



**Outcomes-Focused Regulation -
Draft CLC Code of Conduct**
CLC Consultation Paper
July 2010

Response Deadline: 31 October 2010

Executive Summary

1. The CLC believes that its regulatory framework should achieve the following:
 - consumers receive legal services appropriately tailored to their needs;
 - the regulated community is given proper opportunities for innovation; and
 - the CLC provides efficient and effective regulation.

The draft Code of Conduct is a significant step towards delivery of these outcomes. It is intended that it will come into force in October 2011 assuming that the CLC becomes a Licensing Authority. It will apply to all entities regulated by the CLC, whether as an Approved Regulator regulating licensed conveyancer practices or as a Licensing Authority regulating Alternative Business Structures.

2. The regulatory framework is being revised to focus on the delivery of positive outcomes for consumers of legal services. These will be delivered by the principled and professional behaviour of the regulated community. The Code of Conduct is derived from the Professional Principles set out at section 1 Legal Services Act 2007.
3. The CLC will consult further in the autumn on the remainder of the new framework, extending the Principles and Outcomes based approach identified in the Code. This will include details of the licensing frameworks which will be set up before the CLC's becomes a Licensing Authority and regulates advocacy and litigation services. The CLC will also consult on its approach on a Regulatory Strategy and Enforcement Policy.

Responding to this Consultation

4. The questions posed in this Consultation Paper are set out on page 7. You are welcome to respond to some or all of the questions or to comment on the proposals as a whole.
5. When you respond could you please give your name and address, and whether you are a licensed conveyancer. If you are not a licensed conveyancer, could you please state, if relevant, your status or professional qualification. Unless we are notified otherwise, the CLC reserves the right to publish any response and to refer to it specifically in any further document it publishes following this Consultation. If you wish your response to be treated as confidential could you please let us know when you respond. All responses should be sent by email to consultations@clc-uk.org or by post to

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Submission Deadline: 31 October 2010

Introduction

Statutory Framework

6. The CLC was established by the Administration of Justice Act 1985 (AJA) to regulate licensed conveyancers in the provision of conveyancing services. It has no representative function. The CLC currently regulates about 1,000 licensed conveyancers and just over 200 practices.
7. As an approved regulator the CLC “must, so far as is reasonably practicable, act in a way.., which is compatible with the regulatory objectives”¹ as follows:
 - a) Protecting and promoting the public interest;
 - b) Supporting the constitutional principle of the rule of law;
 - c) Improving access to justice;
 - d) Protecting and promoting the interests of consumers;
 - e) Promoting competition in the provision of services by ‘authorised persons’²;
 - f) Encouraging an independent, strong, diverse and effective legal profession;
 - g) Increasing public understanding of the citizen’s legal rights and duties;
 - h) Promoting and maintaining adherence to the professional principles³.

The “professional principles” are—

- a) that authorised persons should act with independence and integrity,
- b) that authorised persons should maintain proper standards of work,
- c) that authorised persons should act in the best interests of their clients
- d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence and in the interests of justice,
- e) that the affairs of clients should be kept confidential.⁴

¹ S.28(2) Legal Services Act 2007

² defined at s.18 LSA

³ s.1(1) LSA

⁴ s.1(3) LSA

8. The CLC is also required to “have regard to...the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed”⁵.

Outcomes-Focused Regulation

9. The Guidance issued by the Legal Services Board⁶ requires Approved Regulators and Licensing Authorities to adopt a regulatory approach which is principles-based and outcomes-focused. We take that to mean that legal services providers must be encouraged to focus upon the positive outcomes they can generate for consumers of those services. Outcomes will be delivered by acting in accordance with high-level principles – these require you to act in a principled, professional manner - rather than concentrating on complying with prescriptive rules.
10. The shift of focus means that:
 - clients receive a service tailored to their needs;
 - legal service providers can develop new and different ways of delivering services to their customers; and
 - the CLC establishes an environment which enhances client protection, promotes competition and provides informed choice for consumers.

CLC Regulatory Framework

11. The CLC’s current regulatory framework is centred around the Conduct Rules which prescribe the rules the regulated community must follow when they deliver services regulated by the CLC. These are supported by a number of other rules – such as the Accounts Rules and the Continuing Professional Development Rules – as well as relevant Guidance Notes.
12. We are re-focusing the CLC’s regulatory regime, beginning with the Conduct Rules. We are starting the review here as we consider the Conduct requirements to be the core responsibilities legal service providers have to their clients, as well as being the regulatory section most amenable to the principles-based agenda.
13. The Conduct Rules have been re-formulated as the Code of Conduct (Code). We have started by considering the outcomes we are looking for in the context of the Overriding Principles we have identified. Specific requirements remain where there is concern that affording flexibility of approach will represent a significant risk to the delivery of positive Client outcomes.
14. We are currently working on the remainder of the regulatory framework, linking each section with the relevant outcomes and principles identified in the Code and wherever possible basing it on principles rather than specific requirements. It will also be restructured so it is more transparent. For example, we currently have a number of documents labelled Guidance Notes which in fact include mandatory rules.

⁵ s.28(3) LSA

⁶ Alternative Business Structures: approaches to licensing (especially paragraphs 5 & 30)

- These will be restructured so it is clear when a requirement is mandatory, when information is provided for guidance purposes - emphasising that a suggested procedure is just that ie. one possible route for those seeking direction, but not the only route. We will amalgamate toolkits and guidance in a specific subject area so the framework is easier to follow.
15. The framework of a principles-based regime means that there is less prescription. One unintended consequence may be to increase uncertainty as to the expectations of the regulator in a specific set of circumstances. Some regulated bodies, especially new ones, may not feel sufficiently confident in a regime which does not prescribe what they must do. We will ensure appropriate guidance and support is available for those who require it.
 16. Although the entire regulatory framework is to be revised we will not fix what is not broken. The framework will remain in its distinct sections e.g. Accounts, Continuing Professional Development etc. so its general structure is familiar to the existing regulated community.
 17. The regulatory framework will cover all members of the regulated community. The Code will apply equally to individual licence holders and to recognised bodies, as well as to Alternative Business Structures (ABS) (assuming that the CLC's application to become a Licensing Authority is approved). ABS will also need to comply with additional ABS-specific Licensing Requirements incorporating the core ABS outcomes identified by the LSB.
 18. We will consult on the revised regulatory framework in the early Autumn.

CLC Code of Conduct

19. The overriding aim of the framework is to ensure the protection of clients and the promotion of their best interests. Therefore, the draft Code is focused upon outcomes with accompanying principles and specific requirements to deliver the outcomes. The parameters used are as follows:
 - *Principle* – an essential quality; a characteristic, behaviour or ethic, which must be demonstrated so that positive outcomes are generated for clients;
 - *Specific requirement* – a strict direction for conduct;
 - *Outcomes* – the end result of the applications of the principle or rule.
20. The Code is based on the five professional principles set out in the Legal Services Act 2007 and includes two further principles: one aimed at ensuring co-operation with regulators and ombudsmen; the other a duty to promote equality of access and service. The six main principles in the Code are called Overriding Principles, underpinned by the relevant Principles and Specific Requirements.
21. We have taken account of the LSB's guidance on licensing regimes in drafting the Code. We will continue this dialogue throughout our work on the regulatory framework. In addition, we have looked at the regulatory requirements of other bodies which have sought to take an outcome-focused and principles-based approach. This includes the Financial Services Authority, the Care Quality Commission, the Tenant Services Authority, the Environment Agency, as well as

the Solicitor Regulation Authority (currently out for consultation).. There is no set template, with each taking a different approach to outcomes-focused regulation.

22. During the Consultation Period we will engage with the profession and with consumers, and seek the views of other Approved Regulators and stakeholders.

New Conduct requirements

23. **Litigation & Advocacy** – the CLC will apply to regulate litigation and advocacy services, in addition to conveyancing and probate. We particularly welcome feedback on Principle 4 from other Approved Regulators and from those already authorised to provide these services to help us determine if the Principles identified in the Code are appropriate. We will issue a consultation on the CLC’s proposed Litigation and Advocacy licensing framework in the autumn.
24. **Complaints** - the LSB has identified core complaints outcomes it expects all regulatory frameworks to deliver and these are reflected in the attached Code. Most of the requirements should already be familiar to the CLC’s regulated community because they are already included in the CLC’s Complaints Guidance Note. In addition, legal service providers will be required to ensure their procedures are able to respond to the needs of those who are vulnerable or who have a disability.
25. **Promote equality of access and service** – currently the provision of goods and services provision must not discriminate on a basis of disability, gender or race. The Equality Act will extend the current anti-discrimination requirement to cover age, religion, sexual orientation and transgender. Principle 6 also imposes specific equality and diversity responsibilities on the regulated community.
26. Our current view is that it would be unnecessarily prescriptive to require all regulated bodies to have a distinct Equality & Diversity (ED) Policy, and particularly onerous for sole practitioners. However, you may choose to generate the equality outcomes by implementing a distinct policy. (Employers with over 250 employees are already required to have an ED Policy). In light of this we will publish an ED policy

Timeframe

27. It is anticipated that the Code of Conduct will come into effect in October 2011 at the same time as the CLC anticipates as a Licensing Authority to be able to issue licences to ABS.

Questions

In each case you are asked to provide reasons for the answer you have given. You may wish to give specific examples.

1. Do you agree with the definitions used by the CLC to explain Outcomes, Principles & Specific Requirements (paragraph 15)?
2. Do you agree the Overriding Principles are appropriate? Should there be others?
3. Are the Outcomes and Principles proposed appropriate? Should there be others?
4. Are the Specific Requirements in the Code appropriate and adequate? Are there any which could be more appropriately be re-formulated as Principles?
5. Do you find the Code easy to follow? In particular, please tell us how you think the layout can be improved?
6. Do you think a principles-based approach to regulation raises special risks and, if so, how can those risks be reduced?
7. Do you agree the outcomes/principles on Equality and Diversity (ED)? Do you think all bodies should have to have an ED Policy?



Code of Conduct

Introduction

This Code of Conduct was made in accordance with Section 20 of the Administration of Justice Act 1985 and Section 83 of the Legal Services Act 2007.

All individuals and entities regulated by the CLC must comply with this Code and its associated regulatory framework. In this Code “you” refers to individuals and entities regulated by the CLC. You must not permit anyone else to act or fail to act in such a way as to amount to a breach of this Code. Your main driver should be the delivery of positive client outcomes. The Code comprises principles and specific requirements, which taken together deliver positive Outcomes for your Clients and, particularly in relation to Principle 6, for others you deal with.

To effectively secure the protection of, and the provision of choice for, the consumer of legal services, you must at all times comply with the following overriding principles:

1. Act with independence and integrity;
2. Maintain proper standards of work;
3. Act in the best interests of Clients;
4. Comply with your duty to the court;
5. Deal with regulators and ombudsmen in an open and co-operative way;
6. Promote equality of access and service.

We aim to help you comply with the regulatory framework by issuing guidelines and suggested approaches/procedures - such as, the suggested complaints procedure - which provide (particularly if you are a new Practice) one route for you to follow in the absence of your own procedure or if you are concerned that your current procedure does not deliver the outcomes set out in this Code of Conduct.

Disciplinary proceedings may be taken against you if the CLC believes there has been a breach of this Code. The CLC’s response will be informed by the CLC’s Enforcement Policy.

Overriding Principle 1. Act with independence and integrity

Outcomes

You must deliver the following Outcomes:

- Clients are able to make informed decisions about the services and options available to them;
 - Clients trust and value the service you provide and feel adequately protected;
 - Clients are confident that they receive independent representation and advice;
 - Clients are confident that you comply with the law.
-

Principles

Delivery of these Outcomes requires you to act in a principled manner as follows:

- a) You do not allow your independence to be compromised;
- b) You act honestly, professionally and decently;
- c) You do not conduct yourself in a manner which may result in a breach of the law nor in any other manner which may bring the legal profession into disrepute;
- d) You do not allow fee arrangements to prejudice your independence or professional judgement;
- e) You do not conduct business under a misleading name;
- f) You keep Client money safe;
- g) You do not give false or misleading information relating to the provision of Regulated Services;

Specific Requirements

You must also comply with the following specific requirements, unless you are able to satisfy the CLC, or the relevant disciplinary committee, that you are acting in a way which is consistent with Principle 1 and delivery of the applicable Outcomes:

- h) When acting as a CLC licensee, you accept instructions only to act in a matter which is regulated by the CLC;
- i) You keep Client money entirely separate from your money or the money of the entity;
- j) You do not promote the provision of Regulated Services by unsolicited telephone calls or visits;
- k) All business communications, websites and office premises must display information confirming the entity is regulated by the CLC and the names of the Managers (identifying those who are Authorised Persons).

Overriding Principle 2. Maintain proper standards of work

Outcomes

You must deliver the following Outcomes:

- Clients are confident that you act with reasonable care, skill and diligence;
 - Clients trust you to provide them with a competent standard of legal services;
 - Clients are confident that any arrangements you have for the referral of work are consistent with your obligations to them and the CLC, and comply with the law.
 - Clients are aware of who is dealing with their matter and who is responsible for overall supervision.
-

Principles

Delivery of these Outcomes requires you to act in a principled manner:

- a) You always try to provide Clients with a competent standard of service but accept responsibility when this is not the case;
- b) You keep your skills and legal knowledge up-to-date;
- c) You ensure all individuals within the entity are competent to do their work;
- d) You supervise and regularly check the quality of work in client matters;
- e) You comply with anti-money laundering and prevention of terrorism legislation;
- f) You comply fully with any undertaking given by you;
- g) You systematically identify and mitigate risks to the business and to Clients;
- h) You promote ethical practice and compliance with regulatory requirements;
- i) You enable staff to raise concerns which are acted on appropriately;
- j) You provide the Client with all relevant information relating to any fee arrangements;
- k) You do not take unfair advantage of third parties;
- l) You maintain proper governance, management, supervision, financial, and risk management arrangements and controls;
- m) You maintain proper records to evidence your governance, management, supervision, financial, and risk management arrangements and controls and how they are applied;
- n) Where authorised to do so, you administer oaths, affirmations and declarations properly;

Specific Requirements

You must also comply with the following specific requirements, unless you are able to satisfy the CLC, or the relevant disciplinary committee, that you are acting in a way which is consistent with Principle 2 and delivery of the applicable Outcomes:

- o) Control of an entity is from a permanent fixed address in England or Wales.
- p) A Manager who is a Qualified Person is responsible for supervising the services provided by the entity's employees;
- q) You make provision for alternative supervision arrangements in case of illness, accident or other unforeseen event;
- r) Before or when accepting instructions, you inform Clients of the terms on which the instructions are accepted, an estimate of costs and if and when they are likely to change;
- s) You discuss with the Client how costs will be paid, whether directly by the Client, by public funding, through an insurance policy or otherwise;
- t) You advise Clients of the name and status of the person dealing with their matter and the name of the person responsible for overall supervision;
- u) You inform the Client promptly of the existence and amount of a sum payable (whether directly or indirectly) as a result of receipt of that Client's instructions;
- v) With the exception of disbursements, you do not delay completion because fees are outstanding to you;
- w) You keep the Client informed if you are unable to do work within a reasonable timescale after receiving instructions.

Overriding Principle 3. Act in the best interests of your Clients

Outcomes

You must deliver the following Outcomes:

- Clients are confident that you act in their best interests, and that you have the appropriate resources, skills and procedures in place for this;
- Clients are able to make informed decisions about the services they need, how the matter will be handled and the options available to them.
- Clients are confident that their informed consent will be obtained before the entity agrees to act for another person in a matter;
- Clients are aware of any limitation or conditions resulting from your relationship with any other person which may affect or limit the steps you can take on their behalf;
- Clients trust you to treat their affairs confidentially except as required or permitted by law or with the Client's consent;
- Clients are confident that their information is processed in accordance with data processing law and good practice.

Principles

Delivery of these Outcomes requires you to act in a principled manner:

- a) You act only within your professional competence;
- b) You keep the interests of the Client paramount¹;
- c) You only recommend a particular person, business or product when it is in the best interests of the Client;
- d) You cease acting in a matter if the Client so or, in the absence of such instructions, where it is reasonable to do so;
- e) You only provide Regulated Services whilst you have professional indemnity insurance in force;
- f) You ensure there are adequate indemnity arrangements in respect of claims made against you for work carried out by you after you have ceased to practice;
- g) You disclose client information only as you have been instructed (or as required by the CLC's Rules or by law), keeping effective records of any disclosure you make;
- h) You systematically identify, monitor and manage risks to the delivery of this Code's outcomes;

- i) You do not act for a Client where you judge it is not in the Client's best interests for you to do so;
- j) You do not accept instructions from a person nor continue to act for a Client whose interests conflict directly with your own, the entity's, or another Client²;
- k) You seek to exclude or limit liability only with the informed consent of the Client;

Specific Requirements

You must also comply with the following specific requirements, unless you are able to satisfy the CLC, or the relevant disciplinary committee, that you are acting in a way which is consistent with Principle 3 and delivery of the applicable Outcomes:

- l) Where the entity represents parties with different interests in any transaction. each party is at all times represented by different qualified persons conducting themselves in the matter as though they were members of different entities;
- m) When providing services which are not regulated by the CLC, you advise your Client of this and inform them the activity is not covered by professional indemnity insurance approved by the CLC;

¹ Except as required by the law or by the CLC's regulatory arrangements

² Except as permitted by CLC regulatory requirements re: Conveyancing transactions

Overriding Principle 4. Comply with your duty to the court⁷

Outcomes

You must deliver the following Outcomes:

- Clients are confident you act in the interests of justice;
 - Clients consider that you act in good faith towards them;
-

Principles

Delivery of these Outcomes requires you to act in a principled manner:

- a) You promote and protect the client's best interests (without regard to your own, or your entity's interests);
- b) You do not compromise your professional standards or independence;
- c) You assist the court in the administration of justice;
- d) You do not knowingly or recklessly mislead or deceive the court, or allow the court to be misled;
- e) You do not refuse to act as an advocate on the grounds of personal objections to the nature of the case, the client's conduct, opinions or beliefs or their source of financial support;
- f) You comply with any Court Order³ ;
- g) You advise your Client to comply with Court Orders and of the consequences of failing to do so;
- h) You properly protect sensitive evidence;
- i) You safeguard the well being of children and other vulnerable persons;

Specific Requirement

You must also comply with the following specific requirement, unless you are able to satisfy the CLC, or the relevant disciplinary committee, that you are acting in a way which is consistent with Principle 4 and delivery of the applicable Outcomes:

- j) You ensure that the court is made aware of any relevant legal or factual matters which are likely to have a material effect on the outcome of the proceedings.

³Unless an application for a stay is pending or the order has been revoked by the Court

⁷ **Note: this Principle will only be applicable if the CLC's application to regulate advocacy and litigation services is successful – see paragraph 23 of the Consultation Paper**

Overriding Principle 5. Deal with regulators and ombudsmen in an open and co-operative way.

Outcome

You must deliver the following Outcome:

- Clients are confident that you operate in accordance with regulatory requirements.
-

Principles

Delivery of these Outcomes requires you to act in a principled manner:

- a) You are open and honest in your dealings with us;
- b) You comply with the CLC Code of Conduct and the CLC's other regulatory arrangements;
- c) You comply promptly and fully with a CLC direction or request;
- d) You co-operate with any CLC investigation;
- e) You co-operate with any Legal Ombudsman investigation;
- f) You co-operate with other regulators and ombudsmen.

Specific Requirements

You must also comply with the following specific requirements, unless you are able to satisfy the CLC, or the relevant disciplinary committee, that you are acting in a way which is consistent with Principle 5 and delivery of the applicable Outcome:

- g) You promptly notify insurers in writing of any facts or matters which may give rise to a claim under the CLC's Indemnity Policy.
- h) You promptly notify the CLC in writing of any facts or matters which may give rise to a claim under its Compensation Fund.
- i) As a CLC licensee operating in an entity regulated by another regulator you must comply with that regulator's regulations at all times in a way which is reasonably consistent with this Code;
- j) You obtain permission from the CLC before offering Regulated Services:
 - as a new business;
 - in an entity regulated by another Approved Regulator; or
 - through an entity with a Manager who is not a CLC Licensee.

- k) You promptly notify the CLC of any material, ownership or management change in the entity.
- l) You promptly notify the CLC of any material breach of this Code, whether by you, the entity or any other person;
- m) You promptly notify the CLC of a change in a relevant person's circumstances, as set out in the CLC's Notification Rules.

Overriding Principle 6. Promote equality of access and service.

Outcomes

You must deliver the following Outcomes: -

- Clients feel their interests are actively promoted and protected;
 - Clients are confident that the legal services sector is accessible to them and responsive to their needs;
 - No Client, employee, colleague, job applicant or third party you deal with feels discriminated⁴ against (whether directly or indirectly), victimised or harassed;
 - Complaints can be made by any reasonable means and the way in which they are handled takes proper account of Clients' individual needs (in particular the needs of those who are vulnerable);
 - Clients are aware how and when you can be contacted;
 - Clients are confident that complaints handling procedures provide effective safeguards for them;
 - Complaints are dealt with comprehensively and swiftly, with appropriate redress where necessary.
-

Principles

Delivery of these Outcomes requires you to act in a principled manner:

- a) You comply with relevant Equalities legislation;
- b) You make reasonable adjustments to prevent persons with disabilities from being placed at a substantial disadvantage;
- c) You provide equal opportunities for all partners, employees or applicants in employment and training;
- d) You deal with complaints promptly and fairly;
- e) You identify and address systemic Client Complaints issues;
- f) You make all reasonable efforts to ensure you are accessible to Clients;

Specific Requirements

You must also comply with the following specific requirements, unless you are able to satisfy the CLC, or the relevant disciplinary committee, that you are acting in a way which is consistent with Principle 6 and delivery of the applicable Outcomes:

- g) Any allegation of direct and indirect discrimination, victimisation and harassment is investigated thoroughly, resulting, where appropriate, in disciplinary action;
- h) Your complaints procedure is clear, well-publicised, free, and provides appropriate redress options;
- i) You advise Clients from the outset of their right to make a complaint, how to make it, to whom, and the timeframes involved;
- j) You advise Clients of their right to have their complaint escalated to the Legal Ombudsman and provide them with contact details and timeframes of that body.

⁴on the grounds of age, disability, ethnicity or national origin, gender, marital status, numeracy or literacy levels, religion or faith, sexual orientation (including civil partnership status).