



The Chartered Institute of Legal Executives (CILEX) –
Consultation Response:

Upholding Professional Ethical Duties

May 2025

Introduction

- 0.1. CILEX would like to take the opportunity to respond to the Legal Services Board's consultation in relation to Upholding Professional Ethical Duties. CILEX represents a substantial number of members whose conduct is regulated and who are therefore bound by ethical duties.
- 0.2. The Chartered Institute of Legal Executives (CILEX) is the professional association and governing body for Chartered Legal Executive lawyers (commonly known as 'CILEX Lawyers'), other legal practitioners and paralegals. Under the Legal Services Act 2007, CILEX acts as the Approved Regulator (AR) and delegates these regulatory powers to the independent regulator, CILEx Regulation Ltd (CRL).
- 0.3. CILEX represents over 17,000 members of which 76% of the membership are female, 16% of members are from an ethnic minority background, 4% are LGBTQA+ and 7% have a disability. Additionally, in terms of social mobility, 65% of CILEX members attended a non-selective state-run or state-funded school and 41% have an undergraduate university degree. 15% of members come from households which received free school meals.
- 0.4. CILEX broadly supports the rationale for the proposals contained in the consultation paper. The LSB has a unique facilitator role to overlay expectations of embedding and upholding professional ethics in the legal profession. The risk it will have to mitigate is, though, being too attracted to any one-size-fits-all approach.
- 0.5. As the paper itself recognises, there are many factors which can affect how ethical duties are upheld including workplace culture¹ (a key concern and area of focus for CILEX too), differences in practice areas² and of a scale that the ethical conduct of individual lawyers can proportionately evidence³. Therefore, whilst the intention for 'a flexible and *permissive framework for regulators*⁴' is the right one, the requirement for them to have to '*explain why, with evidence, their proposed alternatives to of the specified expectations are more appropriate*' does not seem to offer too great a degree of discretion for regulators to bespoke what they believe are the correct, proportionate solutions for their

¹ Paragraph 26

² Paragraph 29, page 13

³ Eg SLAPPs, paragraph 29.

⁴ Paragraph 40

regulated community.

- 0.6. In addition, many regulators (and professional bodies) have already sought to meet the challenge of upholding professional ethical behaviour through various and significant initiatives, guidance, education materials and support mechanisms. Whilst, of course, there will always be room for improvements, care should be taken not to add compliance requirements based on evidencing prescriptive activity, in addition to what regulators have already judged to be proportionate responses for their regulated community.

Q1. Do you agree with our proposed definition of professional ethical duties?

- 1.1. CILEX divides the definition of professional ethical duties into its five component parts (independence and integrity, proper standards of work, acting in the best interests of their clients, complying with their duty to the court, and keeping client's affairs confidential).
- 1.2. CILEX recognises the value of independence and integrity in maintaining an ethical and respected profession and particularly, as the consultation paper states⁵, the critical role played by education and training plays. This is why the CILEX Professional Qualification (CPQ) includes specific content about placing ethical conduct front and centre for those practising law.
- 1.3. CILEX is aware of cases in the wider legal sector where independence was infringed upon, and integrity was undermined. This has only caused the public's view of the legal sector to diminish not only domestically, but internationally. Specifically, the role of General Counsel for private organisations, and public bodies, is called into question – especially where there are conflicts between commercial and legal interests. CILEX is of the view that where this conflict arises, the legal interest (as part of a wider ethical duty) is paramount.
- 1.4. In relation to the component to “*maintain proper standards of work*”, CILEX concurs that this is a crucial element of the definition of ethical duties. In order for members of the public to have confidence in the profession and for consumers to have confidence in their lawyers, it is vital that all practitioners adhere to this fundamental concept. This should be encouraged through not only rigorous training in order to qualify but also continued education and professional development. CILEX actively encourages this from its own members, and is aware of the regulatory requirements as set out by the frontline regulator, CILEX Regulation Ltd.
- 1.5. CILEX accepts that maintaining and advancing the client's best interests are important ethical duties. However, in the definition, it is important that this is not to be seen as above the duty to the court. Therefore, whilst this should be included in any definition, caveats should be made clear. This can be

⁵ Paragraph 5

demonstrated by the Bar Standards Board's code of conduct which outlines that not all ethical duties are equal, and some are senior to others.

- 1.6. As part of this, CILEX also concurs that ensuring lawyers' compliance with their duty to the court is a valid and important element of the definition. Preventing the court from being misled, and ensuring that the court's wishes are respected, are crucial.
- 1.7. Lastly, CILEX agrees with the broad element that a client's affairs should be kept confidential. This protects clients, and garners trust from consumers and the general public.

Q2. Do you agree with our proposal to set general outcomes?

2.1. CILEX is of the view that the outcomes align well with the overarching ethical objectives. CILEX especially supports outcome 3 which encourages lawyers to actively prioritise ethical duties where these come into conflict with other issues.

2.2. CILEX also recognises that having sufficient and effective resources is fundamental to enabling frontline regulators to properly support practitioners. However, CILEX again sounds a note of caution against not being too prescriptive in relation to this outcome and permitting discretion for regulators to develop solutions they assess as optimal for their regulated community.

2.3 Many organisations have already undertaken much activity to provide comprehensive support: the paper acknowledges the many initiatives of the SRA⁶ in this area; the Law Society has developed an in-house ethical framework, and an ethical decision-making tool; CILEX, as stated above, has redeveloped its CPQ in large part to ensure that ethical behaviour is embedded right from the training of aspiring lawyers. It seems disproportionate therefore to suggest that this does not in some way go far enough⁷. CILEX therefore asserts that ethical awareness is already embedded sufficiently into lawyers' practices.

Q3. Do you agree these proposed outcomes address the harms and unethical behaviours presented in the evidence? Are there any further outcomes we should consider?

3.1. CILEX is of the view that the harms and unethical behaviours, whilst concerning, will not necessarily be addressed by mere publication and enforcement of the Outcomes.

3.2 The paper does not offer sufficient evidence⁸ to justify contemplating an equivalent approach to, for example, the Senior Manager Regime⁹ operating in the

⁶ Paragraphs 52, 61, 66.

⁷ Paragraph 66.

⁸ Paragraph 58

⁹ Paragraph 63

financial services sector which is an extremely onerous and prescriptive system at odds with the flexibility advocated in the paper for the legal sector.

3.2. CILEX also notes, as stated above, that some areas of law are less likely to face a substantial number of ethical issues, in comparison to other areas of law. However, noting that the goals are 'outcomes', CILEX believe that these can be achieved by all practitioners. However, evidencing those outcomes must itself be reasonable and proportionate: there is a limit to the positive influence that individual lawyers can have on larger systemic sector problems, such as the examples cited in relation to SLAPPs and the Post Office Scandal. Whilst there is undoubtedly a need for ethical considerations to be better acted upon by individuals, those types of issues are often cultural and wider, requiring other proportionate interventions from the likes of government.

Q4. Do you agree that the proposed general outcomes should be met by regulators through a set of specific expectations?

4.1. CILEX queries whether the proposed general outcomes should be met by regulators through specific expectations. CILEX believes that the general definition of ethical behaviour and outcomes is a useful baseline for frontline regulators and that there should be a requirement that all regulators comply with this. However, CILEX does not believe that specific expectations above and beyond the definition and outcomes are merited. CILEX believes that a three-step approach should be applied:

1. Are frontline regulators enforcing the general definition of ethical behaviour?
2. Do frontline regulators have appropriate procedures in place to ensure that the outcomes can be achieved?
3. Do frontline regulators have appropriate procedures in place to address circumstances where unethical behaviour has occurred or the outcomes are not complied with?

4.2. CILEX believes that this ensures that the LSB is complying with its statutory duty and that legal regulators are also complying with their requirement to further the regulatory objectives. However, this should not lead to a 'broad-brush' approach by which frontline regulators are expected to comply with unnecessary procedures which do not further the consumer, or public interest.

Q5. Do you agree that regulators should demonstrate that evidence-based decisions have been taken about which expectations are appropriate to implement for those they regulate?

5.1. CILEX agrees with this statement only so far as the extent to which this is already in place. CILEX is aware of the LSB's existing expectations that any decisions from frontline regulators should be evidence-based and that they should be appropriate to implement.

5.2. However, CILEX does not believe that the LSB should go further. CILEX believes that the only route for the LSB would be to prescribe what amounts to expectations which are 'appropriate to implement'. CILEX does not believe that this would be appropriate, given the importance of frontline regulators having freedom to undertake processes and make decisions which are specific to their regulated members.

Q6. Do you agree with the proposed outcome 1?

6.1. CILEX recognises the value of proposed outcome 1. CILEX recognises the importance of rigorous training, as well as thought out and comprehensive continuing professional development. CILEX would welcome specific mandatory training for members on ethics on an annual basis, such as that recommended by the ICAEW.

6.2. CILEX does not agree with the statement that poor conduct stems from pre-qualification education and training. In comparison, CILEX believes that ethics is intertwined with the vast majority of teaching of CILEX qualifications, as well as in their assessment. CILEX does however recognise the added value from teaching aspiring lawyers about the role they have in society. CILEX believes that this is a foundation of all ethical teaching. As a result, CILEX does not agree with the PERL reference group's conclusions as identified at paragraph 46 and would be interested to see the evidence that supports that assertion.

Q7. Do you agree with the specific expectations proposed under outcome 1?

7.1. CILEX believes that the vast majority of the expectations as outlined in pursuing outcome 1 are already being achieved, without these becoming mandatory and broad expectations on regulators.

7.2. Specifically, whilst CILEX believes that case studies are useful as a means of delivering effective training, CILEX believes that other methods such as lived professional experience, and problem questions achieved similar benefits.

7.3. CILEX welcomes the opportunity to share best practice between regulators, however CILEX does not believe that this should become an additional constraint on regulators, given existing labour and financial resources which most organisations are experiencing. This will be especially true for smaller organisations, who have limited available resourcing and expenditure for non-critical work, such as sharing of best practice.

7.4 CILEX is also concerned at the lack of flexibility which would be created by the specific expectation under outcome 1. CILEX is of the view that regulators being required to provide to the LSB explanations for deviations from the outcome, even where they are minor and still retain the spirit of the outcome, is wholly unnecessary.

Q8. Do you agree with the proposed outcome 2?

8.1. CILEX welcomes the outcome that regulators have a framework of rules, regulations, and guidance. However CILEX wishes to draw to the LSB's attention that this already exists for all regulators, as highlighted within the consultation document itself.

8.2. Additionally, CILEX wishes to reiterate the view that a single approach would not be appropriate for all regulators. This depends heavily on the work which is undertaken by the practitioners who are regulated by specific organisations, the size of the organisation, and the individuals who frequently interact with that organisation's practitioners.

Q9. Do you agree with the specific expectations proposed under outcome 2?

9.1. CILEX wishes to express the same concerns for outcome 2 as for outcome 1. In addition to this, CILEX wishes to highlight that a single approach remains inappropriate for all regulators, and that being prescriptive of outcomes is not the same as having a distinct and targeted approach.

9.2. In lieu of the specific expectations which are created within outcome 2, CILEX would recommend working with regulators to create realistic methods of ensuring outcomes are delivered, and that these deliverables target ongoing issues and future risks.

9.3. Specifically, the expectation to 'gather intelligence' by professional regulators is excessively broad and does not focus on issues. This expectation is likely to be misinterpreted by many and will not allow for targeted and specific implementation of solutions to ethical issues.

9.4. Lastly, CILEX wishes to express concern with the cost of achieving the specific expectation proposed under outcome 2. CILEX believes that gathering any data or intelligence, or even collating data from disciplinary / hearings, could be disproportionately costly and burdensome.

Q10. Do you agree with the proposed outcome 3?

10.1. CILEX is of the view that authorised persons should be supported and empowered to uphold professional ethical duties when they are challenged. CILEX is aware that many members will encounter ethical conflicts, both in their professional life, but also in cases where their personal affairs affect their working lives. As a result, CILEX believes that support for practitioners on how to address this challenge is crucial.

10.2. CILEX recognises the issue identified within the gap analysis, namely that there is little discussion of the environments in which authorised persons work. However, CILEX believes that this can be achieved through discussions with each professional regulator, and the sharing of best practice. Whilst there may be gaps, some regulators

will have achieved this and it would be beneficial to take a tailored approach to ensuring that not only are practitioners aware of their personal obligations, but how to apply this to different circumstances.

10.3. CILEX cautions that this expectation has a risk of straying beyond the remit of exclusively legal services/sector regulation if too great an expectation is placed upon regulators to better understand the businesses in which in-house lawyers work¹⁰. CILEX believes that this could lead to an onerous duty which should not be placed on regulators, given cost and resource implications. CILEX believes that especially for smaller regulators, this is not possible.

Q11. Do you agree with the specific expectations proposed under outcome 3?

11.1. CILEX is of the view that regulators are largely already achieving outcome 3, and that this can only be enhanced through sharing of best practice. CILEX believes that sharing case studies and toolkits for practitioners could be beneficial. CILEX welcomes all 7 of the recommendations within the expectations and believes that these should be achieved.

Q12. Do you agree with the proposed outcome 4?

12.1 In broad terms, CILEX agrees with the proposed outcome 4. There is, however, a risk that the scale of the task of *'understanding the challenges at various levels, including the behaviour of individual authorised persons and their relationships to their organisations...'* could be vast in practice.

Q13. Do you agree with the specific expectations proposed under outcome 4?

13.1 Related to the above therefore, the expectations, whilst logical, risk being too simplistic: often understanding the ethical pressures and expectations in many scenarios can be complex and open to interpretation and so care will have to be taken not to assume that handling such nuanced circumstances will be straightforward, clear-cut and therefore resource-light; in fact the opposite may prove to be true.

Q14. Do you agree with the proposed outcome 5?

14.1 CILEX agrees with proposed outcome 5 and contends that regulators are in large part already doing so through their environment scanning activity and ongoing risk assessments.

¹⁰ Paragraph 70.

Q15. Do you agree with the specific expectations proposed under outcome 5?

15.1 In terms of the expectations relating to outcome 5 however, CILEX is of the view that ensuring 'professional ethical duties are maintained across the profession(s) they regulate' may be excessive; no single regulator can guarantee such maintenance but should be accountable for having proportionate regulatory arrangements in place to try.

Q16. Do you agree with our proposed timelines for implementation?

16.1 CILEX believes that the proposed timelines need to be flexible. For some regulators, the 'leap' to meeting the expectations will be much greater than for others. The consultation document seems to accept that the impact transition could be onerous¹¹ but there is no real evidence to support what is only a 'view... *that any increased burdens would be outweighed by the benefits*¹²'.

Q17. Is there any reason why a regulator would not be able to meet the statement of policy outcomes within the timeframes proposed? Please explain your reasons.

17.1 This is for individual frontline regulators to answer and CILEX offers no view.

Q18. Have you identified any equality impacts, we haven't considered which, in your view, may arise from our proposed statement of policy?

18.1 Like the consultation paper itself articulates¹³, CILEX has not identified any likely negative impact resulting from the proposed policy but, given the potential for the implementation of the proposals to be onerous, recommends that better, more thorough research should be undertaken to seek assurance that this is truly the case.

Q19. Do you have any evidence relating to the potential impact of our proposals on specific groups with certain protected characteristics, and any associated mitigating measures that you think we should consider?

19.1 None.

Q20. Are there any other wider equality issues or impacts that we should take into account and/or any further interventions we should take to address these in our statement of policy?

20.1 None identified.

Q21. Do you have any comments on the potential impact of the draft statement of policy, including the likely costs and anticipated benefits?

21.1 As stated above, there are risks that the proposals could be onerous without adding any greater benefit than is already delivered by the specialist approaches of

¹¹ Paragraph 88

¹² Paragraph 89.

¹³ Paragraph 84

individual frontline regulators. There is no real evidence that the proposals will deliver that anticipated benefit nor for why the current arrangements are so deficient.

21.2 The refocus on professional ethical duties and the LSB's unique facilitator role to drive co-ordination and improvement in this area is welcome but care in the execution of the policy will have to be taken to ensure it is handled proportionately and flexibly if any actual benefits are to be realised.

Q22. Do you have any further comments?

22.1 None.