

MAKING A VIRTUE OF NECESSITY? AN OPPORTUNITY TO HARNESS
SOLICITORS' ATTACHMENT TO THE WORKPLACE AS A PLACE FOR LEARNING

JANE CHING*

The intended shift towards outcomes-focussed learning, education and training will require a considerable change of approach among some entities, as systems for determining the impact of learning, education and training or prompting individuals to reflect on its outcomes are relatively uncommon.¹

INTRODUCTION

This article focuses on the learning of members, and aspirant members, of the solicitors' profession (the largest of the many regulated legal professions in England and Wales) as it occurs in the workplace.² It is argued that the profession has a deep-seated cultural attachment to the workplace as a site for learning, and that that attachment can be usefully harnessed to the service of a more distinct collective identity for the solicitors' profession in comparison with the other regulated legal professions; enshrining a commitment to such learning in pursuit of creativity and responsiveness to change –as a defining attribute of the profession. This also involves acknowledging existing intuitive practice that is not necessarily rewarded by organisations or in the existing regulatory framework. The unique breadth of the regulatory licensure of the solicitors' profession, when contrasted with that of the other regulated legal professions, when coupled with the changes in that regulatory structure highlighted in the quotation above and described in more detail below, provide not only a clear impetus, but also an opportunity to make this conceptual shift. There are, of course, risks and challenges in learning sited in the workplace, and I discuss in particular the argument that it leads to conservatism and convergence, further below.

The nature of the solicitor's workplace is increasingly varied, and includes not only the traditional "High Street" firm; but the City or global firm; the "virtual firm";³ local and national government; as well as non law firm "alternative business structures" ("ABSs") and

multidisciplinary professional services organisations.⁴ Some individuals, probably most, will see themselves as specialists in particular fields of law, others may still conduct a general practice.⁵ They will have followed, or be following, a variety of routes to qualification as solicitors.⁶ Only approximately half of them, based on the most recent statistics, will be known to have qualified by virtue of the “traditional” undergraduate law degree.⁷

Nevertheless, all of these individuals, and some of these entities, are regulated by the same Solicitors’ Regulation Authority (“SRA”) for England and Wales, although, for some of them, other regulators (such as the Financial Conduct Authority) or professional codes (such as the Civil Service Code) may have more day to day impact. In order to explore the relationship between the heterogeneity of the profession and its workplaces, and the homogeneity of its regulation and, arguably, collective identity, it is first necessary not only to examine the regulatory landscape as a whole, but also to consider the impact of the other regulated legal professions.

THE REGULATORY LANDSCAPE

In England and Wales, the Legal Services Act 2007 provides the basis for the regulation of the provision of most legal services within England and Wales. The Act provides for the regulation through professional bodies of some legal professionals, entities and activities. The professional bodies are, in their turn, regulated by the statutory Legal Services Board. The Act also allows overlaps and differentials between providers which are almost certainly invisible to clients, in the name of “promoting competition in the provision of services”.⁸ It is not comprehensive: claims management companies⁹ and immigration advisors¹⁰ are regulated separately through the Ministry of Justice, some activities are regulated by other legislation¹¹ and many legal or quasi- legal professions remain self-regulating. The extent to which this complex regulatory matrix will persist for very much longer is, at best, uncertain,¹² but its

effect, particularly in terms of permitting substantial new entrants to the market as regulated entities (at present under the aegis of the existing regulators) is unlikely to be easily reversed.¹³

A very limited range of “reserved legal activity”¹⁴ is, however, subject to regulation by section 13 of the Act, whoever performs it. This has the effect that, for example, advocacy in court can be undertaken by barristers, solicitors, legal executives, and, in their specialist fields, costs lawyers, patent and trade mark attorneys.¹⁵ Conveyancing (transfer of real property) may be carried out by solicitors, legal executives, licensed conveyancers and notaries. Unreserved activity, which includes contract drafting and negotiating and, essentially, advice on the law in any context, is regulated under the Act only if provided by a regulated person,¹⁶ or through a regulated entity such as a solicitors’ firm or SRA-regulated ABS..¹⁷ Finally in this context, it should be noted that the role of the legal executive is decreasingly confined to that of an auxiliary to a solicitor. In education, qualification through the Chartered Institute of Legal Executives (“CILEx”) offers an opportunity to achieve the status of a regulated lawyer considerably more cheaply than through a university education¹⁸ and then, if it is perceived to be desirable, to transfer into the solicitors’ profession.¹⁹ In the marketplace, the forthcoming right to practise independently in legal executive firms which may be virtually indistinguishable from solicitors’ firms creates very clear additional direct competition.²⁰

All of this places particular pressure on the solicitors’ profession. To the extent that it remains a homogeneous profession, or at least a group of associated professionals with a single regulator, there is a growing challenge in trying to isolate and articulate a distinct solicitor identity. The work and working practices of, say, a solicitor specialising in property work, may be more closely aligned to those of a legal executive, licensed conveyancer or notary working in the same field, than they are to those of the immigration specialist solicitor in the next office. The working practices of a solicitor specialising in tax may be more closely

aligned to those of the accountant working in the next building. Nevertheless, in what Moorhead has called the “professional paradox”, all of them are “solicitors” and not only entitled to carry out all of those different specialisms, but at least in principle, to move between them.²¹ Any cohesive collective identity for solicitors must, therefore, stand up to comparison with those of all the other providers of the same legal services. Until or unless regulation shifts sufficiently to permit a single profession and a single regulator, and as long as the governing legislation endorses “competition in the provision of services”, it will be necessary to consider means of differentiation between providers of legal services.

This article imagines this challenge of differentiation as initially one of collective identity, and focuses on one thing that solicitors *do* seem to share: an attachment, whether sentimental or otherwise, and whether they know it or not, to experiential learning in the workplace. This is not to suggest that the other regulated legal professions ignore it: all of them currently prescribe some form of supervised practice prior to qualification or independent practice, and they recognise forms of workplace-based learning to various extents in their CPD systems. What is different for solicitors is that it may be one of the few things that the profession *does* genuinely share. Recently published research with employers in SRA-regulated entities quoted at the head of this article,²² (“the IFF/Sherr report”) indicates that, whether instinctively or by design, SRA regulated employers are committed to learning in the workplace, even if, at present, despite its limited explicit acknowledgement, particularly post-qualification, in the regulatory framework. Not a small part of an exercise in consciously harnessing that commitment could refresh what I suggest may be the somewhat fractured collective identity of solicitors as a group.

THE QUESTION OF IDENTITY

... learning as social participation ...[involves] being active participants in the *practices* of social communities and constructing *identities* in relation to these communities. Participating in a ... work team, for instance, is both a kind of action and a form of belonging. Such participation shapes not only what we do, but also who we are and how we interpret what we do. [Italics in original]²³

Wenger's concept of social learning outlined above, involves four components: i) learning as doing, as establishing a practice; ii) as belonging, becoming a member of a community; iii) of learning as experience leading to the making of meaning and iv) of learning as becoming, as part of the creation of an identity. Clearly, the workplace is a significant site of social learning, including acquisition by individuals of the professional *habitus*, and of socialisation into the culture and *mores* of the "community" represented by the law firm or other legal services organisation and, if they exist, those of the profession as a whole:

The third apprenticeship, which we call the apprenticeship of identity and purpose, introduces students to the purposes and attitudes that are guided by the values for which the professional community is responsible. Its lessons are also ideally taught through dramatic pedagogies of simulation and participation. But because it opens the student to the critical public dimension of the professional life, it also shares aspects of liberal education in attempting to provide a wide, ethically sensitive perspective on the technical knowledge and skill that the practice of law requires. The essential goal, however, is to teach the skills and inclinations, along with the ethical standards, social roles, and responsibilities that mark the professional.²⁴

Here, however, I focus on the collective identity of the community, rather than the individual professional identities of individual solicitors. Others have commented on the fact that the solicitor identity has excluding class and gender implications which are not shared by all aspirants;²⁵ that it may be challenged by close identification with clients or their causes²⁶ and create conflicts with personal morality and values.²⁷ In the context of increased opportunities to site the learning of entrants to the profession in and near the workplace through the apprenticeships and bespoke vocational courses discussed below, it is worthy of note that there is some suggestion that the relationship between the "workplace identity" ("I'm a lawyer with Sue Grabbit and Runne LLP") and the "vocational identity"²⁸ ("I'm a

solicitor”) may be causal. For those who begin their process of professional formation in the workplace, the workplace identity can be stronger at the outset, preceding development of the vocational identity²⁹ which is, I suggest, a correlate of the collective identity. I discuss the problems of convergence and conservatism in the workplace identity, and the significance, and potential role, of at least a sub-category of solicitors who have undertaken at least parts of their education in a different environment – the university – below.

The idea, however, that there is a clear homogenous *collective* solicitor identity, to be easily contrasted with the collective identities of members of other regulated legal professions, and drawn from a collegial, professional culture is more challenging.³⁰ A collective identity of this kind is not innate and must be acquired (in effect, learned) and is defined in part by “the presence of other in-group members ...[as] a potent reminder of someone’s social identity; the more so if the members are aiming at a common goal”.³¹ The fracturing of the solicitors’ profession into a wide variety of types of organisations and fields of legal activity makes it, I suggest, difficult to see such commonality.

A graduate of the postgraduate Legal Practice Course (“LPC”) who has been unable to secure the training contract necessary to complete the qualification process, may desperately want to become a solicitor, rather than work as a paralegal or make a sideways transfer into the legal executive profession, even though both may involve doing exactly the same kind of day to day work. In other respects, however, being a solicitor may at least for some, now resemble a default position akin to being English in the United Kingdom:³² defined rather more clearly by reference to what it is not (one of the specialist legal professions), rather than what it is. A solicitor can still be highly irritated by well-meant enquiries along the lines of “So, you’ve qualified as a solicitor. Congratulations! Are you going to go on and become a barrister?” or “Oh, you’re a solicitor. I thought you were a lawyer”. In some areas of practice, for example for some in-house lawyers, a solicitor identity may be largely irrelevant most of

the time – no more than a question of which set of CPD regulations to comply with – or closely tied to another organisation such as the Society of Trust and Estate Practitioners or Association of Personal Injury Lawyers.³³

What, then, are solicitors, collectively? A loose grouping operating in a variety of contexts, across a wide range of fields, in specialist and non-specialist practice, in private practice and outside it. In fact the solicitors' profession might already be described as a microcosm of what might be expected should a single regulator be imposed on the sector as a whole. Much practice is indistinguishable from the practice of other regulated legal professionals (solicitor/legal executive, solicitor/barrister, solicitor/trade mark attorney) or of differently regulated (the immigration advisor, the accountant) or unregulated practitioners (the paralegal firm or legal consultant).

The smallest regulated legal professions are, by contrast, regulated by activity; both educated in specialist fields and licensed only to practise within them. A licensed conveyancer is licensed only to provide conveyancing services, and that is what the licensed conveyancer qualification system teaches him or her to do. A licensed conveyancer who wishes to, say, conduct property litigation must either transfer into a different profession, or lobby his or her professional regulator to seek additional rights for the entire profession. From this perspective it is no doubt iniquitous to, for example, a patent attorney, that a solicitor is restrained from dabbling in intellectual property law, in which he or she has not specifically been trained, only, as I describe below, by the regulatory framework.

It is the existence of these other professions in England and Wales which, I suggest, causes the problem: the challenge of saying that there is X which a solicitor does, and which only a solicitor does is insuperable. What therefore remains is what a solicitor is.

The current remit of the SRA, as regulator, enables it to remain wedded to the idea of the solicitors' profession as, at least in principle, a generalist profession in which individuals may

practise in a wide range of areas of law and move between them.³⁴ This provides a notable point of distinction from the approach of the other legal services regulators which broadly either self-define by specialism (costs lawyers, IP attorneys, licensed conveyancers, notaries), or are engaged in incremental extension of their regulatory reach from a position of specialism (barristers, legal executives). The breadth of the solicitors' licensure is, for the public, the profession, employers and individuals, both a challenge and a strength.

It is a challenge because it is disingenuous.³⁵ It is not possible to train an individual to have current and expert knowledge of every conceivable area of law. The practice of a small firm servicing the local Muslim community in Bradford would be unrecognisable by an international arbitration specialist in the City. Even if the licensure permits it, it is unlikely that a criminal legal aid practitioner could easily obtain a new job in property law. For the LPC-graduate unable to obtain the training contract required to qualify, and working as a paralegal in a debt collection call centre, the advantage of a broad licensure is, no doubt, all but invisible.³⁶ Proponents of activity based regulation, and members of specialist professions, argue that the public is best served by specialist training³⁷ and specialist (activity-based) licensure for all lawyers. This might, therefore, include those working in the defined specialist technician roles currently occupied at least in part by those frustrated in their attempts to qualify into the (currently higher status) broad-based profession. The risk of specialism for the individual, it need hardly be said, is in the possibility that the specialism disappears.³⁸ The question for the employer is, then, whether to retrain or to rehire.

It is possible to argue, however, that there is a strength in and a need for a category of lawyers who have at least a grounding in a wider range of topics, as troubleshooters, able to recognise problems outside their main specialism but which touch on the client's main problem, and to refer accordingly. This might be envisaged as more closely tied to skills developed in the workplace through Wenger's learning by doing, than to knowledge,

significant as the knowledge base is to the work of solicitors. The knowledge base is, however, constantly changing, rendering the ability to research; to recognise one's own limitations and to ask the right questions critical skills which transcend distinct fields of practice. Perceived as more than merely nostalgic, a generalist grounding in some form, guaranteeing a range of knowledge areas, even if inchoate, while allowing for the development of more transferable skills might facilitate capability, flexibility and change in the field of practice either in response to changes in the market or, more radically, in order to innovate such change. This could encompass new roles for lawyers, in which, as Susskind speculates, they act as creators and overseers of more routinised or sub-specialist legal services functions outsourced or offered electronically.³⁹

This approach is restated in the July 2014 iteration of the SRA training regulations which continues to demand that a trainee solicitor experience at least three different areas of legal practice, and there is no suggestion of any requirements for formal specialist licensure except in, arguably, sole practice,⁴⁰ in rights of audience⁴¹ and outside the technical legal fields (eg financial advice, insolvency practice). The consultation paper on a proposed competence framework for solicitors issued in October 2014 is even more explicit about the link between breadth and collective professional identity, highlighting in particular the “troubleshooting” role:

... a broadly based training and knowledge of the law distinguishes solicitors from other legal professionals who receive training which is more focused on their specific area of practice. ... We have tried to strike a middle ground between the need to spot issues outside a solicitor's practice area and the recognition that the broad knowledge which solicitors have on qualification will inevitably fade where it is not used. We do not expect practising solicitors to retain active knowledge of all these knowledge areas, or to undertake professional development activities in relation to legal topics which are unlikely ever to have a bearing on their practice area. What we do expect, in line with a broadly based qualification, is that solicitors should be able to recognise possible problems even when these are outside their immediate area of practice.⁴²

The capacity for change is not so strongly signalled, but nevertheless appears in the competence statement itself as “adapting practice to address developments in the delivery of legal services”.⁴³

It appears, therefore, that the regulatory landscape, of regulation by title and of asserting the rights of solicitors to practise in a broad range of areas of practice, is unlikely to change fundamentally in the near future. Indeed, the SRA’s commitment to enshrining that base by way of competence framework both at qualification and, less clearly, afterwards, reinforces it. I move on, therefore, to a brief description of those parts of the regulatory structure which impact on learning in the workplace.

REGULATORY LANDSCAPE: SOLICITORS’ LEARNING IN THE WORKPLACE

The regulator’s bite on solicitors’ learning in the workplace has, at present, three principal dimensions:

- a) Regulation of the training contract as a period of pre-qualification supervised practice for the majority of entrants;
- b) A mandatory scheme of continuing professional development (“CPD”) for all practising solicitors; and
- c) Regulation of the competence of the individual solicitor and of the SRA-regulated entity’s workforce as a whole.

Historically at least, the first two have been regulated largely by prescription of inputs: a range of experiences to be undergone during the training contract; a number of hours of activity to be performed for CPD. This was perhaps necessary, but was certainly not sufficient to identify either learning strategies or what had been learned and how that had

changed, improved or confirmed the individual's practice. From 2011, however, the SRA consciously changed its overall regulatory approach to one based on achievement of outcomes.⁴⁴ Similarly, in 2013, the overarching research report into the regulation of legal education across the sector in England and Wales ("the LETR research report"), recommended greater flexibility about the processes and structures of legal services education and training, shifting the focus to achievement of agreed competences, which might be agreed or at least harmonised across the sector.⁴⁵ The three dimensions given above, the last of which is more obviously framed as an outcome than the others, are, however, retained in the 2014 iteration of the SRA Handbook and regulations.

Training contract/period of recognised training

Regulation of the training contract has hitherto been governed by rules about the authorisation of a workplace as a training provider, of specifications for training principals and supervisors⁴⁶ (which did not then include aptitude in training or supervision) and prescription for the time period and the range of experiences to which a trainee solicitor must be exposed: the processes and structures of education.⁴⁷ A set of Practice Skills Standards as at least notional outcomes of the training contract has existed for some years, although comparatively passively stated in some respects, (eg "understand the need to" or "understand the importance of").⁴⁸ Insofar as any there has been any required assessment competence at the point of qualification, this was by sign off from the employer. More recently, following the LETR research report and as part of the SRA's Training for Tomorrow project,⁴⁹ the regulations have been adjusted. The regulations adopted in July 2014, therefore, provide that

if you qualify as a solicitor,⁵⁰ you:

O(TR1) will have achieved and demonstrated a standard of competence appropriate to the work you are carrying out;

O(TR2) will have had such competence objectively assessed where appropriate;

O(TR3) will have undertaken the appropriate practical training and workplace experience;

O(TR4) are of proper character and suitability;
O(TR5) will have achieved an appropriate standard of written and spoken English;⁵¹ and
O(TR6) act so that clients, and the wider public, have confidence that outcomes TR1-TR5
have been met.⁵²

The training contract, as a distinct form of employment arrangement, has been replaced from July 2014 by a “period of recognised training”, albeit still of two years in principle; still tied to achievement of the existing Practice Skills Standards, and prescribing the range of practice areas to which the trainee must be exposed. The period must still be served with an authorised training provider, which is able to offer:

training which:

- (a) is supervised by solicitors and other individuals who have the necessary skills and experience to provide effective supervision,⁵³ to ensure that the trainee has relevant learning and development opportunities and personal support to enable the trainee to meet the Practice Skills Standards;
- (b) provides practical experience in at least three distinct areas of English and Welsh law and practice;
- (c) provides appropriate training to ensure that the trainee knows the requirements of the Principles and is able to comply with them; and
- (d) includes regular review and appraisal of the trainee's performance and development in respect of the Practice Skills Standards and the Principles, and the trainee's record of training.⁵⁴

In the light of the SRA's current consultation on a competence framework, it appears likely that the Practice Skills Standards will be replaced by a competence framework designed to articulate the activities in which a newly qualified solicitor should be competent. This is consistent with approaches adopted in Australia⁵⁵ and Canada,⁵⁶ recommended for all European lawyers⁵⁷ and, closer to home, for foreign lawyers re-qualifying as solicitors through the Qualified Lawyers' Transfer Scheme,⁵⁸ CILEx members wishing to qualify as Fellows,⁵⁹ Queen's Counsel,⁶⁰ legal services apprentices,⁶¹ some paralegals,⁶² and in the QASA assessment of criminal advocates.⁶³ What will be considerably more challenging, and is raised but not resolved in the current consultation, is the method of assessment to be used on qualification, and the extent to which that assessment, or parts of it, might be undertaken centrally under the remit of the SRA (as is the case with the existing QLTS); or by

recognition of existing qualifications. The possibility is at least floated, that a training provider, which includes an employer, might be enabled not only to provide the context for pre-qualification learning, but also to participate in its assessment.

CPD

The solicitors' CPD scheme for England and Wales is, historically and for the moment, an inputs based scheme,⁶⁴ requiring individuals to record participation in activity, rather than any learning or improvement in practice.⁶⁵ Although workplace based activity in, for example, coaching, mentoring and work shadowing is recognised, the effect of the need to record 16 hours of activity in a year, together with the natural tendency of the profession to be acutely conscious of the fluidity of its knowledge base, has tended, I suggest, to elevate the status of classroom or lecture courses, frequently updates on the law and often provided, outside the workplace, by specialist training providers.⁶⁶ This is in contrast to the activity within the workplace that individuals may feel more directly linked to improvements in their own practice.

Although consistent in style with the majority of legal CPD/CLE schemes,⁶⁷ including those of the other regulated legal professions in England and Wales, the SRA scheme is now out of line with professional CPD schemes as a class, which have tended to move towards either outcome recording, or, as has the CILEx scheme⁶⁸ and Law Society of Scotland,⁶⁹ cyclical processes involving planning, activity and reflection. An inputs CPD scheme is, necessarily, inconsistent with an approach to regulation that focuses on outcomes in all other respects. In parallel with the LETR investigation, the SRA scheme was separately reviewed in 2012⁷⁰ and, following consultation, will be changed in 2015-2016⁷¹ to an approach which does not, in principle,⁷² prescribe a minimum number of hours but

...remove[s] the prescriptive requirement for solicitors to undertake CPD through specific regulations. We would rely instead on existing provisions in the Handbook and Code of Conduct requiring regulated entities and individuals to deliver competent legal services and train and supervise their staff. It would be for regulated entities and individuals to decide how these outcomes are achieved. Implicit in the requirement to deliver competent legal services, is an obligation to reflect on whether the quality of practice is good enough, identify areas for development and ensure appropriate development activity is undertaken. We would provide non-mandatory guidance for entities and individuals, with suggestions for implementing this reflective cycle. For entities, the guidance could include examples of best practice in training, development and CPD systems.⁷³

The SRA's consultation on the competence framework endorses this approach to CPD as giving "solicitors the freedom and flexibility to decide for themselves what training and development they need to undertake in order to perform their roles effectively".⁷⁴

Nevertheless, and having earlier indicated that the breadth of the proposed competence framework is not intended to constrain the development of post-qualification specialism – no attempt is made to set statements of level of performance for post qualification performance – the competence framework is nevertheless to be available and used in connection with CPD as "a learning tool. Solicitors will be able to use the competence statement to reflect on their competence within the context of their own role and practice".⁷⁵ It is by no means clear how this will work in practice, particularly for extreme specialists, or those who move into management or other non fee-earning roles, but, as becomes clear in the next section, cannot be ignored.

The competence of the workforce

The training contract and CPD in its historical format are quantitatively small aspects of the learning that goes on in and near the workplace. Both are detached, to some extent from the realities of practice: the training contract as a precursor to it and CPD, at least if envisaged by participants as attendance at courses, alongside fee-earning activity and often away from the office. The third regulatory dimension is the one which is intended to assure overall standards

and to prevent the incompetent “dabbling” that puts clients at risk. The following outcomes must be achieved and, if required, demonstrated to the regulator:

O(1.5) the service you provide to clients is competent, delivered in a timely manner and takes account of your clients' needs and circumstances ...

O(7.6) you train individuals working in the firm to maintain a level of competence appropriate to their work and level of responsibility; ...

O(7.8) you have a system for supervising clients' matters, to include the regular checking of the quality of work by suitably competent and experienced people ...⁷⁶

This places the regulatory burden clearly on the individual solicitor both for themselves and – because the SRA is one of the few legal regulators which regulates entities as well as individuals - for their workforce by prescribing only an outcome. The only current supporting process – itself at odds with the outcomes-led approach - is that those “qualified to supervise” have achieved the “attendance or participation” in 12 hours of training set out in the practice rules.⁷⁷ Solicitors with rights of audience in the higher courts, similarly, remain governed by an hours’ based CPD requirement. It is not clear whether this is an oversight or an admission that, in some areas of high status, or high concern, policing by hours is thought to be more practicable than adherence to the principles of outcomes-focussed regulation.

Rather more significantly, in this context, is the indication in the SRA’s competence framework consultation, that “complying with” the competence framework is to be elevated to the status of an ethical requirement, as an aspect of principle 5, which demands that individual solicitors, and SRA-regulated entities “provide a proper standard of service to [their] *clients*”. This demand has two immediate consequences: a need to be able to demonstrate learning within the workforce (including arguably the non-solicitor workforce) by reference to the competences stated in the framework, but also an opportunity to articulate and reinforce commitments and approaches to learning that may already exist, albeit tacitly. Indeed, part of the proposed competence framework adopts such a commitment as a competence in itself.

A2 Maintain the level of competence and legal knowledge needed to practise effectively, taking into account changes in [one's] role and/or practice context and developments in the law , including

- a) Taking responsibility for personal learning and development
- b) Reflecting on and learning from practice and learning from other people
- c) Accurately evaluating their strengths and limitations in relation to the demands of their work
- d) Maintaining an adequate and up-to-date understanding of relevant law, policy and practice
- e) Adapting practice to address developments in the delivery of legal services.⁷⁸

Together, all three dimensions require attention to the context of what is done in the workplace; the “scope and quality”⁷⁹ of expected performance and the interactions between the colleagues who are learning, and those who are supporting learning in the workplace. I will return to these three themes shortly. Before doing so, however, it is useful to explore the importance that the profession attaches to the workplace as a place for learning, and has done for a very long time.

THE SOLICITORS' PROFESSION AND ITS ATTACHMENT TO LEARNING IN THE WORKPLACE

There is a deep attachment in the profession to learning in the workplace as the most legitimate and most grounded means of learning to work as, and to be, a solicitor.⁸⁰ This is to the extent that the solicitors' profession always was, and remains, attached to the law degree by absorption, rather than by culture. Flood and others have pointed out that substantial graduatisation of the solicitors and barristers' professions in this jurisdiction did not occur until the 1970s.⁸¹ The phenomenon may, also, be a peculiarly common law feature:

...the deeply embedded history of the Inns of Court in England, the traditional route into the bar in that country since the Middle Ages, by contrast with continental entry through the university that developed in the same time period. One route lay through practice, the other through theory. Thus, today the common law jurisdictions, which only "recently" (within the last 100 years!) moved into the university, provide a greater array of options for entry, and across widely varying periods of from no formal schooling at all (the reader, or apprentice, in a law firm only -still an option in England,⁸² and at least in theory, in a few states of the United States); a five year undergraduate career in Australia; the standard Bologna formulation of 3 plus 1-3 in Ireland ...; and a seven year period of combined

undergraduate study (4 years) and graduate study in law (3 years) in the U.S. England too offers law as a form of graduate study, as one of many options.⁸³

There are, even now, non-graduate practising solicitors who qualified by the 5 years' articles route (finally abolished in this jurisdiction only in the 1980s) or by transfer from the legal executives' profession, CILEx offering a largely work-based, "earn while you learn" educational structure.⁸⁴ As a result of more recent development in expanding the government-sponsored apprenticeship scheme into legal services, to the extent that there are proposals for an apprenticeship route extending from the school leaving age to qualification as a solicitor,⁸⁵ there will soon be solicitors who have qualified largely through study whilst working in a law firm, and without passing through a university, again. The 2014 SRA regulations, in anticipation, explicitly now provide for "equivalent means" of achievement of each of the traditional stages in the route to qualification.⁸⁶ The competence framework consultation paper canvasses the possibility of "authorising any training pathway ...which enables a candidate to demonstrate they can perform the activities set out in the competence statement to the standard required. ..."⁸⁷

The fact that full scale, three year, study of law at a university is not thought to be a necessary preparation for practice as a solicitor is demonstrated, not only by the CILEx route and the developing apprenticeship,⁸⁸ but also, quite clearly, by the existence of the Graduate Diploma in Law, ("GDL"), the graduate conversion course, as a shortcut for those who have degrees in any other discipline whatsoever.

The idea that the workplace is perceived as the most relevant locus of learning is also demonstrated, perhaps more tangentially, by some attitudes to the mandatory LPC as a necessary (but irrelevant) hurdle; as too broad or too narrow;⁸⁹ and the extent to which those larger firms which have the resources are willing to invest in adapting the mandatory course to their own ends, in what has been termed "alliance capitalism".⁹⁰

...[T]he emphasis in these programmes is on the acquisition of firm-specific skills, capabilities and values and on the induction into a specific corporate culture, suggesting that in law, like accountancy, the firm is replacing the professional association as the primary source of socialization and identity formation for many lawyers.⁹¹

Such firms may also invest in developed internal academies and structured scaffolding of workplace learning on a wider, and international scale.⁹² The traditional model is, however, considerably more humble.

THE LEGAL SERVICES ORGANISATION AS COMMUNITY OF PRACTICE

The traditional model, which remains apparent in the training contract, is entirely consistent with the profession's non graduate, workplace focussed, roots. It is a domestic, craft apprenticeship. Insofar as there is any consensus about what the training contract is for, it appears to lie in a period of working, in a junior and possibly quasi-familial capacity,⁹³ for a master who is assumed to be both an expert and a person of high standing in the craft. Lave and Wenger describe the aspirant as observing the master's practice and being employed in a series of tasks in practice that are incrementally more complex until he or she achieves an appropriate level of performance for qualification ("legitimate peripheral participation").⁹⁴ The environment need not be a dyad, as others, the journeymen approaching expertise, are perceived as contributing to the novice's learning in a "community of practice". Fuller *et al* however, suggest that the concept of legitimate peripheral participation fails to pay sufficient attention to those who have achieved "full membership" but who continue to regard themselves as learners or to learning that takes place across the boundaries of different communities;⁹⁵ that the concept underplays explicit strategies other than learning by osmosis and that it acknowledges but does not explore the contribution of power to the operation of the community of practice.⁹⁶ Even the original proponents of the community of practice

concept were able to identify examples where the commercial objectives of the employing organisation took priority over what was, ostensibly, a learning environment and where trainees were constantly employed on the same routine tasks, without supervision or support.⁹⁷

Within my own working memory, it was possible for a trainee solicitor to progress from observation, note-taking and research, through carefully chosen court appearances to running a small file under close supervision. After qualification, the files would increase in complexity, or in specialisation. The trajectory of legitimate peripheral participation appeared comparatively clean and, for some lawyers, in some organisations, or some departments and practice groups, may continue to do so. When, however, there is pressure on speed and efficiency; where rotations to individual practice groups are short in duration;⁹⁸ where in-house clients who refuse to pay for a trainee's time on a file, and much of the peripheral work is outsourced elsewhere, the spiral of progression may be broken or diverted.⁹⁹ Alternatively, in more commoditised practice, work may be more repetitive, enabling efficiency in performance of routine tasks, but limiting the opportunities to extend the scope and complexity of tasks that are performed, or the ability to respond creatively to problems outside of the norm.

The community of practice concept is charming, and, when it works and is mutually supportive, no doubt highly effective as a form of social learning and cohesive socialisation towards a common identity, for new entrants at least. Wenger, however, suggests that a focus on participation (“learning by doing”) has advantages not only for the individual but also for the surrounding community and organisation:

For *communities*, it means that learning is an issue of refining their practice and ensuring new generations of members. For *organizations*, it means that learning is an issue of sustaining the interconnected communities of practice through which an organization knows what it knows and thus becomes effective and valuable as an organization. [Italics in original]¹⁰⁰

It is not, however, particularly when the regulatory stance is that competence must be demonstrated, and potentially by reference both pre and post qualification to a pre-determined set of competences, sufficient to rely on an intuitive model alone. Indeed, Boud and Middleton argue that while the community of practice concept has its utility, it is limited in describing the enormous variety of social networks through which learning occurs in the workplace.¹⁰¹ Still less does it articulate the variety of strategies that individuals employ.

CONTEXT AND STRATEGIES FOR LEARNING IN THE WORKPLACE

Workplace 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.¹⁰²

Learning in and around the workplace takes a number of forms. Marsick and Watkins, for example,¹⁰³ contrast “informal” and “incidental” learning with formal learning in the classroom. “Incidental learning”, a sub-set of informal learning, they then conceptualise as what Eraut calls a “by-product” of work, and Rogers’ calls “task-conscious learning” (to be contrasted with “learning-conscious” activity), in circumstances where those involved are not necessarily conscious that learning is taking place and which therefore may be present in some forms of the community of practice. There is clearly a difficulty, where learning is taking place in this way, in identifying what has been learned, to what level, still more in recording it for regulatory purposes by reference to a competence framework. “Informal learning” in this sense, may, however, extend as far as deliberate mentoring or career development interventions, which are highly learning conscious; more susceptible of having their outcomes measured –including by reference to a competence framework - and, in fact, incorporated into the existing CPD system.

Clearly the context: the nature both of the work provided, and of the working environment are critical to what can be learned. This creates at least the potential for a significant tension between objectives. It is in the employer's interests for the employee's identity to be bound up with that of the firm. It is in the employer's interests for its employees to work on a certain category of task, in a certain manner, that is consistent with the practices and business objectives of the organisation. Promotion in a law firm may be tied to billable hours, rather than expertise or innovation.¹⁰⁴ The workplace may be, in Fuller's terms, a "restrictive", rather than an "expansive" environment.¹⁰⁵

Eraut and his collaborators conducted a detailed study of accountants, engineers and nurses in their first three years of employment, to identify a triad of learning factors, and a second triad of context factors, which affected learning in the workplace.¹⁰⁶ Learning factors were identified as challenge and value of the work; feedback and support; confidence and commitment and personal agency. Context involves allocation and structuring of the work; encounters and relationships with people at work and individual participation and expectations of performance and progress. I will discuss expectations of performance (i.e. what is to be learned, and to what level) and the contributions of others, further below. The context and learning factors, however, insofar as they do anything other than permit incidental learning, provide a background in which more explicit learning strategies may be permitted or encouraged.

Cheetham and Chivers, include "unconscious absorption or ismosis [*sic.*]" in their list of 12 informal professional learning strategies, which occupy a spectrum from intuitive strategies such as practice and repetition 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 and the more crisis-driven stretching, perspective switching (including "Damascus Road

experiences”) to the more explicit techniques of reflection; feedback; mentor and coach interaction; psychological and neurological devices (such as deliberate lateral thinking and articulation, frequently by teaching or speaking).¹⁰⁷ Eraut employs three categories in a spectrum running from the incidental approaches of, for example, osmosis or observing colleagues (trying things out, working with clients); more deliberate strategies in the median range (asking questions, reflecting, giving and receiving feedback) and at the far end, activities that are distinctly learning conscious (mentoring, being supervised, attending courses).¹⁰⁸

Recently published research with employers in SRA-regulated entities quoted at the head of this article,¹⁰⁹ (“the IFF/Sherr report”) examined the frequency of deployment of a number of strategies that are towards this informal learning, learning conscious end of the spectrum.¹¹⁰ These strategies are, of course, those that are more visible, and therefore more susceptible of recording and evaluating for regulatory and organisational purposes. They are also strategies that are available both to those in their early career, and those who are more senior.

THE “SCOPE AND QUALITY” OF WHAT IS LEARNED IN THE WORKPLACE

Changes to the SRA’s regulatory framework to focus on outcomes to be demonstrated¹¹¹ rather than rules to be followed create a particular challenge in capturing the extent of solicitors’ and trainee solicitors’ learning that takes place in the workplace. The proposal to assess the competence statement at the point of qualification is, however, entirely consistent with this end-loaded, outcomes approach. The IFF/Sherr report has indicated that, although a substantial proportion of legal services organisations already employ competence frameworks,¹¹² training needs analyses are not, however, necessarily systematically mapped to achieving the scope and level of performance laid out in the competence framework.¹¹³ The competence concept is not itself without difficulty. There are different approaches not only in

Anglophone countries but also within Europe. The SRA's proposal is for an activity-based,¹¹⁴ rather than attribute-based model, an approach which is, however, consistent with the majority of UK models.¹¹⁵ There is also difficulty inherent in meaningfully identifying and articulating competences both in scope¹¹⁶ and in level, which realistically acknowledge the variety and interconnectedness of practice; are not so static as to quickly become obsolete, so rigid as to be exclusionary or so vague as to be meaningless. There is a risk of defaulting to lip service, just as there is with an inputs-based model of CPD, in which isolated and possibly artificial incidents are treated as complying for the purposes of a rigid regulatory rule regarded as imposed from outside. Some of the challenges of adequate and sustained demonstration of individual competences, in a wide range of legal services organisations, have already been explored in the SRA's field test of its pre-LETR competence framework at the point of qualification.¹¹⁷

“Full” participation, whatever we define it to be, will be different for different organisations and take different lengths of time to achieve. In this respect it differs from the generic benchmark “safe” standard of performance represented by competence, which in this context is to be determined for regulatory purposes and largely fixed, in terms of level, at the point of qualification. There is no reason why the profession, in parts or as a whole, should not aspire to something more substantial in terms of expected level of performance¹¹⁸ and embrace the concept as facilitating the pursuit of new forms of practice and flexibility to change.

To meet the competitive demands of our economy, our view of competence needs to be firmly based on a broad and strategic view of the competent workforce, one which can be converted in into practical approaches which will lead to improvement and development - not a replication of a former world and outdated concepts which we already know to be inadequate.¹¹⁹

Even so, aspirations will not be met for scope of performance (range and complexity of tasks) and level (how well those tasks are performed) unless the work is available for entrants in which and by which, they can be learned.¹²⁰

Different challenges present themselves after qualification. It is proposed that the one currently mandatory course for solicitors in their first three years after qualification be dropped,¹²¹ leaving the early career practitioner protected only by the regulation that they should not practise alone¹²² and otherwise at the mercy of the CPD scheme supplemented by such structures and processes - very developed in some cases, absent or tacit in others – as are provided by their employer. Eraut conceives of a trajectory of learning, in which both scope and quality of performance are developed. For solicitors, progression after qualification arguably involves reducing, in objective terms, the scope of activity into the specialist field (but increasing the scope of competence within it), as well as improving the quality (speed, effectiveness, sophistication) of performance. Improvement – or expertise - may involve increasing the repertoire of solutions that the solicitor is able to offer, or the variety of variables which the solicitor takes into account in offering solutions.¹²³ Because the scope of the SRA's proposed competence framework is designed to be susceptible of assessment at the point of qualification, no threshold for quality is set for the later stages of the career, and the scope is, necessarily, limited to the kind of activities that a newly qualified solicitor might be expected to perform. Consequently it includes activities that a more senior solicitor may delegate to others (eg research) and does not explicitly acknowledge roles that might be performed by more senior lawyers: marketing, management of others, lobbying, engaging with the profession at a national level and so on. Level, as solicitors become more expert, and as their practice becomes more specialist – as well as more tacit - cannot easily be captured in a profession-wide competence framework.¹²⁴

Learning after qualification is, I suggest, worthy of much greater attention, particularly given the comparatively small number of studies which have explored this in the context of legal practice specifically. This is not to suggest special pleading – understanding other disciplines will be increasingly significant as multidisciplinary in legal services provision expands – rather to identify how the context differs,¹²⁵ and the extent to which that creates specific challenges for lawyers.¹²⁶ This may involve further work on concepts of expertise, as comparatively static once a plateau has been reached¹²⁷ or as involving the capacity to change acknowledged by the SRA in the rubric surrounding the proposed competence framework,) and to deal with novel situations¹²⁸ so embracing learning at the “growing edge”¹²⁹ of scope and quality of expertise. For those post qualification, the competence quoted in full above, which represents both an outcome and a statement of the means by which it and the other competences might be achieved and maintained, may be the most significant, and the most susceptible of demonstration through the revised approach to CPD.¹³⁰ I return, therefore, to the significance of the workplace and those within it, who may be learning to be experts, or, alternatively, experts who are themselves learning.

THE SIGNIFICANCE OF COLLEAGUES

There is a diverse range of people that we learn from at work, very few of whom are recognised by the employing organisation as people with a role in promoting learning – that is people designated as supervisors or trainers.¹³¹

The role of those facilitating learning for solicitors in the workplace is, I argue, not yet entirely understood, largely because the previous regulatory regime focused its energies elsewhere, on the undergraduate law degree (“LLB”), GDL and LPC, on an inputs based model of CPD and on the training contract.

“Learning from other people” now appears in the draft competence framework as an activity which not only supports competence, but is an aspect of competence in itself and also, as I have indicated, to be elevated to an ethical requirement.¹³² Clearly, lawyers of whatever degree of experience, learn from colleagues, either osmotically or more deliberately. More senior lawyers may be adopted as role models, intuitively or deliberately; or their practices absorbed and adopted. Learning also takes place from peers and near-peers, as individuals discuss problems, or seek help from someone less intimidating than the partner in charge of the file in approaches related to what I will discuss below as a form of social learning called “productive reflection”. Some errors will be checked or filtered out by secretarial and other support staff. In international firms, Faulconbridge has identified a use of expatriate lawyers to manage cultural disparities and to reinforce firm cultures.¹³³ Where multiple role models are available (in a department, or the journeymen in a community of practice), learning may be synthesised from a variety of sources:

Newcomers use established colleagues as “multiple contingent role models” in organizational socialization. They depend and rely on role models in observations and interactions and learn different qualifications from several role models in the process of learning both tacit and explicit knowledge, in order to create their own attitudes, personal style and role behaviour.¹³⁴

The final report of the LETR research phase recommended to the regulators that there should be distinct support for supervisors of periods of supervised practice across the sector¹³⁵ and the IFF/Sherr Report demonstrates that, not only for trainees, but also for non-partner solicitors, legal executives and paralegals, ongoing supervision is regarded not only as most frequently used but also as amongst the most effective, strategies for learning in the workplace.¹³⁶

There is a developing literature – albeit not yet including work on supervision within law firms - on the role of the supervisor more generally which is worthy of attention. Nevertheless,

the themes identified in this literature have resonance for the legal services organisation. Clearly, for example, there is the potential for a conflict in the role: the supervisor is both supervisor of the work as well as of the person. Supervisors may not, therefore, necessarily be facilitators of learning except where this is mandated by the regulator (ie the training contract/period of recognised training), but may contribute to learning in the context of the allocation of work and feedback on it.¹³⁷ Intuitively, they may adopt supervisory approaches that are focused on getting the job done.¹³⁸ Alternatively, if they take a more expansive approach, supervisors may take approaches that align with different educational paradigms,¹³⁹ or employ different behaviours,¹⁴⁰ just as, as expert practitioners, they may practise by reference to different, unspoken, theories of practice. More experienced solicitors may find themselves at moments of transition which may bring with them specific needs for supervisory support of particular kinds.¹⁴¹ The supervisor, perhaps even more so than the expansive or restrictive environment of the organisation as a whole, can facilitate or hinder learning:

The first hindrance was when supervisors that did not show any interest in their employees' learning or ideas and participants felt discouraged from further efforts to attempt transfer [of material from a classroom to a workplace context]. Another hindrance to transfer was where participants felt they were unable to progress change initiatives due to restrictive policies. An unsupportive culture was the final hindrance to transfer. Participants valued those supervisors that created a positive work culture as it gave them some confidence that implementing a well-considered work practice was possible and would not be punished.¹⁴²

Webster-Wright identifies the dilemma for the supervisor, therefore, as balancing

... the problematic nature of current workplace and professional cultures, with a focus on supervision of standards rather than support for [learning], where performance rather than understanding in learning is privileged¹⁴³ ... [with] ... the importance of supporting professionals to feel comfortable learning in their own authentic way, yet challenging them to reflect on and question their practice.¹⁴⁴

The rhetoric of “reflection” is now ubiquitous in the higher education sector,¹⁴⁵ and in some professions. It is beginning to manifest itself in the SRA’s language and now in its regulations, including those relating to the training contract/period of recognised training and more obviously, in the new approach to CPD. “Reflecting on and learning from practice” now appears in the draft competence framework as an activity which not only supports competence, but is an aspect of competence in itself and also, as I have indicated, to be elevated to an ethical requirement.¹⁴⁶ There is at least sufficient consciousness of the term for it to be included in the strategies tested with employers in the IFF/Sherr Report, with 62% of regulated entities having employed it in a 12 month period.¹⁴⁷ This may, however, represent assumptions about reflective learning as a peculiarly solitary form of introspection. In this sense it is perhaps not surprising –despite the requirement that a trainee’s record of training should contain reflective comments – that although 54% of trainees in the IFF/Sherr sample used reflective learning, less than 1% identified it as most effective.¹⁴⁸ The ubiquity of the concept, I suggest, also tends to belie its complexity and the conditions necessary for its implementation: “[r]eflection is a complex process which many learners do not find easy, and facilitating learners’ reflection requires a sophisticated pedagogy”¹⁴⁹ as well as to underplay the potentially disruptive effect (for the employer) of the results of reflection in questioning engrained assumptions and practices.

Other strategies tested in the IFF/Sherr report, including mentoring, discussion of cases, and ongoing supervision may all involve elements of reflection, but reflection in a more collaborative sense. It is almost inevitable, I suggest, that those in the earlier stages of their career find solitary reflection less than productive. In my own experience, novice practitioners have little difficulty in what Brockbank and McGill¹⁵⁰ term “evaluative reflection”, a backward looking approach in which the individual evaluates the strengths and weaknesses of performance. What is missing, and what may require a credible, trusted colleague to provide,

is means of first, confirming whether the evaluation of strengths and weaknesses is realistic, and second, providing means of addressing the weaknesses. Collaboratively, the strategy then becomes closer to that which might be adopted by more senior colleagues faced with a dilemma, the “critical reflection” which questions assumptions embedded in existing understandings of practice and leads to new learning for the individual:

[a]nomalies and dilemmas of which old ways of knowing cannot make sense become catalysts or “trigger events” that precipitate critical reflection and transformation¹⁵¹

Conventional approaches to reflective learning do, however, tend to focus on learning for the individual, rather than for the group, whether or not the strategy is that the reflective activities are conducted in isolation or with others. In either case it requires time and resources, which may not be prioritised if the learning is perceived as being for the individual rather than to the benefit of the employer (to, for example, reduce risk, redeploy staff, correct errors and so on): “dialogic reflective practices rarely occur in work environments, nor does workplace culture typically promote critical reflection”.¹⁵²

Nevertheless, “organisations learn whenever individuals or teams acquire new insights into their work experiences that change their scope of action. Reflecting about one’s own work experience is thus a major catalyst of organisational learning”.¹⁵³ Boud and his collaborators have, more recently, in effect reimaged a more articulate form of social learning within the community of practice, perhaps more suited to the knowledge economy, in a concept of “productive reflection”:

Reflection occurs in the context of producing a learning outcome that can be applied to a real situation ... it refers to a link with whatever is the production that occurs in any given workplace. Productive reflection aims to have an impact on both work products as well as on the wider learning that takes place among participants ... It leads not only to particular work outcomes or actions but also to enabling personnel to be active players in work and learning beyond their immediate situation. Productive reflection aims to feed on itself to create a context that fosters learning, knowledge generation and a congenial workplace.¹⁵⁴

which is collective rather than individual; contextualised within work; involves multiple stakeholders, is generative (ie not confined to pre-determined outcomes) and developmental in character and is dynamic and changes over time as an ongoing process of collaborative review which is embedded as a work practice. Spaces identified as suitable for productive reflection include formal group reflections (eg the review of a transaction or case); interstitially in breaks from work, or as part of group problem-solving processes in which individuals work together and seek help from each other. It can therefore be contrasted with processes narrowly envisaged as “CPD” where it runs the risk of becoming ritualised and superficial and perceived as dissociated from the workplace.¹⁵⁵

Where reflection and what Argyris and Schön have called “double loop learning”¹⁵⁶, which is also adopted as an aspect of productive reflection¹⁵⁷, – the questioning of assumptions - provide distinct utility for solicitors in the current market situation, is in re-examining tacitly accepted practices. Without this, the danger is that learning in the workplace, even if framed in the idealistic containment of a community of practice, becomes convergent and conservative, endlessly reproducing (obsolete) practices.

CONSERVATISM AND CONVERGENCE

Learning in the workplace is, by definition, learning for the purposes of that workplace and that employer, to the extent that there is an established canon of “organisational learning” in which the collective learning and knowledge is conceived as being that of the organisation itself.¹⁵⁸ Wenger’s social learning and Boud et al’s productive reflection include the learning of the group as well as that of the individual. It may not be in the interests of an employer that an employee should aspire beyond their current role; lack of progression routes for some employees (eg paralegals) being in the interests of the organisation.

... it is clear that some forms of practice are likely to be so circumscribed and limited that continuing engagement in them alone will inhibit the broader development of the professional. This implies that CPD requires far greater opportunities to engage in practices that extend the repertoire of practitioners and that the focus needs to move from an analysis of individual knowledge skills and competencies to an analysis of environments and what the practices in them generate in terms of extending practice scope. ...¹⁵⁹

For higher status individuals, there may be fears that stretching activities are pejoratively perceived more as enabling the individual to leave the organisation. Even where this is not the case, intuitive practices involving observation and learning by osmosis from a master may nevertheless be problematic. As well as foregrounding the workplace identity over the vocational identity, they tend to reproduce the practices of the person observed. These practices may have been weak in the first place, or become ossified over time.¹⁶⁰

The potential for learning in the workplace to be circumscribed and limiting, and to be both convergent towards the employer's norm and conservative, is a significant challenge. Given the fluidity of the legal services marketplace as it is at present, strategies of learning that result in conservatism and convergence are not sustainable. The employer does, however, need at least some of its employees to develop expertise in their practice (the alternative being to buy in such expertise¹⁶¹), and to innovate in ways that will allow the organisation, assuming it is in the private sector, to maintain a competitive advantage. It is in the regulators' interest, because it is a statutory objective, for solicitors to be autonomous and independent in judgment. That autonomy and independence is generally taken to be a defining aspect of professionalism.¹⁶² It is certainly a component of the profession's public ethical stance¹⁶³ and may, of course, demand a questioning of the practices, business objectives and ethics of the firm. There will be a problem if, having loosened up regulatory processes in some respects (eg in relation to CPD), the use of a competence framework becomes, despite the intentions of its drafters, a means of ossifying practice rather than enhancing it. The inclusion of competence A2 is clearly designed to ameliorate this.

What may be more significant in an individual workplace, and which cannot be accommodated within a competence framework designed to represent the norm, is the presence of those prepared to challenge what is taken for granted or even held very dear. This will be challenging for individuals “brought up in the firm”, whose identity is bound up in the workplace, and who know little outside it. It will be challenging for those who are so embedded in tacit understandings of their practice that they are unable, despite the regulatory urging to reflect on their own practice, to explain why it is they do what they do (what others might call their “theory of practice”), in order to explore the potential for doing it differently. There is, therefore, I suggest, a place for those who have other contexts and other strategies upon which to draw. Pragmatically, they may be drawn from the lateral hires into the organisation, but there is one ready supply: the graduate entrant whose prior education might equip them, in due course, to ask the challenging questions.

There is, I suggest, a place for both the undergraduate law degree, and for the LPC, whatever it evolves into, as a place to initiate a particular kind of resilience into students, to inject them with some robustness before their hearts, minds and bodies are captured by the overwhelming intensity of the culture of the organisations they will join, but may one day need to question, or to leave. Whether or not these are legal services organisations. Even more, if an element of graduateness is a readiness to challenge, then there is and should always be a place for graduates in the solicitors’ professions. Others may share those attributes, but the ability to question assumptions and challenge norms, is, I suggest, an overwhelmingly necessary aspect of the creation of a culture of workplace learning that is fit for the future and can embrace change rather than merely paying lip service to the expectations of the regulator.

CONCLUSION

... the firm itself is an increasingly important actor in professional projects; thus, its role in shaping the values, practices and ethics of lawyers deserves further attention.¹⁶⁴

The formal regulatory approaches to the extent of licensure, competence frameworks, CPD and commitment to standards and/or learning amongst the regulated legal professions varies (see appendix). The solicitors' profession possesses, however, a unique combination of attributes. Its licensure has the greatest breadth, and is supported by its regulator as promoting both a distinct role as troubleshooter and as facilitating flexibility and responsiveness to change. That regulator is responsible not only for individuals but for the workforce of SRA-regulated entities. The regulatory changes can be seen as loosening the regulatory hold in some respects whilst retaining or tightening them elsewhere. The loosening is represented by greater responsibility for learning for the individual and the employer; achievement of outcomes rather than compliance with regulations; the possibility of qualification by "equivalent means". The breadth of the licensure is reinforced by the requirement that a range of areas of law be experienced during the pre-qualification period of recognised training; and traces of the inputs-based CPD scheme remain in isolated areas. The tightening is represented by the prospect of assessment at day one of domestic entrants as well as foreign lawyers transferring in; by provision of a competence statement for all practitioners which it is proposed will be incorporated in some way into the ethical requirement to provide a good standard of work – representing both scope and quality - and to train employees accordingly. That competence framework sets out the scope of competent practice, if not the level for all practitioners, but also – and rather more strongly than the one used for CILEx Fellows – treats a commitment to learning, and to strategies of social and reflective learning in the workplace, as a competence and as an ethical obligation.

This is all to be imposed by the regulator. There will be challenges for the profession, unused to demonstrating outcomes rather than following regulations, or tracking learning rather than hours spent in the CPD classroom, and particularly if employers may ultimately participate in assessment at qualification by reference to the competence framework. History, as well as the recent empirical work reported in the IFF/Sherr Report demonstrates a commitment to learning in the workplace, as well as a number of social learning strategies in use outside - or despite - the existing CPD system. This provides an opportunity for the profession, if it can effectively harness that commitment, not only to achieve the necessity of satisfying its regulator, but also to achieve the virtue of establishing a differentiated collective identity, based at least in part on learning which facilitates the capacity for troubleshooting and for ability to change.

In order to do so, I suggest a number of strategies will be required. The profession will need to be able to treat the regulatory changes as an opportunity rather than a threat. This will involve selling to its members the benefits of a conscious commitment to learning as enabling capacity; avoiding and managing risk; reducing negligence claims; enabling greater degrees of delegation to juniors and as promoting efficiency rather than taking hours out of the working day. In this it will be assisted by strong examples: the employers of apprentices; the users of competence frameworks; the role models and mentors regarded as liberating and inspiring. It will be assisted by transparency and articulation: acknowledging the commitment to social learning; articulating, evaluating and rewarding effective strategies in use in their own organisations and those of others. This will involve surfacing tacit practices but also identifying actors who may be below the official radar – the informal network of junior lawyers who refer amongst themselves, the mid-career lawyer who gets trainees and juniors out of trouble before that trouble reaches the partners. It will be promoted by permissions and provision of spaces, physical and otherwise, to colleagues to talk about their

work. The physical might be a staffroom, a problem solving colloquium or “fish file”¹⁶⁵ exchange, a regular file review process or post case or transaction review. The non physical involves articulation – so that, for example, the trainee or paralegal sees the implications of the isolated task she has been asked to complete in the context of the transaction as a whole – and, again, permission, to question or reframe. “Why?” and “Why not?” are, as law teachers know, highly powerful questions in the classroom and there is no reason to suggest they are any less powerful in the workplace.

Which brings me to a final point. The proposed regulatory changes focus on learning, as an outcome and only to a limited extent on strategies for learning. Where the solicitors’ profession could transcend its regulator would be to articulate and reward, as a component of its own ethical stance, the teachers, mentors, role models and peers, all as “teachers” within its social learning context.¹⁶⁶

APPENDIX: APPROACHES OF REGULATED LEGAL PROFESSIONS

	Use of competence framework	CPD approach	Ethical reference
barristers	Used for pupillage, ¹⁶⁷ QC competition and for QASA.	Input based approach involving a minimum number of hours. ¹⁶⁸	Core duty 7 refers to a “competent standard of work”, supplementary notes refer to the individual barristers keeping knowledge and skills up to date and warns that CPD compliance may not be sufficient ¹⁶⁹ .
Costs lawyers	Not used	Input based approach involving a minimum number of points. ¹⁷⁰	Principle 4 “Provide a good quality of work and service to each client”, supplementary note requires professional knowledge to be kept up to date. ¹⁷¹
Legal executives	Used for applicants for fellowship, an outcome related to self-awareness and development is to be demonstrated once. ¹⁷² , and for QASA.	Cyclical, with an obligation to “reflect, plan, act and evaluate” ¹⁷³	Principle 9 “act within your competence” is supplemented by references to CPD, to development of knowledge and skills and to carrying out supervision properly. ¹⁷⁴
Licensed conveyancers	Not used	Input based approach involving a minimum number of hours. ¹⁷⁵	Overriding principle 2 on “high standards of work” is supplemented by references to the individual and the workforce. ¹⁷⁶
notaries	Not used	Input based approach involving a minimum number of credit points. ¹⁷⁷	Requirements to provide a proper standard of service. ¹⁷⁸
Patent attorneys and registered trade mark attorneys	Not used.	Input based approach involving a minimum number of hours. ¹⁷⁹	Rule 4, Regulated individuals (including entites) are required to carry out work with “due skill and competence”. CPD compliance is required by rule 16. ¹⁸⁰
solicitors	Used for QLTS entrants, QC competition and for QASA. Practice Skills standards used for training contract. Proposed for all	Currently input based approach involving a minimum number of hours. Proposal to move to a cyclical approach.	Principle 5 “a proper standard of service”, supplemented by outcomes 1.5, 7.6 and 7.8 referring to the individual and the workforce. Proposal to embed competence framework into principle 5.

	entrants and as a basis for CPD		
--	------------------------------------	--	--

* Jane Ching, Professor of Professional Legal Education at Nottingham Law School, Nottingham Trent University. This article is developed from a presentation entitled “Learning and Teaching within the legal services organisation: a collaborative clinic” given as part of the Nottingham Law School Centre for Legal Education First Annual Conference, between 7-8 February 2014. I am grateful to the participants in that event, as well as to my colleague Jane Jarman, who has provided much helpful insight in the development of this paper, and to the reviewers for this journal.

¹ IFF Research and Sherr A, ‘Workforce Education and Training Arrangements in Regulated Entities’ (Solicitors Regulation Authority 2014) <<http://www.sra.org.uk/t4tresources/#document-list>> accessed 23 September 2014, p 6.

² “Temporary” workplaces, such as law student clinics, placements or work experience are excluded from the ambit of this article.

³ Venables D, ‘Virtual Law Firms – Where They Are Now | Internet Newsletter for Lawyers’ <<http://www.infolaw.co.uk/newsletter/2009/09/virtual-law-firms-where-they-are-now/>> accessed 3 October 2014.

⁴ <http://www.pwc.co.uk/careers/student/graduateopportunities/pwc-legal.jhtml>.

⁵ Francis comments that “Arguably, claims to traditional generalist professional knowledge which would support a range of legal work now appear to reinforce the internal stratification of the profession, with actors claiming generalist expertise located in marginal positions at the edge”: Francis A, *At the Edge of Law* (Ashgate 2011), p 171.

⁶ In 2012-2013, for example, 48.9% of newly qualified solicitors had an undergraduate law degree; 16.7% had completed the Graduate Diploma in Law conversion course, 9% were overseas transferees, 4.8% had transferred from the barristers’ profession, and 1.8% from the legal executives profession and the route of entry was unknown for the remaining 18.6%. Law Society of England and Wales, ‘Trends in the Solicitors’ Profession Annual Statistics Report 2013’ (Law Society of England and Wales 2014), p 45. Although, of course, the former barristers and legal executives, as well as the overseas lawyers, might hold law or other degrees, the authors note also that “the proportion of [direct entry?] graduates in all those admitted has been falling over the past decade”, *ibid*.

⁷ In the context of the learning of the profession, it is interesting to note that there appear to be no publicly available data about the number of solicitors who have higher degrees (eg LLM, MBA, JD, doctorate), obtained either before or after admission.

⁸ It is not part of the scope of this article to discuss the potential for conflict between the different statutory regulatory objectives (which include “protecting and promoting the interests of consumers”). For a proposal which seeks to resolve such conflicts, see Mayson S, ‘Review of Legal Services Regulatory Framework Response to Call for Evidence’ <<http://stephenmayson.files.wordpress.com/2013/09/mayson-2013-review-of-legal-services-regulatory-framework.pdf>> accessed 22 August 2014.

⁹ Ministry of Justice, ‘Claims Management Regulator - Groups - GOV.UK’ <<https://www.gov.uk/government/groups/claims-management-regulator>> accessed 16 October 2014.

¹⁰ OISC, ‘People Seeking Immigration Advice: The Office of the Immigration Services Commissioner’ (9 December 2008) <<http://oisc.homeoffice.gov.uk/>> accessed 16 October 2014.

¹¹ For example, trading standards officers and local government officers have rights of audience under legislation other than the Legal Services Act.

¹² Hilborne N, ‘New LSB Chairman Joins Calls for Single Regulator’ <<http://www.legalfutures.co.uk/latest-news/new-lsb-chairman-joins-calls-single-regulator>> accessed 17 October 2014.

¹³ The largest provider of legal services in personal injury cases is now thought to be an SRA-regulated alternative business structure: Rose N, ‘Huge Growth for Quindell’s Legal Services Division’ <<http://www.legalfutures.co.uk/latest-news/huge-growth-quindells-legal-services-division>> accessed 22 August 2014.

¹⁴ The justification of this list is not without controversy: Legal Services Institute, ‘The Regulation Of Legal Services: Reserved Legal Activities – History And Rationale’ <<http://stephenmayson.files.wordpress.com/2013/08/mayson-marley-2010-reserved-legal-activities-history-and-rationale.pdf>> accessed 5 June 2014., p 37. See also Legal Services Institute, ‘The Regulation Of Legal Services: What Is The Case For Reservation?’ <<http://stephenmayson.files.wordpress.com/2013/08/mayson-marley-2011-what-is-the-case-for-reservation.pdf>> accessed 5 June 2014 and Roy A and Handford C, ‘Reserved and

Unreserved Lawyers' Activities'

<http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/reserved_and_unreserved_lawyers.pdf> accessed 5 June 2014.

¹⁵ Some rights of audience are limited to the specialist field, as for the IP attorneys and the costs lawyers, or may be contingent on obtaining a separate qualification and enhanced licensure.

¹⁶ A barrister, CILEx member, costs lawyer, licensed conveyancer, notary, patent attorney, registered trade mark attorney or solicitor.

¹⁷ Indeed, the terms "lawyer" and "law firm" are not restricted titles and, provided this does not involve misrepresentation or fraud, may be used by anyone providing unreserved legal services, including the "paralegal law firm" or "legal consultant", to the extent that there seems to be some question about the point at which an offence is committed. See, for example, Hyde J, 'Wonga Threatened Customers with Fake Law Firms' [2014] *Law Society Gazette* <<http://www.lawgazette.co.uk/practice/wonga-threatened-customers-with-fake-law-firms/5041843.fullarticle>> accessed 17 October 2014.

Such organisations may be in a position to provide legal services more cheaply than solicitors' firms, as they are spared the professional overheads of regulation, or the – invisible to many clients - protections of legal professional privilege (see *R (on the application of Prudential plc and another) (Appellants) v Special Commissioner of Income Tax and another (Respondents)* [2013] UKSC 1 (UK Supreme Court). There is also evidence of confusion about the extent to which recourse to the legal ombudsman is available (see Centre for Consumers and Essential Services and University of Leicester, 'Mapping Potential Consumer Confusion in a Changing Legal Market - Report for the Legal Ombudsman' (University of Leicester 2011)

<<http://www.legalombudsman.org.uk/downloads/documents/publications/Consumer-Confusion-Report.pdf>> accessed 21 August 2014; Northumbria University School of Law, 'Redress for "Legal Services" A Report for the Legal Ombudsman' (Northumbria University 2013)

<<http://www.legalombudsman.org.uk/downloads/documents/publications/Redress-for-Legal-Services-FINAL-11072013.pdf>> accessed 21 August 2014. Other organisations, such as some paralegal firms and members of self-regulated professions (such as members of the Society of Trusts and Estate Practitioners ("STEP") and will writers may on the other hand be providing an equivalent or better service to that offered by solicitors: Legal Services Consumer Panel, 'Regulating Will-Writing' (Legal Services Consumer Panel 2011)

<http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/ConsumerPanel_WillwritingReport_Final.pdf> accessed 21 August 2014..

¹⁸ Chartered Institute of Legal Executives, 'Lawyer Qualifications with the Chartered Institute of Legal Executives' (*Chartered Institute of Legal Executives*)

<http://www.cilex.org.uk/careers/careers_home/career_change/qualifications_and_training/lawyer_qualifications.aspx> accessed 5 June 2014.

¹⁹ See for example Hall K, 'Number of Legal Executives to Grow 17% in next Decade' *Law Society Gazette* (6 June 2014) <<http://www.lawgazette.co.uk/practice/number-of-legal-executives-to-grow-17-in-next-decade/5041562.article>> accessed 10 June 2014.

²⁰ Hall K, 'New Practice Rights Pending for Legal Executives' *Law Society Gazette* (10 December 2013)

<<http://www.lawgazette.co.uk/practice/new-practice-rights-pending-for-legal-executives/5039166.article>>

accessed 5 June 2014. For discussion of the history and marginal status of legal executives, see Francis A, *At the Edge of Law* (Ashgate 2011), chapter 4.

²¹ Moorhead R, 'Lawyer Specialization—Managing the Professional Paradox' (2010) 32 *Law & Policy* 226

<<http://onlinelibrary.wiley.com/doi/10.1111/j.1467-9930.2009.00315.x/abstract>> accessed 29 August 2014.

²² IFF Research and Sherr A, 'Workforce Education and Training Arrangements in Regulated Entities'

(Solicitors Regulation Authority 2014) <<http://www.sra.org.uk/t4tresources/#document-list>> accessed 23 September 2014.

²³ Wenger E, 'A Social Theory of Learning' in Knud Illeris (ed), *Contemporary Theories of Learning: Learning theorists ... in their own words* (Routledge 2008) Pp 209-210.

²⁴ Sullivan WM and others, 'Educating Lawyers Preparation for the Practice of Law' (The Carnegie Foundation for the Advancement of Teaching 2007)

<http://www.carnegiefoundation.org/sites/default/files/publications/elibrary_pdf_632.pdf> accessed 5 June 2014.

For challenges in achieving the objectives of the third apprenticeship in the classroom, see Silver C, Garver A and Watkins L, 'Unpacking the Apprenticeship of Professional Identity and Purpose: Insights from the Law School Survey of Student Engagement' (2011) 17 *Legal Writing: The Journal of the Legal Writing Institute* 373 <http://heinonline.org/HOL/Page?handle=hein.journals/jlwriins17&id=417&div=&collection=journals>.

²⁵ "The evaluation of all neophyte professionals through the dominant symbolic of the profession, expressed through the socialization process, ensures that outsiders will either exit altogether, migrate to one of the lower

status professional titles, or internalize their difference as inferiority and assume the *habitus* of the field”, Sommerlad H, ‘Researching and Theorizing the Processes of Professional Identity Formation’ (2007) 34 *Journal of Law and Society* 190 <<http://onlinelibrary.wiley.com/doi/10.1111/j.1467-6478.2007.00388.x/abstract>> accessed 21 August 2014, p 217. For recent concrete examples, see Cahusac E and Kanji S, ‘Giving Up: How Gendered Organizational Cultures Push Mothers Out’ (2014) 21 *Gender, Work & Organization* 57 <<http://onlinelibrary.wiley.com/doi/10.1111/gwao.12011/abstract>> accessed 14 October 2014.

²⁶ Robertson CB, ‘Judgment Identity and Independence’ (2009) 42 *Connecticut Law Review* 1 <<http://heinonline.org/HOL/Page?handle=hein.journals/conlr42&id=3&div=&collection=journals>>

²⁷ Granfield R and Koenig T, ‘It’s Hard to Be a Human Being and a Lawyer: Young Attorneys and the Confrontation with Ethical Ambiguity in Legal Practice’ (2002) 105 *West Virginia Law Review* 495 <<http://heinonline.org/HOL/Page?handle=hein.journals/wvb105&id=505&div=&collection=journals>>

²⁸ Defined as “how people negotiate their personality with an occupation’s norms and practices or, more precisely, as the fit between an individual’s perception of the occupational world and his or her self-perception”, Klotz VK, Billett S and Winther E, ‘Promoting Workforce Excellence: Formation and Relevance of Vocational Identity for Vocational Educational Training’ (2014) 6 *Empirical Research in Vocational Education and Training*.

²⁹ Klotz VK, Billett S and Winther E, ‘Promoting Workforce Excellence: Formation and Relevance of Vocational Identity for Vocational Educational Training’ (2014) 6 *Empirical Research in Vocational Education and Training*.

³⁰ See, for example, the discussion of high status firm identity and areas of low status practice in Phillips DJ, Turco Catherine J. and Zuckerman EW, ‘Betrayal as Market Barrier: Identity-Based Limits to Diversification among High-Status Corporate Law Firms’ (2013) 118 *American Journal of Sociology* 1023 <<http://www.jstor.org/stable/10.1086/668412>> accessed 9 October 2014.

³¹ Van Stekelenburg J, ‘Collective Identity’, *The Wiley-Blackwell Encyclopedia of Social and Political Movements* (Blackwell Publishing 2013).

³² See for example the political dimension explored in McKay W and et al, ‘Report of the Commission on the Consequences of Devolution for the House of Commons’ (House of Commons 2013) <http://webarchive.nationalarchives.gov.uk/20130403030652/http://tmc.independent.gov.uk/wp-content/uploads/2013/03/The-McKay-Commission_Main-Report_25-March-20131.pdf> accessed 22 August 2014 and the sociological dimension recently explored in Leddy-Owen C, ‘Reimagining Englishness: “Race”, Class, Progressive English Identities and Disrupted English Communities’ [2014] *Sociology* 0038038513516829 <<http://soc.sagepub.com/content/early/2014/01/16/0038038513516829>> accessed 22 August 2014

³³ Francis A, *At the Edge of Law* (Ashgate 2011), p 151. Francis also identifies, however, individuals with multiple identities, who aligned themselves with STEP but did so “alongside a continuing, almost emotional, connection to the parent discipline. Lawyer is their instinctive and primary professional identity”, *ibid*, p 168.

³⁴ There are limited exceptions, for example, rights of audience in the higher courts can only be obtained by solicitors following additional study and an assessment of their advocacy performance: Solicitors Regulation Authority, ‘Higher Rights of Audience Regulations 2011’ <<http://www.sra.org.uk/solicitors/handbook/higherrights/content.page>> accessed 5 June 2014.

Specialist accreditations are available, but these are intended to recognise and promote specialist practice; they are not licences to practise in that field.

³⁵ Moorhead R, ‘Lawyer Specialization–Managing the Professional Paradox’ (2010) 32 *Law & Policy* 226 <<http://onlinelibrary.wiley.com/doi/10.1111/j.1467-9930.2009.00315.x/abstract>> accessed 29 August 2014.

³⁶ Legal Services Consumer Panel, ‘Legal Education and Training - Submission to the Research Team’ <http://www.legalservicesconsumerpanel.org.uk/publications/consultation_responses/documents/2012-05-21LETRsubmission.pdf> accessed 5 June 2014 and commentary in Moorhead R, ‘Activity Based Regulation versus Professional Identity’ <<http://lawyerwatch.wordpress.com/2012/05/21/activity-based-regulation-versus-professional-identity-some-thoughts-on-the-lscps-thoughts-on/>> accessed 5 June 2014. A rather different concept of the lawyer as specialist in the sense of “a commoditised subcontractor of speciality services like most architects [in their role in construction projects]” within larger multidisciplinary teams appears in Currell D and Henderson MT, ‘Can Lawyers Stay in the Driver’s Seat?’ (2014) 38, *Supplement International Review of Law and Economics* 17 <<http://www.sciencedirect.com/science/article/pii/S014481881300080X>> accessed 14 October 2014 at p 19.

³⁷ There is, however, variation on the point at which it is thought that specialist training should branch off from a more generalist background education.

³⁸ It is difficult to find an example of the complete *disappearance* of a specialism, even in the face of radical legislative shift (eg the removal of the solicitors' conveyancing monopoly); regulatory change (eg the extension of direct access by clients to the Bar); or funding revolution (eg changes to the availability of criminal legal aid). This is, however, of little comfort to an individual adversely affected by the change and obliged to reinvent themselves.

³⁹ See, for example. Susskind R, *Tomorrow's Lawyers: An Introduction to Your Future* (OUP Oxford 2013).

⁴⁰ Solicitors Regulation Authority, 'SRA | SRA Handbook - Practice Framework Rules - SRA Practice Framework Rules 2011 | Solicitors Regulation Authority' <<http://www.sra.org.uk/solicitors/handbook/practising/content.page>> accessed 19 October 2014, reg 10.1.

⁴¹ Solicitors Regulation Authority, 'Higher Rights of Audience Regulations 2011' <<http://www.sra.org.uk/solicitors/handbook/higherrights/content.page>> accessed 5 June 2014.

⁴² Solicitors Regulation Authority, 'Training for Tomorrow: A Competence Statement for Solicitors' (20 October 2014) <<http://www.sra.org.uk/sra/consultations/competence-statement.page>> accessed 8 December 2014, p7.

⁴³ Solicitors Regulation Authority, 'Training for Tomorrow: A Competence Statement for Solicitors' (20 October 2014) <<http://www.sra.org.uk/sra/consultations/competence-statement.page>> accessed 8 December 2014, p14.

⁴⁴ Solicitors Regulation Authority, 'Path to Outcomes-Focused Regulation' (2010) <<http://www.sra.org.uk/sra/how-we-work/reports/path-to-ofr.page>> accessed 9 October 2014.

⁴⁵ Webb J and others, 'Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales' (Legal Education and Training Review 2013) <<http://letr.org.uk/the-report/index.html>> accessed 5 June 2014.

⁴⁶ The SRA requires, however, as part of its definition of those "qualified to supervise" "attendance at or participation in any course(s), or programme(s) of learning, on management skills involving attendance or participation for a minimum of 12 hours" ""Solicitors Regulation Authority, 'SRA | SRA Handbook - Practice Framework Rules - SRA Practice Framework Rules 2011 | Solicitors Regulation Authority' <<http://www.sra.org.uk/solicitors/handbook/practising/content.page>> accessed 19 October 2014, reg 12.

In addition, the Law Society's Lexcel practice management standard makes sets benchmarks for the processes involved in supervision:

6.9 Practices will have a procedure to ensure that all personnel, both permanent and temporary, are actively supervised. Such procedures will include:

- a: checks on incoming and outgoing correspondence where appropriate
- b: departmental, team and office meetings and communication structures
- c: reviews of matter details in order to ensure good financial controls and the appropriate allocation of workloads
- d: the exercise of devolved powers in publicly funded work
- e: the availability of a supervisor
- f: allocation of new work and reallocation of existing work, if necessary.

6.10 Practices will have a procedure to ensure that all those doing legal work check their files regularly for inactivity.

6.11 Practices will have a procedure for regular, independent file reviews of either the management of the file or its substantive legal content, or both. ...

Law Society of England and Wales, 'Lexcel Practice Management Standard' <<http://www.lawsociety.org.uk/accreditation/lexcel/>> p 8.

⁴⁷ Solicitors Regulation Authority, 'SRA | SRA Handbook - Qualification and Provider Regulations - Authorised Training Providers Requirements | Solicitors Regulation Authority' <<http://www.sra.org.uk/solicitors/handbook/trainingsregs2014/part5/content.page>> accessed 19 September 2014.

⁴⁸ Solicitors Regulation Authority, 'Trainee Information Pack' <<http://www.sra.org.uk/trainees/resources/trainee-information-pack.page>> accessed 8 October 2014.

⁴⁹ Solicitors Regulation Authority, 'Policy Statement: Training for Tomorrow' <<http://www.sra.org.uk/sra/policy/training-for-tomorrow/resources/policy-statement.page>> accessed 8 October 2014; Solicitors Regulation Authority, 'Training for Tomorrow' (*Solicitors Regulation Authority*, 2013) <<http://www.sra.org.uk/sra/policy/training-for-tomorrow.page>> accessed 5 June 2014.

⁵⁰ Otherwise than by transfer from the Bar or from outside England and Wales. Such entrants are assessed on the basis of parts of a set of "day one outcomes" originally envisaged as a replacement for the practice Skills Standards but not in fact implemented for domestic entrants.

⁵¹ Use of Welsh is currently under consultation: Solicitors Regulation Authority, 'Consultation on Further Review of Training Regulations' <<http://www.sra.org.uk/sra/news/press/legal-firms-training-systems.page>> accessed 8 October 2014.

⁵² Solicitors Regulation Authority, 'SRA | SRA Handbook - Qualification and Provider Regulations - SRA Training Regulations 2014 - Qualification and Provider Regulations | Solicitors Regulation Authority' <<http://www.sra.org.uk/solicitors/handbook/trainingregs2014/content.page>> accessed 8 October 2014.

⁵³ This is a welcome change: previously the qualification to supervise was framed entirely in terms of a prescribed period of post qualification experience., rather than aptitude for the role.

⁵⁴ Solicitors Regulation Authority, 'SRA | SRA Handbook - Qualification and Provider Regulations - SRA Training Regulations 2014 - Qualification and Provider Regulations | Solicitors Regulation Authority' <<http://www.sra.org.uk/solicitors/handbook/trainingregs2014/content.page>> accessed 8 October 2014. There is welcome reference to development rather than mere record of tasks and experiences (my italics):

14.1 The trainee must maintain a record of training which:

- (a) contains details of the work performed;
- (b) records how the trainee has acquired, applied and developed their skills by reference to the Practice Skills Standards and the Principles;
- (c) *records the trainee's reflections on his or her performance and development plans;*
and
- (d) is verified by the individual(s) supervising the trainee.

⁵⁵ Australasian Professional Legal Education Council, 'Competency Standards For Entry Level Lawyers' http://www.aplec.asn.au/Pdf/Competency_Standards_for_Entry_Level_Lawyers.pdf.

⁵⁶ Federation of Law Societies of Canada, 'National Entry to Practice Competency Profile for Lawyers and Quebec Notaries' <http://www.flsc.ca/documents/NASCompetenciesSept2012C.pdf>.

⁵⁷ Conseil des barreaux européens – Council of Bars and Law Societies of Europe, 'CCBE Recommendation on Training Outcomes for European Lawyers' http://www.ccbe.org/fileadmin/user_upload/NTCdocument/EN_Training_Outcomes1_1196675213.pdf.

Commonality with Europe may increase in significance: Lonbay J, 'The Education, Licensing, and Training of Lawyers in the European Union, Part II: The Emerging Common Qualifications Regime and Its Implications for Admissions in Europe' [2010] Bar Examiner 25.

⁵⁸ Solicitors Regulation Authority, 'Qualified Lawyers Transfer Scheme' <<http://www.sra.org.uk/qlts/>> accessed 8 December 2014.

⁵⁹ Chartered Institute of Legal Executives, 'Application for Fellowship Rules (Work Based Learning)' <<http://www.cilex.org.uk/pdf/APPLICATION%20FOR%20FELLOWSHIP%20RULES%20Final.pdf>>

⁶⁰ Queen's Counsel Appointments, 'Guidance for Applicants 2014-2015' <<http://www.qcappointments.org/competitions/current-competition/>> accessed 29 December 2014, p 28.

⁶¹ Chartered Institute of Legal Executives, 'Apprenticeships in Legal Services' <<http://www.cilex.org.uk/study/apprenticeships.aspx>> accessed 8 December 2014.

⁶² Institute of Paralegals, 'Competency Standards' <<http://www.theiop.org/national-competency-standards/contract-terms.html>> accessed 8 December 2014.

⁶³ Bar Standards Board, Solicitors Regulation Authority, ILEX Professional Standards, 'QASA Handbook for Criminal Advocates' <<http://www.qasa.org.uk/QASA-Handbook.pdf>> accessed 29 December 2014, pp 47-51.

⁶⁴ Solicitors Regulation Authority, 'SRA | SRA Handbook - CPD Regulations - SRA Training Regulations 2011 - Part 3 CPD Regulations | Solicitors Regulation Authority' <<http://www.sra.org.uk/solicitors/handbook/cpd/content.page>> accessed 8 October 2014.

⁶⁵ For a more detailed discussion, see chapter 5 of Webb J and others, 'Legal Education and Training Review Research Phase Literature Review' (Legal Education and Training Review 2013) <<http://letr.org.uk/literature-review/index.html>> accessed 5 June 2014.

⁶⁶ See, for example, Henderson P and others, ‘Solicitors Regulation Authority: CPD Review.’ (Solicitors Regulation Authority 2012) <<http://www.sra.org.uk/sra/news/wbl-cpd-publication.page>> accessed 3 September 2014, pp 32-33. For discussion of CPD activity across the legal services sector, see Webb J and others, ‘Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales’ (Legal Education and Training Review 2013) <<http://letr.org.uk/the-report/index.html>> accessed 5 June 2014, p55ff.

⁶⁷ Outliers are the schemes in place in New Zealand and in Alberta: New Zealand Law Society, ‘Continuing Professional Development’ <<https://www.lawsociety.org.nz/for-lawyers/regulatory-requirements/continuing-professional-development>> accessed 12 October 2014; Law Society of Alberta, ‘Continuing Professional Development’ <<http://www.lawsociety.ab.ca/lawyers/cpd.aspx>> accessed 12 October 2014.

⁶⁸ Chartered Institute of Legal Executives, ‘Continuing Professional Development (CPD)’ <<http://www.cilex.org.uk/membership/cpd.aspx>> accessed 12 October 2014.

⁶⁹ Law Society of Scotland, ‘CPD’ <<https://www.lawscot.org.uk/members/membership-and-registrar/cpd/>> accessed 12 October 2014.

⁷⁰ Henderson P and others, ‘Solicitors Regulation Authority: CPD Review.’ (Solicitors Regulation Authority 2012) <<http://www.sra.org.uk/sra/news/wbl-cpd-publication.page>> accessed 3 September 2014.

⁷¹ Solicitors Regulation Authority, ‘Moving towards a New Approach to Continuing Competence: Information for the Continuing Professional Development (CPD) Year 2014/15’ <<http://www.sra.org.uk/sra/policy/training-for-tomorrow/resources/cpd-position-statement.page>> accessed 19 October 2014.

⁷² An hours requirement is, however, retained for solicitors with rights of audience in the higher courts: Solicitors Regulation Authority, ‘SRA | SRA Handbook - HRA Regulations - SRA Higher Rights of Audience Regulations 2011 | Solicitors Regulation Authority’ (1 October 2014) <<http://www.sra.org.uk/solicitors/handbook/higherrights/content.page>> accessed 12 October 2014, reg 9.

⁷³ Solicitors Regulation Authority, ‘Training For Tomorrow - A New Approach to Continuing Competence A Consultation Paper’ (2014) <http://www.sra.org.uk/sra/consultations/t4t-continuing-competence.page#download>, p 6.

⁷⁴ Solicitors Regulation Authority, ‘Training for Tomorrow: A Competence Statement for Solicitors’ (20 October 2014) <<http://www.sra.org.uk/sra/consultations/competence-statement.page>> accessed 8 December 2014, p 11.

⁷⁵ Ibid.

⁷⁶ Solicitors Regulation Authority, ‘SRA | SRA Handbook - Code of Conduct - SRA Code of Conduct 2011 | Solicitors Regulation Authority’ <<http://www.sra.org.uk/solicitors/handbook/code/content.page>> accessed 8 October 2014. Additional requirements are placed on organisations which have the Law Society’s Lexcel Practice Standard, which places operational requirement on accredited organisations, in this context requiring

5.1 Practices will have a plan for the training and development of personnel, which must include:

- a: the person responsible for the plan
- b: a procedure for an annual review of the plan, to verify it is in effective operation across the practice.

5.2 Practices will list the tasks to be undertaken by all personnel within the practice and document the skills, knowledge and experience required for individuals to fulfil their role satisfactorily, usually in the form of a person specification.

5.6 Practices must have a training and development policy including:

- a: ensuring that appropriate training is provided to personnel within the practice
- b: ensuring that all supervisors and managers receive appropriate training
- c: a procedure to evaluate training
- d: the person responsible for the policy
- e: a procedure for an annual review of the policy, to verify it is in effective operation across the practice.

Law Society of England and Wales, ‘Lexcel Practice Management Standard’ <http://www.lawsociety.org.uk/accreditation/lexcel/>, pp 6-7.

-
- ⁷⁷ Solicitors Regulation Authority, 'SRA | SRA Handbook - Practice Framework Rules - SRA Practice Framework Rules 2011 | Solicitors Regulation Authority' <<http://www.sra.org.uk/solicitors/handbook/practising/content.page>> accessed 19 October 2014, reg 12. Loughrey suggests that in pursuit of accountability, law firms should be required to "evaluate and report on how they are discharging their obligation to respect the spirit of the law. This should not be a tick box exercise and the SRA should issue only the most limited guidance on what constitutes compliance, in order to encourage reflective critical thinking". Loughrey J, 'Accountability and the Regulation of the Large Law Firm Lawyer' (2014) 77 *The Modern Law Review* 732 <<http://onlinelibrary.wiley.com/doi/10.1111/1468-2230.12088/abstract>> accessed 17 October 2014p 761.
- ⁷⁸ Solicitors Regulation Authority, 'Training for Tomorrow: A Competence Statement for Solicitors' (20 October 2014) <<http://www.sra.org.uk/sra/consultations/competence-statement.page>> accessed 8 December 2014, p 14.
- ⁷⁹ Eraut M, *Developing Professional Knowledge and Competence* (Falmer Press 1994), p 167. It is important to recognise that there are two aspects of measurement: the range of knowledge and skills, and the standard of their understanding or performance.
- ⁸⁰ See, for example, the views of junior Scottish solicitors in Anderson McKnight H, 'Professional Competence: Can It Be Taught? A Workplace Perspective' (UKCLE 2011) and similar conclusions that workplace learning is "accepted practice" in solicitors' firms in Watson S and Harmel-Law A, 'Exploring the Contribution of Workplace Learning to an HRD Strategy in the Scottish Legal Profession' (2010) 34 *Journal of European Industrial Training* 7 <http://www.emeraldinsight.com/doi/pdfplus/10.1108/03090591011010280>. Chambliss, from the North American perspective, identifies a trend that is tainted by nostalgia "The basic plot [of the research studies] is that law firm culture used to be strong and collegial and good, with lots of mentoring and sharing of clients and strong social ties among partners. Then firm growth and competition came along and ruined it all" Chambliss E, 'Measuring Law Firm Culture', *Special Issue Law Firms, Legal Culture, and Legal Practice*, vol 52 (Emerald Group Publishing Limited) <[http://www.emeraldinsight.com/doi/abs/10.1108/S1059-4337\(2010\)0000052004](http://www.emeraldinsight.com/doi/abs/10.1108/S1059-4337(2010)0000052004)> accessed 17 October 2014, p 8.
- ⁸¹ See Galanter M and Roberts S, 'From Kinship to Magic Circle: The London Commercial Law Firm in the Twentieth Century' (2008) 15 *International Journal of the Legal Profession*. 143; Boon A and Webb J, 'Legal Education and Training in England and Wales: Back to the Future?' (2008) 58 *Journal of Legal Education* 79; Flood J, 'Legal Education in the Global Context: Challenges from Globalization, Technology and Changes in Government Regulation' <http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/lsb_legal_education_report_flood.pdf> accessed 5 June 2014.
- ⁸² This is probably a reference to the legal executive route, although this does in fact involve "formal schooling" through the qualifications offered by CILEx. None of the legal professions in England and Wales regulated under the Legal Services Act in fact employs a structure that involves no formal study or assessment.
- ⁸³ Wilson R, 'The Role of Practice in Legal Education' [2010] Working Papers <http://digitalcommons.wcl.american.edu/fac_works_papers/12> accessed 5 June 2014, p 46.
- ⁸⁴ Chartered Institute of Legal Executives, 'Chartered Legal Executive Lawyer Qualifications' (*Chartered Institute of Legal Executives*) <http://www.cilex.org.uk/study/lawyer_qualifications.aspx> accessed 5 June 2014.
- ⁸⁵ Hilborne N, 'Government Approves Standards for Legal Apprenticeships' <<http://www.legalfutures.co.uk/latest-news/government-approves-standards-legal-apprenticeships>> accessed 3 September 2014.
- ⁸⁶ Solicitors Regulation Authority, 'SRA | SRA Handbook - Qualification and Provider Regulations - SRA Training Regulations 2014 - Qualification and Provider Regulations | Solicitors Regulation Authority' <<http://www.sra.org.uk/solicitors/handbook/trainingregs2014/content.page>> accessed 8 October 2014, reg 2.2.
- ⁸⁷ Solicitors Regulation Authority, 'Training for Tomorrow: A Competence Statement for Solicitors' (20 October 2014) <<http://www.sra.org.uk/sra/consultations/competence-statement.page>> accessed 8 December 2014, p 10.
- ⁸⁸ Hall K, 'What's Wrong with Learning on the Job?' (*Law Society Gazette*) <<http://www.lawgazette.co.uk/law/whats-wrong-with-learning-on-the-job/5040355.fullarticle>> accessed 8 October 2014.
- ⁸⁹ Webb J and others, 'Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales' (*Legal Education and Training Review* 2013) <<http://letr.org.uk/the-report/index.html>> accessed 5 June 2014, para 2.60.

-
- ⁹⁰ See Faulconbridge J, 'Alliance Capitalism and Legal Education: An English Perspective' (2011) 80 *Fordham Law Review* 2651
<http://heinonline.org/HOL/Page?handle=hein.journals/flr80&id=2667&div=&collection=journals>.
- ⁹¹ Faulconbridge JR and Muzio D, 'Legal Education, Globalization, and Cultures of Professional Practice' (2009) 22 *Georgetown Journal of Legal Ethics* 1335
<http://heinonline.org/HOL/Page?handle=hein.journals/geojlege22&id=1343&div=&collection=journals>, p 1351.
- ⁹² Faulconbridge JR, Muzio D and Cook A, 'Institutional Legacies in TNCs and Their Management through Training Academies: The Case of Transnational Law Firms in Italy' (2012) 12 *Global Networks* 48
<<http://onlinelibrary.wiley.com/doi/10.1111/j.1471-0374.2011.00335.x/abstract>> accessed 19 September 2014.
- ⁹³ For a discussion of evolution from this core model, see Galanter M and Roberts S, 'From Kinship to Magic Circle: The London Commercial Law Firm in the Twentieth Century' (2008) 15 *International Journal of the Legal Profession* 143.
- ⁹⁴ Lave J and Wenger E, *Situated Learning: Legitimate Peripheral Participation (Learning in Doing: Social, Cognitive and Computational Perspectives)* (Cambridge University Press 1991).
- ⁹⁵ Fuller, 2007, p 26 cited in Hodge S, 'Transformative Learning as an "Inter-Practice" Phenomenon' (2014) 64 *Adult Education Quarterly* 165, p 171.
- ⁹⁶ Fuller A and others, 'Learning as Peripheral Participation in Communities of Practice: A Reassessment of Key Concepts in Workplace Learning' (2005) 31 *British Educational Research Journal* 49
<<http://onlinelibrary.wiley.com/doi/10.1080/0141192052000310029/abstract>> accessed 19 September 2014 at p 65.
- ⁹⁷ Lave J and Wenger E, *Situated Learning: Legitimate Peripheral Participation (Learning in Doing: Social, Cognitive and Computational Perspectives)* (Cambridge University Press 1991).
- ⁹⁸ Chambliss, in North America, detected aspects of a cohesive culture within practice group teams of three to 10 as "the most immediate source of lawyer's day to day practice norms and habits of mind", Chambliss E, 'Measuring Law Firm Culture', *Special Issue Law Firms, Legal Culture, and Legal Practice*, vol 52 (Emerald Group Publishing Limited) <[http://www.emeraldinsight.com/doi/abs/10.1108/S1059-4337\(2010\)0000052004](http://www.emeraldinsight.com/doi/abs/10.1108/S1059-4337(2010)0000052004)> accessed 17 October 2014, p 21. The modern British practice of rotating trainee solicitors between "seats" which may be as short as three months in duration, militates, I suggest against the effectiveness of even a community of practice of this type.
- ⁹⁹ Ching J, 'The Significance of Work Allocation in the Professional Apprenticeship of Solicitors.' (2012) 34 *Studies in Continuing Education* 1. Participation alone, however, may not be sufficient Edwards A, 'Let's Get beyond Community and Practice: The Many Meanings of Learning by Participating' (2005) 16 *Curriculum Journal* 49 <<http://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=16606700&site=ehost-live>> accessed 19 September 2014.
- ¹⁰⁰ Wenger E, 'A Social Theory of Learning' in Knud Illeris (ed), *Contemporary Theories of Learning: Learning theorists ... in their own words* (Routledge 2008) Pp 212-213.
- ¹⁰¹ Boud D and Middleton H, 'Learning from Others at Work: Communities of Practice and Informal Learning' (2003) 15 *Journal of Workplace Learning* 194, p 200.
- ¹⁰² Billett in Fuller A, Munro A and Rainbird H (eds), *Workplace Learning in Context* (Routledge 2004), p 118.
- ¹⁰³ Marsick VJ and Watkins KE, *Informal and Incidental Learning in the Workplace* (Routledge 1990); Marsick VJ and Watkins KE, 'Informal and Incidental Learning', *The New Update on Adult Learning Theory: New Directions for Adult and Continuing Education* (Jossey Bass 2001).
- ¹⁰⁴ Brivot M, Lam H and Gendron Y, 'Digitalization and Promotion: An Empirical Study in a Large Law Firm' (2014) 25 *British Journal of Management* 805 <<http://onlinelibrary.wiley.com/doi/10.1111/1467-8551.12060/abstract>> accessed 14 October 2014.
- ¹⁰⁵ Fuller A and others, 'Creating and Using Knowledge: An Analysis of the Differentiated Nature of Workplace Learning Environments' (2007) 33 *British Educational Research Journal* 743
<[http://research.ioe.ac.uk/portal/en/publications/creating-and-using-knowledge\(9c036961-19f4-4147-b43b-1a5d8b46a72a\)/export.html](http://research.ioe.ac.uk/portal/en/publications/creating-and-using-knowledge(9c036961-19f4-4147-b43b-1a5d8b46a72a)/export.html)> accessed 19 September 2014.
- ¹⁰⁶ Eraut M, 'Learning from Other People in the Workplace' (2007) 33 *Oxford Review of Education* 403 at p 418.<<http://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=25916061&site=ehost-live>> accessed 27 August 2014. See also comparison of the findings with the context of early career solicitors in Ching J, 'Young Litigation Solicitors and Their Perceptions of Movement from Qualification to the 3 Year Watershed' (Ph D, Nottingham Trent University 2009) <http://irep.ntu.ac.uk/R/?func=dbin-jump-full&object_id=197151&local_base=GEN01> accessed 29 October 2014

-
- ¹⁰⁷ Cheetham G and Chivers G, 'How Professionals Learn in Practice: An Investigation of Informal Learning amongst People Working in Professions' (2001) 25 *Journal of European Industrial Training* 247 <<http://www.emeraldinsight.com/doi/full/10.1108/03090590110395870>> accessed 14 October 2014.
- ¹⁰⁸ Eraut M, 'Learning from Other People in the Workplace' (2007) 33 *Oxford Review of Education* 403 <<http://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=25916061&site=ehost-live>> accessed 27 August 2014.
- ¹⁰⁹ IFF Research and Sherr A, 'Workforce Education and Training Arrangements in Regulated Entities' (Solicitors Regulation Authority 2014) <<http://www.sra.org.uk/t4tresources/#document-list>> accessed 23 September 2014.
- ¹¹⁰ Internal and external training, workshadowing, role stretching, mentoring, formal check on outputs, discussion of cases, reflective learning, online learning and training, and ongoing supervision.
- ¹¹¹ Loughrey points out the positive advantage in "making the firms and individuals responsible for the design of effective compliance systems, thus promoting mindful effort in the design of more effective systems" whilst noting the risk of creative compliance whereby "firms may adapt the goals in ways that achieve the appearance of legitimacy while undermining the efficacy of regulation". Loughrey J, 'Accountability and the Regulation of the Large Law Firm Lawyer' (2014) 77 *The Modern Law Review* 732 <<http://onlinelibrary.wiley.com/doi/10.1111/1468-2230.12088/abstract>> accessed 17 October 2014, p 748.
- ¹¹² IFF Research and Sherr A, 'Workforce Education and Training Arrangements in Regulated Entities' (Solicitors Regulation Authority 2014) <<http://www.sra.org.uk/t4tresources/#document-list>> accessed 23 September 2014, figure 4.1. See also the analysis and further references in Webb J and others, 'Briefing Paper: Knowledge, Skills and Attitudes Required for Practice at Present' <http://letr.org.uk/wp-content/uploads/012012-competence-frameworks-analysis.pdf> and in Lester S, 'Professional Competence Standards and Frameworks in the United Kingdom' (2013) 39 *Assessment & Evaluation in Higher Education* 38.
- ¹¹³ IFF Research and Sherr A, 'Workforce Education and Training Arrangements in Regulated Entities' (Solicitors Regulation Authority 2014) <<http://www.sra.org.uk/t4tresources/#document-list>> accessed 23 September 2014, figure 4.3.
- ¹¹⁴ Solicitors Regulation Authority, 'Training for Tomorrow: A Competence Statement for Solicitors' (20 October 2014) <<http://www.sra.org.uk/sra/consultations/competence-statement.page>> accessed 8 December 2014, p 5.
- ¹¹⁵ Winterton J, 'Competence across Europe: Highest Common Factor or Lowest Common Denominator?' (2009) 33 *Journal of European Industrial Training* 681, p 684.
- ¹¹⁶ See, for example, the overview provided in Webb J and others, 'Briefing Paper 1/2011: Competence' (*Legal Education and Training Review*, 2011) <<http://letr.org.uk/wp-content/uploads/Briefing-paper-12011.pdf>> accessed 28 December 2014. The debate on the subject for legal education is longstanding, Cooper J, 'What Is Legal Competence?' (1991) 54 *Modern Law Review* 112; ; Gasteen G, 'National Competency Standards: Are They the Answer for Legal Education?' (1995) 13 *Journal of Professional Legal Education* 1.
- ¹¹⁷ See for example: BMG Research, 'Final Evaluation of the Work-Based Learning (WBL) Pilot' (Solicitors Regulation Authority 2012) <<http://www.sra.org.uk/sra/news/wbl-cpd-publication.page>> accessed 5 June 2014; Ching J, "'I Intend to Do Very Well in It": The Road(s) to Competence.' (2010) 19 *Nottingham Law Journal* 22.
- ¹¹⁸ Hunt D, 'The Hunt Review of the Regulation of Legal Services' (Law Society of England and Wales 2009) <http://www.nzls.org.nz/catalogue/opac/DigitalContent/Legal_Regulation_Report_FINAL.PDF?jsessionid=59C098BA43C679461703712227096824?parenttreeid=f4cb742268ce4c4984e1d382ea50d5f4&sessiondepth=1&k=18> accessed 5 June 2014.
- ¹¹⁹ Mansfield B, 'Competence in Transition' (2004) 28 *Journal of European Industrial Training* 296, p 308.
- ¹²⁰ Ching J, 'The Significance of Work Allocation in the Professional Apprenticeship of Solicitors.' (2012) 34 *Studies in Continuing Education* 1.
- ¹²¹ Solicitors Regulation Authority, 'Training for Tomorrow: Q&A for Authorised MCS1 Providers' <<http://www.sra.org.uk/mcs1/>> accessed 19 October 2014.
- ¹²² Solicitors Regulation Authority, 'SRA | SRA Handbook - Practice Framework Rules - SRA Practice Framework Rules 2011 | Solicitors Regulation Authority' <<http://www.sra.org.uk/solicitors/handbook/practising/content.page>> accessed 19 October 2014, reg 12.4.
- ¹²³ Harteis and Billett suggest that the "intuitive" responses of experts are based on recognition of crucial patterns; variety in procedures and solutions "that enable them to solve routine problems spontaneously and with apparently limited cognitive effort" and on not merely conscious knowledge but also "rich sources of the tacit knowledge experts developed across their lives": Harteis C and Billett S, 'Intuitive Expertise: Theories and Empirical Evidence' (2013) 9 *Educational Research Review* 145 <<http://www.sciencedirect.com/science/article/pii/S1747938X13000110>> accessed 20 October 2014, p 154.

-
- ¹²⁴ There is a limited literature on postqualification learning and development of expertise in lawyers. See, for example: Blasi GL, 'What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory' (1995) 45 *Journal of Legal Education* 313; Colon-Navarro F, 'Thinking like a Lawyer: Expert-Novice Differences in Simulated Client Interviews' (1997) 21 *Journal of the Legal Profession* 107; Wilkinson MA, Walker C and Mercer P, 'Testing Theory and Debunking Stereotypes: Lawyers' Views on the Practice of Law' (2005) 18 *Canadian Journal of Law and Jurisprudence* 165; Sandberg J and Pinnington AH, 'Professional Competence as Ways of Being: An Existential Ontological Perspective' (2009) 46 *Journal of Management Studies* 1138; Pinnington AH and Somerlad H, 'Competence Development and Participation in Transient Knowledge Communities', *Development of Competencies in the World of Work and Education* (Fakulteta za družbene vede, University of Ljubljana 2009) <http://www.decowe.org/static/uploaded/htmlarea/files/Competence_Development_and_Participation_in_Transient_Knowledge_Communities.pdf> accessed 19 October 2014..
- ¹²⁵ There would be value in considering similarities and differences between the medical ward round, and the solicitors' file review, as structures facilitating learning. See for example: Bleakley A, 'Broadening Conceptions of Learning in Medical Education: The Message from Teamworking' (2006) 40 *Medical Education* 150; Andrew C, 'What Is the Educational Value of Ward Rounds? A Learner and Teacher Perspective' (2011) 11 *Clinical Medicine* 558. Similarly, the supporting structure of the audit team, identified by Eraut as a positive factor in the learning of junior accountants, might bear some similarities to the corporate transaction department in a law firm.
- ¹²⁶ Watson and Harmel-Law, for example, identified influences on and challenges to human resource development in Scottish solicitors' firms as including "the partnership structure, the pervasiveness of time-billed targets ... and [human resource development's] profile and acceptance among the solicitor community": Watson S and Harmel-Law A, 'Exploring the Contribution of Workplace Learning to an HRD Strategy in the Scottish Legal Profession' (2010) 34 *Journal of European Industrial Training* 7, p 18.
- ¹²⁷ Bereiter C and Scardamalia M, *Surpassing Ourselves: An Inquiry Into the Nature and Implications of Expertise* (Open Court Publishing Company 1993). The "technical specialist" who has reached a plateau and is now concerned with identifying techniques to make his or her live easier, is contrasted with the "expert" who is concerned with continuing learning.
- ¹²⁸ Bohle Carbonell K and others, 'How Experts Deal with Novel Situations: A Review of Adaptive Expertise' (2014) 12 *Educational Research Review* 14.
- ¹²⁹ Bereiter C and Scardamalia M, *Surpassing Ourselves: An Inquiry Into the Nature and Implications of Expertise* (Open Court Publishing Company 1993), p xi.
- ¹³⁰ Solicitors Regulation Authority, 'Training for Tomorrow: A Competence Statement for Solicitors' (20 October 2014) <<http://www.sra.org.uk/sra/consultations/competence-statement.page>> accessed 8 December 2014, p 14.
- ¹³¹ Boud and Middleton, Boud D and Middleton H, 'Learning from Others at Work: Communities of Practice and Informal Learning' (2003) 15 *Journal of Workplace Learning* 194 , p201-202.
- ¹³² Solicitors Regulation Authority, 'Training for Tomorrow: A Competence Statement for Solicitors' (20 October 2014) <<http://www.sra.org.uk/sra/consultations/competence-statement.page>> accessed 8 December 2014, p 14.
- ¹³³ Faulconbridge JR, 'Negotiating Cultures of Work in Transnational Law Firms' (2008) 8 *Journal of Economic Geography* 497.
- ¹³⁴ Fildstad C, 'How Newcomers Use Role Models in Organizational Socialization' (2004) 16 *Journal of Workplace Learning* 396 <<http://www.emeraldinsight.com/doi/full/10.1108/13665620410558297>> accessed 13 October 2014, p 405.
- ¹³⁵ Webb J and others, 'Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales' (Legal Education and Training Review 2013) <<http://letr.org.uk/the-report/index.html>> accessed 5 June 2014, recommendation 16.
- ¹³⁶ IFF Research and Sherr A, 'Workforce Education and Training Arrangements in Regulated Entities' (Solicitors Regulation Authority 2014) <<http://www.sra.org.uk/t4tresources/#document-list>> accessed 23 September 2014, figure 5.3.
- ¹³⁷ Hughes C, 'The Supervisor's Influence on Workplace Learning' (2004) 26 *Studies in Continuing Education* 275 <<http://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=13713846&site=ehost-live>> accessed 29 August 2014, p 285.
- ¹³⁸ Cohen J, 'The Nature of Learning Being Facilitated by Frontline Managers' (2013) 16 *Human Resource Development International* 502 <<http://dx.doi.org/10.1080/13678868.2013.825143>> accessed 29 August 2014.

-
- ¹³⁹ Hughes C, 'Issues in Supervisory Facilitation' (2002) 24 *Studies in Continuing Education* 57 <<http://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=6699112&site=ehost-live>> accessed 29 August 2014.
- ¹⁴⁰ Lancaster S, Di Milia L and Cameron R, 'Supervisor Behaviours That Facilitate Training Transfer' (2013) 25 *Journal of Workplace Learning* 6 <<http://www.emeraldinsight.com/doi/abs/10.1108/13665621311288458>> accessed 29 August 2014; Govaerts N and Dochy F, 'Disentangling the Role of the Supervisor in Transfer of Training' (2014) 12 *Educational Research Review* 77 <<http://www.sciencedirect.com/science/article/pii/S1747938X1400013X>> accessed 29 August 2014; Froehlich D, Segers M and Van den Bossche P, 'Informal Workplace Learning in Austrian Banks: The Influence of Learning Approach, Leadership Style, and Organizational Learning Culture on Managers' Learning Outcomes' (2014) 25 *Human Resource Development Quarterly* 29.
- ¹⁴¹ Milligan C, Margaryan A and Littlejohn A, 'Learning at Transition for New and Experienced Staff' (2013) 25 *Journal of Workplace Learning* 217 <<http://www.emeraldinsight.com/doi/abs/10.1108/13665621311316410>> accessed 29 August 2014.
- ¹⁴² Lancaster S, Di Milia L and Cameron R, 'Supervisor Behaviours That Facilitate Training Transfer' (2013) 25 *Journal of Workplace Learning* 6 <<http://www.emeraldinsight.com/doi/abs/10.1108/13665621311288458>> accessed 29 August 2014, p 20.
- ¹⁴³ Webster-Wright A, *Authentic Professional Learning - Making a Difference Through Learning at Work*, vol 2 (first, Springer 2014), p 196.
- ¹⁴⁴ Webster-Wright A, *Authentic Professional Learning - Making a Difference Through Learning at Work*, vol 2 (first, Springer 2014), p 196.
- ¹⁴⁵ See for example, as key texts: Boud D, Keogh R and Walker D (eds), *Reflection: Turning Experience into Learning* (Routledge 1985); Schon DA, *Educating the Reflective Practitioner: Toward a New Design for Teaching and Learning in the Professions* (New Ed edition, John Wiley & Sons 1990); Moon JA, *Reflection in Learning and Professional Development: Theory and Practice* (New Ed edition, Routledge 2000), Moon JA, A *Handbook of Reflective and Experiential Learning: Theory and Practice* (Routledge 2004) and for a legal perspective Schön DA, 'Educating the Reflective Legal Practitioner' (1995) 2 *Clinical Law Review* 231; Neumann RK, 'Donald Schön, the reflective practitioner, and the comparative failures of legal education' (2000) 6 *Clinical Law Review* 101 "Reflective learning" is used in this article advisedly, to emphasise the technique as a learning, rather than as Schön's original concept of "reflective practice" which appears to be, or at least to include, a problem solving strategy for non-standard problems: Schon DA, *The Reflective Practitioner: How Professionals Think in Action* (1 edition, Basic Books 1984).
- ¹⁴⁶ Solicitors Regulation Authority, 'Training for Tomorrow: A Competence Statement for Solicitors' (20 October 2014) <<http://www.sra.org.uk/sra/consultations/competence-statement.page>> accessed 8 December 2014, p 14.
- ¹⁴⁷ IFF Research and Sherr A, 'Workforce Education and Training Arrangements in Regulated Entities' (Solicitors Regulation Authority 2014) <<http://www.sra.org.uk/t4tresources/#document-list>> accessed 23 September 2014,, figure 5.2.
- ¹⁴⁸ IFF Research and Sherr A, 'Workforce Education and Training Arrangements in Regulated Entities' (Solicitors Regulation Authority 2014) <<http://www.sra.org.uk/t4tresources/#document-list>> accessed 23 September 2014,, figure 5.4. For equivalent responses for paralegals and legal executives, see figure 5.5
- ¹⁴⁹ Walsh A, 'Modes of Reflection: Is It Possible to Use Both Individual and Collective Reflection to Reconcile the "three-Party Knowledge Interests" in Workplace Learning?' (2009) 44 *European Journal of Education* 385, p 386.
- ¹⁵⁰ Brockbank A and McGill I, *Facilitating Reflective Learning in Higher Education* (2 edition, Open University Press 2007) .
- ¹⁵¹ Mezirow J, *Fostering Critical Reflections in Adulthood: A Guide to Transformative and Emancipatory Learning* (1ST edition, John Wiley & Sons 1990), p 14. For a link between the community of practice concept and transformative learning, see Hodge S, 'Transformative Learning as an "Inter-Practice" Phenomenon' (2014) 64 *Adult Education Quarterly* 165.
- ¹⁵² Webster-Wright A, *Authentic Professional Learning - Making a Difference Through Learning at Work*, vol 2 (first, Springer 2014), p 150.
- ¹⁵³ Knipfer K and others, 'Reflection as a Catalyst for Organisational Learning' (2013) 35 *Studies in Continuing Education* 30, p 39.
- ¹⁵⁴ Cressey P, Boud D and Docherty P, 'The Emergence of Productive Reflection' in David Boud, Peter Cressey and Peter Docherty (eds), *Productive Reflection at Work* (Routledge 2006), p 18.

¹⁵⁵ Although discussed in the HE context rather than the workplace, a current rehearsal of the issues appears in Platt L, 'The "Wicked Problem" of Reflective Practice: a Critical Literature Review' (2014) 9 *Innovations in Practice* 44. Billett and Choy suggest that students should be readied for learning in the workplace before they enter it: Billett S and Choy S, 'Learning through Work: Emerging Perspectives and New Challenges' (2013) 25 *Journal of Workplace Learning* 264. It is fair to say that, at present, the LPC curriculum requires that students be introduced to reflective learning (it is, however, not an assessed outcome): Solicitors Regulation Authority, 'Legal Practice Course Outcomes' <<http://www.sra.org.uk/students/lpc.page>> accessed 5 June 2014.

¹⁵⁶ Argyris C and Schon DA, *Organisational Learning* (Addison Wesley 1978).

¹⁵⁷ Cressey P, Boud D and Docherty P, 'The Emergence of Productive Reflection' in David Boud, Peter Cressey and Peter Docherty (eds), *Productive Reflection at Work* (Routledge 2006), p12.

¹⁵⁸ The concept is usually taken to derive from Nonaka I and Takeuchi H, *The Knowledge-Creating Company: How Japanese Companies Create the Dynamics of Innovation* (OUP USA 1995). For a recent statement of the state of the field, see Krogh G von and others (eds), *Towards Organizational Knowledge: The Pioneering Work of Ikujiro Nonaka* (Palgrave Macmillan 2013).

¹⁵⁹ Boud D and Hager P, 'Re-Thinking Continuing Professional Development through Changing Metaphors and Location in Professional Practices' (2012) 34 *Studies in Continuing Education* 17, p 27.

¹⁶⁰ "Reliance on informal learning alone can have drawbacks:

- It may be too narrowly based so the employee only learns part of a task or superficial skills which may not be transferable;
- It may be unconscious and not be recognised. This does not build confidence nor lead to development;
- It is not easy to accredit or use for formal qualifications;
- The employee may learn bad habits or the wrong lessons."

Dale M and Bell J, 'Informal Learning in the Workplace' (DFEE 1999) 134

<<http://webarchive.nationalarchives.gov.uk/20130401151715/http://www.education.gov.uk/publications/eOrderingDownload/RB134.pdf>> accessed 13 October 2014, p 4.

¹⁶¹ Kang, Snell and Swart suggest that "while hiring lawyers from outside increases the learning potential of the practice group, it will create coordination problems, which negatively affect the transformation or institutionalization of individual knowledge into practice group learning", Kang S-C, Snell SA and Swart J, 'Options-Based HRM, Intellectual Capital, and Exploratory and Exploitative Learning in Law Firms' *Practice Groups* (2012) 51 *Human Resource Management* 461, p 465.

¹⁶² See however, indications that workplace experience flattens and frustrates individual aspirations to autonomy in Boon A, 'From Public Service to Service Industry: The Impact of Socialisation and Work on the Motivation and Values of Lawyers' (Social Science Research Network 2005) SSRN Scholarly Paper ID 1102282 <<http://papers.ssrn.com/abstract=1102282>> accessed 19 September 2014.

¹⁶³ Solicitors Regulation Authority, 'SRA | SRA Handbook - Code of Conduct - SRA Code of Conduct 2011 | Solicitors Regulation Authority' <<http://www.sra.org.uk/solicitors/handbook/code/content.page>> accessed 8 October 2014.

¹⁶⁴ Faulconbridge JR and Muzio D, 'Legal Education, Globalization, and Cultures of Professional Practice' (2009) 22 *Georgetown Journal of Legal Ethics* 1335 <<http://heinonline.org/HOL/Page?handle=hein.journals/geojlege22&id=1343&div=&collection=journals>>, p 1358.

¹⁶⁵ A "fish file" is a file whose lawyer has got stuck and is tempted to procrastinate about to the extent that there is a risk it is beginning to "smell". The exchange allows a colleague who comes fresh to its problems to take over responsibility for the file.

¹⁶⁶ An example of an ethical stance including both teaching and learning is found in medicine "7. You must be competent in all aspects of your work, including management, *research* and *teaching*" (my italics); General Medical Council, 'Good Medical Practice (2013)' <http://www.gmc-uk.org/guidance/good_medical_practice.asp> accessed 3 September 2014.

¹⁶⁷ Bar Standards Board, 'Pupillage Handbook' <https://www.barstandardsboard.org.uk/media/1610725/pupillage_handbook_2014_new_code_full_doc.pdf> accessed 29 December 2014.

¹⁶⁸ Bar Standards Board, 'Compliance with CPD Regulations "A General Guide to CPD"' <https://www.barstandardsboard.org.uk/media/1548593/a_general_guide_to_cpd_-_2014_version.pdf>

¹⁶⁹ Bar Standards Board, 'The Bar Standards Board Handbook' <https://www.barstandardsboard.org.uk/media/1553795/bsb_handbook_jan_2014.pdf> accessed 29 December 2014, pp 22 and 34.

-
- ¹⁷⁰ Costs Lawyer Standards Board, 'Training and CPD Rules 2013' <<http://clsb.info/rules-regulations/training-cpd-rules/>> accessed 29 December 2014
- ¹⁷¹ Costs Lawyer Standards Board, 'Code of Conduct' <http://www.clsb.info/wp-content/uploads/2014/06/Code_of_Conduct_26_March_2014.pdf> accessed 29 December 2014
- ¹⁷² Chartered Institute of Legal Executives, 'Application for Fellowship Rules (Work Based Learning)' <<http://www.cilex.org.uk/pdf/APPLICATION%20FOR%20FELLOWSHIP%20RULES%20Final.pdf>>
- ¹⁷³ Chartered Institute of Legal Executives, 'Fellows, Associate Prosecutors and Legal Accounts Executives CPD Guide (2013 to 2016)' <http://www.cilex.org.uk/membership/cpd/cpd_resources/brief_cpd_guides/fellows,_aps,_legal_accounts.aspx> accessed 29 December 2014
- ¹⁷⁴ ILEX Professional Standards, 'IPS - CILEx Members Code of Conduct' <http://www.cilex.org.uk/membership/code_of_conduct.aspx> accessed 29 December 2014
- ¹⁷⁵ Council for Licensed Conveyancers, 'CPD Training' <<http://www.conveyancer.org.uk/CLC-Lawyer/CPD-Training.aspx>> accessed 29 December 2014
- ¹⁷⁶ Council for Licensed Conveyancers, 'Handbook' <<http://www.conveyancer.org.uk/CLCSite/media/PDFs/NEW-CLC-Handbook-regulatory-responsibilities.pdf>> accessed 29 December 2014
- ¹⁷⁷ Master of the Faculties, 'Notaries (Continuing Professional Education) Regulations 2010' <<http://www.facultyoffice.org.uk/wp-content/uploads/2013/12/NotariesContinuingProfessionalEducationRegulations2010.pdf>> accessed 29 December 2014
- ¹⁷⁸ Master of the Faculties, 'Notaries Practice Rules 2014' <<http://www.facultyoffice.org.uk/wp-content/uploads/2014/09/Notaries-Practice-Rules-2014.pdf>> accessed 29 December 2014
- ¹⁷⁹ Intellectual Property Regulation Board, 'CPD Regulations' <<http://ipreg.org.uk/pro/rules-and-regulations/cpd-regulations/>> accessed 29 December 2014
- ¹⁸⁰ Intellectual Property Regulation Board, 'Rules of Conduct for Patent Attorneys, Trade Mark Attorneys and Other Regulated Persons' <http://ipreg.org.uk/wp-content/files/2012/07/IPReg_Code_of_Conduct_Dec_2012_website2.pdf> accessed 29 December 2014