



**NEW ETHICAL PRINCIPLES**

**&**

**DEVELOPING STRATEGIC OBJECTIVES**

**CONSULTATION PAPER**

**August 2022**

**Consultation deadline**

**This consultation will run for 8 Weeks.**

**It will close on 15th October 2022.**

## **About this consultation**

This consultation seeks views on two matters that are closely related because they are foundational to the regulation of specialist property and probate lawyers and the way that regulation is delivered:

1. A new draft statement of Ethical Principles for CLC-regulated lawyers and entities; and
2. A new set of Strategic Objectives for the CLC for the three years from January 2023.

The Ethical Principles will set the context for future reviews of regulatory requirements and underpin the CLC's monitoring, compliance and enforcement work. New Strategic Objectives will guide our corporate priorities. Both of these foundational elements have been developed in parallel and will continue to influence each other once they come into effect.

There are questions set out for consultees to consider, and we would also welcome any general comments on any aspect of the Ethical Principles or Strategic Objectives.

## **Why this consultation is important**

Because the CLC is funded by the Practices and Individuals that we regulate, it is important that they and other stakeholders get an opportunity to review and comment on the CLC's plans for meeting its regulatory objectives and fulfilling its unique mission as a specialist regulator of mass-market legal services.

The CLC is also consulting on its proposal not to increase regulatory fees and fee rates this year. This reflects the CLC's commitment to keeping the regulatory burden to a proportionate level that maintains standards of compliance and consumer protection. Against the background of high inflation, this represents a real-terms cut that we hope will assist practices in what continues to be a very uncertain time.

## **Responding to this consultation**

The CLC will publish all responses and may refer to any of them specifically in any further document it publishes following this consultation. If you wish your response to be treated as confidential, please let us know when you respond.

You can respond to the consultation by email to [consultations@clc-uk.org](mailto:consultations@clc-uk.org) or by post to:

The Council for Licensed Conveyancers, WeWork, 131 Finsbury Pavement, London, EC2A 1NT

## **Consultation deadline**

This consultation will run for eight weeks until the end of 15th October 2022.

## **Next steps**

The Council of the CLC will consider the responses to this consultation and prepare submission to the LSB to make the necessary rule changes. Those submissions will be published along with consultation responses (noting the caveat about confidentiality above).

## 1. ETHICAL PRINCIPLES

### Introduction

The CLC has been working up a new statement of Ethical Principles. These Ethical Principles will be a foundational element of the Code of Conduct replacing the current 'Overriding Principles'.

The Ethical Principles will lead our approach to the operationalisation of the Code of Conduct and the development and implementation of wider regulatory arrangements.

The proposed new Ethical Principles are also important for the review of the qualification standards and day one outcomes that is also under way. The new ethical principles will underpin the revised Day One Outcomes for newly qualified CLC lawyers once confirmed.

### The process so far

In the spring the CLC ran a workshop with some members of its Professional Reference Group and other lawyers with experience of the development of new qualification standards and then Council Member Teresa Perchard who now chairs our consumer reference group, who brought the consumer perspective to the work. The workshop looked at the existing Overriding Principles. They are:

1. Act with independence and integrity.
2. Maintain high standards of work.
3. Act in the best interests of your 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.

This was followed by further review by the Council at a strategy workshop in June and by the entire CLC executive team at a planning session in workshop July. This was then followed by agreement to consult on the principles at the formal meeting of the Council in July.

The **draft Ethical Principles** that have emerged from that process are as follows:

1. Act with integrity, honesty, and independence
2. Know each customer, treat them fairly, keep their money safe, and act in their best interests
3. Uphold the rule of law and public trust in the profession and legal services
4. Maintain high standards of professional and personal conduct
5. Collaborate openly and truthfully to comply with regulators, ombudsman, and other legal professionals
6. Promote and support equality, diversity and inclusion in practice and service delivery

### Observations on key changes from the Overriding Principles to the Ethical Principles

The Overriding Principles were last reviewed nearly a decade ago. They are very tightly drafted and, while that is often desirable, everyone involved in the review process agreed that there was value in

expanding the wording somewhat to ensure that the new Ethical Principles would be comprehensive, clear and more exacting.

Therefore, the draft Ethical Principles are slightly longer than what they replace and have been grouped and presented slightly differently. The major changes are:

- Overriding principle 2; *Maintain high standards of work*, is replaced and expanded to be covered in Ethical Principles 2, 3 and 4.
- There is an entirely new draft principle, number 2; 'Know each customer, treat them fairly, keep their money safe, and act in their best interests'. This was viewed as very important at the workshops because it underpins the effective practice of conveyancing and probate so fundamentally.
- Overriding principle 4; *Comply with your duty to the court*, has been removed because it does not apply to CLC-regulated lawyers and was introduced at the last review in case the CLC expanded its regulatory activity to encompass litigation and rights of audience.
- Principle 5; *Deal with regulators and ombudsmen in an open and co-operative way* has been expanded and made more explicit and sets a higher standard than previously. It now reads: *Collaborate openly and truthfully to comply with regulators, ombudsman, and other legal professionals*. This reflects the CLC's action to address lapses in openness and cooperation that the CLC has seen in dealings with a small number of practitioners.
- Principle 6 has been expanded to include diversity and inclusion in the workplace as well as in relation to clients.

#### **Relevant Regulatory Objectives (RO1-8)**

The ethical principles will help deliver all the Regulatory Objectives, though the emphasis is plainly on RO8 – promote and maintain adherence to professional principles.

*RO1 - protect and promote the public interest*

*RO2 - support the constitutional principle of the rule of law*

*RO3 - improve access to justice*

*RO4 - protect and promote the interests of consumers*

*RO5 - promote competition in the provision of legal services*

*RO6 - encourage an independent, strong, diverse and effective legal profession*

*RO7 - increase public understanding of the citizen's legal rights and duties*

*RO8 - promote and maintain adherence to the professional principles*

#### **CONSULTATION QUESTION 1**

**Respondents are asked to comment on any of the draft Ethical Principles. You may wish to provide additional or alternative wording, but please explain the rationale for any proposed changes.**

1. Act with integrity, honesty, and independence
2. Know each customer, treat them fairly, keep their money safe, and act in their best interests
3. Uphold the rule of law and public trust in the profession and legal services
4. Maintain high standards of professional and personal conduct

5. Collaborate openly and truthfully comply with regulators, ombudsman, and other legal professionals
6. Promote and support equality, diversity and inclusion in practice and service delivery

### **Diversity and inclusion impact**

We do not believe that there is any negative impact on diversity and inclusion from the proposed new Ethical Principles. The draft principles would require CLC lawyers to promote and support equality, diversity and inclusion in practice and service delivery – an expansion of our expectations in this area compared to the current ethical principles.

### **CONSULTATION QUESTION 2**

Please comment on any diversity or inclusion impact that you believe could arise from the draft Ethical Principles.

## **2. DEVELOPING STRATEGIC OBJECTIVES**

### **The current strategic objectives**

The CLC's current objectives were developed in 2017 for the five calendar years beginning January 2018. The five-year strategy period is nearing its end. The objectives were retained during the pandemic period, which of course changed the way that the CLC worked in some respects, but which saw the organisation continue to deliver its mission and objectives in its trademark way, providing support to regulated entities and individuals to ensure that standards of consumer protection and other aspects of compliance continued to be met in vastly changed circumstances.

The strategy agreed by the Council in 2017 was based on a series of in-depth discussions supported by some research commissioned specially to look at what the regulated community and potential regulated community (e.g. potential new delivery agents and SRA-regulated firms with significant conveyancing operations) wanted from the CLC.

The Council took into account a great deal of insight into how the practice of conveyancing and probate were going to change and decided to continue its founding mission to support innovation and competition in the delivery of legal services.

Progress against the strategic objectives has been reported in the context of annual reports for the relevant years. A final report on the strategy will be published in early 2023 based on evidence that continues to be collected and a Stakeholder Perceptions Report which is currently at the stage of analysing data collected from a survey and in-depth interviews. All that evidence will be taken into account by the Council when it finalises the CLC's new strategy in the Autumn when it will reflect fully on the outcomes of the consultation.

### **Strategy development for the next three-year period**

The Council has held two workshops – in May and in June – as well as individual sessions for some Council Members with the executive team. In early July, the staff team held its own strategy workshop as part of a team building awayday. All those workshops were informed by

- a PESTLE analysis of the environment that the CLC operates in,
- understanding of progress against the current objectives, which is closely monitored by the Council at each of its quarterly meetings,
- consideration of the recent and likely future evolution of the provision of conveyancing and probate services.

The results of all those sessions as well as initial SMT discussions are reflected in the summary below which was considered by Council again at its meeting in July.

The results of this consultation, stakeholder perceptions research that is currently under way, and other evidence that is being gathered will add further fuel to the Council’s final decisions on future strategy which the Council is scheduled to consider in November alongside the CLC business plan for 2023. The key elements of that business plan, which will begin to deliver the strategy, appear in the ‘Priority actions’ column in the table below.

The statements in bold in the ‘Emerging strategic objectives’ column attempt to capture the strategic objectives. They are not intended at this stage to be the final wording that will appear in a strategy document. The articulation of the strategic objectives will be developed further at Council’s September workshop utilizing any consultation responses then available as well as the further research work that is currently underway and mentioned above.

	<b>Emerging strategic objectives</b>	<b>Priority actions</b>
<b>1</b>	<b>Grow the CLC’s regulated community and broaden the CLC’s sources of funding</b>	<p>Ensure any suitably qualified lawyers specializing in conveyancing and probate (FCILEx, solicitors) or relevant legal practices can easily find out how to convert to regulation by the CLC.</p> <p>Promote education to CLC qualifications to grow the pipeline of new licensed conveyancers</p> <p>Explore providing more support to students and ensure accessibility of routes to CLC qualification</p> <p>Identify any necessary changes to PII</p> <p>Report on progress quarterly to the Council, identifying barriers to growth and addressing them as far as practicable</p> <p>Continue to husband CLC resources and infrastructure carefully</p>

2	<b>Confirm the scope of CLC's regulation</b>	There is no evidence of any need for the CLC to seek to regulate additional reserved services.
3	<b>Promote quality in legal services</b>  A. The CLC should promote all aspects of improvement in the practice of conveyancing and probate, whether legislative, process change or IT-driven.	Continue to work with other regulators, HM Land Registry, Home Buying and Selling Group, DCMS and ID providers, software developers to drive improvement  Continue the Conveyancing 2030 programme and horizon-scanning to inform the CLC and Regulated Community  Ensure that rolling review of Handbook (below) future-proofs CLC regulation  Explore ways to help the regulated community have greater confidence about change and make faster progress  Implement findings of the Quality Indicators pilot
	B. Revised Ethical Standards should underpin work to drive quality and compliance and assist in the disciplinary process.	Establish and promulgate new Ethical Principles  Review Know Your Client requirements and standards and apply to advice, AML, Sanctions and Conflicts of Interest compliance with thematic reviews  Launch new approach to CPD  Review Code of Conduct in line with Ethical Principles and learnings since last review  Establish timetable for rolling review of the Handbook  Promote better understanding of assisted compliance and what happens when it is not achieved  Explore how to ensure relevant, targeted and high-quality training and CPD provision is accessible  Exploit our insight and risk-based approach to target monitoring and compliance  Raise awareness of CLC qualifications by employers

4	<b>Exploit the CLC’s unique approach, insight and relationship with the regulated community</b>	<p>Target compliance work on areas of most significant risk</p> <p>Thematic reviews of most significant risks followed up by compliance action where required</p> <p>Periodic review of monitoring and compliance process</p>
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### Relevant Regulatory Objectives

All of the regulatory objectives listed below are relevant to the CLC’s strategy with the exception that RO3 – *improve access to justice* – is less relevant to the CLC than others in the legal sector as the CLC only regulates transactional services.

RO1 - protect and promote the public interest

RO2 - support the constitutional principle of the rule of law

RO3 - improve access to justice

RO4 - protect and promote the interests of consumers

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RO6 - encourage an independent, strong, diverse and effective legal profession

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RO8 - promote and maintain adherence to the professional principles

### CONSULTATION QUESTION 3

Please comment on any gaps, inconsistency of lack of proportionality that you see in the emerging strategic objectives above.

### Diversity and inclusion impact

The strategy aims to improve diversity and inclusion in the regulated sector and to enhance workplace D&I. The CLC is currently consulting on changes to its Equality Code to create more regulatory levers to address workplace diversity and inclusion. The implementation of that revised Code, following approval by the Legal Services Board will be a strand of work in Q4 of 2022 and 2023 and beyond, within this new strategy.

There do not appear to be any disproportionate impacts on protected groups from the strategy itself, but consultees may have different insight that would help the CLC. The implementation will need to be planned in the light of any potential impacts arising from specific activities.

### CONSULTATION QUESTION 4

The CLC does not believe that the strategic objectives that are emerging through this review process will not negatively impact any particular groups in the CLC-regulated community differently than others. However, we would welcome your comments any comments that you might have.

A particular challenge exists in relation to career progression for women and minority ethnic lawyers. We would welcome any ideas that could help make progress in this area – especially in light of the proposed revisions to the Equality Code, which can be found on our website: <https://www.clc-uk.org/regulation/current-consultations/>



## THE CONSULTATION QUESTIONS

### CONSULTATION QUESTION 1

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### CONSULTATION QUESTION 2

Please comment on any diversity or inclusion impact that you believe could arise from the draft Ethical Principles.

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