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CLLS – PROFESSIONAL RULES AND REGULATION COMMITTEE

RESPONSE TO LSB CONSULTATION

Introduction

1. This is the response of the City of London Law Society ("CLLS") to the LSB's Consultation "*Upholding Professional Ethical Duties*" issued in March 2025. The consultation sets out five outcomes that the LSB considers regulators must pursue to ensure that those they regulate uphold their professional ethical duties, based on the professional principles in the Legal Services Act 2007 (the **Act**). These outcomes would be codified in a statement of policy issued under section 49 of the Act.

2. The CLLS represents City lawyers through individual and corporate membership, including some of the largest international law firms in the world. The CLLS represents over 21,000 solicitors who are members of the profession in the City of London. They represent 12% of all practising solicitors. The CLLS responds to a variety of consultations on issues of importance to its members through its specialist committees. This response has been prepared by the CLLS Professional Rules and Regulation Committee. In the present context all of CLLS' corporate members are regulated by the SRA and as such our detailed experience is in relation to SRA regulation.

Context of the Consultation

3. The Consultation aims to provide a framework that "not only strengthens professional ethical standards but also ensures the legal profession is able to serve the public interest and maintain public confidence." It follows a programme of work (the PERL programme), the research, evidence and feedback of which this Consultation relies on when making the case for the proposals.

4. As acknowledged in the consultation, the role of legal professionals within society, in particular solicitor and barristers, has been subject to additional scrutiny in recent years following various high-profile events. At a general level, lawyers are subject to more criticism from various groups particularly on social media. In addition, there has been an extensive debate on the use of non-disclosure agreements (NDAs), and Strategic Lawsuits against Public Participation (SLAPPs) alongside significant media attention related to the Post Office Horizon IT scandal where lawyers played a significant role. These developments have brought to prominence a series of complex and nuanced legal ethical questions concerning the nature of the public interest lawyers serve in society and how that is balanced against the need to serve society by acting for and in a client's best interests thereby providing those clients with access to justice and legal services more generally.

5. CLLS agrees with the underlying premise of this work, described in the Consultation as "the need to ensure strong professional ethics given the pivotal role that solicitors, barristers, chartered legal executives and other regulated legal professionals (referred to in the Act and this consultation as 'authorised persons') play in upholding the rule of law and administration of justice". However, as set out in more detail below, it would stress the importance of not conflating the issues of legal ethics identified above with other areas of professional conduct which are clearly understood by the regulators (such as the need to act with honesty and integrity) and those whom they regulate.

6. It is our view that these events described above act as examples of the evolving interrelationship between acting in the client's best interest and what is in the public interest when having regard to upholding the rule of law and administration of justice. These are clearly less straight forward questions than perceived to be in the past. This interrelationship is continuing to evolve and indeed is likely to evolve further following the Inquiry Report into the Post Office. We consider that it is this aspect of legal ethics which should be at the forefront of the regulator, and professions, mind with support for the profession to understand and adapt to often nuanced debates around the correct balance.

7. An important context to this debate is that the legal education prescribed by the regulators (including the LSB since 2011) does not include any exploration of the issues described in paragraph 4 above and is limited (with the exception of the BSB) to essentially the recitation of Codes of Conduct without any context as to role of lawyers in society. That regulatory framework has therefore left the profession generally ill-equipped to deal with the evolution of legal ethics.

8. We do not consider that there is evidence to suggest a fundamental failing within the regulatory system in respect of plain and obvious misconduct (such as dishonesty and lack of integrity) such that a statement of policy as broad as the one suggested is necessary. The experience of all of the legal services regulators over an extended period of time is that there is consistently a regular number of cases involving misconduct and rule breaches brought by all regulators. This mirrors the position of legal services regulators globally and other professional regulators in England and Wales. It is therefore, sadly, a normal and inherent part of regulation. There is no evidence that levels of misconduct within the legal professions is more than one would expect or that it has increased in recent years. The LSB places reliance on "What does it mean for lawyers to uphold the Rule of Law?" by Moorhead, Vaughan and Tsuda. Whilst this paper cites a number of examples of poor conduct and behaviour it does not provide any evidence to suggest that the incidence of such cases is higher than it ought to be or that it is increasing[1]. As such it sits within a large body of academic literature which identifies ethical failings but does not seek to address prevalence[2]. Yet the LSB's consultation is only explicable if it considers that there is evidence of an increase in general misconduct and that lawyers as a whole somehow do not understand their obligation to act in accordance with the existing Principles and Codes of each front-line regulator. There is no evidence of such a failure. It is perhaps trite to observe that regulatory action should be based on evidence and the absence of that evidence undermines much of the basis of the consultation.

9. In addition, the LSB's approach risks both over simplifying the issue to a matter of restatement of existing principles, alongside over complicating the response such that it will inevitably create additional unnecessary regulatory burdens. In our view, rather than a restatement of well understood core principles, consideration should be given to how such support can be given practically to the complex and nuanced issues around balancing a client's best interests with the public interest. This should include both:

    a. improving the education around legal (as opposed to general or professional) ethics, ensuring the focus is not just on compliance in the technical sense, but one the role of lawyers in society, the interests they need to balance which can then empower the profession to deal with the increasing complex issues described above; and

    b. encouraging debate, dialogue and engagement of the profession on an ongoing basis in recognition that there are often no straight forward answers to the issues particularly those that relate to the grey areas between the need to act in clients' best interests and the public interest.

10. Finally, regard should be given to the economic context within which these proposals are presented. The UK Government has stressed the role that regulators and regulation should play in the

[1] It does however support our central point that legal ethical obligations are evolving.

[2] One paper relied upon in What does it mean for lawyers to uphold the Rule of Law? is "The Two Faces of Lawyers: Professional Ethics and Business Compliance with Regulation." (see n59) which does undertake quantitate analysis although the conclusion is mixed. Whilst the authors rely on this paper to state: "often lawyers (not clients) who can encourage creative compliance approaches" we read often to mean on a few occasions rather than it is a prevalent practice. As such it does not provide an evidential justification that this is widespread behaviour.

"government's growth mission", by "ensuring that it enables growth and does not unduly hold back investment[3]. This has been recognised in the LSB's more recently published 2025/26 Business Plan[4]:

> *The legal sector is a cornerstone of the UK economy, directly contributing billions to GDP and more broadly facilitating business transactions, resolving commercial disputes, and providing the certainty that investors and businesses need. Public trust and confidence in legal services – underpinned and enabled by effective regulation – are therefore essential to economic growth and the UK's position as a global legal hub.*

And later, when considering the contribution and growth of the legal sector:

> *This growth has been enabled, in part, by a permissive regulatory regime brought about by the Legal Services Act 2007, which introduced greater flexibility and innovation, opening the market to new business models and increasing competition, while putting the interests of consumers and the public interest at the heart of legal services regulation.*

11. Whilst we agree with this sentiment, we question whether additional regulation meets these aims or whether it is proportionate to the issues faced given the lack of evidence to support the LSB's approach. In fact, it risks going against what has been recognised by the LSB as promoting growth – "a permissive regulatory regime brought about by the Legal Services Act 2007". In the interests of brevity, we would refer you to paragraphs 14 to 19 of the CLLS Response to the SRA's Consultation "Financial Penalties: further developing our framework" for additional thoughts on the role of regulation in the context of the growth mission.5

CLLS Position in Relation to the LSB's Proposals

12. Within the specific proposals, we have some specific comments and feedback which we wish to make:

13. Outcomes and Expectations:

    a. In seeking to define "professional ethical duties" we believe that the LSB has oversimplified the issue by providing a restatement of well understood existing professional principles as set out in the Act. We do not consider that this adds any value. We will develop this in more detail below.

    b. Whilst none of the outcomes are objectionable per se, we do not believe they are necessary, as:

        i. the majority, if not all, are already understood by the regulators to form a significant part of their role and the objectives they seek to meet. This flows from both the regulatory objectives[6] through to the day to day activities of as seen in much of their published material.[7] Accordingly, we are not sure what value they add alongside the existing considerations of the regulators and, presumably, the LSB when considering the regulatory frameworks it oversees.

        ii. the reality of these outcomes is that it will trigger, at the expense of the profession and consumers, reactive work by the regulators to re-demonstrate the work they have done already in an attempt to satisfy the LSB.

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[3] New approach to ensure regulators and regulation support growth (HTML) - GOV.UK

[4] Business Plan 2025/26 - The Legal Services Board

[5] CLLS Response to Financial Penalties Consultation

[6] See section 1 and 28 of the Legal Services Act 2007.

[7] See, for example, Priority One of the SRA's Corporate Strategy (SRA | SRA corporate strategy 2023-2026 | Solicitors Regulation Authority)

c. The LSB states that the outcomes are "intended to provide a flexible and permissive framework" however the underlying expectations are arguably prescriptive to the extent that regulators will feel compelled to take specific steps in an attempt to meet them.

14. Outcome 1 - authorised persons have the right knowledge and skills on professional ethical duties, both at the point of qualification and throughout their career

a. As set out in paragraph 7, CLLS agrees with the underlying premise of this outcome. However, the detail demonstrates the flaws in the approach. The LSB's definition of "professional ethical duties" does nothing more than re-state the professional principles in the Act which are in turn found in the Principles adopted by front line regulators in their Codes of Conduct. All of this therefore already exists and is used as an enforcement tool by regulators. It is not clear at all how the LSB considers that adding an additional layer of the same regulations complies with its obligations under Section 1 of the LSA or indeed to obligations of front-line regulators under Section 28. We entirely agree that there is a need for lawyers to understand "how" to balance their different duties in practice but the Outcome is silent as to what training would achieve this – particularly when considering crucial issues such as understanding the debate around the nature of the public interest lawyers serve and the scope of the rule of law.

b. Instead of putting in place additional regulation, the existing framework should be used to promote dialogue and the development of appropriate education and training for each of the professions.

c. Whilst acknowledging the importance of education and training, the CLLS does not consider that the LSB has provided sufficient evidence to support the conclusion that "the examples of poor conduct that had been identified were in large part symptomatic of the pre-qualification education and training". We are not aware of any evidence that links inadequate pre-qualification education and training leading to lawyers not understanding their duties and onward to poor conduct. What the current framework does not do is equip lawyers either at qualification or in practice to understand and deal with in real time the evolving ethical issue we have identified at paragraph 4 above.

15. Outcome 2 - regulators have a framework of rules, regulations, guidance and other resources which make clear that *professional ethical duties* are integral to the way authorised persons are expected to behave and act throughout their careers.

a. Our feedback on Outcome 2 is similar to that of Outcome 1, in particular that:

i. For the reasons we have set out above there does not appear to be evidence that "poor ethical conduct indicates that regulators' core rules and regulations dealing with professional ethical duties are nevertheless not always properly understood or applied in practice, or – at worst – they are disregarded altogether." We entirely accept there are instances of poor ethical conduct as described in the consultation and the underlying academic literature but the LSB's logic appears to be that an incident of poor ethical conduct means that there is a high incidence of poor ethical conduct within the profession. That is a flawed approach.

ii. The existing framework already provides for this outcome to be met, and the LSB should rely upon that to scrutinise the work undertaken by the regulators, both when approving the regulatory arrangements and as part of ongoing evaluation.

iii. Whilst on one hand suggesting that the existing framework is too prescriptive, there is a suggestion that "more rules, regulations, guidance or other resources" is necessary. Whilst CLLS accepts that support is required (see paragraph 7) we doubt that additional regulation is the answer.

b. Alongside this, we would disagree that "most regulators do not provide explicit guidance or support on professional ethical duties". The SRA produces extensive guidance often touching on the key points the LSB raises. In addition, most of the regulators, as well as representative

bodies, provide similar support services. The Consultation proceeds on the basis that the extensive work done by the SRA (and other front-line regulators) does not exist which is curious given these regulatory arrangements were approved by the LSB.

16. Outcome 3 - authorised persons are supported and empowered to uphold their *professional ethical duties* when they are challenged

a. The LSB's approach in this respect is difficult to understand. There are already extensive provisions within the SRA regulatory regime that address these issues. What is the purpose of additional regulation? The LSB has provided no explanation as to why it considers the current regulatory arrangements (which it approved) to be inadequate in this regard.

b. It is also unclear what, if any, issue the LSB is seeking to express when making comments about accountability regimes at paragraph 63 of the Consultation. To the extent this is meant in the context of law firms, it seems to disregard the framework provided by the Act and in regulatory arrangements of COLPs and COFAs, alongside the extensive regulatory expectations placed on owners and managers of law firms and individually qualified practitioners. The Senior Manager Regime under the FCA was introduced following the banking crisis to address the fact that financial services regulation did not impose individual responsibility. However, this has never been lacking in legal services regulation. If the focus is instead on in-house practice, whilst CLLS agree there are specific challenges it also recognises that the framework provided for individual responsibility of solicitors already exists, and it would take statutory change to provide further forms of accountability at a management level in a non-legal business.

c. Finally, we are particularly concerned by the reference to reporting expectations arising due to an "anticipated risk of breach of professional ethical duties". As the LSB will be aware, only recently there has been significant reform in the approach to reporting concerns by solicitors and these arrangements were approved by the LSB. We do not consider that there is evidence to suggest this system is not currently working as intended. In addition, by suggesting a broadening of the reporting requirement to "anticipated breaches" the LSB does not seem to have considered the impact such a change would have or how it would work in practice. The practical consideration of reporting requirements by law firms and practitioners already has a significant impact, both in terms of time and cost. In addition, there is a significant impact on regulators who must consider those reports. Any suggestion that regulators should move away from a system of receiving only reports of serious actual breaches would have a significant impact. Firms would be burdened by additional reporting and the regulators would need to filter more extensively down to the cases where they need to take regulatory action. Regulatory burdens would be substantially increased for no obvious or apparent regulatory purpose[8]. Let alone one that is articulated in the consultation. The suggestion also ignores a fundamental point – would we not expect that if an individual or law firm anticipated a breach, they would stop and not do the thing that they anticipate will cause a breach, seeking guidance as appropriate?

17. Outcome 4 – regulators identify and use appropriate tools and processes to monitor and supervise the conduct authorised persons, and where necessary take effective action to address non-compliance with professional ethical duties

and

Outcome 5: regulators regularly evaluate the impact of their measures to pursue outcomes 1 to 4 above to and make changes, if required, to ensure that they remain fit for purpose.

[8] The evidence for this point is the SRA's recent consultation on its business plan which highlights a 40% increase in reporting within the existing framework and a consequential need for more funding. This underlines the need for careful consideration in accordance with the regulatory principles in this sensitive area.

a. We do not have any specific comments on this outcome, save to say that we understand regulators already undertake much of this work within the existing framework, and so it is not clear why this would need to be codified in additional regulation.

b. In addition, it fails to recognise the varied resources available to the regulators which mean that different approaches must be taken for the different professions. To enforce expectations on the smaller regulators will only increase costs for that profession.

Response to Consultation Questions

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

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

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?**

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

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?**

- See in particular paragraph 13, alongside our feedback in paragraphs 3-12

Q6.	**Do you agree with the proposed outcome 1?**

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

- See in particular paragraph 14, alongside our feedback in paragraphs 3-12

Q8.	**Do you agree with the proposed outcome 2?**

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

- See in particular paragraph 15, alongside our feedback in paragraphs 3-12

Q10.	**Do you agree with the proposed outcome 3?**

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

- See in particular paragraph 16, alongside our feedback in paragraphs 3-12

Q12.	**Do you agree with the proposed outcome 4?**

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

Q14.	**Do you agree with the proposed outcome 5?**

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

- See in particular paragraph 17, alongside our feedback in paragraphs 3-12

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

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.**

- We do not have anything additional to add.

Q18.	**Have you identified any equality we have considered which in your view may arise from our proposed statement of policy?**

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?**

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 anything additional to add.