



Upholding Professional Ethical Duties

CILEx Regulation response to the LSB's consultation on its proposed statement of policy

General Comments

CRL welcomes the LSB's initiative to reinforce professional ethical duties within the legal profession. The proposed Statement of Policy aims to ensure that legal professionals uphold the rule of law and maintain high ethical standards. This aligns with the regulatory objectives and the need to maintain public confidence in legal services.

CRL has summarised its comments under the following points.

Do you agree with the LSB's proposed Statement of Policy?

CRL broadly agrees with the proposed Statement of Policy including the five outcomes. It provides a clear framework for legal professionals to understand their ethical obligations. The emphasis on upholding the rule of law and maintaining professional integrity is essential for the proper functioning of the legal system. We would like clarification on issues surrounding the implementation of the Statement of Policy, what support for regulators will be provided in terms of reshaping their education, training and ongoing competence rules to better align with the Statement of Policy, and what further stakeholder engagement the LSB will be carrying out.

Are there any areas where the Statement of Policy could be improved?

As a regulator, we broadly support the ambition and direction of the proposed Statement. However, for it to achieve its intended impact across a diverse legal sector, we propose the following refinements:

a) Greater Clarity on "Reasonable Steps"

The Statement requires individuals and entities to take "all reasonable steps" to uphold professional ethical duties. This wording, while flexible, may be too indeterminate in high-stakes regulatory contexts. We recommend:

- Including illustrative examples or indicators of what constitutes "reasonable steps" in different practice settings (e.g. small firm vs. ABS).
- Developing a matrix or decision tool to help practitioners and firms assess whether their procedures, culture, and controls meet expectations.

- Clarifying how “reasonable steps” interacts with existing regulatory obligations in codes of conduct, particularly around supervision and reporting obligations.

b) Implementation Guidance Across Diverse Legal Professions

Given the Statement applies to all authorised persons and entities, further tailoring or annexes may be required to ensure proportionality and relevance. For instance:

- Barristers (particularly sole practitioners) may have different capacity to implement governance procedures than large solicitors’ firms or in-house teams.
- Entity-level obligations should consider the business model, regulatory exposure, and resource base of the organization.

A differentiated approach to implementation would make the policy more accessible and practical without compromising its purpose.

c) Integration with Training, Induction and CPD Requirements

While ethical duties are already part of many training regimes, the Statement could provide guidance on how best to link the principles to Ongoing Competence. For example, guidance on:

- Amending Continuing Competence requirements to include rule of law and ethical resilience modules.
- Promoting scenario-based learning through regulator-approved training providers.
- Ethical culture assessments as part of reauthorisation, entity licensing, or thematic review cycles.

d) Reflecting Sector Specific Ethical Risks

The Statement may benefit from a section or appendix on “emerging ethical risks”, where regulators can periodically highlight and update key areas of concern. For instance:

- Strategic lawsuits against public participation (SLAPPs)
- Use of AI in advice delivery
- Conflicts of interest in litigation funding
- Cross-border compliance and offshoring

This would enable the Statement to serve as a living ethical framework responsive to new threats and developments.

e) Accountability Mechanisms and Culture

The Statement could better articulate the role of leadership and internal culture in upholding ethical standards. Consider requiring:

- Senior managers or COLPs/COFAs to take personal responsibility for implementing and reviewing ethical governance.
- Firms to conduct regular ethical health-checks or culture surveys.
- A model set of governance indicators to assess the effectiveness of internal systems.

f) Interplay with Enforcement and Discretion

Finally, we note the need to address how this Statement will inform regulatory decision-making and enforcement. It may help to:

- Specify that failure to meet the Statement may be a relevant factor in assessing fitness to practise or entity suitability.
- Clarify whether and how discretion will be applied when interpreting ethical failures that arise in grey areas.
- Provide case study-based guidance on enforcement actions to promote consistency and transparency.

Do you have any comments on the proposed approach to monitoring and enforcement?

We recognise and support the LSB's intention to ensure that the Statement of Policy is not merely symbolic but operationally effective. However, we believe the current monitoring and enforcement proposals could benefit from greater depth and clarity in the following areas:

a) Proactive, Risk-Based Monitoring Approach

The LSB's outline suggests a reactive model of monitoring based on complaints or breaches. We recommend enhancing this with a proactive, risk-based oversight strategy that includes:

- Thematic reviews targeting high-risk practice areas (e.g. immigration, criminal defence, SLAPPs, litigation funding).
- Ethical risk audits as part of standard supervision or licensing renewal.
- Encouragement of self-assessment and reporting tools by regulated entities to evaluate their compliance with the Statement.

This approach would help identify issues before they crystallise into harm and promote a learning culture.

b) Enhanced Use of Data and Intelligence

Monitoring ethical performance requires robust data. We recommend the LSB, and regulators, build a shared intelligence framework that draws on:

- Complaints data from the Legal Ombudsman and other regulators.

- Disciplinary and enforcement trends across the sector.
- Consumer insights and user feedback, particularly from vulnerable clients or underrepresented communities.

This intelligence should be used to inform regulatory priorities and allow for targeted interventions where ethical standards are at risk.

c) Practical Guidance on Regulatory Expectations

To support consistent enforcement, the Statement should be accompanied by guidance outlining:

- What constitutes a material failure to uphold ethical duties.
- How regulators should balance intent vs. impact in assessing breaches.
- The role of mitigating actions taken by individuals or firms in response to ethical challenges.

Without such guidance, enforcement risks becoming inconsistent or perceived as arbitrary, undermining public trust.

d) Proportional and Graduated Enforcement Responses

We recommend that enforcement linked to the Statement be guided by principles of proportionality and learning. In particular:

- Early-stage or low-level breaches should trigger educative or advisory interventions, such as improvement notices or remediation plans.
- Systemic or wilful failures should result in escalated sanctions, including referral to disciplinary tribunals or conditions placed on practice.
- Consider publishing anonymised case studies showing how breaches of the Statement were handled, to provide transparency and reinforce behavioural norms.

e) Coordinated Regulatory Oversight

Given the shared oversight responsibilities across multiple legal services regulators, we urge the LSB to:

- Facilitate a cross-regulator ethical oversight forum to share intelligence and align enforcement responses.
- Develop a central ethical risk register that highlights key sector-wide issues and regulatory actions underway.
- Provide a mechanism for inter-regulator referrals where cases involve multi-jurisdictional or entity-level complexities.

This would improve coherence, reduce regulatory duplication, and promote consistency of outcomes.

f) Promoting an Open Ethical Culture

Finally, enforcement should be just one component of a wider ethical ecosystem. Regulators should be supported to:

- Encourage firms to adopt 'speak-up' policies and protective mechanisms for whistleblowers.
- Recognise and reward examples of ethical leadership and good practice, not just penalise breaches.
- Promote the Statement as part of a cultural commitment, rather than a compliance burden.

Impact assessment

We consider the impact assessment to be insufficient. Whilst we acknowledge individual regulators will need to assess the impact of any measures they introduce in response to the Statement of Policy, a full cost impact assessment is essential in order to fully understand the extent to which the proposals are sufficiently proportionate and targeted.

Are there any other comments you wish to make?

CRL welcomes the LSB's focus on promoting ethical standards within the legal profession. The CRL at its May 2025 Board meeting debated the important issues raised in this consultation document. The Board discussed the challenges associated with upholding ethical standards in legal services, both from a client perspective and in terms of firms promoting open cultures. The Board also noted the challenges many in-house lawyers have in their roles, highlighting that many CRL approved persons work in such roles in organisations like local authorities. The Board considered what mechanisms could be required or encouraged to improve firm culture and what further CPD could be required to ensure ethics and ethical responsibilities were well understood.

Notwithstanding the outcome of the LSB's consultation, the CRL Board made a commitment to review the CILEX Code of Conduct and CRL's CPD requirements to ensure professional ethical duties are strengthened.

23 May 2025