



CLC Equality Code Consultation 2021

Analysis of Formal Written Responses and Review of Survey responses

The following paper is in 3 parts:

1. A table summarising the written responses to the consultation
2. An analysis of the main points of each
3. A review of responses to the online survey

1. Tables of Responses

<u>Question / Organisation</u>	SRA	LS CP	SLC
1. Do you think that the Equality Code is up to date and clear on the expectations and obligations it sets out for those regulated by the CLC?	-	Outcome 6.1 states “[T]he service is accessible and responsive to the needs of individual Clients, including those who are vulnerable”. <ul style="list-style-type: none"> • This outcome is clear in its intent, but it would be helpful to ensure licensed conveyancers understand that it is up to them to ascertain whether any of their clients or prospective clients have any special needs, priorities or are subject to circumstances that would leave them feeling vulnerable. • Recent LSB research shows that anyone can be vulnerable when using legal services, even those who one would not ordinarily think of as being vulnerable (and who do not necessarily consider themselves in that light). • In addition, this research also showed that how a client is served can have a great impact and help reduce (or increase) the vulnerability. 	We agree that the Equality Code is clear on the expectations and obligations it sets out for those regulated by the CLC.

<u>Question / Organisation</u>	SRA	LS CP	SLC
Q1 Continued.		<ul style="list-style-type: none"> • The commentary, now included as part of the code, is useful in explaining what a vulnerability could be, but could also refer to mental or emotional stress. • The Panel would like to see the commentary expanded to note that all individual consumers have different views on what is important to them about their legal matter and how they would like to be communicated with and served. • Consumer segmentation could be helpful here. It is important that licensed conveyancers engage in a process to ensure that the needs of each consumer are being met and adjustments are made as appropriate. <p>Outcome 6.2 states “[N]o-one – Client, employee, colleague, job applicant, trainee, or other party – you deal with feels discriminated against (whether directly or indirectly), victimised or harassed”.</p> <ul style="list-style-type: none"> • It is interesting to note that this outcome is phrased as a negative. While the Panel appreciates this outcome covers legal obligations to treat people equally, it may be more effective to state the outcome sought as a positive statement, perhaps following up with what the CLC does not want to see. • The negative formulation of the outcome may be one reason why there is a focus on complaints. • Unfortunately, complaints are not always a reliable indicator of discrimination, victimisation, bullying, harassment or poor service. From the consumer’s perspective, many legal services consumers do not complain when they are not satisfied with the service they receive. • In addition, our most recent Tracker Survey shows that minority ethnic consumers are much less likely to first complain to the firm than White British consumers. • If most consumers do not make a complaint to the firm they receive legal services from when they are not satisfied, tracking complaints alone will not ensure that everyone a licensed conveyancer interacts with is treated fairly. • In addition, it is also not clear that others would complain to the firm if they felt they were treated unfairly, victimised, bullied or harassed. 	

Question / Organisation	SRA	LS CP	SLC
<p>2. Do you agree with the proposed addition of the new Specific Requirement relating to data collection at paragraph 7 of the revised Equality Code?</p>	<p>We share your view that legal regulators need to be able to collect and analyse reliable diversity data about their regulated community.</p> <ul style="list-style-type: none"> • And we agree that it is useful to involve regulated entities in this. • We have a similar requirement in our Code of Conduct for Law Firms - rule 1.5 requires law firms to “monitor, report and publish workforce diversity data, as prescribed”. • In our experience it would be helpful to be clear that data collection and analysis are a regulatory requirement. • Our approach is to ask law firms to collect the data themselves and report it to us. We provide guidance to ensure they understand what is required, which includes information about what to collect, and how to report and publish the data. • We use questions which allow firms to compare their results with national benchmarks such as the census. 	<ul style="list-style-type: none"> • The Panel agrees that it is important for regulators to have current data regarding diversity in the profession. • Accordingly, it makes sense to mandate data collection and analysis. The Panel is unsure why the CLC does not want to collect diversity data from individual licensed conveyancers as opposed to firms when the response rate has been better with individuals. • One must also assume the data is also more accurate. Though it is important to encourage firms to monitor their own diversity data, a complete and accurate data picture is vital to inform equity, diversity and inclusion policy as well as monitoring and evaluation progress. 	<ul style="list-style-type: none"> • In principle, we agree with the proposed addition of the new Specific Requirement relating to data collection. • However, we would like further information in relation to how often this information is to be collected by the regulated community and delivered to the CLC, e.g. annually

Question / Organisation	SRA	LS CP	SLC
	<ul style="list-style-type: none"> And as you will know, have been working through our Legal Regulators Equality Diversity and Inclusion Forum to align our approach within the legal sector. 		
<p>3. Do you agree with the proposed addition of the new Specific Requirement relating to reporting complaints data at paragraph 8 of the revised Equality Code?</p>	<p>We [also] have a general requirement on solicitors and law firms to report misconduct and have provided guidance on this for the profession on our website: SRA Reporting and notification obligations. The case studies provided to help clarify our expectations include scenarios involving discrimination and sexual misconduct.</p> <ul style="list-style-type: none"> We are currently considering the response to our recent consultation on our proposals to include a new obligation to treat people fairly. As part of this we proposed new obligations on firms and individuals to challenge inappropriate behaviour. We will share the consultation response with you once published as it may be 	<p>As explained above, the Panel does not feel that compiling complaints data that are related to equality, diversity and inclusion will accurately show whether licensed conveyancers are discriminating against some people or giving other unfair treatment.</p> <ul style="list-style-type: none"> Therefore, monitoring these types of complaints alone will not be effective. Other metrics will also need to be tracked. Having said this, the Panel does feel that it is important for firms and regulators to collect and proactively act on complaints data. It is good practice to keep a detailed record of complaints so that trends or problems can be identified. It may be useful to set out guidance.¹ It can be complex to determine whether there is an equity, diversity and inclusion aspect to a complaint as it may not always be readily apparent on the face of the complaint. It would also be helpful for the CLC to set out information to assist firms (or individual licensed conveyancers) to deal with such complaints. This guidance should include how to respond to complainants in a respectful way and evaluate actions taken to see if there is a way to improve service to future clients, so that others do not feel excluded or treated unfairly. Regulators also need to collect this type of information on an ongoing basis to support licensed conveyancers and firms in correcting and preventing unfair treatment. 	<p>In principle, we agree with the proposed addition of the new Specific Requirement relating to the reporting of complaints data at paragraph 7 of the revised Equality Code.</p> <ul style="list-style-type: none"> However, as above, we would like further information in relation to how often this information is to be collected by the regulated community and delivered to the CLC, e.g. annually and how this data will be used by the CLC. In addition, we would like more information about what the CLC would constitute as a complaint by members of the public who are not clients (to include estate agents and other conveyancers) together with examples of the “proportionate action” to be taken by the CLC in the event of evidence of non-compliance with the Code.

• ¹ 2022 Tracker Survey results show 24% of dissatisfied legal services consumers were silent sufferers who did not take any action to complain. 2022 Tracker Survey results show 48% of White British consumers would first complain to the firm versus 30% of minority ethnic consumers

Question / Organisation	SRA	LS CP	SLC
	<p>useful in considering your position.</p> <ul style="list-style-type: none"> We do not have a requirement for firms to record discrimination complaints made by clients or employees, and we would be interested in discussing with you how this works and how you would utilise that information as a regulator. 	<ul style="list-style-type: none"> This type of information may also help them ensure appropriate standards are in place to ensure the different needs of diverse consumers are met. Consequently, it does make sense to require complaints data to be collected, but the CLC should also consider additional methods of monitoring and evaluating the way licensed conveyancers and firms are treating others. There should also be a duty to report this data to the CLC in a regular and ongoing fashion as opposed to only when required. 	
<p>4. Are there any other aspects of the Equality Code, Code of Conduct, Regulatory Arrangements, or draft Guidance that should be amended/added to enable the CLC to better meet its obligations under Regulatory Objective 6?</p>	-	<ul style="list-style-type: none"> All equality, diversity and inclusion policies (including any firm-produced policies) must be centred on the consumer as well as the employee perspective. Fostering a diverse profession that is representative of society at large is an important regulatory objective, but it does not end there. Regulators must also develop the ability of legal services providers to deliver services that are adaptable to the needs of a diverse public as part of encouraging a strong, diverse and dependent profession. 	<ul style="list-style-type: none"> Perhaps the CLC should look to award recognition for evidence of active commitment to enhanced diversity within the regulated community in order to meet the duty of “encourage”.

<u>Question / Organisation</u>	SRA	LS CP	SLC
<p>5. Are there any other comments or insights you would want to share at this stage</p>	<ul style="list-style-type: none"> In relation to your code and guidance, we have found that not all harassment and bullying is specifically on the basis of protected characteristics. Our own approach, as set out in The SRA's approach to equality, diversity and inclusion has a wider remit than just the protected characteristics.² 	<ul style="list-style-type: none"> The Panel wishes to draw the CLC's attention to the fact that minority ethnic legal services consumers have had consistently lower satisfaction rates than White British consumers. Equal treatment of all consumers means striving to meet the diverse needs of all consumers with a responsive service, not just avoiding harm such as discrimination victimisation, bullying or harassment. This positive duty should be emphasised throughout the CLC's Equality Code. 	<p>Not at this time</p>

² The SRA also sent indicative examples of their wider guidance in case of relevance : [Use of social media and offensive communications](#) ; [Sexual Misconduct: Workplace environment guidance](#); [Workplace environment case studies](#); [Accepting instruction from vulnerable clients or third parties acting on their behalf](#) ; [Equality, Diversity and Inclusion resource page](#).

Response Mapping / Dashboard

Q / Organisation	SRA	LS CP	SLC
1	Orange	Green	Green
2	Green	Green	Green
3	Green	Green	Green
4	Orange	Green	Green
5	Green	Green	Orange

Key to Matrix

Response sent - Generally supportive of proposals. With additional recommendations.

No response - to the Q sent. Or other issues raised.

2. Response Analysis

Background

- There were 3 responses to our consultation. All of these were from respondents working in the conveyancing or legal-regulation sector.
- Alongside core questions on changes the consultation also welcomed general advice and commentary.
- While the number may be limited, they are from core group we would have hoped to obtain insights from – and in particular the LS CP and SLC. The SRA also has a historically strong Equalities team, so their recommendations have also been useful.
- While limited in number the responses, most answers were also answered by all the respondents. And some were quite detailed. They have collectively provided further useful insights / nuances on this complex matter, and their main recommendations are summarised below, under each Question.

Evaluation (Each Question)

Q1. Do you think that the Equality Code is up to date and clear on the expectations and obligations it sets out for those regulated by the CLC?

Overall – Broad support / agreement. With some advice on further changes.

Responses – 2 / 3. The LS CP and SLC. The SRA did not note any views / issues.

Key observations / Further changes to consider -

The main respondent on this Q was from the LS CP. They requested / noted points on:

- Complaints - are a complex area, and are not always a reliable indicator of concerns.
- Scope - The importance of a wider view of consumer vulnerability being taken (e.g. to include mental / emotional stress).
- Framing - Reframing our outcomes as a positive statement, perhaps following up with what the CLC does not want to see.

- Added clarity – i.e. would be useful for the CLC to make it clearer to firms that it is up to them to ascertain whether any of their clients or prospective may be vulnerable.

Q2. Do you agree with the proposed addition of the new Specific Requirement relating to data collection at paragraph 7 of the revised Equality Code?

Overall – Broad support / agreement. With some advice on further changes.

Responses – 3 / 3

Key observations / Further changes to consider -

The SRA noted points on:

- Added Clarity – recommended making clearer that data collection / analysis are a regulatory requirement.
- Approach – flagged their use of Questions (which allow firms to compare their results with national benchmarks / forms).

The LSCP had recommendations around:

- Sources / Evidence Gathering - noting the response rate has been better with individuals than from firms. And their assumption that such an approach leads to more accurate data.

The SLC requested:

- Timing / Guidance – further information on how often this information is to be collected by the regulated community / delivered. e.g. annually

Q3. Do you agree with the proposed addition of the new Specific Requirement relating to reporting complaints data at paragraph 8 of the revised Equality Code?

Overall – Broad support / agreement. With some advice on further changes.

Responses – 3 / 3

Key observations / Further changes to consider -

The SRA raised suggestions on:

- Case studies – to help clarify expectations, e.g. the SRA's versions includes scenarios involving discrimination and sexual misconduct.
- New obligations / Fairness – they are currently considering responses over a new obligation to treat people fairly, including challenging inappropriate behaviour. (Details to be shared when the analysis is complete).
 - (NB Separate to actions on our consultation:
 - Records / Reviewing obligations – they do not have an obligation to record discrimination complaints made by clients / employees and we would be interested in discussing this with us to see how this works / how we would utilise that information as a regulator).

The LSCP noted that:

- Complaints / Other Data – as per Q1 above. They believe they do not offer a clear proxy for accurately understanding equality issues. And suggest other metrics will also need to be tracked in addition.
- Further Guidance – may be useful, to assist firms / individuals to deal with such complaints on unfair treatment / other issues. e.g. how to respond to complainants in a respectful way. Or evaluate actions to see if there is a way to improve services.
- Timing – there should be duty to report this data to the CLC in a regular manner, as opposed to only when required.

The SLC noted:

- Timing – as well. And requested further information on how often / when data should be collected / delivered.
- Use – is further details on how this data will be used by the CLC.
- Scope – and further information on what would constitute a complaint by the public who are not clients (e.g. to include estate agents and other conveyancers).
- Examples - of the “proportionate action” to be taken by the CLC.

Q4. Are there any other aspects of the Equality Code, Code of Conduct, Regulatory Arrangements, or draft Guidance that should be amended/added to enable the CLC to better meet its obligations under Regulatory Objective 6?

Overall – Broad support / agreement. With some advice on further changes.

Responses – 2/3. The LS CP and SLC. The SRA did not note any views / issues

Key observations / Further changes to consider -

The LS CP commented on:

- Consumers - And that all policies in this field should be centred on the consumer as well as the employee perspective.
- Concepts / Capacity - Fostering a diverse profession is a base, but regulators must also develop the ability of legal firms to deliver services that are adaptable for a diverse public.

The SLC recommended:

- Incentives – i.e. the CLC should look to award recognition for evidence of active commitment to enhanced diversity (re: duty to encourage).

Q5. Are there any other comments or insights you would want to share at this stage?

Overall – No major concerns / issues. Mainly stressed / reiterated advice on further changes.

Responses – 2/3. The SRA and LSB. The SLC did not note any views / issues.

Key observations / Further changes to consider -

The SRA noted :

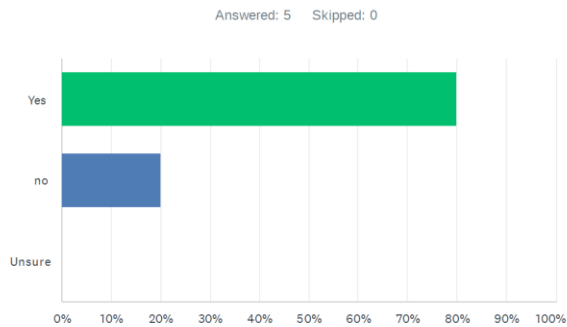
- Scope / Remit – echoing Q1 responses, they have found not all harassment / bullying is specifically on the basis of protected characteristics. And recommended a wider remit.

The LS CP commented that:

- Consumers – from a minority ethnic background have had consistently lower satisfaction rates with legal services.
- Concept / Capacity - echoed the point in Q4: the need to serve all consumers with a responsive service, not just avoiding harm, is a positive duty, emphasised via the Code.

3. Online Survey Responses

Q1 Would you agree that improvements could be made on how we all collect general information on equality to understand it better?



Comments

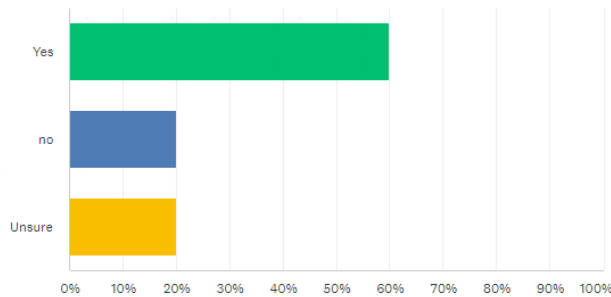
1. Because unconscious bias exists. Gaps may only be noticed when information is collated.
2. There are a number of definitions that could define this evaluation - I would suggest we determine what 'angle' we are looking to facilitate and adopt the appropriate definition. Personally, as we are all Legal entities in our own right - should we apply more focus to the ACAS definitions? I would suggest so. Equality Equality in the workplace means equal job opportunities and fairness for employees and job applicants. You must not treat people unfairly because of reasons protected by discrimination law ('protected characteristics'). For example, because of a person's sex, age or race. Diversity Diversity is the range of people in your workforce. For example, this might mean people with different ages, religions, ethnicities, people with disabilities, and both men and women. It also means valuing those differences. To avoid bullying, harassment or discrimination, you should make sure: - your workforce and managers understand what is protected by discrimination law - what's expected under discrimination law is actually happening in your workplace - you make changes if what's expected is not happening, for example stepping up staff training - your workforce and managers understand what the benefits can be of having a range of people with different backgrounds

- Put in place a council of CLC Licensed Conveyancers/Solicitors for the areas we are looking to improve so that a real voice with real life experiences of the obstructions are able to contribute actively on behalf of their area

Question 2

Ideally, the CLC would have anonymous diversity data on everyone working in the regulated community. Do you think that it would help to ensure a good response rate to surveys if firms regulated by the CLC took part in the collection of diversity data from their staff?

Answered: 5 Skipped: 0



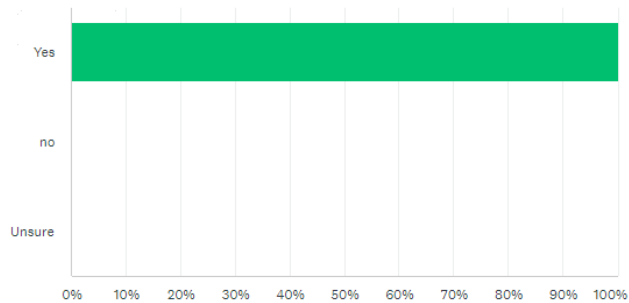
Comments

- I think employees would be less likely to be honest if asked for this information directly from their employer for fear of it not being anonymous. I know this as have been asked to do an anonymous survey in a small firm and because it would be obvious my answers came from myself, I was not honest.
- This must surely be the way forward if we are to be accountable and make a positive difference? We need to know where we are now, how we look in respect of the national picture of what success means, and what action plans can be developed to ensure we progress towards success, if we are not yet there?

Question 3

Should the CLC require firms it regulates to report all instances of complaints from clients or staff that have an element of discrimination to them?

Answered: 5 Skipped: 0



1. Without regulation firms could continue with discriminatory behaviour because they believe they can simply get away with it. Sadly many firms I have worked for under CLC regulation have displayed discriminatory behaviour towards staff/interviewees.
2. I would suggest that this was immediately voluntarily implemented - in preparation for any regulated change. Voluntary implementation may cause a 'subliminal' positive outcome.
3. People are afraid to speak up and challenge discrimination, reporting and accountability can help combat that and identify problematic firms with high reports of discrimination so that there is change

Question 4

Are there any specific steps you think a regulator could take to improve equality, diversity and inclusion in the legal sector?

Comments

1. Ensure that it is a CLC requirement for firms to have ongoing diversity and equality monitoring in place; that it is a CLC requirement to recruit in a means that avoids unconscious bias.
2. It would be useful for firms to have a percentage of female and ethnically diverse individuals at senior level. The majority of firms have a large population of male leadership and it very difficult to break through that ceiling
3. Publish standards of what the perfect approach would be. Again - ACAS have some positive advice. Perhaps request that everyone submit their relevant policies for review and support? See - <https://www.acas.org.uk/improving-equality-diversity-and-inclusion/making-your-workplace-inclusive>
4. As above - put in place a council of Conveyancers/Solicitors looking to push for change with the objective of improving equality, diversity, and inclusion. There are various steps i think could be taken by such a council not just at working level but also visits to the younger generation, at university, college and even high school. As someone who was always discouraged from pursuing a career in law, I think there could be more encouragement and support/mentors to the next generation

Respondents

ANSWER CHOICES	RESPONSES	
▼ I hold a CLC licence and work in a CLC-regulated firm	0.00%	0
▼ I hold a CLC licence but do not work in a CLC-regulated firm	40.00%	2
▼ I am a non-CLC lawyer in a CLC-regulated firm	20.00%	1
▼ I am a consumer of legal services	0.00%	0
▼ I am a fee-earner in a CLC-regulated firm but I do not hold a personal licence	0.00%	0
▼ I work in a non-legal support role in a CLC-regulated firm	20.00%	1
▼ I am an EDI professional	0.00%	0
▼ Other (please specify)	Responses	20.00% 1
TOTAL		5