The individual may be in a position to, as the work-based learning outcomes (Appendix II) put it "identify areas where skills and knowledge can be improved" (although one of the examples given above puts even this in doubt) but struggle, without aid, to "plan and effect those improvements".

13.6.   Engagement with experience (category 2b of the competence for development)

Although the acquisition of "experience" is perceived as important, aspects of an orientation to learning by way of deliberate engagement with experience, by way of interactive activity during CPD sessions; asking questions and use of slight seniors, have already emerged from the data. Again, there seemed to be a shift in approach to asking questions: from seeking an answer to seeking a range of possible solutions, at about the two year PQE point.   Such engagement also engages the andragogical assumptions of self-direction and a deliberate orientation to experience which, in this context, involves something more than unconscious acquisitional learning leading to tacit knowledge. At 7.6, I explored concepts of reflection, now embedded in the work-based learning outcomes as an ability to "reflect on experiences and mistakes so as to improve future performance", a formulation which encompasses not only the emotional debrief and evaluative reflection described at 7.6.2 but also suggests the forward-looking critical reflection leading to change embodied in the Kolb experiential learning sequence (Fig. 7).

13.6.1 Reflection/application/engagement: the place and shape of reflective learning in the interview group

It was a concomitant of the interviewees' general feelings of lack of confidence and competence being that they often assumed that it would be mistakes that would be made and learned from (in preference to positive experiences):

> So, say, for example, I've used a particular phrase or I've set something out in
> a particular way that they say "Well, maybe you should word that differently
> or set it out this way" and I will then learn from that and I won't make the
> same mistake again.
> Oslo, 1 year PQE, para 45

The painful but ultimately (unexpectedly) positive experience could also be a trigger for transferable learning:

> Yes, that was really one of the best things I've done this year, I think, in terms
> of learning something new really well.
> Q   And you're putting all of that - maybe not the [topic] but a lot of the
> things from that into practice in terms of this other lecture you've got to do?
> A   Yeah, I'm not so worried about that at all now. Perhaps I should be
> because they might be a bit more demanding! Than a roomful of [topic
> professionals] just interested in the lunch! [Laughs] But, yeah, certainly I'm

> not so worried at all about it now. I've just got to pick what I'm going to speak about. Read about it and practise and practise and practise. But coming out the other side, it'll be, I know I will have gained from doing it. So I don't think I'll mind signing myself up to a few more of those.
> Madrid, 1 year PQE, paras 53-55

Nevertheless, the immediate emotional context (inherent in the feelings of lack of confidence held by many of the interviewee group) had to be allowed to dissipate before a more objective perspective, from which learning could be derived, could emerge, a result consistent with Illeris' (2004) view of the emotional aspect as necessarily part of the model of development and with Boud's (1985) focus on the emotional aspects of reflective learning:

> But I think with hindsight on a lot of these things that have happened, it is the experience that you've gained since then that has maybe made you think "Well that's all part of the learning process" and even though that wasn't a particularly nice experience, it's almost like "Well at least I've been through that now, because I'll be prepared for it the next time". That's the way I look at it, anyway.
> Oslo, 1 year PQE, para 43

Objectivity unclouded by personal emotion or feelings of incompetence could, however, be gained more quickly by reflecting on the activities of colleagues (information about such activities being acquired by observation or "asking questions"):

> No I suppose just to emphasise that I feel I gain a lot more from just listening to other people and seeing how they react to situations, and thinking "Oh, that's a good phrase, I'll use that one!" or something. Just silly little things like that. They're necessary.
> Q   What kind of things do you find you are picking up? Techniques, or tactics...?
> A   Yeah, ways of dealing with people or, yeah, tactics because I initially, certainly when I started, I would see, well, this is the issue; but how do we want to play it, or maybe we want to phrase it this way because this is a slightly different impression we want to give out and that kind of thing, which I think you can only really learn on a bit by bit basis.
> Toronto, 18 months PQE, paras 28-30

If the missing "competence" on qualification was seen to be addressed by acquisition of "experience", it was, however, frequently the generic "confidence" that was identified as the outcome of the experience or of the reflection, particularly when, as I suggested at 7.6.2.3, the existence of an opportunity to apply in the future was uncertain:

Q   And are those things that you've been able to put into practice since or are you storing them up for the future?
A   No, because it was quite recently!
Q   OK. But one day?
A   Oh yeah, absolutely. I think I will be less nervous about delivering something like that in the future and have a better understanding of how to do it.
Paris, 1 year PQE, paras 37-40

I was worried that I was going to be embarrassed and it would be really awful and nobody would turn up and I'd be really criticised for the amount of effort it had taken for then zero results. So afterwards now I think it has just given me confidence I could do it again.
Madrid, 1 year PQE, para 57

If one considers the individuals in the interview group, as I speculated in Chapter 6, as exerting control over their environment by self-defining as not yet ready to be aspirational or to question their employer, remedying the deficit in confidence may be sufficient at this stage. Indeed, individuals often appeared to find it very difficult to identify specific learning outcomes other than this acquisition of confidence that could prospectively and possibly aspirationally be stored up for the future as critical reflection:

So, yeah, so that's certainly, immediately that's one that struck me as being a definite developmental tool.
Q   And that sounds as though you've been conscious of that all the way through.
A   Yeah, definitely, right from the outset. Right from the outset! Yeah, I knew that right from the outset, that it was going to be, it was likely to be demanding; clients are demanding; it was likely to run, to go the length. I can't categorically say that, but it had all of those hallmarks, I think. So, yeah, I knew from the outset. I knew that - it's not only with hindsight, I knew at the time - that it was going to be a massive learning vehicle. Definitely, so one could complete and say that, obviously, one learns from every single file that one deals with but; you know. ...
Vienna, 2 ½ years PQE, paras 61-63

Indeed, my attempts to drill down to any forward-looking results of reflection often required a follow up question:

Q   And was there anything from that that you are still using now or was it a good confidence-building thing at the time?
A   Yeah, I think it was a good confidence-building thing at the time and I have tried to bear it in mind. ...
Berlin, 2 months PQE, paras 38-39

Q   One question I'm quite interested in is: did you think of them as good learning experiences when you started or as they've been ongoing or might it be simply because I've asked you now that you're thinking "oh, that's good"?
A   No, I've always thought it was quite good experience, yeah.

which may itself have transmitted a leading assumption that forward-looking critical reflection was a desirable activity.

In fact, rather than exhibiting this critical forward-looking reflection, which assumes that the individual is able, after a single, emotionally charged experience, to filter what is important for a supposed similar future opportunity, to identify what needs to change and to identify steps to implement such steps; most individuals adopted the backward-reasoning attributed to novices in Chapter 6 and discussed at 7.6.2.3, recalling and reflecting on prior experience only *at the point that an opportunity for application subsequently arose* and when the two experiences could be compared so as to select from the original experience what was important or applicable to the new scenario:

> ... when that situation comes up again you can actually look back to the previous time that it happened and feel more confident to know what to do.
> ...
> Rio, 3 months PQE, para 12

> And, certainly, you take that forward with you, even subconsciously, I think, because sometimes the next time - it might be ten years - but the next time that a similar set of facts lands on your desk, you think "Ah, actually, yes, I remember dealing with something similar". I'm not saying that, you know, you always fall back just on what you did last time, but you certainly bring that with you and have that as part of your arsenal and part of your experience you can then give to the client and say "Well, look in similar situations in the past the following has happened so we should be thinking about this and that". So, yeah, I, no definitely, good or bad, I think, you take experiences with you and certainly would strive to learn from them, I think. Otherwise it would be an extremely foolish thing to do. I think you've got to learn from past experience.
> Vienna, 2 ½ years PQE, para 68

Toronto, however, had been coached into a more critically reflective attitude that might include forward-looking outcomes as well as the opportunity to put new learning into practice:

> Q   You clearly think that was quite useful. (Incredibly). Was that an analysis that you had at the time or is it thinking that afterwards?
> A   As part of the module we had to write a report afterwards and we chose - I think the whole thing lasted over four months or something - and we chose to have a midway meeting as well. So I guess I had the chance to think on it then as well, but I mean, even if I hadn't analysed it was the fact that from caring, or not caring in a sense, but not thinking it was up to me, thinking of that side of work. Just a complete mental switch really.
> Q   I can see that. Have you been able to put it into practice?
> A   Yeah, ...

Vienna, with the advantage of an initially higher level of confidence than some of the others and also at what is becoming the significant 2 year PQE point, even articulated a classic, forward-reasoning, conception of a reflective process as well as the backward-reasoning already identified, without apparently relying on such external support:

> I think that's got to be a healthy way of looking at it, to say "What can we take from the file?"; "What did we learn from it?"; "What can we put it back in the future?"; "How might we do things differently?" …
> But yeah, I at all times, I think, I reflect on matters and think "OK, so if this happened that time, would I have done it any differently? If I would have done it differently; how would I have done it differently?" …
> Vienna, 2 ½ years PQE, paras 63, 68

There are, consequently significant implications here for the way in which one engages with the newly qualified when working with them on reflection. Clearly (see Boud, Keogh and Walker, 1985) the emotional debrief is important, as is seeking to remedy the confidence deficit. Focussed reflection, because it is focused and, by definition, on matters of significance (Mezirow, 1990; Moon, 2004), is, I suggest, a critical supplement to the development of tacit understandings and schemata by virtue of exposure to experience alone. Not only can it address the emotional needs of the individual but has a role in:

a)   addressing specific sub-deficits derived from any mismatch for the individual between the training contract and the job on qualification;

b)   when guided into forward-looking (7.6.2.3) and critical reflection (7.6.2.1) (as opposed to simple and possibly static or even destructive evaluative reflection) take a conscious forward-focus which can lead to aspirational learning; and

c)   accommodating, validating and, in fact, encouraging, change (significant at the macro-level because of the state of flux of the field as well as at the micro-level for the individual).

Individuals at this stage need help, however, either to construct their reflection retrospectively only when there is an actual opportunity for application, or, in most cases, to be coached through identification of what is important as well as how it might be implemented, the generic "guidelines" suggested by Benner (*op cit*: 23) for the advanced beginner. A suitable person to assist in this way might, I suggest, be the approachable "slight senior" of three or so years' PQE: 13.9.

Double-loop learning

Critical reflection

Evaluative reflection

Asking questions (12.6.3.3) of "slight senior (12.6.3.4)

Use of appraisal and formal mentoring provided by employer (12.6.3.4; 12.6.3.5)

Deliberate practice (seeking feedback) (7.5; 12.6.3.4)

Preference for and participation in discussion in CPD activity (11.3.3)

Observation of seniors/working with seniors in zone of proximal development (7.5)

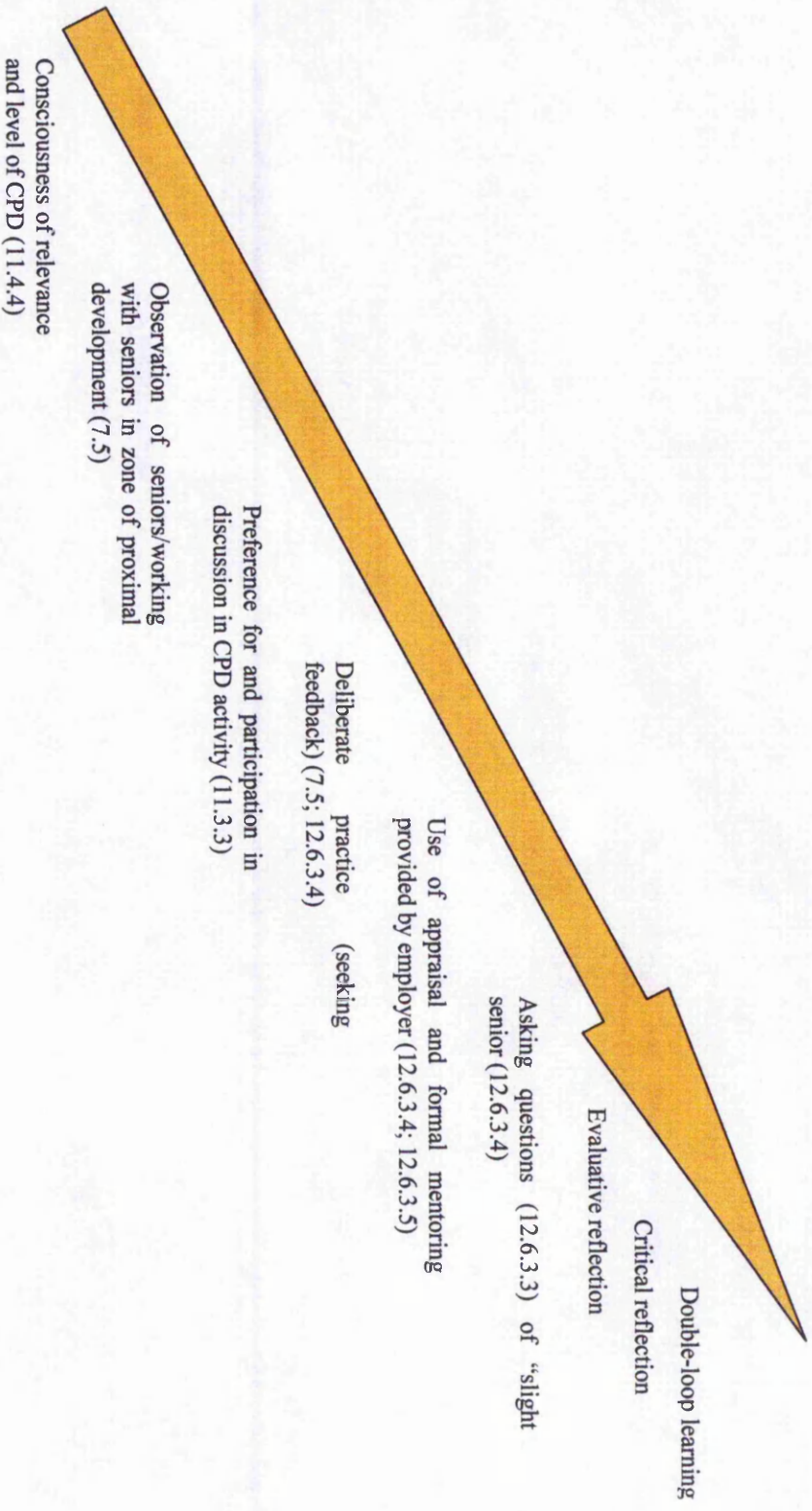Consciousness of relevance and level of CPD (11.4.4)

Figure 43 The spectrum of "engagement with experience"

13.7   Enhancement of existing activity and aspiration beyond current activity (category 3 of the competence for development)

The extent to which individuals within the target group do or are in a position to, engage in learning-rich activity focussed not on competence at the range of tasks they currently undertake, but in preparation for a new and more complex range of tasks further along the vector of development, has been a theme of this study.   Individuals, beginning from a position lacking in feelings of competence and confidence, might see their development solely in terms of survival or competence at current tasks and remedying any deficit arising from the training contract: as having enhancement of current competence as their priority.   It would not, then, be unreasonable if they resisted any attempt to have them think more aspirationally until that deficit had been filled.   I have already identified individuals such as Madrid, who, whether because of continuity between training contract and qualification job, personality or both, were able to engage in more aspirational activity as well as an apparent shift in orientation to learning occurring in others at around the two year PQE point (11.3, 12.3.2, 12.6.3.3).

There was evidence in the data of individuals' focus immediately upon qualification being to achieve a sensation of competence in tasks now expected of them:

> I don't quite know how you suddenly make yourself up to that standard within
> a couple of weeks or a couple of months.
> Berlin, 2 months PQE, para 10

However, because individuals had often described a lack of understanding of what was now expected of them, that is, precisely what "current activity" might entail, there could be some confusion about what might or might not be aspirational in any event. This is perhaps the case with those who, whilst interested in ADR as a long term specialisation or as part of the overall desirable repertoire, found themselves needing to know something about it because of the work expected of them on qualification. Aspiration could be expressed very generally as part of long term goals, without again this stage any clear analysis of what the aspiration might entail or how it might be achieved:

> I know that I want to get more involved in the world of [field] litigation and
> become, you know, a "name" in that field but I'm two and a half years
> qualified, so at the moment it's just completely wildest dreams but that's very
> [much in the future?] which, I'd imagine, is pretty similar to most people, if
> they're taking it seriously.

Individuals were more ready to consider information (*i.e.*, updates on the law) as possibly being of future relevance (but contrast the responses at 11.3.1.2 to CPD activity seen to be too advanced) than other skills or attributes:

> [n]ot yet, no, but I - the firm is very good at sending out newsletters around the departments, there's a … newsletter there's also a newsletter for each team and there have been various things in that and I've noted [inaudible] down and I'm going to look into that a bit more, I think it's something that could come up
> Q   So it's going to be relevant at some point?
> A   Yeah, it hasn't done so yet but it will be.
> Cairo, 4 months PQE, paras 33-35

although identification of possible future areas of work (that is, increasing of the scope of work) was also recognised, at least where it again involved acquisition of information:

> … I'm just coming into this area of work and this might be something that really takes off. So you start reading into that and learning about that and that could be an area that you know you really work on.
> Cairo, 4 months PQE, para 31

Madrid, who, as shown above, had good pre-qualification experience, strong feelings of confidence and competence on qualification and was able to articulate comparatively clear personal goals, was, however, at only one year post-qualification, engaging almost entirely in speculative, aspirational CPD activity, at least as far as new fields of activity were concerned, to the extent of having received a message from others than CPD was directed only at enhancement of existing practice and not aspiration to extend the scope

> Some people have said the way I do it, I do it's quite naughty actually. So I went on that three-day [second topic] law course which is, I'd never done anything to do with [second topic] law; so that isn't really development of existing skills, it's just going and getting loads of points in something brand new and I was told that was a bit not really what it was aimed for, CPD was meant to be developing things.
> Madrid, 1 year PQE, para 35

Whilst I have noted that some people at the two year PQE point took a more open approach to CPD activity and that others without specific long term goals used opportunistic CPD activity, it is also possible to treat a more-focussed approach to participation in CPD activity on the basis of immediate relevance less as a rejection of

speculative aspirational activity as mature focus on the job at hand or as part of a positive decision to aspire in a different direction:

> There are areas of [field] that I've barely touched and particularly things like [specialist area] because I've been very cautious about getting into them because they are particularly difficult when I have touched on them. And I had experience of others dabbling and getting their fingers burned, so I'm quite cautious about that. It's perhaps something I would like to do when I feel as though I've got myself well grounded in the more general areas; but I suppose that's what I'm thinking of.
> Sydney, 4 years PQE, para 22

One should, therefore, be careful to distinguish strategic aspirational activity from a more generic openness to all learning activity; simple lack of decisiveness or an eagerness to please.

Toronto, the participant in the coaching experience, having identified some tasks as potentially being of future relevance had adopted a strategy of working towards them in manageable steps, within the context of an organisational initiative and with considerable personal support:

> So, yeah, it's good and there have been changes and I'm glad I managed to make little changes now rather than suddenly finding I had to make a big leap
> ...
> Q   To do articles or marketing?
> A   Yeah. To suddenly be thinking "Oh God, it's expected of me that I should be doing this". Or thinking I want to be doing this because I want to be raising my individual profile but that's years down the line... [inaudible] Well, exactly, that's the thing really, my mental shift and it is good and there's some talks - some internally as well - we're trying to, the department's trying to raise its profile within the banking and corporate teams and [coach] then does quite a few talks to various teams "over the road", it's called, and there's a couple of other talks that [s/he]'s doing towards the end of the year which I'm going to be helping research and then present.
> Toronto, 18 months PQE, paras 43-45

whilst Vienna recognised the need to move into new fields of activity in a different sense, that of management of others, but again, with the employer's encouragement:

> ... we are very much encouraged to look at human resource management; all sorts of the other skills that come with it; I think eventually becoming a manager in the sense of, obviously, the partners manage this business. And again that is something really that should be taken as read; but we're encouraged very much to sort of continue development and training in that field.
> Vienna, 2 ½ years PQE, para 31

and was also the only interviewee specifically to address the question of increased complexity of new tasks as well as of their scope:

> [a]nd, I think, as you develop, you want to deal with more complex issues of law and of fact that are perhaps more high value. And that's something that, I think, has been very, very instrumental in my caseload, my development, my ability.
> Vienna, 2 ½ years PQE, para 56

Aspiration is, then, a difficult area. Insofar as it is present within the majority of the interview group, it is not fully formed outside the concept of storing up information or of moving into new areas of practice, *i.e.,* increasing the scope of or changing the domain without necessarily envisaging increased complexity of task. The differential between what most individuals feel competent and confident about at the point of qualification suggests that, except for those exceptionally well prepared for the status of qualification, aspirational activity in the sense of preparation for increased complexity of task and acquisition of a repertoire of multiple possible solutions, may be premature. As Vienna remarked, the newly qualified solicitor is in no position to grasp it, nor the need for it, at that point. The individual at the 3 year watershed may, however, be in a different position and it is this that I move on to discuss.

13.8. The period of professional adolescence; the 2 year and 3 year thresholds and their implications for reflective learning

I have used the phrase "professional adolescence" throughout to express some of the contradictions of the liminal phase commencing, I suggest, immediately after qualification and in particular the contradiction between the apparent status conferred by qualification and the feelings of confidence and competence expressed by those within it. How it manifests itself for the interview group in terms of their own self-knowledge is described in this chapter at 13.4 which also admits that some interviewees (Madrid and Vienna in particular) did not experience it or experience it to the same extent as their colleagues although aspects of it were shared by the LINEA nurses (Miller and Blackman, 2002). The utility of the neologism, I suggest, derives from its recognition that the transition to a fully effective solicitor cannot be assumed to be complete at qualification given the need to remedy the deficit of the training contract and simultaneously to take on new roles and expectations. Just as an adolescent is neither child nor fully adult (but might at different time exhibit attributes of either), the

0-3 year PQE solicitor may frequently occupy, I suggest, a similar stage (with the regression in performance and learning orientation seen in other fields (Boshuisen, *op.cit.*, 5.3.1.6, 6.2(5); 7.6.2.2; 10.3.3.6; 11.7) which demands not only the labelling that I have provided but consequent acknowledgement and appropriate support. The concept can clearly be extended at least to nurses and may therefore be of utility in the field of professional learning generally

One might ask, therefore, when the period comes to an end. It can be inferred from the fact that individuals are permitted to practise on their own account at 3 years' PQE (2.6) that the view of the profession, if it has one, is that it closes, for everyone, at that watershed and that is the threshold on which I chose to base this study. The interviewees not yet at that threshold perceived some elements of greater "maturity" in their more senior colleagues: a sense of confidence, of having mastered the routine (10.3.4) and of having had the opportunity for repetition and seeing transactions to completion that they themselves lacked. I have suggested that the three year point might represent proficiency on the Dreyfus scale (6.2(4)), which of itself assumes that, even if a degree of autonomy has been achieved, there is work to be done before expertise is attained.

In a learning context, I have detected some possible changes in approach representing a greater tolerance of ambiguity and "artistry" occurring around the two year point (11.3.1.1, 12.6.3.3) and, if this is the tipping point, there are serious implications for the deficit remedying education that might be appropriate before it and the consolidating and aspirational activity that might be provided at and after it. Further investigation on an action research basis could investigate whether dissemination of expert rules or work to convert retrospective and evaluative reflection into forward-looking and critical reflection (13.6.1, Fig 43) might accelerate the onset of this tipping point and the closure of the period of professional adolescence; an activity to which the "slight senior" of around 3 years' PQE might assist: 13.9. It should be of concern to the profession that such work could only realistically take place in conjunction with the remedying of the deficit between training contract and qualification has been addressed. It would not be unreasonable to expect a correlation between the time taken during the first three years to remedy the deficit from the training contract and the length of time taken thereafter to reach a stage which could be defined as "ready to practise solo", which might delay the real onset of benchmark for autonomy beyond the formal three year point.

13.9   Recommendations in respect of the 3 year watershed

Ultimately, a set of competences for the three year mark may be desirable. If nothing else, and in the light of the fear expressed in the preceding paragraph, some clarity would be achieved about what the profession has in mind beyond a notional period of exposure to practice as delineating a readiness for autonomous practice, even if this only represents Dreyfus proficiency. Clearly such competences would encompass those demanded at the point of qualification with appropriate extensions both as to quality and scope of performance (assuming that benchmarks are set – as they are not at present – for the day one or work-based learning outcomes).

One extension of scope would be into those activities such as marketing and networking perceived by their juniors as arising for the first time on qualification (an extension of group 4 of the work-based learning outcomes). Similarly one might expect recognition of the need to manage the whole of transactions and the "routine" of managing the file and perhaps also a small team, also perceived as a difference by their junior colleagues (an extension of groups 5 and 6 of the work-based learning outcomes). Although not necessarily perceived by their junior colleagues, one might expect Dreyfus proficiency and greater tolerance of ambiguity to be represented by enhanced quality of decision making and evaluation of variables (outcome 3.3 of the work based learning outcomes).

In terms of learning, however, and particularly as some of their junior colleagues perceived a depressed learning orientation in those at the watershed – consistent with technical specialism rather than expertise in the sense employed by Bereiter and Scardamalia (*op. cit.*), it might be necessary to reinforce the competence for development:

a)   at category 2a to be explicit about developmental planning (13.5.3) and personal responsibility for development (13.5.4);

b)   at category 2b, to define engagement with experience so as to encompass both forward-looking and critical reflection, of which these more senior lawyers might be expected to be more capable; and

c)   at category 3, to incorporate an expectation that aspirational learning is now appropriate to extend the scope as well as the quality of activity.

Further reinforcement might be desirable in respect of the commitment to the basic levels of keeping up to date which were a given for the juniors striving to remedy the

deficit of the training contract and to survive transition into the new field but which were perceived by some of them as less pronounced in their more "complacent" or "bored" seniors.

The profession might, as a commitment to address the current political need to demonstrate its own competence, actively recognise, for those of 3 years' PQE, a role as "slight senior". They could usefully act as participants in the engagement with experience of the professional adolescents, assisting them by answering questions, evaluating experiences and providing forward-looking, implementable steps by which they might improve, supplementing those aspects of the higher realms of the spectrum of engagement with experience (Fig 43) towards forward-looking and critical reflection, with which their juniors struggle (13.6.1); providing the mentoring and coaching help I described at 13.5.4.

13.10 Closing comments, implications for policy and practice

The perceptions of the route towards the profession's apparent watershed for autonomy held by participants in the study, then, proceeds from and exists within a state of ambiguity. The mixed messages provided by the academic stage are compounded by a training contract which operates by way of general socialisation but may achieve little more, at least for some. What has been achieved during the training contract may be an incomplete apprenticeship, resulting in a considerable deficit to be addressed at the point of qualification and transferability of what has been learned can be easily dislodged by a job on qualification which is perceived as different (even if that difference amounts to a change of side in the litigation). Whether the change to work-based learning, with its set of outcomes that acknowledge to some extent some of the activities (administration, billing and business context) that have been described as new expectations arising on qualification, will assist in reducing the deficit, remains to be seen. It is unlikely, however, that, in the current environment, litigation will ever again provide the small cases or "trainee files" that operated as the apprentice piece of the past. At present, however, the newly qualified litigator exists in a vacuum of uncertainty, despite having attained an ostensible status which is recognised by colleagues and clients in which feelings of competence and confidence are depressed but in which formal induction and assistance with transition may be more theoretical or *ad hoc* than actual. Nevertheless, as can be seen from Appendix V in which I seek to compare their position with the others in the LINEA study, this crisis of emotion,

identity and competence that I have described as professional adolescence is shared at least with the nurses who experience a similar sudden personal exposure to clients' and their problems and both to diagnosis (analysis) and treatment (problem-solving). That deficit infects all aspects of the individuals' approach to learning, particularly in constraining what it is perceived as necessary to learn and postponing the aspirational. The slight changes in strategy identified in some of those at the 2 year PQE point suggests that it may take as long as a further two years before that deficit is resolved.

CPD activity, sanctioned in both senses of the word, transmits a message about compliance rather than learning (see Madden and Mitchell, *op. cit.* in Chapter 4) although interviewees, familiar with the classroom, have distinct ideas about relevance, level, delivery and interactivity, even if they perceive CPD as being essentially about the acquisition of information rather than of skills and attitudes. A problem with CPD where it was not about updating was identification of the steps an individual would need to take to change: the completing arc of the Kolb cycle (Fig. 7).

Penetrating beneath the ostensible legitimacy of the CPD classroom, individuals recognise the workplace as being a more valuable learning environment although their model here is much less clear. The opportunity for repetition is valued, as is the opportunity to seek the whole of a transaction. Some unconventional activities, such as delivery of lectures, were filling a vacuum in the conventional activity still represented by the work-based learning and day one outcomes. The employer might be seen as supporting, defining or controlling goals and developmental activity as CPD or otherwise but appraisal, an environment in which, if carefully carried out, all aspects of the Kolb cycle can be addressed, was particularly valued. The one individual who had been provided with a coach had, similarly, been able to identify steps to take to implement change. On a less formal level, the form of engagement with experience represented by asking questions of slight seniors, was perceived as a valuable resource (even if one not explicitly recognised by the employer).

Individuals showed some recognition that it was important to recognise a wider range of variables, that the implications of decisions were important and that an expanded repertoire of solutions (particularly including ADR) were desirable but did not otherwise describe traits in others that could be identified as specific traits of expertise or expert algorithms. So, for example, although they recognised that there were benefits in accumulating a store of experience (the foundation for classic forward-reasoning and reflection) they did not describe others employing forward-reasoning or

attempts to provide them with expert checklists or to teach them forward reasoning techniques. Reflection often appeared as an emotional debrief or as evaluative reflection, whilst critical reflection (both forward-looking and as identifying manageable steps to implement change) appeared to need the assistance of a more senior colleague, coach or appraiser except in the case of those who possessed an unusual degree of personal confidence and understanding about the level of competence expected from them. The significance of forms of engagement with experience (shown as a spectrum at Fig. 43) is that they represent a means of adding to and enhancing the unconscious acquisitional learning represented by simple exposure to practice and repetitive activity within it. Individuals within the interview group, as mapped at Fig 43, were involved in activities such as asking questions which might be described as precursors to reflection in its purist, critical sense. The final steps of evaluative and critical reflection not only provide a vehicle for examination and sharing of practice but might also be conceived of as strategies which can be focussed (as Toronto's coach focussed on particular tasks and as discussed at 13.6.1), and, if focussed, deployed urgently to assist in remedying the deficit and hastening autonomy and the close of the period of professional adolescence.

I had intended this study to focus on learning after qualification. What has emerged, however, is the extent to which the inheritance of the training contract casts its shadow positively or negatively over the subsequent period. It may not be entirely possible to remedy the deficit in all cases: one can hardly prevent individuals changing firm on qualification, or demand that the training contract represent every specialised sub-field. Nevertheless, such mechanism as on-qualification induction; clarification by the employer what qualified status means; coaching, assisting with identification of stapes to implement change as well as the crucial repetition and the opportunity to see transactions to completion, may all serve to improve the experience.

In the final analysis, the importance of this study for the profession lies first in its having explored – from the perspective of those seeking to build on it *after* qualification as preparation for their *future* development towards a state of autonomy - of the extent of the effects, emotionally and professionally, of deficit between the training contract and the job on and after qualification.. This deficit contributes to and arguably exacerbates a state of inconsistency and confusion – a lack of continuum found by others to exist in the context of the LPC and the contribution of the training contract towards the point of qualification - which might, *pace* LINEA, be to some

extent inevitable in the first stages of a career but is particularly significant for the interview group. This study demonstrates that this lack of continuum continues to overshadow practice for, it would appear, at least the first two years after qualification. The profession might, therefore, be said to have regressed in the quality of its apprenticeship in Lave and Wenger's sense: the journeyman Mr Guppy, after all, in 1853 and without that three year period in limbo, clearly possessed subjective feelings of competence and confidence sufficient to allow him a considerable degree of aspiration.

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1995	Disability Discrimination Act
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1998	Data Protection Act
1998	Human Rights Act
2000	Race Relations (Amendment) Act
2007	Legal Services Act

European Convention For The Protection Of Human Rights And Fundamental Freedoms 1950
Civil Procedure Rules 1998, S.I. 1998/3132
Directive 2008/52/EC on Certain Aspects of Mediation in Civil and Commercial Matters

Solicitors Regulation Authority

Day one outcomes for qualification as a solicitor

Version 2, April 2007

At the point of admission, a solicitor should be able to demonstrate:

A Core knowledge and understanding[1]1 of the law applied in England and Wales

Knowledge of:

- the jurisdiction, authority and procedures of the legal institutions and professions that initiate, develop, interpret and apply the law of England and Wales and the European Union;

- applicable constitutional law and judicial review processes;

- the rules of professional conduct, including the Solicitors' Accounts Rules; and

- the regulatory and fiscal frameworks within which business, legal and financial services transactions are conducted.

Understanding of:

- Contract law;

- Torts;

- Criminal law;

- Property law;

- Equitable rights and obligations;

- Human rights; and

- The laws applicable to business structures and the concept of legal personality.

B Intellectual, analytical and problem-solving skills

The ability to:

- review, consolidate, extend and apply knowledge and understanding;

- frame appropriate questions to identify clients' problems and objectives, and to obtain relevant information;

- evaluate information, arguments, assumptions and concepts;

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[1] Knowledge should be demonstrated by the ability to explain, in relation to a particular area: key principles, facts, rules, methods and procedures. Understanding requires demonstration of higher level skills: working with, manipulating and applying knowledge in familiar and unfamiliar situations.

- identify a range of solutions;
- evaluate the merits and risks of solutions;
- communicate information, ideas, problems and solutions to clients, colleagues and other professionals; and
- initiate and progress projects.

C Transactional and dispute resolution skills

The ability to:

- establish business structures and transfer businesses;
- seek resolution of civil and criminal matters;
- establish and transfer proprietary rights and interests;
- obtain a grant of probate and administer an estate;
- draft legal documentation to facilitate the above transactions and matters; and
- plan and progress transactions and matters expeditiously and with propriety.

D Legal, professional and client relationship knowledge and skills

Knowledge of:

- the legal services market; and
- commercial factors affecting legal practice.

The ability to:

- undertake factual and legal research using paper and electronic media;
- use technology to store, retrieve and analyse information;
- communicate effectively, orally and in writing, with clients, colleagues and other professionals;
- advocate a case on behalf of a client;
- exercise solicitors' rights of audience;
- recognise clients' financial, commercial and personal priorities and constraints;
- exercise effective client relationship management skills; and
- act appropriately if a client is dissatisfied with advice or services provided.

E Personal development and work management skills

The ability to:

- recognise personal and professional strengths and weaknesses;
- identify the limits of personal knowledge and skills;
- develop strategies to enhance professional performance;
- manage personal workload;
- employ risk management skills;
- manage efficiently, effectively and concurrently a number of client matters; and
- work effectively as a team-member.

F Professional values, behaviours, attitudes and ethics

Knowledge of the values and principles upon which the rules of professional conduct have been developed.

The ability to:

- behave professionally and with integrity;
- identify issues of culture, disability and diversity;
- respond appropriately and effectively to the above issues in dealings with clients, colleagues and others from a range of social, economic and ethnic backgrounds; and
- recognise and resolve ethical dilemmas

Work Based Learning Outcomes

Introduction

During the period of Work Based Learning, a successful candidate must acquire, develop and apply skills and knowledge relating to

1.   the practical application of the law

2.   professional communication

3.   relationships with clients

4.   the wider business environment in which he or she works

5.   the delivery of business and client objectives, including the planning and managing of his or her own workload.

6.   teamwork and co-operation in line with the objectives of the organisation

7.   his or her own professional abilities, their limits and their further development

8.   the application of the rules and principles of professional conduct in legal practice.

1. Application of legal expertise

By the end of the period of Work Based Learning, a successful candidate should be able to

1.1   identify the relevant law and legal implications associated with an issue

1.2   apply effectively knowledge and understanding of the law to the key factual and legal issues that are relevant to a client's needs, objectives and priorities

1.3   exercise effectively, both separately and in combination, relevant skills in areas of practice including

1.3.1   practical legal research

1.3.2   writing and drafting

1.3.3   interviewing and advising, and

1.3.4   advocacy.

1.4   keep up-to-date with changes in law and practice relevant to his or her work

as demonstrated through experience in at least three areas of law, and in both contentious and non-contentious work.

2 Communication

By the end of the period of Work Based Learning, a successful candidate should be able to

2.1 use clear, concise and unambiguous language in all communications with clients and other recipients

2.2 tailor his or her style of communication to suit the purpose of the communication and the needs of different clients and other recipients

2.3 demonstrate sensitivity to clients' and other recipients' diversity and to any vulnerability or disadvantage, and make appropriate adaptations to the style and content of communications

2.4 elicit relevant information through effective questioning

2.5 address all relevant factual and legal issues in client communication

2.6 listen effectively to others.

3 Client relations

By the end of the period of Work Based Learning, a successful candidate should be able to

3.1 promote clients' confidence and trust through an organised, focussed and professional approach to the relationship with clients

3.2 identify clients' needs, objectives and priorities with clarity, and take accurate instructions which reflect those needs, objectives and priorities

3.3 exercise effective judgement in evaluating alternative courses of action or possible solutions in the light of clients' needs, objectives and priorities

3.4 take appropriate steps to inform clients of key issues including relevant facts, progress towards their objectives, and costs

3.5 manage clients' expectations about likely outcomes.

4 Business awareness

By the end of the period of Work Based Learning, a successful candidate should be able to

4.1 demonstrate an appreciation of the internal and external business context of his or her work

4.2   demonstrate an understanding of the costs and benefits of alternative courses of action in relation to business decisions.

5   Workload Management

By the end of the period of Work Based Learning, a successful candidate should be able to

5.1   manage a number of tasks concurrently so as to meet all objectives, priorities and deadlines relating to those tasks

5.2   exercise effective judgement regarding the effective use of his or her time

5.3   exercise effective judgement in respect of realistic timescales for completion of tasks and delivery of objectives

5.4   raise any issues relating to completion of tasks and delivery of objectives with colleagues

5.5   use resources effectively

5.6   use and maintain files and other business systems appropriately to ensure that the organisation's regulatory obligations and business objectives are met, including accessibility of material to colleagues wherever appropriate

5.7   record accurately his or her work to a level of detail appropriate to the work and the organisation.

6   Working with others

By the end of the period of Work Based Learning, a successful candidate should be able to

6.1   demonstrate awareness of the impact of his or her actions on others and on the organisation's objectives

6.2   co-operate with, support and share information with colleagues to further the organisation's objectives

6.3   identify situations where the support of colleagues is needed, and make effective use of that support

6.4   treat colleagues and others with respect and professionalism.

7   Self awareness and development

By the end of the period of Work Based Learning, a successful candidate should be able to

7.1   evaluate accurately the strengths and weaknesses of his or her professional skills and knowledge

7.2   identify situations where the limits of his or her abilities are reached, and the next steps in such cases, in clients' best interests

7.3   reflect on experiences and mistakes so as to improve future performance

7.4   identify areas where skills and knowledge can be improved, and plan and effect those improvements.

8   Professional conduct

By the end of the period of Work Based Learning, a successful candidate should be able to

8.1   interpret any situation in the light of solicitors' core duties and any other relevant professional conduct requirements, and act accordingly

8.2   exercise effective judgement in relation to ethical dilemmas and professional conduct requirements.

Day one outcomes (April 2007)	APLEC Competency standards for entry level lawyers (2002)	Boon taxonomy (1992)
A Core knowledge and understanding1 of the law applied in England and Wales Knowledge of: • the jurisdiction, authority and procedures of the legal institutions and professions that initiate, develop, interpret and apply the law of England and Wales and the European Union; • applicable constitutional law and judicial review processes; • the rules of professional conduct, including the Solicitors' Accounts Rules; and • the regulatory and fiscal frameworks within which business, legal and financial services transactions are conducted. Understanding of: • Contract law; • Torts; • Criminal law; • Property law; • Equitable rights and obligations; • Human rights; and • The laws applicable to business structures and the concept of legal personality. **B Intellectual, analytical and problem-solving skills** The ability to: • review, consolidate, extend and apply knowledge and understanding;	**Problem solving** **1. Analysing facts and identifying issues** • identified and collected all relevant facts as far as is practicable. • analysed the facts to identify any existing or potential legal and other issues. • distinguished facts that might be used to prove a claim from other facts, if the matter so requires. **2. Analysing law** • identified any questions of law raised by the matter. • researched those questions of law properly, having regard to the circumstances. • identified and interpreted any relevant statutory provisions and applied them appropriately to the facts.	*1 Application of knowledge* • apply a sound general knowledge of rules of law/practice/procedure in area of specialisation particularly in relation to time limits for the instigation of proceedings • research rules of law and procedure • conduct research on factual issues • act in relation to simple interlocutory procedures *4 Analytical and problem-solving skills* • evaluate issues of liability and quantum (or non-damages remedy) • analyse problem and consider appropriate solutions

• frame appropriate questions to identify clients' problems and objectives, and to obtain relevant information;

Lawyer's Skills
2. Interviewing clients
• prepared for the interview properly, having regard to relevant information available before the interview and the circumstances.
• conducted the interview using communication techniques appropriate to both the client and the context.
• ensured that the client and lawyer have both obtained all the information which they wanted from the interview in a timely, effective and efficient way, having regard to the circumstances.
• ensured that the lawyer and client left the interview with a common understanding of the lawyer's instructions (if any) and any future action that the lawyer or client is to take.
• made a record of the interview that satisfies the requirements of law and good practice.
• taken any follow-up action in a timely manner
• coherently in accordance with law and good practice.

Problem Solving
4 Generating solutions and strategies
• identified the problem and the client's goals as fully as is practicable.
• investigated the facts and legal and other issues as fully as is practicable.
• developed creative options and strategies to meet the client's objectives.
• identified the advantages and disadvantages of pursuing each option or strategy including costs and time factors.
• assisted the client to choose between those options in a way consistent with good practice.
• developed a plan to implement the client's preferred option.
• acted to resolve the problem in accordance with the client's instructions and the lawyer's plan of action.
• remained open to new information

• evaluate information, arguments, assumptions and concepts;
• identify a range of solutions;
• evaluate the merits and risks of solutions;
• communicate information, ideas, problems and solutions to clients, colleagues and other professionals; and
• initiate and progress projects.

Johnson and Bone (2004: 31) suggest the following relevant assessment criteria:
• Analysed factual material, identified the legal context in which factual issues arise, related the central legal and factual issues to each other and identified the elements of a selected cause of action;
• Identified the material facts from parties' statements of case and other court documents;
• Assessed the strengths and weaknesses of each side's case, including, where appropriate, the opponent's evidence.

Day one outcomes (April 2007)	*APLEC Competency standards for entry level lawyers (2002)*	*Boon taxonomy (1992)*
C Transactional and dispute resolution skills [topics not relevant to civil litigation not included] The ability to: • seek resolution of civil and criminal matters; Johnson and Bone (*ibid*, 33) suggest by way of assessment criteria that the newly qualified solicitor has dealt with procedural aspects of the case: • Assessed the strengths and weaknesses of both the client and the opponent's case • Identified the facts and evidence required to support the client's case • Identified all means of resolving the dispute having regard to the principle that litigation should be a last resort • Advised the client on the merits of the case, including the relevant rights and remedies • Advised the client on the means of financing the cost of any action, including the availability of legal aid and conditional fees • Recognised and complied with the relevant limitation period	**Civil Litigation Practice** **1 Assessing the merits of a case and identifying the dispute resolution alternatives** • assessed the strengths and weaknesses of both the client's and opponent's cases. • identified the facts and evidence required to support the client's case. **Lawyer's Skills** **6 Facilitating early resolution of disputes** • Identified the advantages and disadvantages of available dispute resolution options and explained them to the client • Performed in the lawyer's role in the dispute resolution process effectively, having regard to the circumstances. • Documented any resolution as required by law or good practice and explained it to the client in a way the client can easily understand **Civil Litigation Practice** **1 Assessing the merits of a case and identifying the dispute resolution alternatives** • identified all means of resolving the case, having regard to them client's circumstances. • advised the client of relevant rights and remedies in a way which the client can easily understand. • where possible, confirmed in writing any instructions given by the client in response to initial advice. • identified and complied with the relevant limitation period.	*6 Case preparation* • Prepare a case for trial (including both procedural and strategic use of pre-trial procedure)

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2 Some limitation is presumably implicit – one can only gather such evidence insofar as it exists or, "to prove the claimant's case" to the extent that it is susceptible of proof at all. Some cases fail.

3 It is not obvious what "recognise" is intended to mean in the context recognise when a judge is exercising such powers or recognise (and understand the extent to which) the judge can exercise such powers?

4 Again, some level of limitation is presumably implicit; a newly qualified solicitor (or *any* solicitor) can hardly be expected to know the methods of enforcement of judgments in every jurisdiction in the world. I suggest that no more than an understanding of the domestic means by which a judgment can be registered with foreign authorities (or not) with a view to enforcement, can be expected.

5 It is not obvious to me what a case *presentation* strategy (as opposed to a case management strategy, for example) might be.

- Identified the elements of an appropriate claim or defence

- Advised the client on the means of resolving the dispute other than resorting to litigation
- Identified the appropriate forum for the dispute
- Identified the appropriate procedure (fast track or multi track)

- Followed procedures to encourage settlement and drafted the terms of a settlement agreement

- Recognised the effect of the overriding objective of the Civil Procedure Rules and the consequences of non-compliance
- Recognised the effect of Human Rights Act issues at all stages of the litigation process

- Identified and carried out the main procedural steps, namely:
  o Pre-action protocols
  o Issue and service of proceedings
  o Statements of case
  o Allocation and the tracking system
  o Directions

- Identified the [evidential] issues likely to arise at the hearing
- Analysed the evidence rigorously using the laws of evidence
- Obtained more evidence through appropriate use of the rules of disclosure
- Gathered the evidence needed to prove or disprove the

Civil Litigation Practice
2. Initiating and responding to claims
- identified an appropriate claim or defence.
- identified the elements of the claim or defence, according to law.

[See lawyer's skills 6 above]

- identified a court of appropriate jurisdiction.

[see Lawyers' Skills 6].
5. Negotiating settlements
- conducted settlement negotiations in accordance with specified principles.
- identified any revenue and statutory refund implications.
- properly documented any settlement reached.

- followed procedures for bringing the claim or making the defence in accordance with the court's rules and in a timely manner.
- drafted all necessary documents in accordance with those procedures.

3. Taking and responding to interlocutory and default proceedings
- identified any need for interlocutory steps or default proceedings, according to the court's rules.
- followed procedures for taking those steps or proceedings in accordance with the court's rules and in a timely manner.
- drafted all necessary documents in accordance with those procedures and rules.

4. Gathering and presenting evidence
- identified issues likely to arise at the hearing.
- identified evidence needed to prove the client's case or disprove the opponent's case, according to the rules of evidence.
- gathered the necessary evidence.
- presented that evidence according to law and the court's rules.

5 Investigation and fact handling
- identify sources of evidence
- submit evidence to cost/benefit analysis
- test accuracy of facts
- analyse complex fact situations (no criteria are given for identification of what is "complex")

claimant's case²

- Explained the general structure of a trial including examination, cross examination and re-examination
- Recognised the court's case management powers and duties
- Recognised the exercise of judicial case management³

- Identified and explained the methods of enforcing judgments in and out of the jurisdiction.⁴

- draft legal documentation to facilitate the above transactions and matters; and

Johnson and Bone (*ibid*, 36) suggest by way of assessment criteria that the newly qualified solicitor has competently

- Drafted claim forms, particulars of claim, defences, application notices, orders and witness statements
- Drafted the terms of a settlement agreement
- Prepared a brief to counsel
- Managed (under supervision) the progress of a case or dispute to resolution
- Demonstrated the ability to deal with the client care implications at all stages of the case or dispute

- plan and progress transactions and matters expeditiously and with propriety.

In the context of civil litigation, Johnson and Bone (*ibid*, 37) suggest by way of assessment criteria that the newly qualified solicitor has competently:

- Identified the options for dealing with the client's case or dispute
- Identified the relative merits of each option and advised the client on those options including their cost and time implications

6. Taking action to enforce orders and settlement agreements

- identified procedures for enforcing the order or settlement according to law and the court's rules.
- followed those procedures in a timely manner.

Lawyers' Skills
4. Drafting other documents

- identified the need for, and purpose, of the document.
- devised an effective form and structure for the document
- having regard to the parties, the circumstances, good practice, principles of writing simple, straightforward English and the relevant law.
- drafted the document effectively having regard to the parties, the circumstances, good practice, principles of writing simple, straightforward English, and the relevant law.
- considered whether the document should be settled by counsel.
- taken every action required to make the document effective and enforceable in a timely manner and according to law (such as execution by the parties, stamping, delivery and registration).

Problem Solving
4 Generating solutions and strategies

- identified the problem and the client's goals as fully as is practicable.
- investigated the facts and legal and other issues as fully as is practicable.
- developed creative options and strategies to meet the client's objectives.
- identified the advantages and disadvantages of pursuing each option or strategy including costs and time factors.
- assisted the client to choose between those options in a way consistent with good practice.
- developed a plan to implement the client's preferred option.

7 Drafting

- draft correspondence
- draft pleadings
- instruct counsel

• Planned the steps needed to progress the case or dispute in accordance with the client's instructions • Developed a case presentation strategy⁵	• acted to resolve the problem in accordance with the client's instructions and the lawyer's plan of action. • remained open to new information
D Legal, professional and client relationship knowledge and skills Knowledge of: • the legal services market; and • commercial factors affecting legal practice. The ability to: • undertake factual and legal research using paper and electronic media; • use technology to store, retrieve and analyse information; • communicate effectively, orally and in writing, with clients, colleagues and other professionals;	**Problem solving** **2. Analysing law** • identified any questions of law raised by the matter. • researched those questions of law properly, having regard to the circumstances. • identified and interpreted any relevant statutory provisions and applied them appropriately to the facts. **Work Management and Business Skills** **3. Managing files** • used a file management system to ensure that work priorities are identified and managed; clients' documents are stored in an orderly and secure manner; and to alert the lawyer to any need to follow up a matter or give it other attention. • rendered timely bills, in accordance with law and any agreement between the lawyer and client, which set out the basis for calculating the lawyer's fees. • accurately recorded all communications and attendances, with details of dates and times. **Problem Solving** **3 Providing Legal Advice** • Applied the law to the facts of the matter in an appropriate and defensible way • Given the client advice in a way which the client can easily understand • Kept up with any developments that might affect the accuracy of previous advice and told the client about the effect of those developments **Lawyer's Skills** **1 Communicating effectively** • Identified the purpose in a proposed communication, the most effective way of making it, an appropriate communication strategy, and the content of the proposed communication

communication

- Presented thoughts, advice and submissions in a logical, clear, succinct and persuasive manner, having regard to the circumstances and the person or forum to whom the communication is made
- Identified and appropriately dealt with verbal, non-verbal and cross-cultural aspects of the proposed communication
- Taken any follow-up action in accordance with good practice.

Lawyer's Skills
1 Communicating effectively

- Presented thoughts, advice and submissions in a logical, clear, succinct and persuasive manner, having regard to the circumstances and the person or forum to whom the communication is made

7 Representing a client in court

- Observed the etiquette and procedures of the forum
- Organised and presented in an effective, strategic way:
  - Factual material
  - Analysis of relevant legal issues; and
  - Relevant decided cases
- Presented and tested evidence in accordance with the law and good practice
- Made submissions effectively and coherently in accordance with law and good practice

Work Management and Business Skills
4. Keeping client informed

- communicated with the client during the course of the matter as frequently as circumstances and good practice require.
- confirmed oral communications in writing when requested by the client or required by good practice.
- dealt with the client's requests for information promptly.
- informed the client fully of all important developments in the matter, in a way which the client can easily understand.

- presenting an argument (not necessarily confined to formal advocacy in court)

- convey to witnesses, in a convincing and ethical way, their responsibilities to the courts and to the parties

2 Interaction skills

- establish a working relationship with a client (including strategic skills such as identification of client goals, listening and questioning skills in interview and advising on legal outcomes, costs and non-legal solutions)
- be assertive in dealing with clients (essentially dealing with ambiguity or inconsistency in the client's account of events)
- present advice which is inconsistent [sic, "consistent" is intended] with the client achieving his/her/their goals
- maintain a good working relationship with client
- deal with representatives of other parties

- advocate a case on behalf of a client;
- exercise solicitors' rights of audience;

- recognise clients' financial, commercial and personal priorities and constraints;

- exercise effective client relationship management skills; and
- act appropriately if a client is dissatisfied with advice or services provided.

Johnson and Bone suggested (*ibid*, 38) that what is now section D includes interviewing skills similar to those suggested by Boon, as well as letter writing, recognition of the client's business and commercial context and client liaison and communication as well as risk management (suggested by Johnson and Boon, *ibid*, 47, essentially to involve avoidance of negligence and risk management in terms of such issues as money laundering and mortgage fraud); problem solving (as opposed to outcome A and apparently intended to be covered during the degree, practice-based research and related issues.

Day one outcomes (April 2007)	APLEC Competency standards for entry level lawyers (2002)	Boon taxonomy (1992)
E Personal development and work management skills The ability to: • recognise personal and professional strengths and weaknesses; • identify the limits of personal knowledge and skills; • develop strategies to enhance professional performance; • manage personal workload; • employ risk management skills; • manage efficiently, effectively and concurrently a number of client matters; and • work effectively as a team-member.	**Ethics and professional responsibility** **8. Reflecting on wider issues** • reflected on that lawyer's professional performance in particular situations. **Work Management and Business Skills** **2 Managing risk** Recognised the limits of the lawyer's expertise and experience and referred the client or matter to other lawyers, counsel or other professionals, as the circumstances require. **Work Management and Business Skills** **1 Managing personal time** • Used a diary or other system to record time limits of deadlines and to assist in planning work • Identified conflicting priorities as they arise and managed the conflict effectively; • Used available time effectively, to the benefit of the lawyer's clients and employer **2 Managing risk** • Conducted each matter in a way that minimises any risk to the client, lawyer or firm arising from missed deadlines, negligence or failure to comply with the requirements of the law, a court or other body; • Recognised the limits of the lawyer's expertise and experience and referred the client or matter to other lawyers, counsel or other professionals, as the circumstances require. **3. Managing files** • used a file management system to ensure that work priorities are identified and managed; clients' documents are stored in an orderly and secure manner; and to alert the lawyer to any need to follow up a matter or give it other attention. • rendered timely bills, in accordance with law and any agreement between the lawyer and client, which set out the basis for calculating the lawyer's fees. • accurately recorded all communications and attendances, with details of dates and times. **5 Working cooperatively** • Worked with support staff, colleagues, consultants and counsel in a professional and cost effective manner.	*9 Organisational/tactical* • handle a number of cases employing strategies and tactics appropriate to each case *3 Team working* • work in interdisciplinary teams (the focus is particularly on relations with expert witnesses) • delegation (essentially at this stage with support staff)

F Professional values, behaviours, attitudes and ethics	Ethics and professional responsibility	
Knowledge of the values and principles upon which the rules of professional conduct have been developed. The ability to: - behave professionally and with integrity; - identify issues of culture, disability and diversity; - respond appropriately and effectively to the above issues in dealings with clients, colleagues and others from a range of social, economic and ethnic backgrounds; and - recognise and resolve ethical dilemmas	**1. Acting ethically** - identified any relevant ethical dimension of a particular situation. - taken action which complies with professional ethical standards in that situation. **2. Discharging the legal duties and obligations of legal practitioners** - identified any duty or obligation imposed on the lawyer by law in a particular situation. - discharged that duty or obligation according to law and good practice. **3. Complying with professional conduct rules** - identified any applicable rules of professional conduct. - taken action which complies with those rules. **4. Complying with fiduciary duties** - recognised and complied with any fiduciary duty, according to law and good practice. **5. Avoiding conflicts of interest** - identified any potential or actual conflict, as soon as is reasonable in the circumstances. - taken effective action to avoid a potential conflict or, where a conflict has already arisen, dealt with it in accordance with law and good practice. - taken appropriate action, where applicable, to prevent such a conflict arising in the future. **6. Acting courteously** - demonstrated professional courtesy in all dealings with others. **7. Complying with rules relating to the charging of fees** - identified any rules applying to charging professional fees. - complied with those rules, where they are relevant. - maintained records and accounts in accordance with law and good practice. **8. Reflecting on wider issues** - reflected on that lawyer's professional performance in particular situations. - brought to the attention of an employer or professional association any matters that require consideration or clarification. - recognised the importance of pro bono contributions to	- encouragement of a proactive attitude in others (whilst this covers criticism and opinion, this is related to the immediate dispute and problem rather than to ongoing personal development per se) *10 Appreciation of the professional role* - understand the solicitor's responsibilities to his/her clients and to his/her profession and act accordingly

	legal practice. • ·demonstrated an awareness that mismanagement of living and work practices can impair the lawyer's skills, productivity, health and family life.	
	Civil Litigation Practice **5. Negotiating settlements** • ·conducted settlement negotiations in accordance with specified principles. • ·identified any revenue and statutory refund implications. • ·properly documented any settlement reached. **Lawyers' Skills** **5. Negotiating settlements and agreements** • ·prepared the client's case properly having regard to the circumstances and good practice. • ·identified the strategy and tactics to be used in negotiations and discussed them with and obtained approval from the client. • ·carried out the negotiations effectively having regard to the strategy and tactics adopted, the circumstances of the case and good practice. • ·documented the negotiation and any resolution as required by law or good practice and explained it to the client in a way the client can easily understand. **6. Facilitating early resolution of disputes** • ·identified the advantages and disadvantages of available dispute resolution options and explained them to the client. • ·performed in the lawyer's role in the dispute resolution process effectively, having regard to the circumstances. • ·documented any resolution as required by law or good practice and explained it to the client in a way the client can easily understand.	*8 Negotiation* • negotiate effectively

APPENDIX IIB   Mapping Of Work Based Learning Outcomes Against Day One Outcomes

Codes derived from the analysis in this study are shown in the far right hand column

	Work based learning: outcomes (April 2008 version)	Day one outcomes (March 2007 version)	Codes
Application of legal expertise:	1.1 identify the relevant law and legal implications associated with an issue	A Core knowledge and understanding of the law applied in England and Wales B Intellectual, analytical and problem-solving skills review, consolidate, extend and apply knowledge and understanding/evaluate information, arguments, assumptions and concepts C Transactional and dispute resolution skills seek resolution of civil and criminal matters	ADR Procedure/precedent/CPR Reading books/journals/websites Trial/litigation Procedure/precedent/CPR
	1.2 apply effectively knowledge and understanding of the law to the key factual and legal issues that are relevant to a client's needs, objectives and priorities	A Core knowledge and understanding of the law applied in England and Wales B Intellectual, analytical and problem-solving skills: review, consolidate, extend and apply knowledge and understanding	Delivering lectures and seminars Procedure/precedent/CPR Writing articles
	1.3 exercise effectively, both separately and in combination, relevant skills in areas of practice including 1.3.1 practical legal research 1.3.2 writing and drafting 1.3.3 interviewing and advising, and 1.3.4 advocacy.	B Intellectual, analytical and problem-solving skills review, consolidate, extend and apply knowledge and understanding/frame appropriate questions to identify clients' problems and objectives and to obtain relevant information/evaluate information, assumptions and concepts/identify a range of solutions/evaluate the merits and risks of solutions/communicate information, ideas, problems and solutions to specialist and non-specialist audiences C Transactional and dispute resolution skills Draft legal documentation to facilitate ... transactions and matters D Legal, professional and client relationship knowledge and skills Undertake factual and legal research using paper and electronic media/ communicate effectively, orally and in writing, with clients, colleagues and other professionals/ advocate a case on behalf of a client/exercise solicitors' rights of audience	Procedure/precedent/CPR Delivering lectures and seminars Writing articles Drafting/writing Procedure/precedent/CPR Reading books/journals/websites Advocacy
	1.4 keep up-to-date with changes in law and practice relevant to his or her work	E Personal development and work management skills identify the limits of personal knowledge and skills/develop strategies to enhance professional performance.	Delivering lectures and seminars Procedure/precedent/CPR Reading books/journals/websites Updating/knowledge of law Writing articles
Communication	2.1 use clear, concise and unambiguous language in all communications with clients and other recipients	B Intellectual, analytical and problem-solving skills: communicate information, ideas, problems and solutions to specialist and non-specialist audiences	Delivering lectures and seminars Meetings Telephone calls

		C Transactional and dispute resolution skills seek resolution of civil and criminal matters **D Legal, Professional and client relationship knowledge and skills** exercise effective client relationship management skills	Writing articles ADR Drafting/writing
	2.2 tailor his or her style of communication to suit the purpose of the communication and the needs of different clients and other recipients	**B Intellectual, analytical and problem-solving skills:** communicate information, ideas, problems and solutions to specialist and non-specialist audiences **C Transactional and dispute resolution skills** seek resolution of civil and criminal matters **D Legal, Professional and client relationship knowledge and skills** communicate effectively, orally and in writing, with clients, colleagues and other professionals/exercise effective client relationship management skills	Delivering lectures and seminars Meetings Telephone calls Writing articles ADR Advocacy Delivering lectures and seminars Meetings Drafting/writing
	2.3 demonstrate sensitivity to clients' and other recipients' diversity and to any vulnerability or disadvantage, and make appropriate adaptations to the style and content of communications	**D Legal, Professional and client relationship knowledge and skills** exercise effective client relationship management skills **F Professional values, behaviours, attitudes and ethics** identify issues of culture, disability and diversity/deal appropriately and effectively with the above issues with clients, colleagues and others from a range of social, economic and ethnic backgrounds	Advocacy Drafting/writing Meetings Telephone calls
	2.4 elicit relevant information through effective questioning	**B Intellectual, analytical and problem-solving skills** frame appropriate questions to identify clients' problems and objectives and to obtain relevant information **C Transactional and dispute resolution skills** seek resolution of civil and criminal matters	Asking questions Meetings Telephone calls ADR Advocacy
	2.5 address all relevant factual and legal issues in client communication	**A Core knowledge and understanding of the law applied in England and Wales** **B Intellectual, analytical and problem-solving skills:** review, consolidate , extend and apply knowledge and understanding/communicate information, ideas, problems and solutions to specialist and non-specialist audiences **C Transactional and dispute resolution skills** seek resolution of civil and criminal matters	Meetings Telephone calls ADR Trial/litigation Drafting/writing
	2.6 listen effectively to others.	**C Transactional and dispute resolution skills** seek resolution of civil and criminal matters **D Legal, Professional and client relationship knowledge and skills** exercise effective client relationship management skills	ADR Advocacy Asking questions Meetings Telephone calls
Client Relations	3.1 promote clients' confidence and trust through an organised, focussed and professional approach to the relationship with clients	**D Legal, Professional and client relationship knowledge and skills** exercise effective client relationship management skills **F Professional values, behaviours, attitudes and**	Admin/billing/targets/time management Drafting/writing Meetings Telephone calls

	ethics behave professionally and with integrity	
3.2 identify clients' needs, objectives and priorities with clarity, and take accurate instructions which reflect those needs, objectives and priorities	**B Intellectual, analytical and problem-solving skills** frame appropriate questions to identify clients' problems and objectives and to obtain relevant information **C Transactional and dispute resolution skills** seek resolution of civil and criminal matters **D Legal, professional and client relationship knowledge and skills** recognise clients' financial, commercial and personal priorities and constraints	Meetings Telephone calls ADR Procedure/precedent/CPR Trial/litigation
3.3 exercise effective judgement in evaluating alternative courses of action or possible solutions in the light of clients' needs, objectives and priorities	**B Intellectual, analytical and problem-solving skills:** evaluate information, arguments, assumptions and concepts/identify a range of solutions/evaluate the merits and risks of solutions/communicate information, ideas, problems and solutions to specialist and non-specialist audiences **C Transactional and dispute resolution skills** seek resolution of civil and criminal matters	Meetings Telephone calls ADR Procedure/precedent/CPR Trial/litigation
3.4 take appropriate steps to inform clients of key issues including relevant facts, progress towards their objectives, and costs	**B Intellectual, analytical and problem-solving skills:** communicate information, ideas, problems and solutions to specialist and non-specialist audiences/initiate and progress projects **D Legal, Professional and client relationship knowledge and skills** communicate effectively, orally and in writing, with clients, colleagues and other professionals / exercise effective client relationship management skills	Admin/billing/targets/time management Meetings Telephone calls Trial/litigation Drafting/writing
3.5 manage clients' expectations about likely outcomes. [6]	**C Transactional and dispute resolution skills** seek resolution of civil and criminal matters **D Legal, Professional and client relationship knowledge and skills** exercise effective client relationship management skills	ADR Meetings Telephone calls Trial/litigation
Business awareness		
4.1 demonstrate an appreciation of the internal and external business context of his or her work	**A Core knowledge and understanding** **C Transactional and dispute resolution skills** seek resolution of civil and criminal matters **D Legal, professional and client relationship knowledge and skills** knowledge of the legal services market and commercial factors affecting legal practice[7]	Admin/billing/targets/time management ADR Meetings Telephone calls
4.2 demonstrate an understanding of the costs and benefits of alternative courses of action in relation to business decisions.	**B Intellectual, analytical and problem-solving skills:** evaluate the merits and risks of solutions **C Transactional and dispute resolution skills** seek resolution of civil and criminal matters **D Legal, professional and client relationship knowledge and skills**	ADR Meetings Procedure/precedent/CPR Telephone calls Trial/litigation

[6] Presumably this actually means "takes suitable steps in an attempt to" rather than "successfully", although a sub-outcome of the section "legal, professional and client relationship skills" is defined as "ability to exercise *effective* client relationship management skills" (my italics).

[7] There is no similarly detailed day one outcome relating to the business context of clients.

		Recognise clients' financial commercial and personal priorities and skills	ADR
Workload management	5.1 manage a number of tasks concurrently so as to meet all objectives, priorities and deadlines relating to those tasks	E Personal development and work management skills	Admin/billing/targets/time management Trial/litigation Whole of transaction/case
	5.2 exercise effective judgement regarding the effective use of his or her time	E Personal development and work management skills manage personal workload/ manage efficiently, effectively and concurrently a number of client matters	Admin/billing/targets/time management
	5.3 exercise effective judgement in respect of realistic timescales for completion of tasks and delivery of objectives.	E Personal development and work management skills manage personal workload/ manage efficiently, effectively and concurrently a number of client matters	Admin/billing/targets/time management Trial/litigation Whole of transaction/case
	5.4 raise any issues relating to completion of tasks and delivery of objectives with colleagues	E Personal development and work management skills manage personal workload/ manage efficiently, effectively and concurrently a number of client matters	
	5.5 use resources effectively	C Transactional and dispute resolution skills seek resolution of civil and criminal matters E Personal development and work management skills manage personal workload, manage efficiently, effectively and concurrently a number of client matters	ADR Trial/litigation
	5.6 use and maintain files and other business systems appropriately to ensure that the organisation's regulatory obligations and business objectives are met, including accessibility of material to colleagues wherever appropriate	B Intellectual, analytical and problem solving skills initiate and progress projects E Personal development and work management skills manage personal workload/ manage efficiently, effectively and concurrently a number of client matters	Admin/billing/targets/time management
	5.7 record accurately his or her work to a level of detail appropriate to the work and the organisation	C Transactional and dispute resolution skills seek resolution of civil and criminal matters	Admin/billing/targets/time management
Working with others	6.1 demonstrate awareness of the impact of his or her actions on others and on the organisation's objectives	E personal development and professional skills Recognise personal and professional strengths and weaknesses/work effectively as a team member	Asking questions Delivering lectures and seminars Discussion – at course Meetings Telephone calls Writing articles Supervision/management Feedback/criticism
	6.2 co-operate with, support and share information with colleagues to further the organisation's objectives	D Legal, Professional and client relationship knowledge and skills communicate effectively, orally and in writing, with clients, colleagues and other professionals E personal development and work management skills Recognise personal and professional strengths and weaknesses/work effectively as a team member	Asking questions Discussion – at course Feedback/criticism
	6.3 identify situations where the support of colleagues is needed, and make effective use of that support.	E personal development and work management skills Recognise personal and professional strengths and weaknesses/work effectively as a team member	Discussion – at course Feedback/criticism Reading books/journals/websites

	6.4 treat colleagues and others with respect and professionalism.	**E personal development and work management skills** work effectively as a team member **F professional values, behaviours, attitudes and ethics** behave professionally and with integrity	Meetings Supervision/management
Self-awareness and development	7.1 evaluate accurately the strengths and weaknesses of his or her professional skills and knowledge	**E personal development and work management skills** Recognise personal and professional strengths and weaknesses/identify the limits of personal knowledge and skills	Appraisal Asking questions Developmental planning/goals Discussion – at course Feedback/criticism Non CPD learning activity Reading books/journals/websites Reflection/application/engagement Supervision/management Updating/knowledge of law Workplace learning
	7.2 identify situations where the limits of his or her abilities are reached, and the next steps in such cases, in clients' best interests	**E personal development and work management skills** Recognise personal and professional strengths and weaknesses/identify the limits of personal knowledge and skills/ work effectively as a team member	
	7.3 reflect on experiences and mistakes so as to improve future performance	**E personal development and work management skills** Develop strategies to enhance professional performance.	Appraisal Asking questions Developmental planning/goals Discussion – at course Feedback/criticism Non CPD learning activity Reading books/journals/websites Reflection/application/engagement Repetition of activity Supervision/management Updating/knowledge of law Whole of transaction/case Workplace learning
	7.4 identify areas where skills and knowledge can be improved, and plan and effect those improvements	**E personal development and work management skills** Recognise personal and professional strengths and weaknesses/identify the limits of personal knowledge and skills/develop strategies to enhance professional performance.	Appraisal Asking questions CPD formal activity CPD point counting Delivering lectures and seminars Developmental planning/goals Discussion – at course Feedback/criticism Non CPD learning activity Reading books/journals/websites Reflection/application/engagement Repetition of activity Supervision/management

Professional Conduct			
			Updating/knowledge of law Whole of transaction/case Workplace learning Writing articles
8.1 interpret any situation in the light of solicitors' core duties and any other relevant professional conduct requirements, and act accordingly	**F Professional values, behaviours, attitudes and ethics behave professionally and with integrity**		Admin/billing/targets/time management Advocacy CPD formal activity CPD point counting
8.2 exercise effective judgement in relation to ethical dilemmas and professional conduct requirements.	**F Professional values, behaviours, attitudes and ethics recognise and resolve ethical dilemmas**		

APPENDIX III   *Devonport Limited v. Hammersmith Sundries Plc.*

In 2006, Devonport enters into a contract with Hammersmith under which Hammersmith will supply all its stationery requirements for a two year period. Devonport undertakes to make a minimum order worth £4,000 a month. There is no clause in the contract making any explicit provision for termination of the contract prior to the expiry of the two year period.

By the end of the first year, it is clear that not all is well. Several consignments of stationery supplies have been delivered late. In respect of others, complaints have been made about the quality of the supply: notepaper has been badly printed, envelopes are of the wrong size and so on. Devonport ultimately refuses to pay for the last four consignments (all of which have been returned) and indicates that it will not make any orders during the second year of the contract. Hammersmith claims that any difficulties have been minor and/or quickly resolved, that all outstanding invoices are due and that Devonport is not entitled to, in effect, terminate the contract half-way through.

Some increasingly heated telephone calls take place between the credit controller of Hammersmith and the Finance Director of Devonport, resulting in a threat of legal proceedings.

In January 2007, both parties consult their solicitors. The invoices remain unpaid and no further orders have been made by Devonport. Devonport has now contracted with an alternative supplier on an emergency basis and, because of this, at a premium. Neither party has pre-existing legal expenses insurance and legal aid is not available in business to business disputes. Both parties agree, therefore, to pay their solicitors on an hourly rate.

There being no "pre-action protocol" for this kind of dispute, Hammersmith's solicitors write a formal letter to Devonport, setting out the precise details of their claim and requiring an acknowledgement within 21 days and a formal reasoned response within three months.

Devonport's solicitors provide the detailed response at the beginning of April, refusing to admit liability either for the outstanding invoices or to pay the minimum order rate for the second year of the contract. In parallel with this correspondence, solicitors for both sides have been, on the telephone and by correspondence, trying to negotiate an amicable resolution to the dispute. Since Devonport is at this stage

entirely adamant that, even on a commercial basis, it is not prepared to make any financial contribution to a settlement, these attempts are unsuccessful.

Consequently, Hammersmith issues a claim form at the end of April 2007 seeking payment for the outstanding invoices and a figure representing the minimum orders requiring under the contract for the second year of the contract. Devonport files an acknowledgement of service followed by a formal defence towards the end of May. In the defence Devonport also makes a counterclaim against Hammersmith for the additional costs involved in replacing defective goods from other sources and the premium paid to the emergency supplier. Hammersmith files a defence to counterclaim in mid-May, asserting that there have been no unremedied defects in the goods, that there was no reason to terminate the contract and that no action of Hammersmith's has caused the losses of which Devonport now complain.

Shortly after filing of the defence with the court, both parties receive an allocation questionnaire to be completed and returned within a fortnight. A certain amount of liaison between the solicitors goes on in relation to completion of the questionnaires (the purpose of which is to assist the court in timetabling the pre-trial activities), which are then filed. The court notifies the parties that the claim has been allocated to the multi-track but that no further directions will be given pending a case management conference ("CMC") which is to be held in August.

Throughout the period from their initial instructions, the solicitors for both sides have been considering with their clients the prospect of reaching an amicable resolution of the case as well as tactical manoeuvres that might increase their bargaining position, have the effect of dismissing the case of one party or the other or reveal evidence that will assist in proving their case.

Tactics in the first category generally rely on use of the so-called "English Rule" that the winner in litigation can normally expect to recover his or her legal costs from the loser (otherwise that costs "follow the event"). So, on issuing proceedings, Hammersmith simultaneously made a "Part 36 offer" that they would be prepared to accept, in settlement, a specific amount less than the full value of their claim. If Devonport were to accept that offer, they would pay the amount of the offer together with Hammersmith's legal costs to date and the dispute would be resolved. Since we will assume that Devonport do not accept the offer, they now run the risk that if the amount awarded against them at trial is greater than the value of the offer, they will be required to pay penalties in additional costs and additional interest.

Tactics in the second category generally depend on enforcing penalties for failure to comply with time limits set by the court or on persuading the court that the opponent's case is so weak, and so obviously weak, that no further time and resources should be expended by the parties or by the court on pursuing it to a trial whose result will be a foregone conclusion.

The essentials of the remaining pre-trial stages are concerned - the nature of the dispute having been defined by the formal claim form, defence, counterclaim, reply to defence and defence to counterclaim – with identifying the evidence that will be relied on by the parties in proving their case in respect of that dispute. So, in "disclosure" arrangements are made for both sides to identify and reveal to their opponent all pre-existing documentary evidence that both supports and is adverse to the case. Disclosure, give or take some bickering about whether disclosure has been made to the appropriate extent, is complete by mid September, the date having been imposed at the case management conference.

The case management conference also prescribed a date for simultaneous exchange of written statements of the oral evidence to be given by each lay witness called by the parties in the dispute. Exchange normally takes place after disclosure so that final statements can be drafted by reference to a complete set of documents. Here it is complete in late October. As the parties estimated that a four day trial would be appropriate, at the case management conference the court allocated the case to a "trial window" of three weeks in May 2008.

Unless there is some technical issue as to the quality of the stationery, this does not seem to be a dispute requiring the assistance of an expert witness. Where there is such a need – so, for example, medical evidence as to the extent of injuries and subsequent disability in a personal injury claim – complex debates take place in order to identify suitable experts, to decide whether one expert should be appointed between the parties or whether each party should be allowed their own individual expert, when the expert's report(s) should be provided to the parties, whether experts will be required to give oral evidence at the trial and so on.

Following disclosure and exchange of witness statements, the evidence is now available to both parties, who can reassess their chances of success. Claims frequently settle at this point. To the extent that they do not, and absent a further round of tactical manoeuvres, final arrangements are made for trial. These will include such activities as ensuring that the binders of documents ("trial bundles") to be used by all parties and by

the judge in the trial are collated and identical; instructing and liaising with an advocate, still generally a barrister and such mundane activities as ensuring that witnesses are kept informed of the trial date and the location of the trial.

The trial itself, assuming that it takes place at all, will be pressurised for all involved. Following the trial, there may remain questions about possible appeal, about arrangements for payment of costs and damages and ultimately, if no payment is forthcoming, using methods of enforcement up to and including putting Devonport, assuming it is the unsuccessful party, into insolvent liquidation.

RESEARCH INTO THE MODEL OF DEVELOPMENT HELD BY 0-3 PQE CIVIL LITIGATORS

BROCHURE FOR PARTICIPANTS AND GATEKEEPERS

INDEX

Executive Summary

• This research, carried out as part of an M Phil/Ph D project by a legal education specialist, endeavours to identify some of the factors surrounding post-qualification education in the significant but under-researched 0-3 PQE period.

• The intention is to interview solicitors in that category specialising in civil litigation in particular as well as in-house and external training specialists with a view in the long term to the development of conclusions that can contribute towards a better understanding of the needs of those in this category and to the provision of appropriate support for them.

• The researcher undertakes to preserve client confidentiality and to take steps to avoid the risks of creation of disclosable and non-privileged documents.

• The privacy of individual participants and their firms will also be preserved although a summary of final results (in anonymised form) will be available to interviewees and, where relevant, to firms.

• Whilst the researcher will be grateful for co-operation with the research, it must be emphasised that participation is voluntary and that participants may withdraw from the research at any stage.

Background

The Law Society first introduced a formal scheme of Continuing Professional Development ("CPD") in 1985. The scheme, initially applying to those qualifying after 1987, has gradually extended upwards, finally encompassing all solicitors in 1988.[8] The current "Guide to the Law Society's CPD Scheme" places responsibility for professional development squarely on the individual. Guidance is given, in the form of a SWOT analysis[9] and suggestions that a short, medium or long-term development objective should be set by the individual. The Law Society's *Training Framework Review* (2001 - 2005) which, although dealing explicitly and in detail only with the academic and vocation stages when suggesting that a national framework of required competencies might be developed, did not exclude in its original consultation paper (2001) the ultimate possibility of its extension beyond qualification: "[I]dentification of competencies and outcomes expected of a solicitor at the point of admission will provide a base from which consistent outcomes can be set for post-qualification accreditation."[10] It is in this context that research into the post-qualification arena is required.

Purpose of the research

Since there is so little research on the experience of solicitors in their first three years post-qualification, or on the existing CPD framework;[11] the researcher has elected to investigate that period of professional development as part of a potential PhD study.

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[8] The currently applying version of the Training Regulations 1990 is that implemented in November 2001 following a subsequent review.

[9] Strengths, Weaknesses, Opportunities, Threats.

[10] *Training Framework Consultation Paper (law Society, 2001).*, p. 5.

[11] The Law Society's definition is of CPD activity is that: "'continuing professional development' means a course, lecture, seminar or other programme or method of study (whether requiring attendance or not) that is relevant to the needs and professional standards of solicitors and complies with guidance issued from time to time by the Society" albeit with the caveat that "the activity should be at an appropriate level and contribute to a solicitor's general professional skill and knowledge and not merely advance a particular fee-earning matter".

For reasons involving the researcher's own field of legal work, the target group of participants has been defined as those of 0-3 years' PQE involved in civil litigation.

Consequently, the researcher wishes, principally by interview, to seek to obtain the recollections of solicitors within that category about the attributes they perceive as desirable at the 3 year PQE stage and the "learning experiences" that they have encountered during the post-qualification period. It is at this stage that recently-qualified solicitors leave the stage of formal and structured learning and enter the sphere of professionalism and responsibility for one's own CPD. The researcher wishes to examine how that responsibility manifests itself by considering the conceptions of solicitors in this category about the means of development and learning during that stage:

- What do they perceive as the desirable characteristics of a person at the 3 year PQE stage?
- What, if any, formal plans do they use to acquire such characteristics?
- How do they perceive themselves as acquiring such characteristics?
- How best do they perceive themselves as acquiring such characteristics? (what factors promote and what factors hinder the acquisition of those characteristics? Where does CPD-accredited activity fit into the picture?)

The intention is not, it should be emphasised, to draw conclusions about any individual solicitors or about individual firms, employers, internal training departments or external providers of education or training.

"Learning experiences" may include formal organised CPD activity; reading and workplace experiences or informal instruction or example by colleagues or superiors.

The researcher
The researcher has been involved in solicitor education at Nottingham Law School since 1993, both at LPC and post-qualification levels, having previously practised as a solicitor in general commercial litigation in the City and West End of London. It is possible that individual participants may therefore know or have been taught by the researcher at either level.

What does participation involve? (0-3 year PQE solicitors)
For individual participants involvement will be as follows:

i   initial questionnaire (pages 9 and 10);
ii   interview;
iii   follow up and feedback.

The initial questionnaire is designed as a time-saving measure and will obtain certain basic information necessary to place each participant in context. It is envisaged that this will take no more than 15 minutes to complete and can be handed to the researcher at the interview.

Whilst the researcher would prefer the opportunity to undertake wide-ranging and prolonged or multiple interviews with participants, the dictates of practice, chargeable hours and targets are recognised. The basic commitment, then, is to an interview of no more than 1 hour in duration. Participants' involvement in the interview will, where

appropriate, be "cleared" with training personnel/gatekeeper in advance. Interviews will take place at the participant's workplace or, if preferable to the participant, at a nearby neutral venue.

Interviews will be sound-recorded digitally or on tape and subsequently transcribed by the researcher. If participants wish, transcripts will be forwarded to them (marked private and confidential, or to their home or other nominated address) for comment after the event. Where recording is digital, no tapes will be retained so that the transcript will become the final record of the interview. Tapes and transcripts will be retained by the researcher until the research project has been completed. As early as possible in the life of the project that is consistent with any need to maintain contact with individual interviewees or firms, personal information such as names of individuals and firms will be replaced by pseudonyms selected either randomly or by the interviewee. Data will be recorded and processed in accordance with the provisions governing research data in the Data Protection Act 1998.

At the end of the interview, the participant will be thanked for his or her participation and invited, should they wish to do so, to continue the debate by e-mail or other communication with the researcher following the interview.

Following data analysis, the researcher may seek the views of participants on initial findings and will, in any event, forward a summary of findings, with thanks, to participants and, where relevant, their firms.

What does participation involve? (training and other personnel)
If possible, the researcher would like to conduct an adapted version of the research structure with training and supervisory personnel. This will not take the form of seeking commentary from such participants on data provided by individual participants (in the absence of their express permission) but might include requests for comments on a summary of findings.

Participation is voluntary
Participation by firms or other employers and by individuals is entirely voluntary. Whether the approach is by a firm or employer allowing access to the researcher to conduct the research or whether the contact is directly with the interviewee, **it remains entirely open to an individual to elect not to participate in the research or, having participated, to withdraw his or her consent by notification to the researcher.** The participation or otherwise of any named individuals will not be transmitted to a firm or other employer although, by necessity, the number of participants at any one firm may need to be identified to the firm and in the final research (although firms will not be named).

Disclosure, privilege and client confidentiality
Learning experiences may occur during day-to-day practice as well as in formal "classroom" situations. In discussing workplace learning, participants are asked to maintain normal conventions in respect of case-anonymisation. Questionnaires, tapes, transcripts of interviews and other similar communications do not attract legal privilege and information contained in them could conceivably (although this is unlikely) fall within the definition of standard disclosure. Clients should not be referred to by name or in any other way that could identify them in respect of information that is not in the

public domain or in any way that might result in a breach of client confidentiality. The researcher is a solicitor and understands and will respect the ethical limitations on colleagues. In addition, the research will be conducted in accordance with the ethical framework of the Revised Ethical Guidelines for Educational Research (2004) of the British Educational Research Association.

Confidentiality and anonymity
Firms and individual participants will be allocated (or may choose) a pseudonym as soon as logistically possible in the life of the research project. Quotations from transcripts of interviews or other communications may be used in the research report. There may be concerns that such quotations whether direct or in summary, might, despite the use of pseudonyms, allow identification of an individual or a firm or that other aspects of detail provided by participants might result in an identification being made. Any such concerns should be discussed with the researcher and steps will be taken to present material in such as way as to avoid as far as possible any prejudice to the anonymity of participants or their firms or other employers.

What will happen to the data?
The project will generate completed questionnaires, transcripts of interviews, other correspondence entered into with participants following interview, including comments on transcripts and a summary of findings. Transcripts will be sent to participants as soon as possible after the interview and participants may comment on the transcript and in particular whether it has been sufficiently anonymised. The summary of findings will, as set out above, be made available to participants and, where relevant, to firms and employers and comment may be generated on that summary.

Data collected will be synthesised into a final substantial thesis that will be submitted for assessment (including review by external examiners) within the School of Education of the Nottingham Trent University and will, assuming successful submission, thereafter be retained in the university's library. It should be said that an article or longer paper derived from the research may be published and/or that the results of the research in a form similar to an article or paper, or to the summary of findings may be submitted to, for example, the Law Society to assist in its thinking about supporting development in this 0-3 PQE period. Synthesis may include some quotation in an anonymised form from questionnaires, interview transcripts, and correspondence. Completed questionnaires, tapes, transcripts and other correspondence will be destroyed both in hard copy and electronically on completion of the research project described above.

Summary
1   Questionnaire – retained by researcher – may be quoted in anonymised form – will be destroyed on completion of the research project.
2   Transcript – will be copied in an anonymised form to participant for comment, correction – transcript will be retained by researcher – may be quoted in anonymised form - will be destroyed on completion of the research project.
3   Correspondence – retained by researcher – may be quoted in anonymised form – will be destroyed on completion of the research project.

4   Summary of findings – copied to participants and, where relevant, firms – may be quoted in/appended to the thesis and/or paper.

What is in it for participants?
It is genuinely hoped that by giving up a small period of time to consideration to the way in which you are learning and developing as a solicitor in that crucial 3 year period you may have insights which will be of direct value to you as an individual. Beyond that, it is hoped that the conclusions of the research can be used to assist and support those in the early years of post-qualification experience (this being a significantly under-researched period) in the future.

I am a student on an award-bearing course NLS is running. Will participation or otherwise affect my marks?
No. Whilst you or the researcher might choose to postpone participation in the research until you have completed your course in any event, all award-bearing courses involve systems of script anonymisation, first and second-marking, moderation and review by independent external examiners before marks are awarded to students.

Outline interview structure

In order to help you in preparation for the interview and to assist in reassurance about the nature of the interview, an outline structure is given. Follow-up questions not listed here may be asked to help the researcher to clarify responses.

1   Introduction. Clarification of permission and destination of data. Outline of the purpose of the research. Thanks for participation.

2   Please think back to the period during which you first qualified. How did you feel about yourself as a litigator during that period?

3   Did you have/do you have any conscious plans about your development towards the 3 years PQE characteristics? (If so, please describe them. If so, were/are there any particular steps or strategies you were/are using to reach those goals? Have you seen the Law Society's training plan and SWOT analysis templates or an equivalent? Why do you have a plan/not have a plan?)

4   What are the characteristics, do you think, of someone who has 3 years PQE? Are there any particular threats or challenges to the profession or your field of practice that you anticipate before you reach that point?

5   Please think about the period from qualification until now. What kind of activities, events or material first come to mind under the heading "CPD"? Are there any other kinds of activities, events or material that you consider as contributing to (or intended to contribute to) your development towards the 3 years PQE characteristics during that period?

6   Please think of an experience that you consider to have been effective in helping your development towards the 3 years PQE characteristics since you qualified. (Please describe it. What are the factors that made it effective? Were you conscious of those factors at the time or did you carry out that analysis later on (or even for the first time during this interview)? What use did you make of what you had learned later on? Do you/did you employ any positive strategies for making the most of what you have learned?)

7   Please think of an experience that you consider to have been less effective in helping your development towards the 3 years PQE characteristics since you qualified. (Please describe it. What are the factors that made it less effective? Were you conscious of those factors at the time or did you carry out that analysis later on (or even for the first time during this interview?) What use did you make of anything you had learned later on? Do you/did you employ any positive strategies for making the most of what you have learned?)).

8   Is there anything you would like to say about the ways in which development towards the 3 years PQE characteristics can be helped to be effective for newly qualified litigators?

9   Thanks. Invitation to respond with any issues or ideas that occur later. Arrangements for forwarding of transcript.

Researcher's contact details

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Direct Line: 0115 8484157

E-mail: jane.ching@ntu.ac.uk

Thank you for agreeing to assist in this research project. Prior to the interview, it would be very helpful if you could please complete this questionnaire.

No: of questionnaire	
General Details	
Name[12]	
Contact address/e-mail (all correspondence will be marked private and confidential. Correspondence may be sent to a home or other nominated address if preferred).	
Date of qualification as a solicitor	
Field in which you practise (e.g. construction disputes, personal injury)	
Qualification details	
Qualifying degree (law, joint honours, non-law plus CPE)/FILEX – please describe which and identify institution(s).	
LPC – please give year of completion and identify institution(s)	

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[12] A name is requested at this stage for ease of communication. Prior to writing up, names will be converted to randomly selected pseudonyms.

CPD/education and training	
Does your firm have a required structure for CPD or are you individually responsible for selecting CPD activity and ensuring you comply with Law Society requirements? If there is a structure, please give an outline.	
Does your firm require you to keep a learning journal or engage in personal development planning ("PDP")? If it does not, do you personally keep any record/plan of your learning/development? Please describe in outline any such journal, record or plan that you use.	
Please identify any other way in which you identify or select CPD activity.	

I consent to participation in the research described in the brochure and to use of the transcript and resulting data as described in it and in accordance with the provisions governing research data contained in the Data Protection Act 1998. I also grant permission to audio-recording of the interview.

Signed

Date

(items in red are comparable with the interview group in this study)

Trainee accountants

Allocation and Structuring of Work

Audit teams (temporary)
Scaffolded progression
Contact with range of clients
Formal professional training for examinations

Participation and expectations

Clear apprenticeship route
Pay your way
Must pass examinations
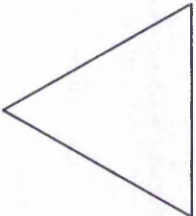
Relationships at work

Strong mutual support in teams
Strong organisational culture
Sensitivity to client differences
Develops peer group interaction

Graduate Engineers

Allocation and Structuring of Work

Project teams (long term)
Open plan offices
Social links around workplace
Intranet
Strong CPD programme
Little direct client contact

Participation and expectations

Learning is serious business
Work expectations often unclear
Have to do whatever turns up
Limited peripheral participation within their project
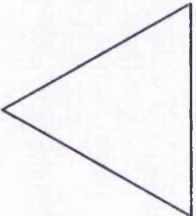
Relationships at work

Ask anything culture
Loose links in large teams
Informal contact with neighbours
Develops wider networks
Hunter-gatherers of resources and expertise
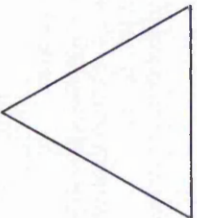Broader context of project often missing

Newly Qualified Staff nurses

Allocation and Structuring of Work
Ward based shift work
Full responsibility on arrival
Pressure cooker environment
Prioritisation critical
Multiple brief contacts with other health professionals

Relationships at work
Variable ward climates
Ward leadership critical
Variable contact with peers
Delegating to health care assistants
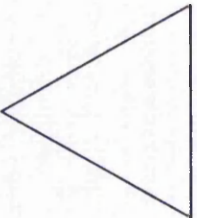
Participation and expectations
Unreasonably high at start
Transition problems underestimated
Ultimate responsibility for key decisions
Overwork is the norm

Context factors (Eraut et al, 2004)

Newly qualified litigation solicitors

Allocation and Structuring of Work
Long term team/department
No change/radical change of tasks on qualification
Time pressure/management
Variable pre-qualification be unclear
CPD required but of variable relevance/utility

Participation and expectations
Step change on qualification
High expectations on qualification
New expectations and job responsibility
(admin/billing, marketing etc)
No further necessary qualifications to achieve

Relationships at work
Hierarchical structure
Variable availability of partners
Use of slight senior as a resource

Trainee Accountants

Challenge and Value of Work
Good progression and client variation
Audit is legal requirement
Value for clients is clear
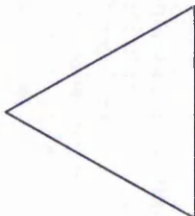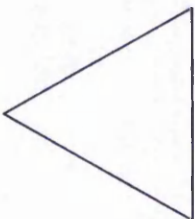
Confidence and Commitment
Short term confidence
Commitment to audit teams
Concerns about general progress
Less commitment to organisation
Range of career choices

Feedback and support
Good on the spot feedback and support
Feedback on evaluation forms too late
Normative feedback weak

Graduate Engineers

Challenge and Value of Work
Variable types and levels of challenge
Depends on work available
Isolation from clients resented
Chartered status valued only by some

Confidence and Commitment
Confidence ebbs with lack of challenge
Commitment to chartered status ebbs if not
valued in local workplace
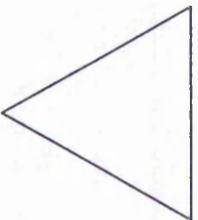Concerns about general progress
Range of career choices

Feedback and support
GEs suss out most helpful people in close range
GEs track down company expertise beyond their office
Many designated support roles, few of them active
Quality of support varies with immediately locality
Normative feedback weak

Learning Factors (Eraut et al, 2004)

Newly qualified staff nurses

Challenge and Value of Work
High levels of challenge
High value for patients
Complex relationships with other workers and professionals
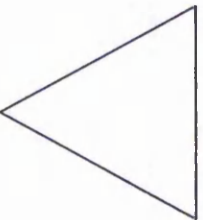Complex relationships with patients and their families

Confidence and Commitment
Strong commitment to patients
Commitment to colleagues variable
Early loss of confidence
Concern about general progress
Rebuilding confidence depends on support

Feedback and support
Variable close support
Variable mentor support
Occasional skills coaching
Variable back up
Emotional support critical
Access to training
Learning culture of ward

Newly qualified litigation solicitors

Challenge and Value of Work
High value but distress purchase for clients
High levels of challenge
Complex relationships with clients, opponents, etc
Progression ad hoc

Confidence and Commitment
Crisis in confidence and assessment of competence on qualification
Examinations
Strong commitment to profession/clients
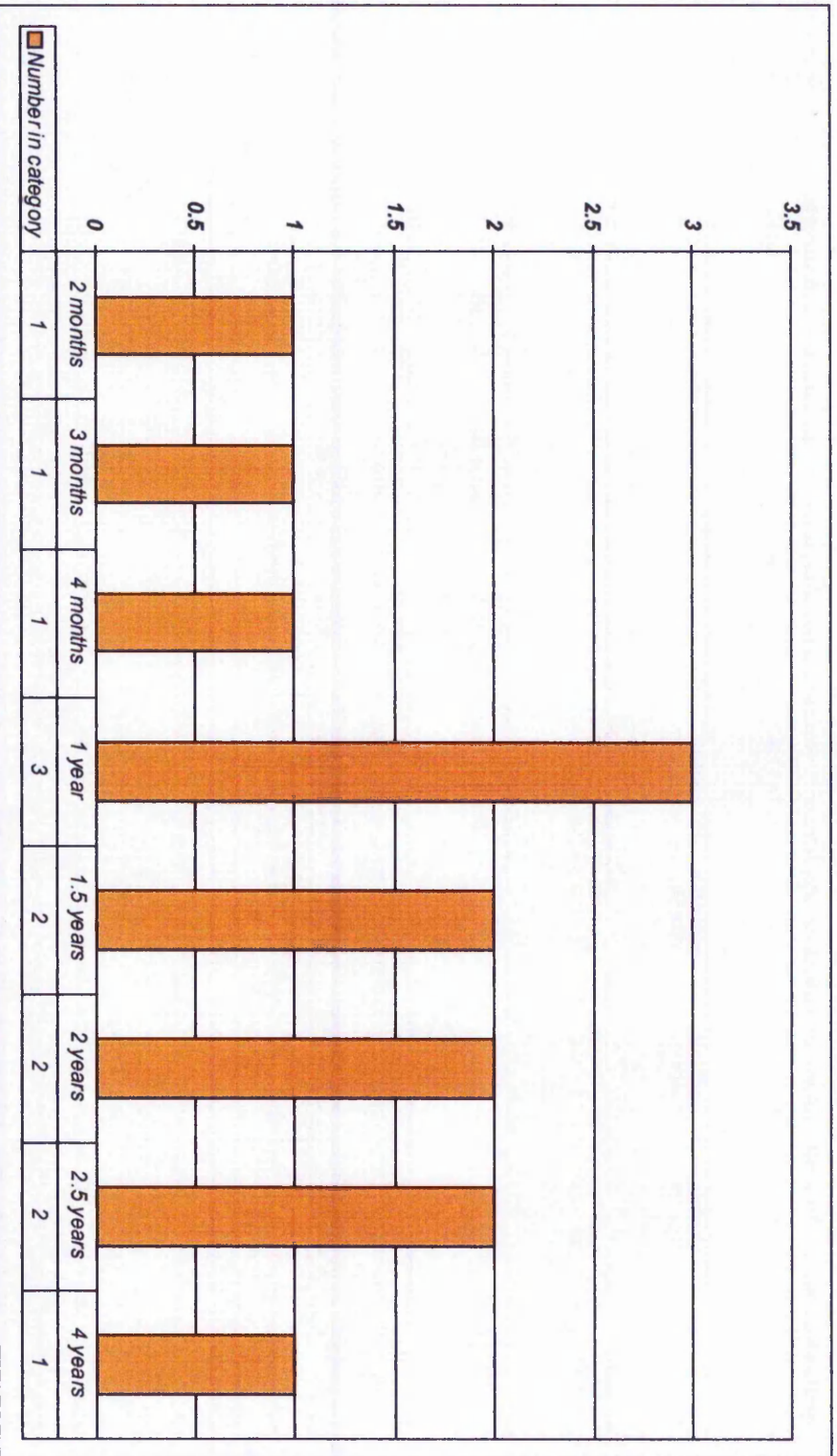Concern about progression: no criteria/markers

Feedback and support
Induction on qualification largely lacking/ineffective
Variable mentor/supervisor support
Appraisal positive
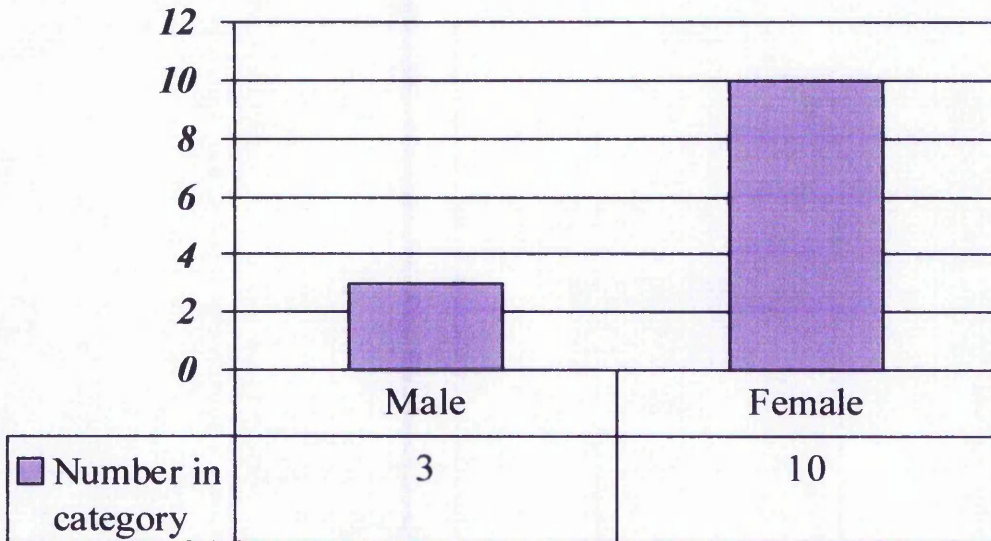Recourse to slight senior
CPD seen as updating

APPENDIX VI   Proportion Of Interview Participants By Level Of Qualification

APPENDIX VII   **Proportion Of Interview Participants By Gender**

	Male	Female
▧ Number in category	3	10

APPENDIX VIII   **Proportion Of Interview Participants By Type Of Firm**

	Large (City)	Regional firms	Firms in regional cities
▨ Number of interviewees employed by each category of employer	6	4	3
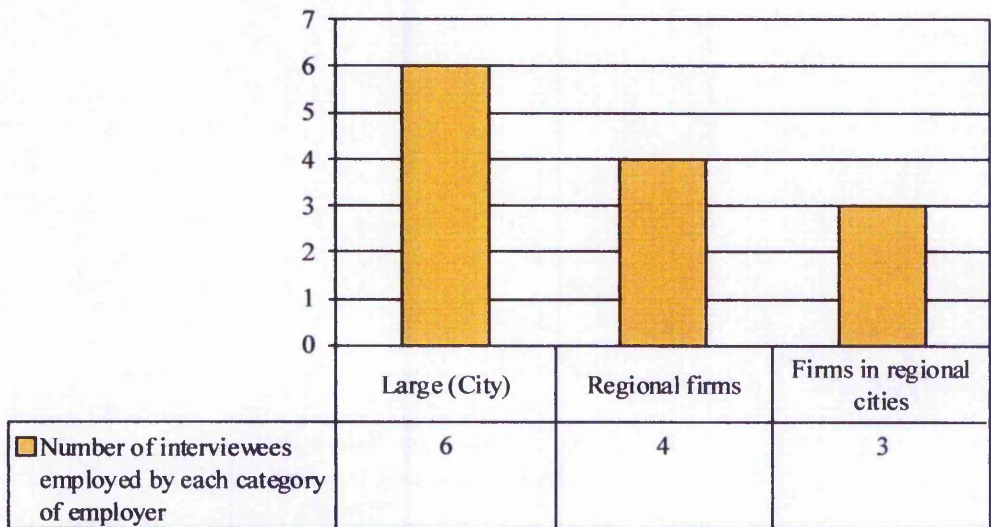
APPENDIX IX   Distribution Across Firm Type Of The 5 Organisations Employing Interviewees

Chart showing "Number of employing organisations within each category":

Firm type	Large city firm	Regional firms	Firm in regional city
Number of employing organisations within each category	1	2	2
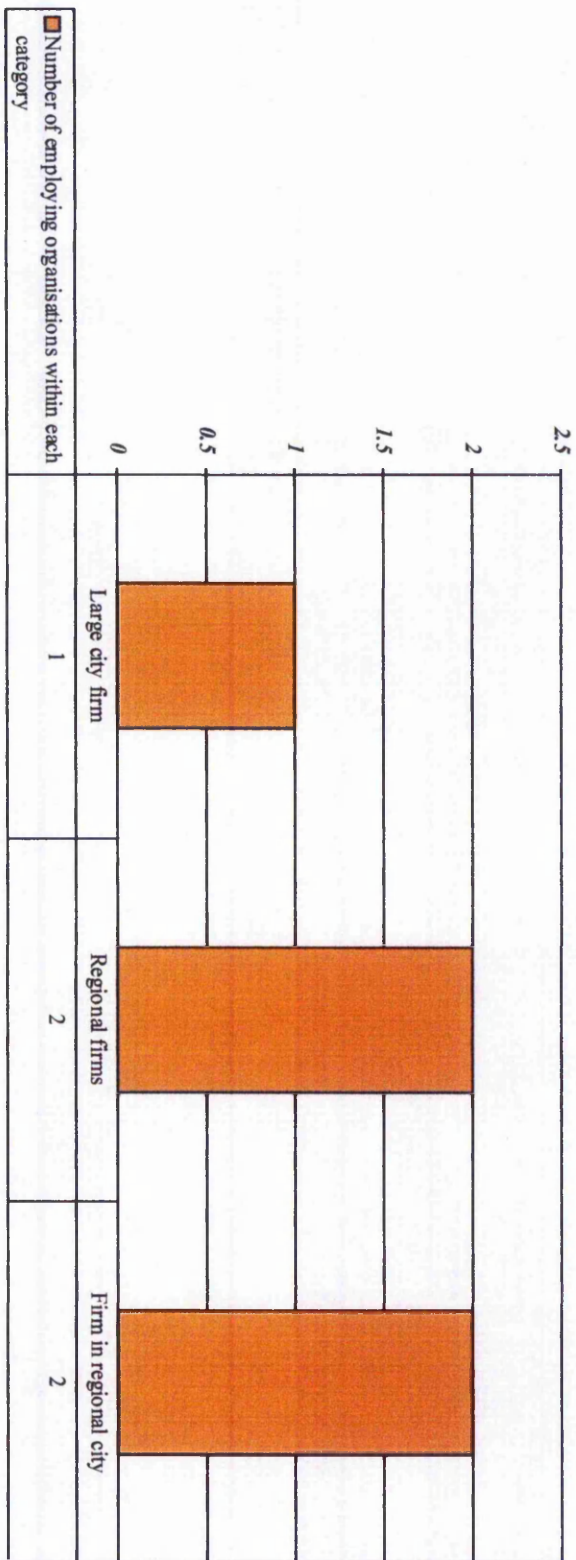
Number Of Interviewees From Each Employing Organisation

	large city firm	regional firm 1	regional firm 2	firm in regional city 1	firm in regional city 2
Number of interviewees from each employer	6	3	1	2	1
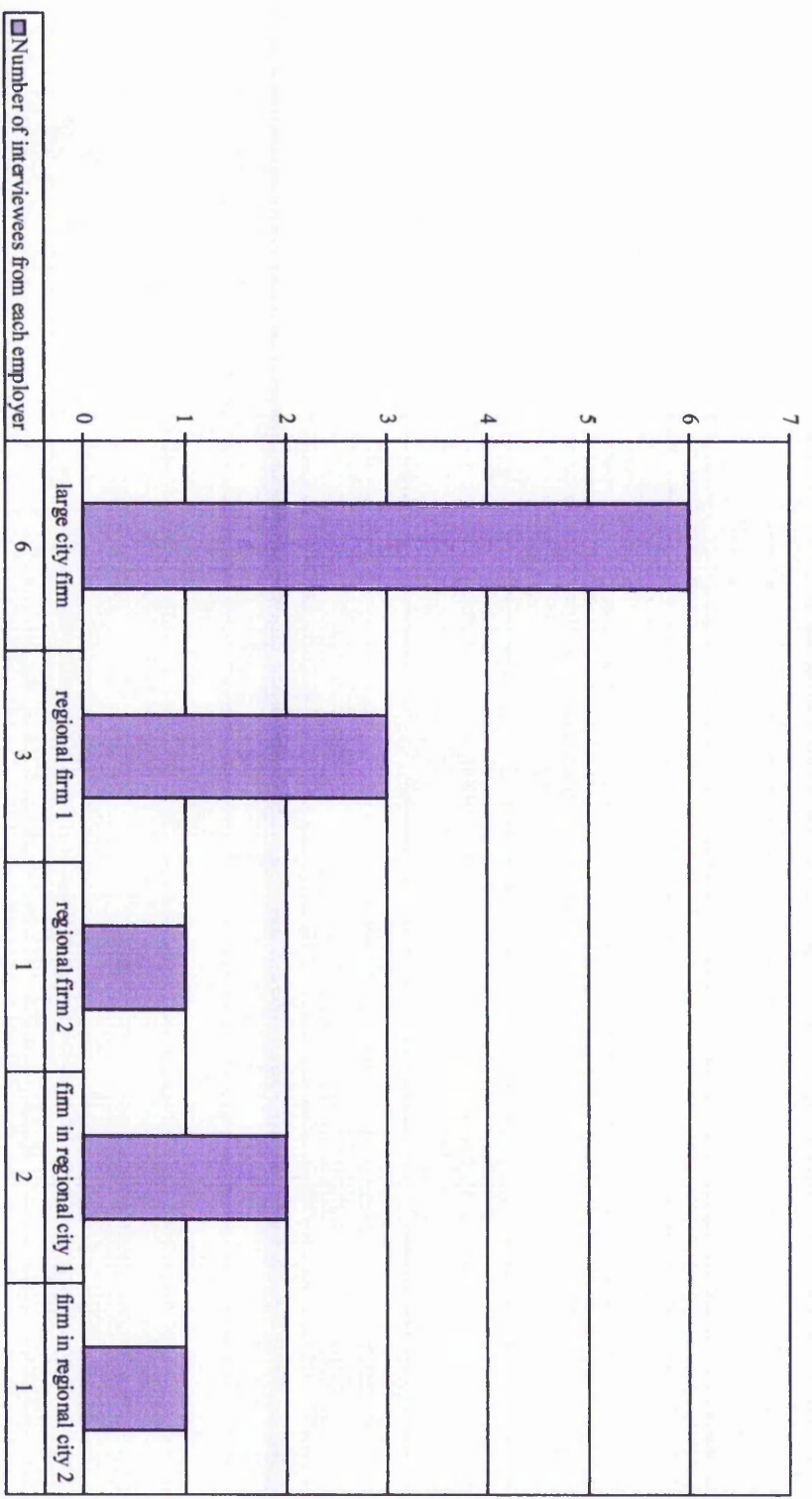
Academic Stage Of Interviewees By Type Of Degree/Institution

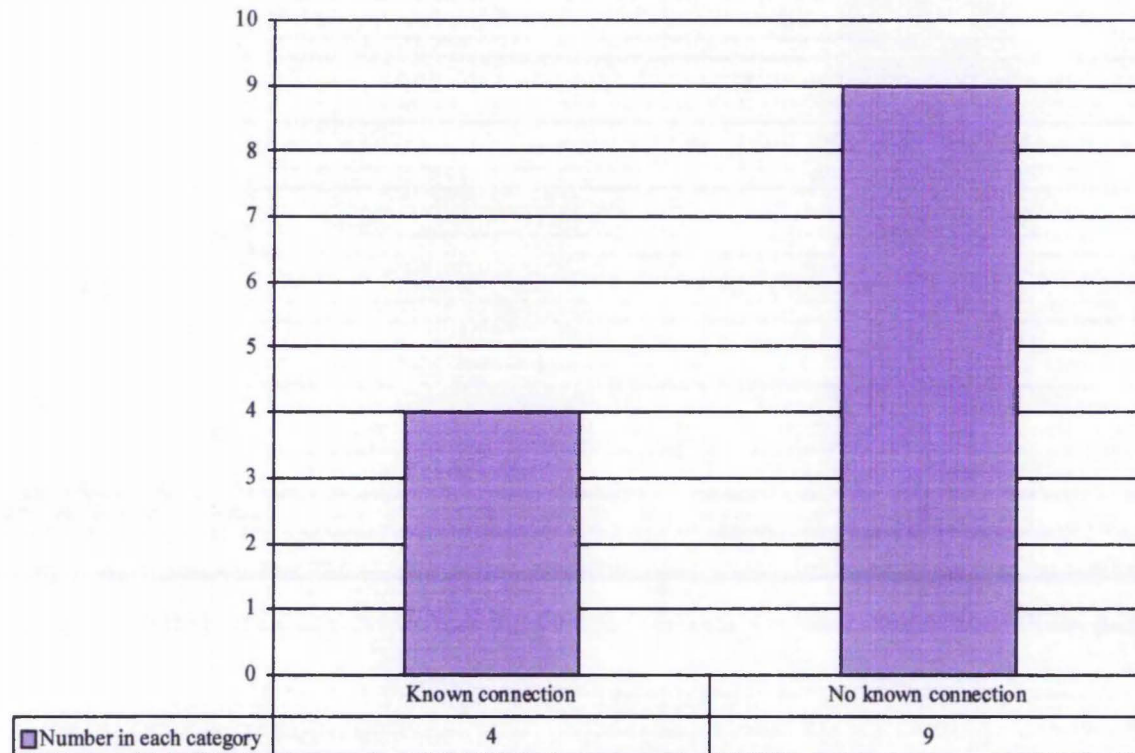|	non law degree plus CPE	law degree - "Oxbridge"	law degree - "redbrick"	law degree - "post 1992"	FILEX	not given
Number of interviewees in each category	3	1	4	3	1	1
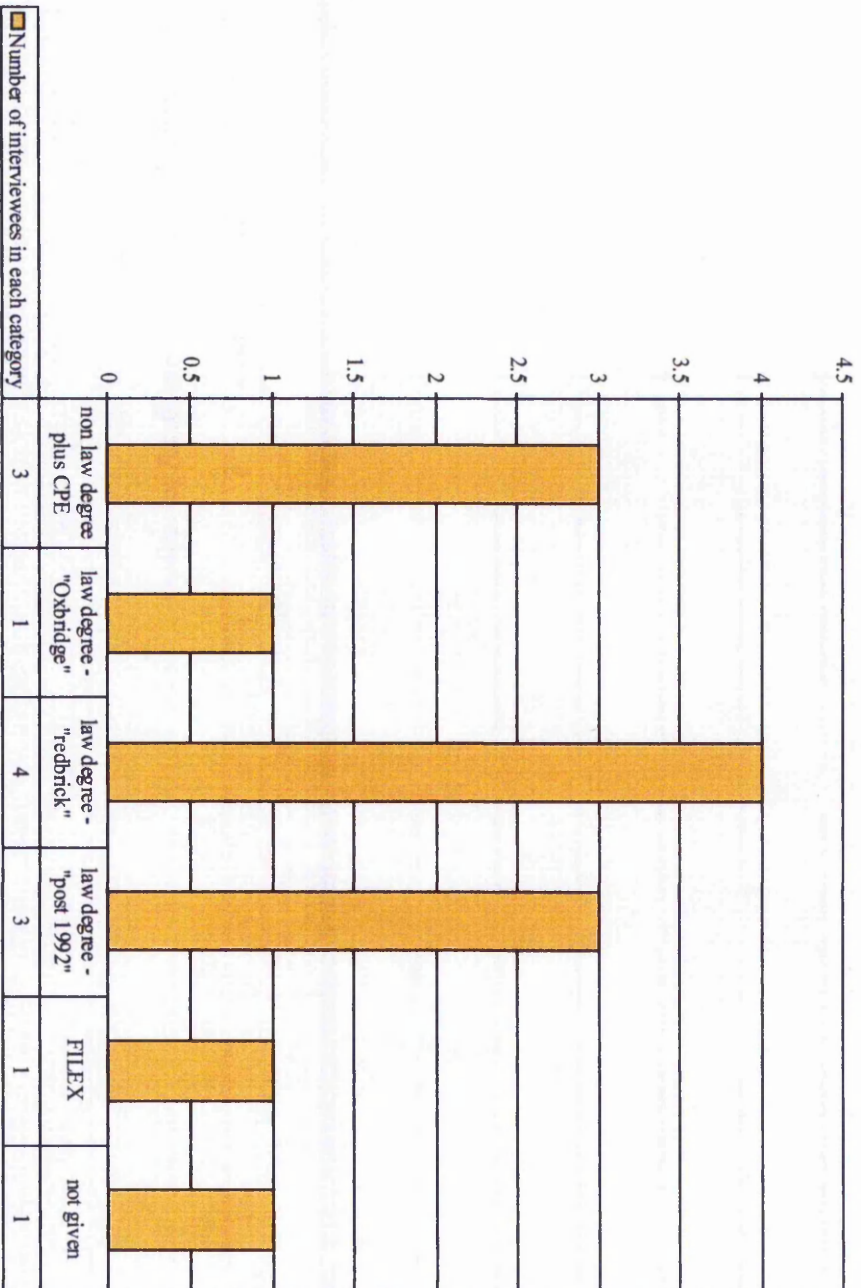
NB: "law degree" includes joint honours amounting to a QLD.

Interviewees' Vocational Stage By Type Of Institution
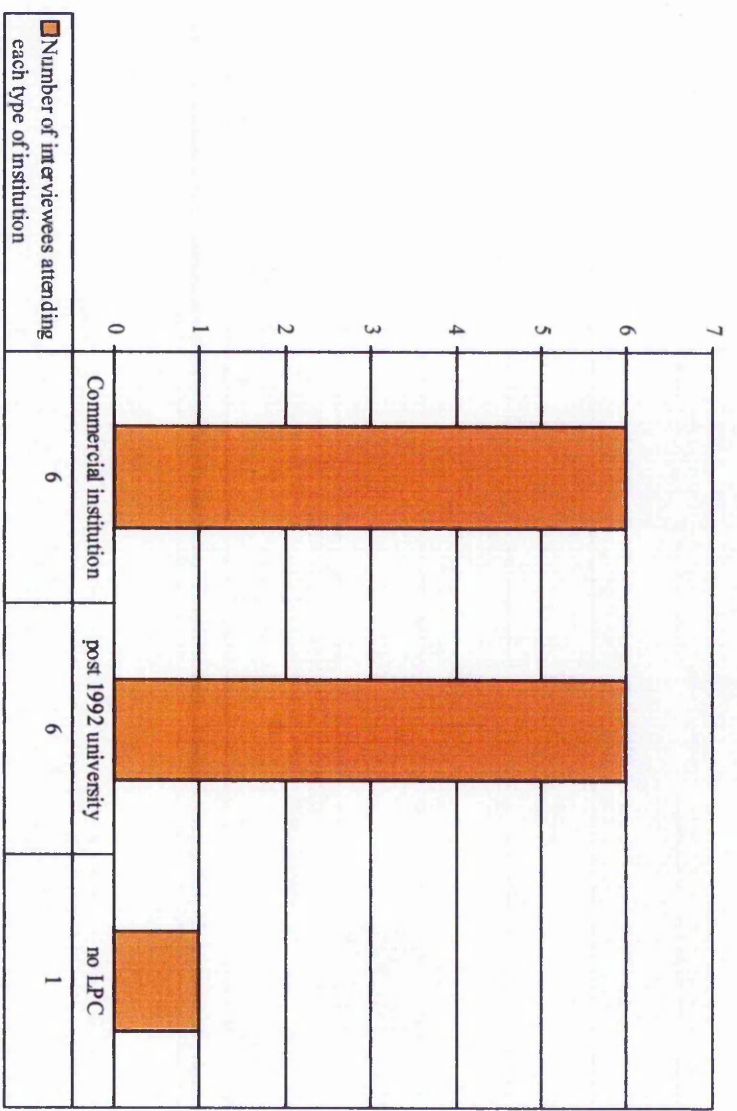
	Commercial institution	post 1992 university	no LPC
Number of interviewees attending each type of institution	6	6	1

	Known connection	No known connection
Number in each category	4	9

NB: such connections include degree or LPC at NTU/NLS but do not include any similar connections of the gatekeeper.

YOUNG LITIGATION SOLICITORS AND THEIR MENTAL MODEL OF MOVEMENT FROM QUALIFICATION TO THE 3-YEAR WATERSHED

SUMMARY OF RESULTS

March 2008

A long time ago, in 2004 and 2005 when I was carrying out interviews, I promised those interviewees and the gatekeepers who had kindly allowed me access to them, that I would share with them a summary of my results. The vagaries of part-time research have meant that this summary is being prepared considerably later than I wished and that many of those who I interviewed about a 3 year watershed then some distance in the future, have now achieved or passed it. But one hopes that the picture I obtained remains useful: a) to those still working towards the watershed suggesting that perhaps they are not alone and b) to those supervising individuals within that difficult phase in understanding or remembering what those individuals are likely to be going through. In the light of the SRA's proposal that individuals will possess a series of "day one outcomes" at the point of qualification, preparation for and confidence at the point of qualification as a springboard for the remainder of the individual's career as well as in the crucial early years after qualification is of current political as well as personal significance for all of us. This was, in my view, a comparatively simple question to ask, but not one I could establish had been asked before, or asked of the newly qualified solicitors themselves (and to their employers), to all of whom my deepest gratitude is owed.

a)   Benchmarks

The proposed work-based learning outcomes make, in my view, some assumptions about the kind of work that is to be carried out by trainees, in particular that they will have a level of overall responsibility for and autonomy in client matters and direct client contact that may not be the case in all (or even many) firms prior to qualification. The purpose of this study was not to compare the current activity of trainees against the draft work-based learning outcomes, however, but to look at the position of individuals qualified under the current provisions, at and after the point of qualification. My starting point was, then, to find out how people described themselves and their feelings

at the point of qualification, knowing that this would have been influenced by their training contract experiences.

Feelings on qualification

Interviewees showed great consciousness of their new status within the hierarchical structure of the firm. An identity, and not just a role or job, had been achieved after many years of work. The expectations of others might now change or be expected to change (but in the case of colleagues, might not in fact be perceived to do so for the better). Tensions emerged for some individuals between this status and their confidence, and between status and tasks allocated to them (whether they were seen as "trainee" or "solicitor" tasks).

A positive training contract experience, with the same firm (known colleagues and familiar expectations and working practices) and with a great deal of similarity between the "last seat" and the post-qualification job (the same field and, ideally, the same side: claimant or defendant) promoted confidence at the point of qualification. Feelings of confidence on qualification then also correlated highly with feelings of competence at the same stage. The addressing of individual discrepancies and gaps arising from changes in firm, field, side and so on, might be significant, therefore, for any on-qualification induction. There was, however, a distinct sub-group whose feelings of competence outweighed their feelings of confidence because, it appeared, they were able to see themselves as competent novices in the field, rather than, perhaps, sensing that the expectation was that they should be competent, at the point of qualification, in everything or to a higher level. A survey conducted by other researchers, on newly qualified staff nurses, also found that some of them felt that on qualification they were expected to be competent in and take responsibility for everything (Miller and Blackman, 2003).

Interviewees talked about increased and sometimes unexpected expectations now imposed on them both in terms of new tasks (such as billing, meeting targets, marketing or the day-today running of a whole file beginning to end) and of increased responsibility and workload. These expectations were usually seen as imposed by colleagues or clients but sometimes a burden of responsibility was seen as being self-imposed through conscientiousness or professionalism. Individuals frequently desired some repetition of activity so that they could demonstrate or put into place earlier learning: at qualification many tasks felt entirely new.

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Perceptions of the 3 year watershed

I chose the 3 year post-qualification point as my second benchmark because it represents the point at which an individual is permitted to practise on his or her own account and therefore, presumably represents a point by which the profession considers an individual to have reached a "safe" level of competence. Whether distant from (0-18 months post-qualification); close to (2-2 ½ years post-qualification) or beyond it, the principal attribute of the 3 year PQE solicitor was seen by interviewees as that of "confidence", acquired through prolonged exposure to work tasks; seeing things through beginning to end and repetition of activity as well as through having had the opportunity to get "systems in place" to manage the workload. Perhaps because the systems are in place and familiarity has been acquired in the procedural and administrative tasks, as well as in the range of problems seen and repertoire of solutions accumulated, (the "collapsing" of knowledge and pattern recognition seen as expertise develops), those at the watershed were thought also to be able to see the bigger strategic picture. However, the confidence of the 3 year PQE solicitor was seen as perhaps only being superficial as they were also seen as still being engaged in learning. An assumption that a 3 year PQE solicitor was, by definition, more competent than someone less qualified was considered in one case inappropriate and, essentially, derived from a hierarchical labelling system. Confidence and increased competence, however, could also be seen as negative, leading to stress (a heavier or more complex workload) or complacency that might inhibit personal development and learning. This might particularly be the case in what I will call "aspirational learning" (focussed on new roles or fields as opposed to increased competence in existing tasks), at least where that learning was in a CPD context.

b)   Formal CPD

Although consultation has only taken place at this stage on post-qualification accreditation schemes, the SRA has taken CPD within its remit. Concerns have already been expressed about the CPD system in general, in particular as to:

- the focus on process and time spent on CPD activities rather than outcomes;
- the small number of CPD hours required each year;

- the danger that it could become a tick box exercise bearing little relation to real development needs;

- the difficulty of monitoring whether CPD is properly carried out; and

- the fact that developmental needs will vary enormously between individuals, career stages and practice areas,

resulting in a suggestion that "[t]here may be a case for modifying CPD arrangements so that they are based more on outcomes relative to the individual's training and development needs".

Although interviews took place before the creation of the SRA or its statement of principle, I wanted to investigate what interviewees thought of the existing CPD system – generally focussed on delivery of updating information and regulated by way of input (attendance) rather than output (measurement of learning) - and how, if at all, they felt it might contribute to their own development when compared to their activities in the workplace. Consequently, I started by asking what first came to mind when I used the term "CPD".

Top of the head concepts of CPD

The response was precisely what I had expected given the type of CPD system currently in place for solicitors and the majority of CPD provision: that there is a responsibility to "do the hours" and that CPD is fundamentally about lectures or talks that update (i.e. deliver information). Interviewees were particularly conscious of the need to comply with the hours requirement although none identified difficulties in doing so themselves (some referred to more senior colleagues being in a different position), because of the number of opportunities available to them, particularly in-house provision. What CPD activity was engaged in was in some cases affected by decisions made for the individual (such as a compulsory induction course) or with the individual in the course of appraisal. Nevertheless, interviewees evaluated CPD activity by a number of criteria:

- Relevance – bearing in mind the pressures on individuals as they sought to get to grips with new expectations and a new role, it is not surprising that relevance tended to be defined – at least by the very newly qualified - in terms of very direct alignment with their actual field of practice (although very confident

individuals might choose CPD on a more aspirational basis related to possible areas of future practice). Some interviewees at 2 years PQE, however, described a broader approach in which you might "learn something from everything" or acquire "useful background knowledge".

- Appropriate level. As much CPD updating (particularly perhaps in-house) is delivered on an open-access basis, level, particularly for the very newly qualified, was a significant factor. On the other hand, one can imagine that entry level activity intended to re-energise or contextualise what had been covered on the LPC might suffer if perceived as "remedial". Interviewees suggested that a degree of prior knowledge of the subject matter of the talk might help, as might the unthreatening environment provided by a cohort of students of a similar level of qualification, but pitching a course either too high or too low, assuming too much (or any) prior knowledge contributed to its negative evaluation.

- Applicability. Material that might otherwise be seen as relevant seemed to become irrelevant if it could not be applied in practice. The theme of identifying practical steps by which to implement the information or expectation from a course (how to change) also arose where courses were seen as too academic or on technical subjects that arose in practice infrequently or not at all.

- Content. Although some interviewees discussed participation in "workshops" and skills training in advocacy and negotiation, the concept of CPD activity as "legal updating" means that there was some doubt about the extent to which material related to some of the new expectations about management, marketing and so on could be covered (or covered effectively) in CPD activity.

- Discussion. Courses that involved a discussion were valued, as promoting applicability as well as consolidating recall and understanding although limitations were recognised in promoting discussion in a group of novices (without real-life experience in the topic).

- Internal vs external. Whilst the presence of other students of the same level was valued in CPD activity, some interviewees found that internally delivered CPD allowed for appropriate tailoring of discussion to their actual workplace activity, whilst others felt that the opportunity to discuss with people from other firms enhanced debate.

- Costs. Whilst internal provision and the contribution of internal training personnel in ensuring compliance was identified as a positive, a number of interviewees recognised costs as a factor potentially inhibiting their participation in external CPD over more cost-effective internal provision.

- Time pressure/availability. A pressure on the individual's time proceeding partly from a difficulty in predicting how long any task would take, precisely because the tasks now allocated were new, adversely affected the newly qualified generally. This is despite the expectation in the work-based learning outcomes that trainees will be able to make "realistic judgements about amount of time required for tasks". This general pressure in its turn placed constraints for some on the time available for updating by reading or course attendance (particularly perhaps where a course was delivered internally and was of short duration).

- Positive factors, then, once the variables of content, relevance and the cost/benefit of the time spent attending the course were accounted for; included topicality or intrinsic interest of the subject matter and the overall performance skills of the lecturer (accounting for the concentration span of the listeners).

Nevertheless, and given the context, not at all unnaturally, the concept of CPD remained very much that of information transfer: updating on procedure or law.

c)   Non-CPD

It is hardly surprising that "living" the job", by definition relevant and applicable, was perceived as more personally useful even if, as contrasted with the CPD classroom, could be deprecated as "just general learning".

When asked what contributed to individuals' learning that they did not place under the "CPD" label, I found four groups of activity emerging:

i. Litigation activity (drafting, advocacy, ADR, trial, procedure, CPR)

ii. Professional and client care activity (telephone calls; meetings; marketing and networking; administration, billing and time management)

iii. Supervisory activity (appraisal; asking questions; feedback and criticism; supervision and management)

iv. Learning rich activity (induction, writing articles, repetition of activity, seeing the whole of a matter through and so on).

i. Litigation activity (drafting, advocacy, ADR, trial, procedure, CPR)

The extent to which an individual generated documents him– or herself, with or without discussion and intervention from a senior colleague represented a marker for the development of professional competence and responsibility beyond the training contract, paradoxically particularly when the documents in question were mundane (trainees were seen as being asked to draft individual letters but not to manage the day-to-day correspondence on a file). A point of autonomy and full responsibility for documents was described as being reached at about the 3 year point. Drafting was seen as a focus for learning a) analysis and clarity of expression as well as b) administrative practicalities. However, drafting documents and seeking advice on them from colleagues was most often mentioned as a context not only for bonding with those colleagues and as a means of substantive learning (taking on board the senior's suggestions) but also of learning to learn in the workplace context (a growing autonomy to seek advice at the point *the individual* thought it appropriate).

ADR would generally only have been covered by way of introduction during the LPC, although a number of interviewees had developed sufficient interest in it for it to form part of their personal development plans or their personal concept of professionalism (as resolvers of disputes rather than litigators). Although important in practice, negotiation has been removed from the LPC curriculum, and it was perhaps for that reason that it was an area (involving both knowledge and skills) where individuals, unusually, described combining learning it both through CPD and in the workplace.

Where litigation procedure was concerned, however, revision of the rules (last covered in the LPC classroom roughly 2 ½ years prior to qualification) was seen as desirable – at least if the "remedial" label could be avoided (by contextualising the coverage to the specific firm or field of practice) – and a formal CPD context was assumed for that revision. However, perhaps because here the procedure had been covered during the LPC, workplace experience in litigation was seen as building on procedural knowledge, and resulting in a) improvements to confidence and autonomy and to an understanding of litigation strategy and tactics as well as b) allowing individuals to develop a degree of professional pragmatism; practise case analysis and avoidance of negligence (learning how to deal with mistakes). Interaction with senior colleagues was valued here and the ability to complete the whole of the case is

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particularly desired as was repeated exposure to the kind of problems that arose from running cases (the themes of repetition and completion). Nevertheless, actually finding suitable litigation to allow the newly qualified to develop such skills and attributes could, in the current climate, prove difficult.

Similarly, I expected advocacy to be an area of particular difficulty in the workplace, given the downturn in litigation activity generally. Even those who have made a positive decision to specialise in litigation may be ambivalent, at best, about taking on advocacy. The reference in the proposed day one outcomes to the newly qualified possessing "the ability to … exercise the rights of audience available to all solicitors on admission" may be more aspirational than real. Advocacy was, however, for those who had had the opportunity, an example of an activity through which individuals learned (usually in the workplace but occasionally in the classroom) a) presentation and document managing skills and confidence but also b) derived through that experience other skills of tactics and analysis, informing the way in which they might deal with tactical precursors to a trial. However, whilst opportunities to conduct advocacy were restricted, I did find a partial alternative developing (although at a potentially huge sunk cost in terms of unchargeable preparation time) in the delivery, by interviewees, of lectures and seminars to colleagues, clients or potential clients. What this activity demanded in terms of i) preliminary knowledge and research and ii) skills in presentations and ability to answer questions from the floor showed, as described by interviewees, a remarkable similarity to advocacy in aspect a) above, even if, because the element of persuasion was normally absent, aspect b) was less well replicated (there are other differences, including court etiquette, presence of an opponent and document handling).

ii. *Professional and client care activity (telephone calls; meetings; marketing and networking; administration, billing and time management)*

Interaction with clients was a significant factor in interviewees' description of the step change on qualification (going to meetings with the client; making important telephone calls; networking as interaction with potential future clients) as well as their sense of status at that point. A personal sense of professionalism contributed to the quality of work output; to a positive attitude towards development and the need to acquire or maintain competence and knowledge independent of CPD compliance. This sense of having become a professional imbued a hunger for induction into new aspects of that

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role beyond fee-earning and a clear consciousness of the impact of mistakes (particularly significant, perhaps, in the light of the depressed feelings of competence expressed by some interviewees). Indeed, so strong was the sense of professionalism that one interviewee could se the potential for tension between the workplace as a learning environment and the workplace as a provider of client services.

Telephone calls were mentioned by a number of interviewees. In contrast to written documents, they did not allow time for thinking and for taking advice from senior colleagues. Calls by definition lacked the interpersonal cues employed in face-to-face advocacy and lecturing. To some extent the issues about telephone calls involved confidence and knowledge but interviewees felt that there were also techniques to be learned (and, with the increase of telephone hearings, this may become more, rather than less, significant) and learned in the workplace. Similarly it was felt that skills in conducting or participating in meetings could or should only be learned in the workplace.

Marketing and networking were mentioned by a number of interviewees as an area for which they felt unconfident and less well prepared. Involvement in marketing and networking might be perceived as representing involvement in the full spectrum of professional legal activity and participation in the business of the firm, although opinion differed about whether involvement was a marker for qualification or was something that equated more closely to the 3 year watershed. Where early involvement was required, scoping the firm's expectations was less of a challenge than working out what skills were needed to meet those expectations (how to change).

One of the most significant aspects of the acquisition of greater responsibility on qualification was seen as the responsibility for management of the file, keeping to deadlines, routine correspondence, managing costs and the like. This in particular was an area where pre-emptive assistance by way of on-qualification induction would be welcomed, although there was evidence of after-the event support being provided through appraisal systems. The additional pressure afforded by this new responsibility – and learning how to deal with such administrative tasks – was described by some as having a depressing impact on their ability to learn consciously from their on-the job experiences in other ways.

iii. Supervisory activity (appraisal; asking questions; feedback and criticism; supervision and management)

Clearly personal relationships and interactions within the workplace were very significant and the senior (supervising partner) could potentially have direct personal impact on the individual's development after qualification, perhaps in terms of specialisation, as well as as a role model. On a day to day level, as supervision within a law firm could be quite intense, I had wondered whether individuals after qualification - perhaps perceiving themselves as having reached a state of independence and autonomy acknowledged in the status "qualified" - might react negatively to, for example, letters being checked as a matter of course. Whilst a number of tensions were evident in interviewees' descriptions of their feelings about their status on the transition into qualification, this was not the case for the degree of supervision actually provided, which individuals positively welcomed either at the time or with hindsight. Some supervisors acted as positively-oriented mentors in supporting not only the individual's workload and quality of work but also in supporting their development.

What also became apparent, however, was the phenomenon of recourse to what I have called the "slight senior": a person more experienced than the interviewee, (although perhaps not by very much), more available and perhaps less intimidating, appearing as a) a specific individual; b) a generic strategy explicitly adopted by the individual or c) implicitly inherent within the firm's structure (as, for example, by the allocation of shared offices). Particularly where these slight seniors were self-selected by the juniors, they were a group whose contributions both to development and to the avoidance of negligence might be under-recognised by employers.

Asking questions of colleagues represented a degree of autonomy in the questioner (choosing when and of whom to ask) as well as the potential for questions to be directed both at solving current problems and/or learning for the future (e.g. "Why is this important?") Individuals might also choose *not* to ask questions as a positive learning tactic because they would prefer the discipline and challenge of finding out for themselves. Questions reported included those focussing on personal development (general advice); questions of peers during courses or informally and questions of technical specialists, including those of lower status (such as outdoor clerks and secretaries). Where an external speaker was involved in a course, the opportunity might be taken to ask questions of the speaker, perhaps to avoid the embarrassment of asking (very senior) colleagues. The most conventional use of questions was in solving immediate problems in fee-earning work, often seen as a reciprocal arrangement. However, as individuals gained confidence and experience, the role of questions

changed from seeking an answer to the problem to seeking a range of alternatives from which the individual might select. Forward-looking reflective practice questioning was also described (e.g. "What are we trying to achieve?") as part of the problem solving process as well as post-experience reflective learning (e.g. "How could I have done it differently?").

Where feedback was concerned, however, there was an assumption that it would be negative and, in contrast to the situation where the individual chose to ask a question or to a formal supervision structure generally, even frustrating or difficult to accept. Some feedback was *ad hoc* but some formed part of a more formal file review or appraisal process. Appraisal was seen as coming too late to deal with issues arising from the transition into qualification although some appraisal described was very grounding and useful developmentally, not only retrospective but also forward-looking, setting objectives and, crucially, identifying means by which those objectives might be achieved (how to change). Appraisals were amongst the activities selected by individuals as representative of good learning experiences (bad learning experiences were frequently dull, irrelevant CPD updating lectures given at the wrong level).

iv. *Learning rich activity (induction, writing articles, repetition of activity, seeing the whole of a matter through and so on)*

Given the importance given to the delivery of seminars and lectures by individuals and the learning of substantive subject-matter, presentation skills and confidence involved, I had wondered if writing of articles would occupy a similar position. Opinions differed about whether such writing fell within CPD and, whilst it might be seen as developmental, was also seen as being about marketing. Writing articles, was not seen as a highly significant contribution to professional development.

The workplace in general, however, was seen as highly significant as an environment for learning. Although a minority of interviewees mentioned activity from the LPC, previous working lives or involvement with organisations that was sufficiently similar to their workplace activity to allow transfer of learning into it, the workplace was seen as a place to acquire confidence derived from "experience". Exactly how prolonged experience contributed to development and to the attributes perceived in the 3 year PQE proved more difficult for interviewees to articulate and one interviewee suggested that whilst goals were comparatively easy to identify, how they might be achieved was much more difficult (how to change). Some skills, as described above, were thought of

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as not being capable of being learned in the classroom (not perhaps unreasonably given interviewees' experience of CPD activity). Given some of the concerns expressed about the relevance and level of CPD and its perceived constraint as passively transmitted "knowledge" rather than skills or attitudes, it is not surprising that individuals felt workplace learning to be more valuable, and to involve more prolonged learning activity, than CPD.

The opportunity to consolidate and demonstrate learning by repetition surfaced very frequently in the interviews as highly desirable and in contrast to the anxiety engendered by exposure to the unknown (and, given descriptions of feelings on qualification, much was felt as unknown at that stage). Completing the whole of a transaction (completion) occupied a similar status, particularly if the transaction was complex and engages a number of skills. *Quantity* of experience was seen as providing not only "knowledge" (which could, here, encompass skills, tactics and attitudes such as a sense of proportion) but primarily confidence as well as a greater opportunity for exposure to a greater number of problems and acquisition – on an *ad hoc* basis – of a repertoire of potential solutions. Ultimately, however, as with some of the more experienced interviewees' attitudes towards CPD, both good and bad experiences in practice were seen as developmental, the discipline of dealing with good and bad being seen as a learning outcome in itself.

d) Developmental planning, reflection, self-direction and autonomy

The preceding discussion, then, has identified a number of desiderata suggested explicitly or implicitly by interviewees as potentially affecting or promoting their personal development towards the perceived 3 year PQE characteristics, principally of confidence, of possession of a wider repertoire of solutions and an ability to look at problems holistically.

a. Management of the period of transition with appropriate, accessible support and supervision (which both provides a framework but also permits development of some autonomy) recognising the implications of pre-qualification experience and new expectations: **on-qualification induction**

b. Desired knowledge: principally acquired by updating at an appropriate level within an appropriate learning environment and without undue pressure of time: **appropriate CPD**

c. Desired skills: tactics, telephone calls, networking, marketing: **appropriate CPD/workplace exposure**

d. The understanding of and acquisition of strategies to meet new expectations in terms of responsibility and new expectations such as marketing and client contact: **how to change/on-qualification induction**

e. The significance of conducting the whole of a transaction and repetition of activity as learning-rich experiences: **repetition and completion**

In this section, then, I discuss the strategies described by interviewees for survival and achieving the characteristics identified in those at the 3 year watershed as well as the extent to which people in this group recognised or planned for aspirational activity. The possession of a learning orientation and strategies will become of increased significance given not only the proposed changes to CPD but at the point of, and before, qualification. The proposed work-based learning standards include, as competences to be demonstrated both during and at the end of what is now the training contract:

- Keeps up-to-date with changes in the law
- Demonstrates an awareness of own professional limitations, knowing when to ask for assistance
- Reflects on experiences and mistakes and learns from them
- Works to continuously improve oneself as a professional

Similarly, the day one outcomes suggest that at the point of qualification, an individual should be able to

- recognise personal and professional strengths and weaknesses;
- identify the limits of personal knowledge and skills;
- develop strategies to enhance professional performance

Interviewees were largely unaware of the (then) Law Society SWOT analysis form designed to help in developmental planning, although in some cases their firms clearly used developmental planning methods, perhaps as part of an appraisal process. The

conventional goal of "making partner" by way of developmental aim was not shared by all or even many of the interviewees, although it was highly significant for some. Some individuals had very specific goals and strategies to achieve their stated aims, whether of achieving partnership or, more widely shared, of achieving expertise and recognition generally or in a defined field. Not all felt able to articulate developmental plans or explicitly felt it was too early to do so. Some interviewees did not separate or articulate personal plans differing from the plans their employers might have for them (although some not only had personal plans but recognised the potential for tension between their own plans and those of their employers). Several found it difficult to separate desired outcomes or objectives (e.g. improving competence in X) from processes (going on a course about X) and, as we have seen, this difficulty in knowing how to go about achieving aims is a theme of the results (how to change). Some interviewees took an opportunistic approach tied in to a plethora of CPD activity offered to them. Indeed, interviewees tended to interpret my question about developmental planning as being tied to planning CPD activity, even though they considered the workplace as being a more valuable learning environment. Individuals who had more personal and specific goals, however, seemed more likely to be taking steps outside the CPD system to achieve them, such as asking to be involved in certain kinds of work. There was a continuum in this respect from

- those who saw and took a large proportion of the responsibility for their own development, irrespective of or in supplement to support mechanisms offered by their employers, with personally set goals either as a deliberate strategy or recognised as emanating from personal conscientiousness, through

- those making use of internal mechanism and opportunities to achieve their objectives, or able to identify mechanism and opportunities which would allow them to do so appropriately, to

- those who were, at this early stage at least, largely dependent on internal mechanisms both for setting goals and for the process by which they might achieve them. They might also reply on such mechanisms to define whether autonomy and responsibility for personal development was expected (or possible, if the individual was not necessarily in a position to identify matters that needed attention).

Reflective learning

However there remained a focus on updating, an area over which it is comparatively easy for the newly qualified individual both to identify a need and to take some control over the means of addressing. The proposed work based learning outcomes contain not only an expectation of a general learning orientation (seen in all the interviewees) but use of a specific strategy: that of post-experience reflective learning. It was a concomitant of interviewees' general feelings of lack of confidence and competence that they often assumed that it would be mistakes that would be made and learned from (as opposed to positive experiences). In fact, however, the descriptions of delivering lectures and seminars were defined both as positive (at least with hindsight) and as learning-rich. Where difficult experiences were concerned whether mistakes or ultimately positive, it was as if the immediate emotional context (perhaps inherent in the feeling of lack of confidence and competence held by many) had to be allowed to dissipate before a more objective perspective, from which learning could be derived, could emerge. Objectivity unclouded by personal emotion or feelings of incompetence could be gained more quickly by reflecting on the activities of others, whether peers or seniors. However, the output of the reflection was frequently articulated as "confidence", perhaps because it was uncertain whether there would be an opportunity to apply what had been learned in the future (how to change). In fact, rather than assuming that an individual was able, without help from a mentor or supervisor after a single, perhaps emotionally charged, experience to filter out what would be important for a speculative *future* opportunity, identifying what needed to change and steps by which to implement such change, most interviewees recalled and reflected on prior experience *retrospectively*. That is, only at the point that an opportunity for application subsequently arose and when the two experiences could be compared so as to select from the original experience what was important or applicable to the new scenario. Consequently supervision and assistance were welcomed at all stages of *forward-looking* reflection:

- identification of what was or could be learned,
- how to implement (how to change) and
- provision of opportunities for implementation (repetition to embed learning).

Clearly, for those working with the newly qualified, the emotional debrief was important, as is seeking to remedy the confidence deficit. Individuals may need,

however, either to construct their reflective learning *retrospectively* only when there is an actual opportunity for application or, in most cases, to be coached through identification of what is important as well as how it might be implemented for *future* application.

Aspirational learning

As many of the interviewees began from a position of feeling lacking in confidence and competence, I wondered at what point, if at all, they might begin to focus not on achieving competence at the range of tasks they currently undertook but on preparation for a new and more complex range of tasks (aspirational learning). As I have already indicated, there appeared to be a shift in the way individuals used the device of asking questions at around the 2 year mark. Immediately on qualification, not unreasonably, individuals' focus was on achieving a sense of competence in the tasks then expected of them, and, because so many of those tasks and expectations were new, there could be some confusion about what might be aspirational or not in any event. Aspiration might be expressed very generally as an overall long-term developmental goal. As elsewhere, individuals were more comfortable considering knowledge and information (contrasted with skills or attitudes) as possibly being of future relevance and, in some cases, identifying possible new areas of work suggested a readiness to extend the *range*, if not necessarily of the *complexity* of work carried out. Individuals, perhaps those with good feelings of competence and confidence on qualification and with a good experience of transition into qualification, or with good internal mentoring supporting the period of transition, might, however, be personally in a position to engage, deliberately, in a wide and aspirational choice of CPD activity in particular. Aspiration might also be strategic in the sense of *rejection* of irrelevant CPD activity or a positive decision to aspire towards expertise in a narrowly defined direction.

Conclusion

The picture emerging, then, is one of individuals at a difficult transitional stage, titrating between issues of status and survival and in a context where new and perhaps unexpected expectations and responsibilities had suddenly arisen (**on qualification induction**). Even if confidence and feelings of competence were depressed by discrepancies between the "last seat" and the qualification job – such that re-energising or motivation was thought potentially desirable - , individuals had a clear sense of

themselves as being involved in learning rich activities, particularly in the workplace. The need to survive and pressures on their time produced a very strategic approach to CPD activity in particular, including strong opinions about relevance, delivery and level. Choice of CPD activity might be opportunistic, based on compliance or defined by the employer. Where the new expectations were concerned, individuals might see clearly the need for learning to meet them, but had more difficulty, in the absence of mentoring or other supervision, in seeing how to achieve them (how to change). Some tasks with which individuals might welcome help might not be obvious to their supervisors (e.g. making telephone calls or dealing with routine correspondence). Discussion, approachability and the opportunity to ask questions both at courses and in the workplace was particularly emphasised. Individuals might feel it was too early to have more long term goals, or have long term goals that were quite generic and based around the acquisition of expertise in a field rather than acquisition of hierarchical status. **Aspirational activity**, at this stage, was rare unless individuals already had a specific developmental goal. Whilst reflection was common, without help, it tended to be retrospective and arose only once an opportunity for application has arisen; with implications for supervisors and mentors in either assisting forward-looking reflection (**how to change**) or ensuring that opportunities for application (including **repetition and completion**) and retrospective reflection arose. Supportive supervision and developmental help particularly during appraisal was also particularly welcomed.

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Appendix: specific suggestions made by individuals as to support and development in the first three years

Note that this list is given in alphabetical order rather than in any order of priority and that interviewees were taken from a number of different firms and that individual comments therefore do not necessarily relate to all interviewees or all of their firms.

Support might be welcomed in/felt unprepared for:
- Adjusting register in correspondence and on telephone for different kinds of client
- Administrative file management (e.g. remembering deadlines)
- Appropriate supervisory/management (e.g. in talking through files); giving feedback etc.) support
- Court etiquette (e.g. whether to say "Good Morning" to the judge)
- Dealing with assessment of costs
- Discussion, case studies in CPD courses (contrasted with lecture only)
- Encouraging/allowing individuals to attend external/shared courses so as to learn with and from colleagues with different experiences
- Help estimating how long tasks will take (time management)
- Help understanding what learning opportunities exist
- How to have/chair an effective meeting
- Induction as to new expectations/role arising on qualification generally or in specific department
- Opportunity to observe in court
- Requiring individuals to deliver training sessions
- Time to spend on specific learning-focused activity/keeping up to date/reading articles and cases
- Translating recognition of personal weaknesses/challenges into prescriptions that will improve/cure them
- Updates that recognise the benchmark level of knowledge of the newly-qualified
- What steps to take to achieve expectations in marketing/networking