

# Learning and teaching within the legal services organisation: a collaborative clinic

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# SRA regulation

## Outcome O(TR1)

*you* maintain competence through relevant ongoing training.

## Outcome 7.6

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

# SRA Regulation

- R 8.2: Suitable arrangements for compliance
  - Supporting training and development
- R 8.5 Compliance Officers - personal impact and R 8.1
  - An authorised body must have suitable arrangements in place to ensure that its compliance officers are able to discharge their duties in accordance with these rules.
- Guidance Note (iii)(j)
  - appropriate systems for supporting the development and training of staff;
- Failure in training obligations

# SRA Regulation

## Draft Training Regulations 2014.

- “if you qualify as a solicitor, you:
  - will have achieved and demonstrated a standard of competence appropriate to the work you are carrying out;
  - will have had such competence objectively assessed where appropriate ...”

# BSB Handbook, oC24 and gC39

Your *practice* is run competently in a way that achieves compliance with the Core Duties and your other obligations under this *Handbook*. Your *employees*, *pupils* and trainees understand, and do, what is required of them in order that you meet your obligations under this *Handbook*.

In order to be able to provide a competent standard of work, you should keep your professional knowledge and skills up to date, regularly take part in professional development and educational activities that maintain and further develop your competence and performance and, where you are

- a *BSB authorised body* or a *manager* of such body, you should take reasonable steps to ensure that
- *managers* and *employees* within your *organisation* undertake such training.
- Merely complying with the minimum Continuing Professional Development requirements may not be sufficient to comply with Rule C15.

# What have we got

- Regulatory requirements (eg SRA outcome 7.6), training contracts, pupillages and periods of qualifying employment
- CPD
- Willingness and enthusiasm
- A default mode: osmosis? Update lectures?
- A business that needs to make money
- People with a range of abilities and experiences
- A variety of different qualification routes within the same organisation?
- Conscripts or volunteers?

# What have we not got

- Time
- Resources
- Ideas?
- Explicit regulatory rules to follow
- A regulatory requirement to teach, as well as to learn?

# Compare...

You must be competent in all aspects of your work, including management, research and teaching ...

You must take steps to monitor and improve the quality of your work.

You should be willing to take on a mentoring role for more junior doctors and other healthcare professionals

GMC (2013) *Good Medical Practice*



# What do we want to achieve?

- Updating?
- Reduced claims?
- Increased capacity?
- Remedial work/addressing risks?
- Just in case or just in time?
  
- Competence ....

Competence?

# Competence?

- Properly qualified?
- Not negligent?
- Midway between novice and expert?
- Having the ability 'to perform the tasks and roles required to the expected standard' (McKee and Eraut, 2013)
- To what extent does it involve a commitment to:
  - Maintain competence?
  - Extend the scope and quality of performance?

# Competence?

- The unique characteristic of competence is the effective and creative demonstration and deployment of knowledge and skill in human situations. ... Competence refers to the process of governing the application of knowledge to a set of tasks and is typically acquired by practice and reflection. Some aspects of performance in situations may depend on innate characteristics of an individual. In as much as such performance is not learned it cannot be recognised as learning. Competence also encompasses the extent to which the learner can acknowledge his/her limitations and plan to transcend these through further learning.

HETAC, cited in Kennedy et al (2009)

# Capability

...[t]he usefulness of the capability construct for professional education lies in holding ... [two meanings of the term “capability”] together in some kind of balance.

In its first sense capability has a present orientation and refers to the capacity to perform the work of the profession: capability is both necessary for current performance and enables that performance.

In its second sense, capability can be said to provide a basis for developing future competence, including the possession of the knowledge and skills deemed necessary for future professional work.

Eraut, M. (1994: 208)

# Competence frameworks

- Competences/competencies
- CILEx Competency Framework
- SRA QLTS day one outcomes
- SRA: Training for Tomorrow
- BSB: pupillage assessment criteria

# Lester (2013):

- Generic:
  - ethics and professionalism;
  - developing oneself, others and the profession;
  - managing oneself, work and others;
  - communication, client and public relationships
- Profession-specific:
  - assess (investigation, analysis and assessment);
  - decide (problem-solving, planning and decisions);
  - do (action and implementation);
  - review (review and evaluation)

# Task conscious and learning conscious activity

Learning conscious activity



A Um, well you know, it's just training.

Q OK. Any particular kind of training?

A Yeah, talks.

Solicitor, 1 year PQE,

... also you can get videos and just watch a video but that, at the end of the day, that's a talk, it's still a talk. I mean any training really is going to be a talk isn't it, someone talking at you?

Solicitor, 2 ½ years' PQE,

# Design and delivery

- Target audience(s)
- Numbers
- Outcomes
- Activities
- Resources (paper, room, electronic, catering, room layout)
- Assessment
- Troubleshooting
- Teaching the teachers

# Evaluation questionnaires

- Participant satisfaction?
  - Participant learning?
  - Organisational change?
  - Participants' use of new knowledge and skills?
  - Client impact?
  - Value for money?
- 
- Adapted from Muijs and Lindsay (2008)

# Assessment

- Validity
  - Are you testing what you claim to test?
- Reliability
  - Consistency and rigour
- Fairness
  - Expectations? Level? Diversity issues?
- Feasibility
  - What can you actually do, in the time and with the resources you have.

See General Medical Council Postgraduate Medical Education and Training Board (2007) and SALT, 2010

## Task conscious and learning conscious activity

### Task conscious activity

".... We do try to teach around the patients, but ... you can't stop and say, I'm sorry, I know the child's having a seizure, but we need to talk about what causes seizures".

Lingard *et al*, (2003: 608)

# Learning in the workplace

- Communities of practice – a naïve concept?
- Zone of proximal development
- Apprentice pieces
- Slight seniors
- Consistency – the mentor v the micro-manager

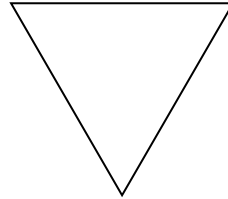
# Strategies used

- Practice and repetition
- Reflection
- Observation and copying
- Feedback
- Extra-occupational transfer
- Stretching activities
- Perspective switching
- Mentoring/coaching
- Osmosis
- Neurological (eg visualising, NLP)
- Articulation
- Collaboration and liaison

Cheetham and Chivers (2001)

# The LINEA findings: accountants

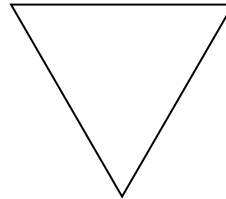
*Allocation and Structuring of Work*  
Audit teams (temporary)  
Scaffolded progression  
Contact with range of clients  
Formal professional training for examinations



*Relationships at work*  
Strong mutual support in teams  
Strong organisational culture  
Sensitivity to client differences  
Develops peer group interaction

*Participation and expectations*  
Clear apprenticeship route  
Pay your way  
Must pass examinations

*Challenge and Value of Work*  
Good progression and client variation  
Audit is legal requirement  
Value for clients is clear



*Feedback and support*  
Good on the spot feedback and support  
Feedback on evaluation forms too late  
Normative feedback weak

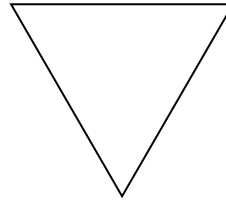
*Confidence and Commitment*  
Short term confidence  
Commitment to audit teams  
Concerns about general progress  
Less commitment to organisation  
Range of career choices



# The LINEA findings: nurses

## *Allocation and Structuring of Work*

Ward based shift work  
Full responsibility on arrival  
Pressure cooker environment  
Prioritisation critical  
Multiple brief contacts with other health professionals



## *Participation and expectations*

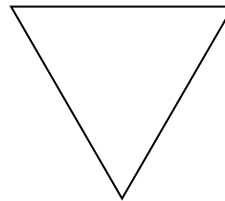
Unreasonably high at start  
Transition problems underestimated  
Ultimate responsibility for key decisions  
Overwork is the norm

## *Relationships at work*

Variable ward climates  
Ward leadership critical  
Variable contact with peers  
Delegating to health care assistants

## *Challenge and Value of Work*

High levels of challenge  
High value for patients  
Complex relationships with other workers and professionals  
Complex relationships with patients and their families



## *Confidence and Commitment*

Strong commitment to patients  
Commitment to colleagues variable  
Early loss of confidence  
Concern about general progress  
Rebuilding confidence depends on support

## *Feedback and support*

Variable close support  
Variable mentor support  
Occasional skills coaching  
Variable back up  
Emotional support critical  
Access to training  
Learning culture of ward

# Assessment

- Self certification
- Supervisor appraisal
- Peer appraisal
- Client appraisal
- Written evidence
- Positive proof or “negative marking”
- How many times?
- A cycle: diagnose, plan, do, evaluate/demonstrate impact on practice
- Legal professional privilege?

# CILEx WBL

All evidence provided should be work you have carried out yourself, be relevant to meeting the outcome and should demonstrate how you have met the outcome. You should not include copies of codes of practice, statutes, blank forms and letters etc. as these do not evidence how you have met the outcome. When assessing your application, the Committee will take the relevance of the evidence provided in support of the application into account.

# The challenges will be

- Understanding the outcomes
- Scope and quality
- Applying/adjusting to my kind of practice: do I do this at all?
- Emotion and embarrassment?
- Demonstrating: “Show, don’t tell!”
- Opportunities to perform
- Supervision and support
- Appeals?

- Various assessment activities can be used to measure the achievement of the professional skills of aspiring professional accountants. Work-based simulations or group exercises are examples of activities that enable aspiring professional accountants to develop and demonstrate achievement of learning outcomes related to professional skills, within a professional accounting education program. Practical experience also enables aspiring professional accountants to participate in assessment activities to demonstrate their professional skills. Examples of such activities include (a) keeping a diary, (b) participating in 360 degree assessments, (c) compiling portfolios of evidence of achievement of learning outcomes, or (d) being monitored by a practical experience supervisor.
- Assessment of professional skills in the workplace may require a different approach to that of written examinations in order to achieve high levels of reliability, validity, equity, transparency, and sufficiency. For example, assessment design may include:
  - (a) Specification of learning outcomes that are clear and detailed in order to minimize ambiguity and increase the reliability and transparency of the assessment;
  - (b) Training of workplace assessors in order to achieve consistency between assessors and equity between candidates; and
  - (c) Creation of work-based simulations in order to provide sufficient, equitable, and reliable assessments of professional skills.

International Accountancy Education Standards Board (2014)

- The collaborative assessment ... is a portfolio which combines the report of the workplace supervisor, the student's claims as to their own capability and evidence of capability provided to or collected by the academic supervisor. While the supervisor's report may play a key role in the assessment process, the final responsibility for grading should rest with the academic.

McNamara (2013: 195).

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

Schön, DA, (1987: 61)

- [t]he career of the expert is one of progressively advancing on the problems constituting a field of work, whereas the career of the non expert is one of gradually constricting the field of work so that it more closely conforms to the routines the nonexpert is prepared to execute.

Bereiter and Scardamalia, (1993: 11)



# Activity I: achieving competence

Either:

- Bring your own current issue, or
- Debate this scenario.
  - You have a small group of mainstream criminal litigators in your firm/organisation/chambers. You have offices in Nottingham, London and Brussels. Changes in funding mean they have had to widen their horizons and they wish to expand, quickly, into prison law and disciplinary work (e.g. professional tribunals). Your CPD budget is very overspent and you can probably afford one external course/conference; a couple of new journal subscriptions, and a webinar or two.
  - The group consists of:
    - Ajay, a recent lateral hire with 3 years' experience in disciplinary work;
    - Beth, a recent lateral hire with 7 years' experience in prison law work;
    - Colin, who has 40 years' experience in the organisation, and in serious criminal cases;
    - Deepak, who has 5 years' experience in a range of criminal work, including some prison law;
    - Elbert, a paralegal with a Ph D in criminology, who is in effect a research assistant;
    - Fiona, a (former secretary) paralegal who focuses on administration and client relations.

# Activity II: demonstrating competence

Either:

- Bring your own current issue, or
  - Debate this scenario.
    - You have a small group of mainstream commercial civil litigators in your firm/organisation/chambers. Currently appraisals are carried out by the partners on the basis of their own evaluation, which also informs their “sign off” of pupils and trainee solicitors.
    - The group consists of
      - Graham, a paralegal (BPTC qualified) who works at the same level as a 2 year PQE solicitor;
      - Hannah, a paralegal (ex secretary signed up with the Institute of Paralegals);
      - Idris, a legal executive working towards Chartered status;
      - James, a new pupil barrister who wishes to specialise in this area on qualification;
      - Karen, a second year trainee solicitor who does not wish to specialise in this area on qualification;
      - Leon, Miriam and Nur: three assistant solicitors (3, 7, and 10 years’ PQE);
      - Owen and Phyllis: two partners (12 and 40 years’ PQE). Both have indicated informally that they are “bored”.
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And now?