**Questionnaire for civil society and bar associations**

1. **Taking into consideration the guarantees for the functioning of lawyers, contained in principles 16-22 of the** [**Basic Principles on the Role of Lawyers**](https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx)**, please describe the constitutional, legal, administrative and policy measures adopted in your country to enable lawyers to exercise their professional activities in favour of their clients in a free and independent manner**

It is relevant to note the separation of the profession in the UK into solicitors and barristers. The Law Society of England and Wales is the independent professional body which represents solicitors for the jurisdiction of England and Wales (so excluding Scotland and Northern Ireland which have their own professional representative bodies). The focus of this response will therefore be solicitors, although some responses are relevant to both sides of the profession.

The Legal Service Act 2007 created a separation between representation and regulation of the professions (the Law Society and the Solicitors Regulatory Authority - “SRA” -, as well as other regulated professions). The Act also created the Legal Services Board (“LSB”) which oversees approved regulators like the SRA and others, and the Office for Legal Complaints (which is responsible for administering the [Legal Ombudsman](http://www.legalombudsman.org.uk/) scheme). The LSB is independent of both government and the profession. While the LSB is part of the public sector, it operates independently of the government. The LSB is financed by the levy imposed on solicitors and other regulated professions.

1. **What entities and/or mechanisms are in place to prevent and/or punish interferences with the free and independent exercise of the legal profession? Please briefly describe them and specify whether they are independent bodies or if they belong to the administrative structure of the State.**

There are no specifically designed entities and/or mechanisms to prevent and/or punish interferences with the free and independent exercise of the legal profession. In relation to the press, an individual solicitor or law firm would need to make use of press complaints procedures or defamation law. The UK has had a robust criminal justice system which may be relied on in instances such as that described below of an attack on a lawyer for exercising their profession, where the individual was arrested and charged. However, reductions in funding, to all parts of the criminal justice system, including prosecutors, courts and criminal legal aid, have resulted in delays and prolonged periods of those accused on remand, which risks undermining the probity of criminal justice in England and Wales.

1. **Please indicate if there are any legislative, administrative, or institutional barriers that have hindered the work of lawyers and the exercise of the legal profession in your country and describe them.**

Insufficient government resources have been allocated to the justice system, with court closures, lack of investment in infrastructure and legal aid cuts. There is a tension in the move towards online court hearings between the needs of justice and the Government’s wish to secure costs savings. However, the question whether to hold a hearing online is one for the judge in each case, which provides protection against undue focus on cost savings. However, the reluctant approach to the funding of justice delivers a negative message about the government’s attitude towards access to justice, the role of lawyers and the importance of this work. This message is reflected in government statements about lawyers by government ministers, including the Minister for Home Affairs and the Prime Minister.

The gradual erosion of legal aid provision during the past decade, in particular the severe cuts to civil legal aid in the 2012 Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act has hindered the work of lawyers working for disadvantaged people, primarily in the areas of family, housing, immigration, and welfare benefits law. Some firms have closed or reduced staffing (and see further the coronavirus section below). It can be argued that through such measures the Government sends an implicit message about lawyers acting for “unpopular” clients, which is reflected in public statements of the government and reported in the press, as expanded on below. This has had an adverse impact on their ability to act for disadvantaged clients and contributes to negative perceptions by the public and hostility towards these lawyers.

The government has taken a further step by introducing the Nationality and Borders Bill which is currently before parliament and seeks to introduce additional powers for the Immigration Tribunal to fine lawyers for “improper, unreasonable or negligent behaviour”. We have expressed our concerns that this is a very broad formulation which, as a result, could have a chilling effect on the willingness of solicitors to take on difficult cases for fear of risking personal financial liability.

Solicitors are already subject to rigorous regulatory regimes, including from the SRA, LSB, and additional court rules allowing for penalties imposed through costs (wasted costs orders) and the ability of the Immigration Tribunal to refer cases of improper behaviour to the regulator. The Law Society therefore believes that this additional power is unnecessary and would only serve to duplicate existing regimes, creating more complexity. At worst, it risks driving a wedge between solicitors and their clients, by creating a conflict of interest if solicitors are to be held personally liable for costs for reasons outside of their control. Solicitors are fundamentally obliged to act in their clients’ best interests, which may involve adjourning a case due to a change in circumstances which they are not at liberty to disclose.

1. **Please describe the role of the national bar association(s) in protecting lawyers and the free exercise of the legal profession. Is the bar association de jure and de facto independent from the State?**

The Law Society of England and Wales and the Bar Council of England and Wales are the two “national” bar associations of this jurisdiction, which are independent representative bodies of these professions and respected by the profession and have a strong reputation with press and public.

1. **Please provide detailed information on the number of lawyers that have been subject to criminal, administrative or disciplinary proceedings in the last five years for alleged violations of standards of professional conduct. How many of them were found guilty? How many of them were ultimately disbarred?**

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| --- | --- | --- | --- | --- | --- |
| Year | [2016](https://www.solicitorstribunal.org.uk/sites/default/files-sdt/Solicitors%20Disciplinary%20Tribunal%20Annual%20Report%202016_0.pdf)[[1]](#footnote-1) | [2017](https://www.solicitorstribunal.org.uk/sites/default/files-sdt/SDT%20ANNUAL%20REPORT%202017_0.pdf)[[2]](#footnote-2) | [2018](https://www.solicitorstribunal.org.uk/sites/default/files-sdt/ANNUAL%20REPORT%202018.pdf)[[3]](#footnote-3) | [2019](https://www.solicitorstribunal.org.uk/sites/default/files-sdt/SDT%20Annual%20Report%20for%202019_1.pdf)[[4]](#footnote-4) | [2020](https://www.solicitorstribunal.org.uk/sites/default/files-sdt/2020%20ANNUAL%20REPORT_1.pdf)[[5]](#footnote-5) |
| Nr. of applications | 132 | 176 | 139 | 144 | 137 |
| Nr. of people with restrictions on practice | 26 | 24 | 50 | 20 | 23 |
| Nr. of people suspended | 20 | 25 | 21 | 18 | 19 |
| Nr. of people disbarred | 76 | 58 | 80 | 68 | 55 |

It should be noted that the sanctions applied can be higher than the number of applications since there could be multiple sanctions in each case. The number of applications is relatively consistent throughout the five-year period with a high in 2017, when it jumped by a quarter relative to the average number. Sanctions restricting practice doubled in 2018 to 50, more than the following two years combined; this was unusual as the years previous to 2018 treaded the average. The number of suspensions averaged 20 over the 5-year period, with a 25% increase compared individually with each other year seen in 2017. The number of people disbarred waxed and waned from year to year, with a high of 80 in 2018 and a low of 55 in 2020.

1. **Please provide information on any case where lawyers in your country have been subject to intimidation, hindrance, harassment or improper interference, whether from State authorities or non-State actors, for action taken in accordance with their recognized professional duties. Please also describe the measures that State authorities have taken to investigate and bring perpetrators to justice.**

Lawyers in the UK are thankfully not generally subject to intimidation or harassment and are largely free to carry out their duties without fear of hindrance or improper interference. However, there are occasions when they are subject to stigmatization by legislators, government or press, and there has been an increased occurrence of this in recent years. In 2016, in the context of the ‘Brexit’ Court ruling that Parliament should decide whether to trigger Article 50 in relation to the UK’s departure from the EU, the media branded the judges ‘enemies of the people’ and launched personal attacks on them, including disclosing their home addresses. Following a later 2019 case challenging and ultimately nullifying the Prime Minister’s use of the ‘prorogation power’, government and media rhetoric was again very critical of judges and the courts, accusing them of undue ‘judicial activism’ and political motivations. These instances have been the foundation and justification for several subsequent legislative changes and proposed reforms, including constitutional reforms.

The 2019 Conservative Party [manifesto](https://www.conservatives.com/our-plan) pledged to review constitutional issues, including of the system of judicial review whereby individuals can challenge actions of state authorities. It stated this was to ensure judicial review *“is available to protect the rights of the individuals against an overbearing state, while ensuring that it is not abused to conduct politics by another means or to create needless delays.”* The latter half of this justification is again indicative of a wider rhetoric which implies that lawyers, and particularly human rights lawyers, are acting politically when representing their clients. This violates the principle of non-identification of lawyers with their clients and their clients’ causes.

Following a consultation, the Judicial Review and Courts Bill, is currently being debated by the UK parliament. While it does not contain measures that constrain the ability of lawyers to represent clients, it does seek to alter the remedial system in ways that could undermine the effectiveness of judicial review as a means to ensure government accountability and appears to send a message to the judiciary to deter them from their role in holding government to account.

In 2018, the Joint Parliamentary Committee for Human Rights considered the importance of a robustly independent legal profession and threats to legal professionals’ independence in the context of disciplinary action taken again law firms representing Afghan and Iraqi nationals who were suing the Ministry of Defense for mistreatment at the hands of the British military. In their [report](https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/669/66908.htm) the Committee stated, “*It is not appropriate for Ministers, and especially not the Prime Minister, to criticise solicitors who are the subject of ongoing professional disciplinary proceedings in a way which would identify them, for representing claimants against the Government of whom the Government disapproves. Everyone is entitled to representation in court, and it is for the courts to decide on the merits of a given case*”.

The Law Society in its written evidence to this inquiry stated: “We have been very concerned by the rhetoric directed towards the legal profession. The language of blame, division and fear used by some powerful voices towards solicitors and the judiciary was damaging. It potentially undermines the separation of powers and the independence of the legal profession. We publicly challenged these comments and made representations to Government and in the press stating that we will continue to pursue access to justice for those who are weak, vulnerable, or marginalised, even if these are regarded as ‘unpopular’ cases.”

It was also found that the Ministry of Defence had corresponded directly with the SRA on particular cases, giving rise to allegations that it had sought to exert pressure on the SRA for disciplinary measures against lawyers.[[6]](#footnote-6)

Between 2019 and 2021 during the consultative and legislative process for the Overseas Operations (Service Personnel and Veterans) Act, the Law Society expressed its concerns regarding negative rhetoric targeting lawyers in the context of claims brought against the armed services. Using terms such as “[lawfare](https://www.lawgazette.co.uk/news/military-under-threat-from-lawfare/5070805.article)”, “judicialisation of war” and other language that implied that judges, the courts and the rule of law have no place in military matters, we were concerned that this such rhetoric suggested that by representing clients in claims against the military lawyers are acting against the national interest.

In 2016, the then Prime Minister also referred to “Activist left wing human rights lawyers” who “harangue and harass” British armed forces, suggesting such law firms would be shut down.[[7]](#footnote-7)

*Attacks on immigration lawyers*

In September 2020, the Law Society was contacted by one of its member firms to provide assistance following a [physical attack](https://www.thetimes.co.uk/article/knifeman-attacked-duncan-lewis-law-firm-that-had-helped-migrants-cdmhwq7jw) at their offices. During the attack a member of the public, armed with a knife, threatened a receptionist, and made threats to kill a solicitor. The motivation for this was the attacker’s belief that the firm and targeted solicitor were frustrating the removal of immigration deportees. The law firm concerned is one of the largest legal aid immigration law firms in the UK.

Following the attack, the Law Society wrote to the Secretary of State for Home Affairs. The man was [arrested and charged](https://www.theguardian.com/uk-news/2020/oct/23/man-faces-terror-charge-over-alleged-attack-at-immigration-law-firm) with several offences, including preparation of terrorist acts under section 5 of the Terrorism Act 2006. He is due to stand trial in 2022.

This attack occurred within a climate of increasingly hostile rhetoric towards immigration lawyers in particular. Just days before the attack the UK Home Office twitter account had [posted](https://www.bbc.co.uk/news/uk-politics-53937593) a video accusing “activist lawyers” of frustrating immigration deportations. The Law Society condemned this and wrote to the Home Secretary, following which the video was removed. Both the International Bar Association and the International Bar Association’s Human Rights Institute also [condemned](https://www.ibanet.org/article/bb258df4-b878-41b1-b255-0f9690fbfefa) the comments made by the Home Secretary and Prime Minister.

In addition to these specific instances, we have also received reports from law firms who receive hate mail regarding their work representing migrants, sometimes directly addressed or sent to specific lawyers who are known to have been involved in high profile cases. We have also had reports of solicitors being targeted on social media.

As an example, after a successful judicial review of the government’s use of a military barracks to house refugees who have crossed the Channel, a tabloid newspaper published an article accusing the ‘millionaire’ lawyers of profiting from legal aid and publishing intimate personal details about a partner in the law firm which acted for the refugees. These incidents tend to occur when there is a publicised controversial case, often involving immigration.

The use of harmful rhetoric by Government ministers against lawyers, and particularly immigration lawyers, for action taken in accordance with their professional duties is ongoing. For example, following a recent bomb attack at a Liverpool hospital on 14 November 2021, the Home Secretary [linked](https://www.independent.co.uk/news/uk/politics/liverpool-bombing-priti-patel-asylum-b1959104.html) the attacker’s status as an asylum seeker to the role of lawyers. She made comments stating that the attack showed why asylum reform is needed, insinuating that lawyers acting for immigration claimants abuse the legal system for profit and conflating lawyers with the beliefs of their clients. The comments in question, reported in the media, were:

*“A whole sort of professional legal services industry has based itself on rights of appeal, going to the courts day-in day-out at the expense of the taxpayers through legal aid … there’s a whole industry that thinks it’s right to defend these individuals that cause the most appalling crimes against British citizens, devastating their lives, blighting communities — and that is completely wrong.”*

We remain concerned that there is an ongoing trend of ascribing bad faith motives to lawyers who are carrying out their professional duties. Such actions damage the reputation of the legal profession and public trust in lawyers, contributing to a climate in which it becomes more difficult for lawyers to carry out their duties, where attacks on lawyers by members of the public seem justified or justifiable, and this ultimately undermines the rule of law.

1. **What activities does your organization carry out to promote the independence of the legal profession? Do you co-ordinate with other organizations with similar functions in other countries or regions? Are you part of a network for this purpose? Please give examples.**

The Law Society promotes the independence of the legal profession through its Lawyers at Risk programme, one of its International Rule of Law programmes, which supports lawyers (and sometimes judges and prosecutors) who are being prevented from carrying out their professional duties, for example through threats, arrest, detention, prosecution, unfair disciplinary measures, disappearance, ill treatment and enforced disappearance. We send letters to State authorities on particular cases, but also address the structural causes that give rise to risk through UPR reports, Amicus briefs, expert evidence to international and national bodies, trial observations, and advocacy before British All-Party Parliamentary Groups, the Commonwealth Secretariat, the Foreign, Commonwealth & Development Office, the Council of Europe, United Nations and regional human rights bodies. The Law Society often coordinates with Bars and Law Societies in other countries, as well as local and international NGOs. The Law Society is a member of umbrella organisations of lawyers, such as CCBE, IBA, UIA, LAWASIA and others.

1. **To what extent has the legislation and/or measures adopted in your country because of the Covid-19 pandemic, affected the exercise of the independence of the legal profession or security of lawyers. Please explain.**

The Coronavirus Act 2020 has hindered lawyers’ ability to exercise their profession because of the increase of court backlogs and increase of unfinished caseloads, as well as a decrease in Crown Court legal aid payments (28%). [Overall](https://www.chambersstudent.co.uk/where-to-start/trends-affecting-the-legal-profession), the annual legal aid expenditure has fallen by 38% in real terms, leading to a closure of half of the non-profit legal advice services and law centres since 2013. In a report by the Bar council, 38% of criminal barristers have said they have doubts about whether they will still be practicing by the end of 2021. Uncertainty over career stability and overwork has had an impact on the ability to exercise the legal profession, as well as on financial and professional security.

1. **Please describe the measures and policies you would suggest to better protect and guarantee the free exercise of the legal profession.**

We would support the recommendation of the Joint Committee on Human Rights tenth report of session 2017–19: Enforcing Human Rights. The Government must create a positive environment in which lawyers are not impeded from bringing human rights cases against the Government. Lawyers should not be criticized because they represent ‘unpopular’ clients in human rights claims. Where there are concerns about lawyers’ conduct, the proper disciplinary channels should be used, and the Government should not seek to abuse its position to influence, intimidate or interfere in that process.

We would recommend in the UK, as we recommend in relation to foreign jurisdictions, that lawyers are not stigmatised by government, law makers, or media for the exercise of their profession and that they not be identified with their clients and their clients’ causes.

In the context of an increasingly hostile environment towards lawyers, the Law Society supports the introduction of the European Convention on the Profession of Lawyer as a binding Convention with a feasible and effective implementation mechanism.

1. SDT Annual Report 2016, page 16 [↑](#footnote-ref-1)
2. SDT Annual Report 2017, page 22 [↑](#footnote-ref-2)
3. SDT Annual Report 2018, page 21 [↑](#footnote-ref-3)
4. SDT Annual Report 2019, page 39 [↑](#footnote-ref-4)
5. SDT Annual Report 2020, page 37 [↑](#footnote-ref-5)
6. <https://www.theguardian.com/law/2017/jul/22/iraq-war-crimes-ministry-of-defence> [↑](#footnote-ref-6)
7. <https://www.independent.co.uk/news/uk/politics/theresa-may-tory-conference-speech-applause-attacks-activist-left-wing-human-rights-lawyers-a7346216.html> [↑](#footnote-ref-7)