

Solicitors Regulation Authority Response to the Legal Service Board's Consultation on Upholding Professional Ethical Duties, May 2025

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

We agree with the aims of this definition and the emphasis on professional ethical duties it places on the regulated professions. We understand the proposed definition of professional ethical duties would be used by the Legal Services Board (LSB) in the context of setting outcomes and expectations for regulators. It would not have a wider application and would not constrain or restrict what regulators consider to be unethical behaviour in its arrangements or regulatory decision making. We welcome this approach.

The definition should make it clear that it pertains to the conduct of regulated professionals in the context of professional standards, rather than moral judgments of right or wrong.

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

Yes, we agree with setting general outcomes for professional ethical duties. General outcomes will help focus attention on the importance of meeting professional ethical duties. We think a united response from the legal sector is helpful - with appropriate flexibility in approach as required across professions and with different regulators working together as appropriate.

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

Yes, we agree that these proposed outcomes address the harms and behaviours presented in the evidence. The proposed outcomes align with the outcomes and standards we require from our regulated community through our Principles and Codes. We do not propose any additional outcomes.

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

We consider that the outcomes alone provide enough certainty and draw sufficient attention to what regulators should achieve in this area. However, if the LSB decides that there should be specific expectations it is important that they confirm that the general outcome will have been considered met if a regulator delivers all of the expectations. We also agree that it is important that there is flexibility for regulators to deviate from the specific expectations where appropriate (please also see our answer to question 5).

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?

If the specific expectations are adopted in the LSB's policy statement, we think that regulators should have the flexibility to deviate from specific expectations where appropriate, demonstrating evidence-based decision making (please see also our answer to question 4).

Q6. Do you agree with the proposed outcome 1?

Yes, we agree with outcome 1.

We have integrated ethics and professional conduct into the Solicitors Qualifying Examination (SQE) – in both the SQE1 and SQE2 assessments. Data shows candidates generally perform well in these questions relative to other topics. However, in line with the commitment we made when we introduced the SQE we are reviewing whether the current approach should be changed or augmented.

Post-qualification, solicitors maintain their competence, including in respect of their professional ethical duties. We are preparing to consult later this year on proposals to strengthen our continuing competence requirement, and we are considering the introduction of a new requirement on professional ethical duties in this context.

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

We have noted a slight difference in the wording of one of the expectations under outcome 1 between the consultation and the draft statement of policy. In the consultation on page 22 you say:

“In pursuing outcome 1, regulators **must**:

Set standards for education and training, both in the lead up to qualification and at appropriate regular intervals throughout an authorised person's career, so that they **may** (our emphasis) understand and apply professional ethical duties in everyday practice.”

In the draft statement of policy in Annex A you omit 'may' from this wording.

We agree with the language on page 22.

We can, and do, set standards with a view to making sure solicitors understand and apply professional ethical duties in practice. We will consult on new requirements to provide additional assurance that all solicitors throughout their practising careers, understand and apply professional ethical duties in practice. We query whether outcome 1 should refer to setting standards for 'qualification and continuing competence' because our regulatory focus is primarily on the outcome of the education and training undertaken (i.e. competence on qualification and continuing competence) rather than the education and training itself. However, no education and training standards can guarantee that all solicitors will understand and apply professional ethical duties. In particular, an understanding of ethical duties cannot, in itself, guarantee their application.

We have a specific concern regarding expectation I.c,

Whilst we agree that it would be good practice for training on professional ethical duties to use resources such as case studies and examples from real life, we do not agree that this is a “standard”, rather it is a means by which training providers and employers might seek to deliver training on professional ethical duties to comply with the standards. We agree with the other aspects of the expectations proposed under outcome 1.

Q8. Do you agree with the proposed outcome 2?

Yes, we agree with outcome 2.

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

We agree with the specific expectations, which are consistent with our regulatory approach and actions we have taken. In the context of outcome 2, you have highlighted in your consultation document the warning notices and tailored guidance around ethical conduct that we have produced in relation to SLAPPs, NDAs and to support the in-house community as good practice examples. We think this is a model other regulators could use.

We also operate a free professional ethics helpline service, responding to over 25,000 requests for ethics guidance each year, including a large volume of inquiries about situations where professional ethical duties conflict. We believe this service has a critical role in supporting our efforts to maintain and improve ethical standards – through the advice provided and the intelligence we gather to inform our assessment of risks and concerns across the sector and our response to them. We are committed to a proactive, risk-based approach to regulation around professional ethics, drawing on a range of intelligence and information.

Q10. Do you agree with the proposed outcome 3?

Yes, we agree with outcome 3.

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

We broadly agree with the specific expectations proposed under outcome 3 and have undertaken significant work in this space. For example, we have produced support materials around dealing with challenges to upholding professional duties for the in-house community. We are keeping these under review, considering developing new case studies based on feedback and queries into our professional ethics helpline.

Regarding expectation V, we have carried out thematic reviews on workplace culture which have led to new arrangements and guidance in this area - which we are currently evaluating. While we support the aim of this expectation, we do not think the word 'ensure' is appropriate here. We can set standards which we expect authorised persons to achieve and take enforcement action as appropriate, but we cannot ensure that all authorised persons foster work environments and cultures where ethical decision-making is supported and valued.

In paragraph 66 of the consultation document, you say:

“We note that the SRA has developed guidance to share with employers to help shape conversations and develop understanding of an in-house solicitor’s professional obligations. However, we consider that this does not go far enough to establish a clear reporting line with senior accountability.”

We would appreciate detail about your concern that this does not go far enough.

Q12. Do you agree with the proposed outcome 4?

Yes, we agree with outcome 4.

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

We broadly agree with the specific expectations proposed under outcome 4.

We recognise the value in gathering insight and intelligence from a range of sources to build a picture of compliance.

For example, we are already using analysis of both first and second tier complaints data as part of our Risk and Intelligence Framework, which gathers and seeks to identify and assess key intelligence, patterns in our data and other key information that may indicate potential risks and enables strategic assessment of them. We will be setting out more detail around this in our response to the LSB's statement of policy on first-tier complaints published in November.

We agree that there are benefits in gathering insight directly from consumers and consumer representative groups to help identify potential issues and trends. Gathering intelligence in this way is also an important alternative route for information sharing in an area where consumers may be less likely to complain or feel comfortable raising issues with a firm directly.

Whilst there are also opportunities for consumers to complain directly to us, the wider intelligence gathered via consumers, consumer representative groups and other stakeholders is qualitative in nature. It may therefore be helpful to make this clearer in the wording of the expectation.

Q14. Do you agree with the proposed outcome 5?

Yes, we agree with outcome 5.

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

We broadly agree with the specific expectations proposed under outcome 5. We carry out evaluations of our regulatory measures – it is a core feature of our regulatory approach. We will need to consider how we can effectively do this specifically in relation to our approach to “ensuring professional ethical duties are maintained”. Given the broad definition of professional ethics and how investigations into misconduct are often multi-faceted, there will be challenges in isolating data for this purpose.

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

We agree with the proposed timelines for implementation, subject to our response to question 17.

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.

While we agree with the proposed timelines for implementation, our ability to meet the statement of policy outcomes may be affected if any rules need to be changed and approved by the LSB. Our timetable for implementation will depend on the LSB's approval timetable, particularly if rule change requests are made by multiple regulators.

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

We have not identified any additional equality impacts. We would need to consider potential equality impacts and how to monitor them depending on how the statement of policy, and the specific expectations therein, are taken forward.

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?

We do not have any additional evidence relating to the potential impact of the proposals on specific groups with certain protected characteristics.

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?

We do not have any further comments on wider equality issues or impacts.

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

We do not have any further comments on the potential impact of the draft statement of policy, including the likely costs and anticipated benefits. We encourage the LSB to adopt a proportionate and targeted approach to monitoring progress against its statement, considering the totality of its asks of regulators and the timing of them.

Q22. Do you have any further comments?

We do not have any further comments.