

University of Sussex  
Centre for the Study of Corruption

# Submission to the Rule of Law inquiry by the Lords Constitution Committee

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Conflict of Interest declaration: Prof Robert Barrington, the author of this submission, was Deputy Chair of the Taskforce on Business Ethics and the Legal Profession, whose work is cited below.

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# Rule of law inquiry by the Lords Constitution Committee

## Summary

- Lawyers<sup>1</sup> are fundamental to upholding the rule of law, which in turn safeguards the profession, as well as supporting the UK's wider reputation as a fair society that is also a good place to do business
- There is now an active debate within and outside the profession as to whether lawyers are playing this role or have compromised their professional ethics in pursuit of commercial success
- The approach to clients involved with kleptocracy and state capture exemplifies this, and is one of several areas cited in which the legal profession appears at risk of undermining the rule of law
- It is not too late to re-set this - and there are solutions at hand.

## Introduction

In this consultation submission, we particularly want to draw the Committee's attention to the question of the role of lawyers in upholding – or undermining - the rule of law. Our submission is informed by primary research undertaken by our team at the Centre for the Study of Corruption, which has focussed on the role of the UK legal profession (particularly solicitors in England & Wales) in relation to representing overseas clients involved with grand corruption, kleptocracy and state capture.

Our response is particularly relevant to the following questions in the consultation:

1. What threatens the effective operation of the rule of law in the UK?
5. Is there a role for the public in upholding the rule of law and international influence?
6. How important is the rule of law for the UK's economy?
7. What threatens the effective operation of the rule of law globally?

## Lawyers and the Rule of Law

We regard lawyers as being fundamental to upholding the rule of law. This requires legal professionals to act in an ethical manner, and to retain public trust that they are doing so. As outlined in the literature on legal ethics<sup>2</sup> and the SRA's own guidance, legal professionals have an over-riding responsibility to society to act in the public interest. Our view on the

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<sup>1</sup> This submission focuses primarily on Solicitors in England & Wales due in part to the 'cab rank rule' that applies to Barristers.

<sup>2</sup> A full bibliography can be provided on request

public interested is in line with that of Professor Stephen Mayson of UCL, who explores in a recent paper on 'Legal Services Regulation: the meaning of "the public interest"' what it means for the law to be a 'public profession' and how this differs from merely commercial enterprises.<sup>3</sup>

## **The contested role of lawyers**

There is an active debate as to whether the legal profession is fulfilling its duties and responsibilities to upholding the rule of law. Much of this territory is laid out in Prof Richard Moorhead's Hamlyn lectures.<sup>4</sup> He identifies a number of areas – including the 'zealous lawyering' in the Post Office scandal, the use of Non-Disclosure Agreements to silence victims of injustice, the issuing of frivolous SLAPP suits to silence or intimidate critics, and the willingness to represent clients involved with kleptocracy or grand corruption, in which lawyers are exhibiting 'frail professionalism.'

Within the specialist area of kleptocracy and grand corruption, the Centre for the Study of Corruption has concluded that at times lawyers are undermining, rather than upholding, the rule of law. Ironically, they are often deploying arguments on legal ethics to justify their client choices.

Our research<sup>5</sup> has shown that when challenged on such issues, legal professionals defer to a set of standard 'default justifications', for example that they are providing 'access to justice.' However, there have been numerous examples of where this seems to be at odds with their public interest role – for example in representing Yevgeny Progozhin, head of the Wagner Group, after his role leading a brutal mercenary group in Ukraine and elsewhere was well known, in taking a frivolous SLAPP suit against a UK journalist.

A key issue here is that UK-based lawyers sometimes defend their actions as 'upholding the rule of law', but in reality they are stretching the interpretation of this phrase beyond reasonable limits. This, in turn, undermines trust and confidence in the profession.

A number of recent reports and initiatives have started to unpick these arguments. In particular, the Taskforce on Business Ethics and the Legal Profession, composed primarily of senior lawyers, has introduced some important elements to the discussion:<sup>6</sup> a) solicitors are not obliged to take on clients who cannot convincingly prove the origins of their wealth – they have professional discretion, b) there is no right of 'access to justice' in commercial – as opposed to criminal – matters c) good practice in ethics already exists in a number of law

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<sup>3</sup> [https://www.ucl.ac.uk/ethics-law/sites/ethics\\_law/files/irlsr\\_second\\_supplementary\\_report.pdf](https://www.ucl.ac.uk/ethics-law/sites/ethics_law/files/irlsr_second_supplementary_report.pdf)

<sup>4</sup> <https://www.lawgazette.co.uk/commentary-and-opinion/are-solicitors-blinded-by-an-ideology-of-zeal/5121419.article>

<sup>5</sup> <https://www.sussex.ac.uk/webteam/gateway/file.php?name=csc-wp-comments-analysis-jan-2025.pdf&site=405>

<sup>6</sup> <https://www.ibe.org.uk/legal-profession-taskforce.html>

firms and can be more widely adopted, d) professional ethics need to be at the core of the profession to secure its survival and strengthen its key role in society. The Taskforce concludes: 'Firms have a duty to place professional ethics at the centre of their decision-making when considering which clients to represent. Fulfilling this duty will reduce safe havens for the proceeds of corruption, thereby advancing the pursuit of justice. It will also enhance the international reputation of the City of London.'

In other words, which clients lawyers choose to represent, and the manner in which they conduct their cases, have become highly contested territory. The UK's leading legal ethicists, such as Profs Richard Moorhead and Steven Vaughan, have written extensively on this issue.

### **Public trust and the profitability of the profession**

A recent speech by Guy Beringer, KC (Hon)<sup>7</sup> – former Senior partner at Allen & Overy – has highlighted the importance for the profession itself in maintaining a reputation for operating in the public interest and upholding the rule of law. Loss of public trust may be accompanied by loss of the privileged status enjoyed by the profession, to the detriment of both society and the profession: 'That is why one of the key General Principles for the solicitors' profession is the maintenance of public trust. This is not a wholly altruistic principle. If the public begins to lose trust in the profession, they are likely to remove those privileges. I wonder how much time is spent in the corridors of legal power worrying about that possibility? Rather too little, I suspect. Law firm leaders may well say that they are too busy worrying about competitiveness. A fundamental and increasingly public aspect of competitiveness is profitability. But... public trust is underpinning profitability (because of the economic advantages which are granted to a public profession) so that answer just does not really ring true. The point here is that anyone worrying about competitiveness and profitability should also be worrying about public trust. This is the forgotten hierarchy of profitability for a public profession. Public trust is foundational – you cannot simply move straight to profitability.'

### **Areas for further examination**

In a recent letter to the Financial Times,<sup>8</sup> a former Senior Partner of a large City law firm explained that 'Paul Weiss, Skadden Arps and similar firms play a critical role in facilitating commercial activity — whether that is M&A, capital markets or commercial disputes. Their business model is much closer to investment banking than it is to many other law firms.'

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<sup>7</sup> <https://www.ibe.org.uk/static/3594c26f-880a-4e5c-9230ddded2212b4c/Taskforce-Chair-Guy-Beringer-Speech-02-April-2025.pdf>

<sup>8</sup> <https://www.ft.com/content/b3a27bdd-a147-4d7b-a138-6785e2b55068>

The significant expansion of US law firms in the UK may be expected to have a significant effect on the culture and values of the profession as a whole. This dynamic is as yet little understood. However, the Committee may wish to note that US-style lawyering is perceived by many leading legal ethicists, such as Rick Abel of UCLA, as prioritising commercial success over the public interest.

### **What can be done?**

The Taskforce on Business Ethics and the Legal Profession has put forward a number of recommendations for maintaining public trust in the profession.

In this submission, we ask the Committee:

- 1.To acknowledge the key role played by an ethically-based legal profession in upholding the rule of law
- 2.To engage with the profession's regulators, particularly the Legal Services Board, to ensure that this perspective is at the heart of regulatory approaches
- 3.To support the conclusions and recommendations of the Taskforce on Business Ethics and the Legal Profession.