

Summary of Responses to the CLC’s Code of Conduct Consultation

(October 2023-January 2024)

Thank you to all who participated in the CLC Code of Conduct consultation which closed on 8 January 2024. This document outlines the feedback received and sets out the CLC’s response to the consultation.

We have structured this document as the consultation was structured and have included the number of responses received for each question, and where respondents consented to their comments being published, we have included them in anonymised form.

Where the consultation asked whether respondents felt the Ethical Principle and Outcomes were clear or sufficient, respondents who said they were not clear or sufficient had the opportunity to explain why in the comments section. A couple of different respondents made the same comments verbatim in response to certain questions, these have been included for completeness.

We received feedback from a total of 16 respondents of which 11 are CLC regulated lawyers, including a member of The Society of Conveyancers, a representative of The Conveyancing Association, a member of a professional disciplinary panel and three others who did not specify their professional affiliation or membership.

13 of the 16 respondents answered all questions with three respondents answering only some of the questions. For this reason, at certain questions below, the total number of respondents is less than 16.

Overarching Consultation Questions:

1. Do you agree that clarity of the Code of Conduct is improved by simplifying its structure so that it consists of the Ethical Principles and illustrative Outcomes? If not, do you have suggestions for an alternative approach?

14/16 respondents agreed with this question 2/16 respondents disagreed with this question
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If you have answered 'no', do you have suggestions for an alternative approach?

Note: Comments made here referred to specific outcomes and so have been included below under the relevant outcome to make reference easier.

2. Do you have any comments on the Ethical Principles themselves?

7/16 respondents answered yes 8/16 respondents answered no

If yes, please provide your comments here:

“I think that the principles should have been broadened further to also include others within the industry, other conveyancers, this shouldn’t have just been restricted to principle 5”

“Point 2 This should refer to client not customer, the use of this word gives rise to ambiguity, as practitioners do not have customers, they clients. Further, the term customer is incompatible with the remainder of the wording in the principals. Point 6 A practitioner should not be bound to promote and support equality, diversity and inclusion in practice and service delivery. The existing wording of promoting equality of access and service could be bolstered by adding "to all" at the end of the sentence. I dislike the proposed Point 6, it does not add value in my opinion, and leads me to think how I could support equality, diversity and inclusion in practice and service delivery, whereas I would be comfortable in knowing how to satisfy the ethical principal of promoting equality of access and service to all.”**

“Your members flaunt the code of conduct since you take so little regulatory action”

“I believe that it would be useful to provide some context/examples to what personal conduct would fail to meet the required standards, e.g. hateful comments in social media postings etc.”

“Draft ethical principle 2 seems vague, what does it mean to know each customer? All other proposed principles seem fine and clear to me.”

“I think that the principles should have been broadened further to also include others within the industry, other conveyancers, this shouldn’t have just been restricted to principle 5”

3. Do you agree that these Ethical Principles should apply to the conduct of a CLC-regulated lawyer outside the carrying out of their business in order to maintain the reputation of the legal sector and trust in the profession and legal services?

12/16 respondents answered yes
3/16 respondents answered no

Please provide any comments:

“However, I do think that we need to be careful as to what is considered within the remit of the profession as people should still be allowed a private life without the worry of persecution.”

“yes, save for my comments above.” (Note: this is reference to the comments above marked with**)

“Conduct outside business is nothing to do with the Regulator - the High Court has already told the SRA this in Beckwith”

“I don't think it is the business of a professional body to regulate private behaviors. I certainly agree that people should act in the ways proposed but disagree that it is the business of the CLC to

regulate or purport to regulate private behavior. Additionally, what is meant here by "high standard of personal conduct", what is being asked of conveyancers here?" *** [sic]

"However, I do think that we need to be careful as to what is considered within the remit of the profession as people should still be allowed a private life without the worry of persecution."

4. Does the revised Code of Conduct provide a clear overarching framework for all CLC regulated lawyers?

Extremely clear – 3/16 respondents

Very clear – 7/16 respondents

Somewhat clear – 2/16 respondents

Not so clear – 1/16 respondents

Not at all clear – 2/16 respondents

Please provide any further comments here:

"Principal 6 in it's current form is ambiguous. Principal 2 is erroneous. How can I know my customers, I know my clients." [sic]

"The principles are dreadfully drafted - clearly no qualified lawyer has had a hand in them"

"I think some elements are open to interpretation and could be clearer. See comments above."
(Note: this is reference to the comments marked with ***).

CLC Response re Questions 1 to 4

Most respondents (88%) agreed that the proposed changes to the structure will help to improve the clarity of the Code. Whilst some comments received suggest a few changes to the draft Ethical Principles and Outcomes would be helpful, including some minor changes to language, respondents wholly support the change in structure and content.

A small minority of respondents suggested that the Code should extend to others across the conveyancing sector. Whilst we can appreciate why this suggestion might have been made, the CLC has no statutory power to impose requirements on other professionals or individuals in the sector who fall outside of our regulatory remit and would be unable to monitor or enforce compliance by those individuals. It is worth remembering though that, as the introduction to the Code makes clear, employees and managers of CLC regulated practices, though not necessarily CLC licensed, make face enforcement action in cases where they have failed to comply with the Code.

We have taken on-board comments about the term 'customer', changing it to 'client' where appropriate, however in certain places the term customer or consumer remains where we are referring to people who have not yet instructed a conveyancer, but are or are potentially in the market for conveyancing services.

In response to the comment that the CLC takes little regulatory action and that members flaunt the Code, the CLC takes a robust and risk-based approach to regulation, managing compliance where appropriate and escalating to enforcement or disciplinary procedures where such action is warranted. Details of the CLC's regulatory and enforcement activities are routinely published and are available to review on our website.

Whilst comments from a minority of respondents suggest that conduct outside of the business of conveyancing i.e. conduct in a conveyancer's personal life, should not become a matter of regulation, this represents a minority view. Most respondents (75%) agreed that the Ethical Principles *should* apply to personal conduct.

Whilst a conveyancer's personal conduct outside of their professional life *may* become the subject of regulatory or enforcement action, the CLC's concerns about personal conduct are most likely to be limited to conduct in a conveyancer's personal life which brings the profession into disrepute, or calls into question the conveyancer's honesty, integrity, or suitability to hold a CLC licence. In assessing whether any 'private' conduct or behaviour warrants regulatory or enforcement action, the CLC will consider the circumstances of each case and will continue to adopt a reasonable and proportionate, risk-based approach.

We have considered feedback asking for further examples or additional context to assist in determining what personal conduct would fail to meet required standards. However, cases involving the personal conduct of regulated individuals are fact specific and as case law suggests, likely to be quite wide ranging in their nature. We are therefore of the view that to endeavour to define a threshold for personal conduct that does or does not meet expected standards of conduct or provide a list of examples would be unlikely to offer any useful guidance, given that each case is likely to be very different from the next in both the facts and circumstances.

Ethical Principle 1

Act with integrity, honesty, and independence

You must deliver the following Outcomes:

- 1.1 Clients receive good quality information, representation and advice*
- 1.2 Clients receive a professional, honest, and lawful service*
- 1.3 You maintain your independence*

5. Are the Outcomes illustrating this Ethical Principle:

a. clear?

14/16 respondents agreed they are clear

b. sufficient?

1/16 respondents agreed they are sufficient

1/16 respondents agreed that this was both clear and sufficient

6. Do you have any suggestions for amendments to any of the proposed Outcomes?

No comments received.

7. Do you have any suggestions for additional Outcomes for this Ethical Principle?

“Being able to provide communication by phone to all parties when working from home”

CLC Response re Questions 5 to 7

All respondents found this either clear, sufficient or clear and sufficient. The only comment received proposes a granular level of guidance about the means of communication that conveyancers choose to use in their practice. This level of detail is not consistent with CLC’s approach which favours high level guidance allowing conveyancers the scope to determine, based on their local circumstances and client requirements, the most effective methods of communication.

Ethical Principle 2

Know each customer, treat them fairly, keep their money safe, communicate openly and truthfully with them and act in their best interests

You must deliver the following Outcomes:

2.1 Each Client’s best interests are served (within legal and regulatory bounds)

2.2 Clients receive advice appropriate to their circumstances

2.3 Clients have the accurate, appropriate and useful information they need to make informed decisions

2.4 Clients are aware of any limitation or any condition resulting from your relationship with another party

2.5 Clients’ affairs are treated confidentially (except as required or permitted by law or with the Client’s consent)

2.6 You consult Clients on key decisions in a timely way

2.7 You only recommend a particular person, business or product when it is in the best interests of the Client

2.8 Your accounting and banking arrangements keep client money secure

2.9 Services are delivered in accordance with timetables reasonably agreed with the Client

2.10 You accept responsibility where the service you provide is not of the expected standard and provide appropriate redress for the Client where necessary

2.11 Handling of complaints takes proper account of Clients' individual needs, including those who are vulnerable

2.12 Complaints are dealt with impartially and comprehensively.

8. Are the Outcomes illustrating this Ethical Principle:

a. clear?

11/16 respondents agreed they are clear

1/16 respondents said they are not clear

b. sufficient?

1/16 respondents agreed they are sufficient

2/16 respondents said they are not sufficient

9. Do you have any suggestions for amendments to any of the proposed Outcomes?

"2.1 Each Client's best interests are served (within legal and regulatory bounds) - should also refer to bouns of Cleitn instructions - clients may instruct us to act against what we percieve as their best interests." [sic]

"2.6 and 2.10- How do you measure the expected standard, as this is subjective to each client? Although each company normally has an agreed turnaround time for dissemination of information, with the emergence of Amazon Prime expectations, should there be some sort of standard practice set out?"

"take out the word customer and replace it with client. 2.11 - why include the specific wording "including those who are vulnerable" Practitioners are already bound to take account of clients vulnerabilities so to include this here specifically is a duplication."

"See above - there should be a calve-out for following client instructions"

"2.2 Clients receive advice appropriate to their circumstances as relayed to you by the client on enquiry 2.3 Clients have the accurate, appropriate and useful information they need to make informed decisions appropriate to their circumstance"

"Perhaps something in the Outcomes that deals with the Ethical Principle of 'Know your customer'"*****

"2.6 and 2.10- How do you measure the expected standard, as this is subjective to each client? Although each company normally has an agreed turnaround time for dissemination of information, with the emergence of Amazon Prime expectations, should there be some sort of standard practice set out?"

10. Do you have any suggestions for additional Outcomes for this Ethical Principle?

“See.9” (Note; this is reference to the comments marked **** at 9 above).

CLC Response re Questions 8 to 10

Whilst the majority of respondents (75%) agreed that the outcomes are clear or sufficient and only 2 said they were not sufficient, there is a theme running through the comments about tailoring advice to the client’s specific needs, knowing the client and acting in line with client instructions even where that may not be consistent with the advice given, or to act on instructions would not, in the conveyancer’s opinion, be in the client’s best interests . These comments are reasonable and consistent with a client-focussed approach, and therefore, in addition to deleting ‘customer’ in favour of ‘client, we have made some amendments which aim to place emphasis on understanding the client’s specific needs and the provision of information to enable clients to make informed decisions and provide clear instructions. By ensuring that accurate, appropriate, and useful information, including information about risks, is provided to all clients, conveyancers will in most cases have complied with these requirements regardless of whether the client accepts or rejects their advice or, the conveyancer has to act on client instructions which, in their view, are not consistent with the client’s best interests.

Ethical Principle 3

Uphold the rule of law and public trust in the profession and legal services

You must deliver the following Outcomes:

3.1 You act in the interests of justice;

3.2 You act in good faith towards Clients;

3.3 You assist any Court or Tribunal or the CLC's Adjudication Panel honestly and openly as required and comply with any of their findings;

3.4 You refer clients to qualified lawyers for advice outside your areas of expertise.

3.5 You do not conduct yourself in a manner which may result in a breach of the law nor in any other manner which may bring the legal profession into disrepute.

11. Are the Outcomes illustrating this Ethical Principle:

a. clear?

11/16 respondents agreed they are clear
2/16 respondents said they are not clear

b. sufficient?

1/16 respondents agreed they are sufficient

1/16 respondents said they are not sufficient

12. Do you have any suggestions for amendments to any of the proposed Outcomes?

“3.3 Shouldn’t be restricted to clients, it should be extended to all parties within a conveyancing transaction.”

“3.1 is vague, I can make sense of the law, but not justice. 3.4 Here i am promising only to introduce qualified lawyers but earlier, I am permitted to introduce appropriately skilled parties. Some of the best practitioners I know are not qualified lawyers.”

“3.5 - see Beckwith comments, above”

“3.3 Shouldn’t be restricted to clients, it should be extended to all parties within a conveyancing transaction”

13. Do you have any suggestions for additional Outcomes for this Ethical Principle?

“Refusing to act for a client who is not acting truthfully to others in their transaction and causing them loss as a result”

CLC Response re Questions 11 to 13

Most respondents (75%) said that the outcomes are clear or sufficient, with only 3 saying they are neither clear nor sufficient. Two comments however suggested that the outcomes be extended to cover all parties involved in a conveyancing transaction and one comment noted an inconsistency in guidance which talks of referring clients to ‘qualified lawyers’ and ‘appropriately skilled’ practitioners. The CLC agrees that acting in good faith, not only in dealings with clients but more broadly, will help promote constructive engagement, timely and positive outcomes for clients. We have therefore made minor additions to the wording of Outcome 3.2. In addition, recognising that conveyancers may need to refer their clients to qualified professionals other than lawyers, a minor change has been made to the wording of Outcome 3.4 so that it now refers to ‘appropriately qualified professionals’.

Ethical Principle 4

Maintain high standards of professional and personal conduct

You must deliver the following Outcomes:

4.1 Clients are provided with a good standard of legal services;

4.2 Client matters are dealt with using care, skill and diligence;

4.3 Appropriate arrangements, resources, procedures, skills and commitment are in place to ensure Clients always receive a high standard of service;

4.4 Your skills and knowledge are up to date

14. Are the Outcomes illustrating this Ethical Principle:

a. clear?

13/16 respondents agreed they are clear

b. sufficient?

2/16 respondents said they are not sufficient

15. Do you have any suggestions for amendments to any of the proposed Outcomes?

“4.3 Appropriate arrangements, resources, procedures, skills and commitment; are in place to ensure Clients always receive a high standard of service; - is inconsistent and incoherent with 4.1 that only requires "a good standard of legal services", not a "high" standard; the same standard should be referred to in both rules - presumably "good" being lower than "high". Candidly only a "reasonable" standard of service can logically be mandated in either rule - since if everyone is good, then no-one is, as "good" implies better than average.” [sic] *

“More an observation - re 4.3 is it possible to ensure that client always receive a high standard service? Perhaps clients should always receive a service of a reasonable/good standard - or alternatively consistently receive a high standard of service. I suppose it's whether the Code of Conduct should be realistic or aspirational.....”

“Whilst this is clear to me I have reservations on how some firms will interpret this and indeed how SRM's will know how to interpret on inspections From my dealing with other firms in day to day practice I have concerns about the lack of legal knowledge of both qualified and non qualified fee earners. I see too often employees treating their own internal company policies and "box ticking" with higher regard than the actual law in the conveyancing process and their what is in their individual client's best interest . There is little if any understanding of their own client's position or need to complete within a timeframe and definitely no consideration of the circumstances of others in the chain which could jeopardize the chain. This is probably partly to do with the culture of the firm and they put the internal policies above all else for fear of internal disciplinary action potentially or just a lack of understanding of the process, their clients needs or the affect on the reputation of the industry . Their own clients don 't question or challenge them due to not wishing to question their own lawyer who should be acting in their best interest.. how is this going to monitored in practice?”

“4.4 I assume that this can be checked by looking at CPD courses taken throughout the year, but how does the CLC or other regulatory bodies check that each conveyancers knowledge is up to date?”

“Inconsistent and incoherent - see comments above” (see comment above marked *)

“There is nothing obvious in the Outcomes relating to "personal conduct" as noted in the Ethical Principle”

“4.4 We assume that this can be checked by looking at CPD courses taken throughout the year, but how does the CLC or other regulatory bodies check that each conveyancers knowledge is up to date?”

16. Do you have any suggestions for additional Outcomes for this Ethical Principle?

“As per the point above, should the requirements of point 4.4 go further and be specific.”

“See .16” – which is reference to ““There is nothing obvious in the Outcomes relating to "personal conduct" as noted in the Ethical Principle”

“As per the point above, should the requirements of point 4.4 go further and be specific”

CLC Response re Questions 14 to 16

Most respondents (81%) felt that the outcomes were clear, however some comments suggest that there is concern about the evidence that CLC will look at in assessing compliance and concerns about compliance with internal practice policies and processes potentially at the cost of compliance with CLC requirements.

In assessing whether conveyancers are keeping their skills and knowledge up to date, CLC may look at a range of evidence including an individual’s record of CPD. It is also worth noting that the CLC is in the early stages of a piece of work looking relating to Ongoing Competence (previously Continuing Professional Development) and how this is documented and reported to the CLC. This will be launched in the coming months and conveyancers will be given clear information about the new requirements and how to ensure they are fully compliant.

Whilst the CLC recognises that it is necessary for practices to have internal policies and processes in addition to CLC requirements, and that it is important for those to be complied with, as regulated professionals, conveyancers are required to ensure they always meet their regulatory obligations. Individuals who focus on compliance with internal practice requirements at the expense of compliance with CLC requirements may face regulatory action or, in serious cases, regulatory sanction.

To address concerns raised elsewhere in the consultation about inappropriate or unfair blurring of lines between personal and professional conduct, we have added an outcome which focusses on ensuring that personal conduct does not bring the profession into disrepute.

Ethical Principle 5

Collaborate openly and truthfully to comply with regulators, ombudsman, and other legal professionals

You must deliver the following Outcomes:

5.1 You act in accordance with your legal and regulatory responsibilities

5.2 You are open and truthful in all your dealings with the CLC and other regulators, the Legal Ombudsman, HM Land Registry, the Probate Registry, HM Revenue and Customs, Lenders and other legal professionals, suppliers

5.3 You comply promptly and fully with a CLC direction or request

5.4 You comply promptly with any authorisation, permission or condition endorsed on your licence, Recognised Body Certificate or Licensed Body Licence

5.5 You co-operate promptly with any CLC investigation

5.6 You co-operate fully with any Legal Ombudsman investigation and comply promptly with any requests, requirements or findings they issue

5.7 You co-operate fully with other regulators and ombudsmen and comply promptly with any requests, requirements or findings they issue

5.8 As a CLC licensee operating in an entity regulated by another regulator you must comply with that regulator's regulations at all times.

17. Are the Outcomes illustrating this Ethical Principle:

a. clear?

13/16 respondents agreed they are clear

b. sufficient?

1/16 respondents agreed they are sufficient

1/16 respondents said they are not sufficient

18. Do you have any suggestions for amendments to any of the proposed Outcomes?

"5 seems completely repetitive and windy, and could say the same thing in about 25% of the words if properly drafted"

"my previous comment probably applies to 5.2 above and being open and truthful in your dealings with other legal professionals. On occasions we are hounded by chasing emails from firms only considering one side of a transaction and do not take into consideration the fact that their client has a related transaction which is no where near ready so by applying unnecessary pressure we can act in our own clients best interest to not cause delay when in reality we can then wait for months for the other side to be ready which causes unnecessary stress and long hours when juggling work capacity. Again firms are more focussed on the workings of their own business model at the expense of acting in the best interest of their client or being open and honest with other legal professionals creating a more stress in the profession"

"I would merge 5.3 and 5.5 together?"

"Wordy and badly drafted - see comments above"

19. Do you have any suggestions for additional Outcomes for this Ethical Principle?

"Should we consider the Code of Conduct being over any approved Directors/Managers who operate in a CLC regulated practice even if they do not hold a Certificate?"

"I would like to see a specific outcome that means that lawyers interact with other lawyers in a professional and balanced manner"

“Clarity that all Directors/Managers, whether qualified individuals or not, are liable to work to the Code of Conduct”

CLC Response re Questions 17 to 19

Most respondents (88%) agreed that the outcomes are clear or sufficient however some of the comments suggest again that some would like to see CLC requirements extended to individuals who do not hold a CLC licence. We have addressed this point above.

As with the comments made in relation to the outcomes for Ethical Principle 3, that there is some concern expressed about conveyancers potentially prioritising compliance with practice policies and procedures rather than CLC requirements, and again, some concern about how conveyancers engage with other legal professionals.

As noted above, it is a condition of holding a CLC licence that all CLC licensed conveyancers ensure they meet their regulatory obligations and balance their regulatory obligations and compliance with internal practice policies or procedures appropriately.

Through the introduction of changes to Ethical Principle 3 and the related outcomes, we have sought to place emphasis on ensuring good faith in dealings with all parties that a conveyancer may engage with in the course of their practice.

Ethical Principle 6

Promote and support equality, diversity and inclusion in practice, service delivery and dealings with clients.

You must deliver the following Outcomes:

6.1 The service is accessible and responsive to the needs of individual Clients, including those who are vulnerable [1]

6.2 No-one - Client, employee, colleague, job applicant, trainee or other party - you deal with feels discriminated [2] against (whether directly or indirectly), victimised or harassed

6.3 You promote and support diversity and inclusion in management and legal service delivery

[1] A Client may be vulnerable because of a range of characteristics, including (but not limited to): basic skills: literacy and numeracy; complexity and confusion: difficulty of accessing and understanding large amounts of information; disability or other impairment; mental health issues; distress or sudden change in circumstances e.g. bereavement, divorce, illness or loss of employment; low income; age; caring responsibilities; limited knowledge of, or limited skills in, use of English; balance of power: lack of competition and or choice; or inexperience or lack of knowledge of a particular subject. Vulnerability can only be assessed on a case-by-case basis.

[2] On the grounds of age, disability, gender reassignment, marital and civil partnership status, pregnancy and maternity, race, religion or faith, sex or sexual orientation.

20. Are the Outcomes illustrating this Ethical Principle:

a. clear?

12/16 respondents agreed they are clear

b. sufficient?

1/16 respondents agreed they are sufficient

2/16 respondents said they are not sufficient

21. Do you have any suggestions for amendments to any of the proposed Outcomes?

“6.3 You promote ... diversity ... in ... legal service delivery; is impossible and unreasonable - would such promotion require sending out an LBGT+ brochure on completion?”

“With respect to 6.2 - should it be "is" discriminated against rather than "feels" discriminated against? Whilst we would take it very seriously if anyone did feel this way and we actively have policies and procedures to prevent it, this would suggest if someone felt discriminated/victimised/harassed - but this was unfounded - it would still be a breach of the Code.”

“Should *2 also include paternity not just maternity? More and more are taking the shared leave option” .”

“6.3 - I don't understand how I can agree to promote such values. I neither promote or support such statements. What a good lawyer should do is to promote and support access and service to all.”

“6.3 is absurd - see comments above”

“In the consultation paper dated August 2022, the Ethical principle given is shorter than that given above, being: "Promote and support equality, diversity and inclusion in practice and service delivery" Which is correct?”

“Should *2 also include paternity not just maternity? More and more are taking the parental leave option.”

22. Do you have any suggestions for additional Outcomes for this Ethical Principle?

“Should this principle also extend to other Conveyancers etc in our dealings with them?”

“The principle also extend to other Conveyancers etc in our dealings with them”

CLC Response re Questions 20 to 22

Most respondents (88%) agreed that the outcomes are clear or sufficient with only 2 saying they are not sufficient. Some comments suggest that there may be a lack of understanding of the obligations that businesses and individuals who are delivering a service to the public, have under existing Equality legislation.

Under the Equality Act 2010 businesses and individuals who are providing a service such as conveyancing or other legal services to the public, or a section of the public, whether paid or unpaid, are required to ensure they do not unlawfully discriminate against anyone in the course of delivering those services. Ethical Principle 6 is therefore not seeking to impose additional or more burdensome

obligations on CLC regulated practices or individuals, but rather it is seeking to reflect existing law and provide guidance on how to ensure compliance with Equality duties (and Ethical Principle 6) within the context of a CLC licensed practice.

Some comments called for guidance to include reference to 'paternity'. It is worth noting that in addition to fathers who have a right to paternity leave, there are range of others who have rights to parental leave (e.g. same sex partners). Rather than outlining all of those circumstances, we have elected to confine the language we use to the protected characteristics as defined in the Equality Act 2010, however, it is of course the case that CLC licensed individuals and businesses must ensure that that internal policies and practice respect the parental rights of all individuals and do not discriminate in any way.

The use of the word 'promote' is not intended to place an obligation on individuals to proactively advertise or promote their services to people with protected characteristics under Equality legislation, but we expect CLC licensed businesses and individuals to model non-discriminatory behaviour by ensuring that services are delivered in a manner that does not discriminate, is inclusive and that where necessary, reasonable adjustments are made so that clients with protected characteristics are able to access their services and are not unlawfully discriminated against in so doing.