

Ethical Principles Consultation Report Back

Purpose: For agreement

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Approver: Chief Executive

Summary

This paper reports back on the ethical principles consultation which closed on 31 October 2022.

Recommendations

The Council is asked to:

1. Agree the revised Ethical Principles following the outcome of the consultation; and
2. Note the next steps for the review of the Code of Conduct

Relevant Regulatory Objectives

The revision of the Code of Conduct arguably engages all of the regulatory objectives as it is such a fundamental element of the regulatory architecture.

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

Financial impact

There is no direct financial impact arising from the approach to the review set out in this paper. Resourcing of the review overall has been taken account of in the 2023 Business Plan.

Diversity and inclusion impact

The proposed new ethical principles include a sharper focus on D&I and will help the profession meet the CLC's expectations.

Communications requirements

There will be a full, open consultation on the new Code of Conduct. We will roll discussion of the new Code into roadshows in the first half of 2023 and there will be a major promotional effort ahead of the new Code coming into force.

Introduction

In 2022 the CLC consulted on a new set of Ethical Principles to update the Overriding Principles that currently shape the Code of Conduct. That consultation was one step in the overall review of the Code of Conduct. This paper reports on the outcome of the consultation and sets out the immediate next steps.

Relevant CLC Principal Risks

Updating the Code of Conduct helps to mitigate Principal Risks 1, 2, 6 and 7.

1. Loss of significant practice fee income caused by depressed market conditions, practice churn or practice closure
2. Unplanned increase in the cost of regulation to the point where expenditure exceeds income
- ~~3. Loss of any or multiple SMT members~~
- ~~4. The CLC is unable to attract and retain capable and competent employees due to uncompetitive pay or benefits~~
- ~~5. A major incident, either physical or cyber threatens the continuity of the CLC through loss of staff or infrastructure~~
6. Not delivering on the CLC Strategy
7. Practices are not able to secure Professional indemnity insurance or terms are unaffordable or unacceptable to the CLC
- ~~8. Organisational performance and staff welfare risks in a small organisation~~

Recommendations

The Council is asked to:

1. Agree the revised Ethical Principles following the outcome of the consultation; and
2. Note to the next steps for the review of the Code of Conduct.

Changes to the Ethical Principles following consultation

An analysis of the responses received to the initial consultation on the Ethical Principles can be found at Annex A. There were four responses to the form a consultation from the Consumer Reference group (which itself brings together a range of organisations), the OLC, The Legal Services Consumer Panel and the Society of Licensed Conveyancers. There were only three responses to the online survey. All responses were very supportive of the proposed changes.

As a result, we have made the following changes to the draft Principles. Yellow highlighting indicates an addition and a strike-through indicates a removal.

The amendment to Principle 2 was suggested by the Consumer Reference Group (CRG) and is clearly a useful high-level requirement.

The deletion in Principle 5 was also suggested by the CRG to broaden out the requirement from compliance alone to all collaboration.

The addition to Principle 6 was suggested by the CRG to ensure that it is understood and good practice on diversity and inclusion extends to clients and does not apply solely to the workplace.

The new draft Ethical Principles read as follows:

1. Act with integrity, honesty, and independence
2. Know each customer, treat them fairly, keep their money safe, **communicate openly and truthfully** with them 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, service delivery and dealings with clients**

Other points raised in consultation

The Legal Services Consumer Panel (LSCP) suggested that vulnerable consumers should be referred to explicitly in Principle 2. This is a point that can best be taken account of in the revision of the Code of Conduct in the section that will set out the expectations that flow from the Principles. We also do not want to dilute the intention that there is an onus and expectation to know each and every client.

LSCP also suggested that there should be an additional principle on whistleblowing. Again, we consider that this can best be taken account of in the rest of the Code of Conduct in the detail around Principles 3, 4 and 5.

Recommendation

The Council is asked to agree the revised Ethical Principles following the outcome of the consultation.

Next Steps

Staff will now prepare a fully revised Code of Conduct on the basis of the revised Ethical Principles with a view to launching a consultation before the end of Q1.

The introduction of Principle number 2, which does not have an equivalent in the existing Overriding Principles, creates an opportunity to clarify the CLC's expectations around 'knowing your client'.

CLC Ethical Principles: Consultation Process - Formal Written Responses**Background**

Standard consultation and workshops

- There were 4 set of comments obtained in responses to our consultation.
- While the number may be limited, they are from the core group we would have hoped to obtain insights from.
- All broadly welcomed the proposed changes, while recommended some alterations.
- Whistleblowing and working examples of how the Principle may apply were the 2 most common themes that emerged across some respondents.

On the supporting questionnaire, there were 3 responses.

- On Q1: on the new Principles – and if they cover ‘all the aspects of ethical legal service delivery that they should’:
- There was general support – 3 answered ‘Yes’.
- On Q2: on the expansion of new equality, diversity and inclusion requirements – and if they may be any potential negative impacts:
- There was broad backing - 2 answered, noting ‘No’.

Response Dashboard

Q / Organisation	CLC CRG	LS CP	OLC	SLC
Overall				
Q1 Principles				
Q2 EDI	N/A		N/A	

Key

Green: Response sent - Comments generally supportive of proposals (with additional recommendations).

Blue: No response sent - to the specific Q. (And no negative points / risks flagged).

Table of Responses

<u>Question / Organisation</u>	<u>CLC Consumer Reference Group¹</u>	<u>Legal Services Consumer Panel</u>	<u>OLC</u>	<u>SLC</u>
General Feedback	<p>Supportive and welcomed the changes. Seemed better and clearer. Also felt they were significant in refereeing to new and more demanding expectations.</p> <p>Members asked if timeliness of communication to clients was an expectation of 'high standards' And also whether efficiency and value for money were aspects of Ethical conduct / service.</p> <p>Suggested examples/illustrations of how each Principle can be adhered to.</p>	<p>The Panel was supportive of these changes.</p> <p>And noted that they are well considered.</p>	<p>Thought the new Principles were very clear.</p> <p>Set out expectation of firms.</p> <p>Makes it easier for OLC to do their work.</p> <p>And potentially also allows them to refer to CLC for misconduct (e.g. If they discover a firm has not been honest with them).</p>	<p>Broadly welcomed the review. And the intentions behind it. Agreed, subject to comments below, that they are suitable, and will enhance standards (both on Day One Outcomes , and for post-qualified conveyancers).</p> <p>Would have preferred more information/weight behind the findings of the workshops that informed the consultation. With more details on how the changes will lead to the development/introduction of wider regulatory arrangements.</p> <p>Stated that will best work in practice if the final Code is published alongside examples of how each Principle can be adhered to.</p>
<p>Q1.</p> <p>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.</p> <p>(See Footnote for list of proposed Principles),²</p>	<p>Principle 2 – query around whether this could be expanded to something like 'communicate openly and truthfully to clients,'</p> <p>Had a question around the incentives for compliance, and how to make this (and the other Principles) stick</p> <p>Principle 3 – could consider referring specifically to whistleblowing.</p> <p>Principle 5 – a question around whether 'comply' is required in the text. Also noted that, apart from legal professionals,</p>	<p>Principle 2 – could be strengthened by mentioning vulnerable consumers explicitly.</p> <p><i>Overall</i> – a strong view that there should be an additional principle on whistleblowing. (Not just for actions committed, but to act as a valuable deterrent).</p>	<p>Principle 2 – felt a much fuller description.</p> <p>Principle 4 – adding 'personal conduct' could help the CLC in identifying issues where a firm/individual has not maintained high standards, or treated consumers fairly.</p> <p>Principle 5 – Noted our addition of 'truthfully.'</p>	<p>Principle 2 – a wider view beyond identification, e.g. the client's objectives. And how they should treat them fairly.</p> <p>Principle 5 – would be beneficial to expand upon the wording, and fuller transparency behind this decision, noting that only a small number have 'lapses in openness and cooperation.'</p> <p><i>Overall</i> – requested clarity that the CLC itself will also adhere to the new Ethical Principles, in relation to its interactions with the regulated community and wider public.</p>

¹ Membership involved in this specific feedback (from a wider group): the Homeowners Alliance; the Office for Legal Complaints; the National Consumer Federation; a former CLC Council member; and an independent consumer advocate.

² [List of Proposed Principles](#)

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

<u>Question / Organisation</u>	CLC Consumer Reference Group ¹	Legal Services Consumer Panel	OLC	SLC
	<p>there are a range of other bodies, such as HMRC that should 'be in view in terms of openness and truthfulness.'</p> <p>Principle 6 – could be more active if it also expected adaptation and change (alongside promotion and support). It should be clear the scope also applies to clients/consumers.</p>			
<p>CONSULTATION QUESTION 2 Please comment on any diversity or inclusion impact that you believe could arise from the draft Ethical Principles.</p>	-	<p>The Panel was not aware of any impacts that could emerge from these draft Principles.</p> <p>Welcomed the extension of diversity beyond the professional and into delivering services.</p>	-	<p>Do not believe the changes will adversely affect the CLC's ongoing commitment on these issues.</p>

6. Promote and support equality, diversity and inclusion in practice and service delivery.