**Questionnaire from the Special Rapporteur on the independence of judges and lawyers**

Protection of lawyers in the free and independent exercise of the legal profession.

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.un.org/ruleoflaw/files/UNBasicPrinciplesontheRoleofLawyers.pdf)**, 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.**

The framework for the regulation of legal services in England and Wales is set out in the Legal Services Act 2007 under which there is an independent oversight regulator of legal services, the Legal Services Board. Independent regulators are responsible for the regulation of legal services, rather than the Government. The Lord Chancellor – a minister of the executive responsible for legal services policy – also has a statutory responsibility to respect the rule of law and defend the independence of the judiciary.

The ability of lawyers to advise their clients in a free and independent manner is further protected by the principle of Legal Professional Privilege (LPP). This prevents certain types of confidential communication between a lawyer and their client from being disclosed, even in court. LPP comprises of legal advice privilege, which protects confidential communication, written or oral, for the purpose of seeking and receiving legal advice, between a lawyer and client; and litigation privilege, which protects confidential communication, written or oral, between a lawyer, client and third party, where the primary purpose is obtaining legal advice, evidence or information for litigation.

1. **Please describe the entities and/or mechanisms that are in place to prevent and/or punish interferences with the free and independent exercise of the legal profession, whatever the source of interference.**

The regulation of legal professionals is conducted by independent regulators, who have the power to impose sanctions under disciplinary mechanisms if they determine that there has been a breach of the rules or regulatory requirements. Decisions made through disciplinary mechanisms are subject to a right of appeal to the High Court, which means individuals can seek to challenge a decision made by a regulator. The UK courts and the judiciary are independent of the regulators and Government.

The rule of law is fundamental to the United Kingdom and the government is committed to upholding it and respecting the independence of the legal sector. Furthermore, Parliament is sovereign in the UK and will scrutinise and hold to account the government. Any attempts by the State to interfere with the independence of the legal profession would therefore be subject to challenge and scrutiny by both the courts and also Parliament.

1. **Please describe the role of the national bar associations(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?**

Under the Legal Services Act 2007, the legal profession in England and Wales, together with their regulators, operate independently of Government. The Legal Services Board (LSB) is the independent oversight regulator of the sector and oversees a number of legal services regulators who are responsible for the direct regulation of the various legal professions in England and Wales. The regulators have a responsibility to the public to ensure that those they regulate meet high standards and they have the power to act when risks are identified. While the Lord Chancellor is ultimately responsible for deciding on any changes to the regulatory framework recommended by the LSB, Parliamentary approval is required to implement changes via amendments to the 2007 Act or secondary legislation. The Government cannot intervene in decisions taken by the regulators within their existing statutory remit.

Similarly, representative bodies for legal professionals are independent of Government. Their role is to represent the interests of their members, including on matters of Government policy. The Government has no influence over the actions of the representative bodies.

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?**

Independent regulators are responsible for the regulation of legal professionals in England and Wales. As regards the three main groups of legal professionals, namely solicitors, barristers and legal executives, details of proceedings carried out by their regulators, respectively the Solicitors Regulation Authority, Bar Standards Board and CILEX Regulation, are provided at Annex A.

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.**

Should lawyers experience intimidation and/or harassment, this is a matter for the police, or for the relevant independent regulator for matters of interference or hindrance.

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.**

Legislation and measures passed as a result of the Covid-19 pandemic have had no impact on the independence of the legal profession, which is defined in statute under the Legal Services Act 2007.

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

The independence of the legal profession is a vital constitutional principle of the rule of law and is already guaranteed in statute. We would encourage all States to ensure that the protection of the legal profession is made universal.

**Annex A**

**Solicitors (information supplied by the Solicitors Regulation Authority)**

**Cases with SRA sanctions**

Individual cases

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **2015/16** | **2016/17** | **2017/18** | **2018/19** | **2019/20** |   |
| Total number of files | 394 | 413 | 271 | 324 | 274 |   |
|   |   |   |   |   |   |   |
| Letters of advice | 236 | 223 | 132 | 155 | 73 |   |
| Rebukes | 84 | 102 | 68 | 68 | 51 |   |
| Fines | 61 | 63 | 46 | 36 | 49 |   |
| Section 43 orders \* | 45 | 45 | 44 | 56 | 67 |   |
| Conditions placed on practising certificates | 22 | 24 | 21 | 10 | 16 |   |
| Findings and warnings | 19 | 33 | 10 | 14 | 19 |   |
| Section 47 (2) (g) \*\* | 1 | 3 | 5 | 4 | 3 |  |

\* In the case of a non-solicitor who has, for example, either been convicted of a criminal offence or been involved in a breach of the SRA’s Standards and Regulations in connection with their involvement in a legal practice, this regulatory decision can be taken to control where and how they work. It means that if a firm regulated by the SRA wishes to employ or remunerate the individual, they must first get the SRA’s written permission.

\*\* In the case of a former solicitor whose name has been removed from the roll, a direction prohibiting the restoration of their name to the roll except by order of the Solicitors Disciplinary Tribunal. Again, it means that if a firm regulated by the SRA wishes to employ or remunerate the individual, they must first get the SRA’s written permission.

**Cases heard at the Solicitors Disciplinary Tribunal**

Individual outcomes

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **2015/16** | **2016/17** | **2017/18** | **2018/19** | **2019/20** |
| Total number of cases | 129 | 117 | 134 | 125 | 112 |
|   |   |   |   |   |   |
| Fines | 52 | 57 | 81 | 53 | 38 |
| Strike offs | 75 | 59 | 78 | 71 | 57 |
| Suspensions | 17 | 18 | 26 | 12 | 18 |
| Other decisions | 14 | 19 | 13 | 10 | 9 |
| No orders | 3 | 7 | 7 | 3 | 10 |

Notes:

* Figures for each period cover November to October of the following year.

**Barristers (information supplied by the Bar Standards Board)**

# Barristers subject to investigations closed in the last five years

From 1 January 2016 to 31 December 2020

All numbers represent the number of distinct barristers. A single barrister may be the subject of multiple independent investigations, and so may be represented in more than one year/more than one section of the tables.

## **Investigations closed**

Including cases closed at investigation stage, and those closed after disciplinary action

Note: figures in […] show how many of those cases related to criminal charges and convictions.

|  |  |  |  |
| --- | --- | --- | --- |
| **Year** | **Closed after investigation** | **Closed after being referred to disciplinary action** | **Total** |
| 2016 | 119 [3] | 56 [20] | 168 [23] |
| 2017 | 134 [2] | 44 [15] | 176 [17] |
| 2018 | 135 [2] | 34 [9] | 166 [11] |
| 2019 | 89 [3] | 41 [14] | 128 [17] |
| 2020 | 86 [1] | 33 [10] | 117 [11] |
| **Total** | **526 [11]** | **191 [64]** | **686 [75]** |

## **Barristers receiving administrative sanctions**

Administrative sanctions can be in the form of a warning and/or a financial penalty and do not constitute a disciplinary finding. They can be imposed where the BSB is satisfied on the balance of probabilities that the breach has occurred, and the BSB considers that to impose an administrative sanction is proportionate and sufficient in the public interest.

PCC - Professional Conduct Committee

IDP - Independent Decision-Making Panel. Each IDP for enforcement and disciplinary decisions is made up of five members of the Independent Decision-Making Board (IDB). Panels always include both barrister and non-legally qualified members and always include more non-legally qualified members than barristers. The IDB replaced the Professional Conduct Committee in October 2019.

For cases closed at investigation stage.

Note. figures in […] show how many of those cases related to criminal charges and convictions.

|  |  |  |
| --- | --- | --- |
| **Year** | **Decision Maker** | **Total** |
| **Staff** | **PCC** | **IDP** |
| 2016 | 35 [0] | 8 [2] | 0 [0] | 43 [2] |
| 2017 | 56 [1] | 5 [0] | 0 [0] | 61 [1] |
| 2018 | 57 [1] | 4 [0] | 0 [0] | 61 [1] |
| 2019 | 32 [1] | 4 [0] | 4 [0] | 40 [1] |
| 2020 | 19 [0] | 0 [0] | 8 [0] | 27 [0] |
| **Total** | **195 [3]** | **20 [2]** | **12 [0]** | **228 [5]** |

## **Barristers who were the subject of Proved cases following Disciplinary Proceedings**

DBC - Determination by Consent procedure. DBC is a consensual process reserved for cases where there is no dispute of facts and the nature of the conduct would not warrant a greater sanction than a fine. DBC cases are decided by IDPs on the papers but findings of professional misconduct under the process have the same status as findings by Disciplinary Tribunals.

DT - Disciplinary Tribunal

For cases closed after disciplinary action concluded

Note. figures in […] show how many of those cases related to criminal charges and convictions.

|  |  |  |
| --- | --- | --- |
| **Year** | **Decision Maker** | **Total** |
| **DBC** | **DT** |
| 2016 | 9 [4] | 36 [16] | 45 [20] |
| 2017 | 6 [6] | 29 [9] | 35 [15] |
| 2018 | 11 [7] | 18 [2] | 29 [9] |
| 2019 | 6 [5] | 28 [7] | 34 [12] |
| 2020 | 3 [3] | 22 [7] | 25 [10] |
| **Total** | **33 [24]** | **126 [40]** | **155 [62]** |

## **Barristers who were disbarred**

All cases in this section were closed following a Disciplinary Tribunal.

For cases closed after disciplinary action concluded

Note: figures in […] show how many of those cases related to criminal charges and convictions.

|  |  |
| --- | --- |
| **Year** | **Number of barristers** |
| 2016 | 16 [8] |
| 2017 | 9 [5] |
| 2018 | 3 [1] |
| 2019 | 10 [5] |
| 2020 | 4 [0] |
| **Total** | **42 [19]** |

**Legal Executives (information supplied by CILEx Regulation)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Year | Total no of misconduct allegations received | No. of misconduct allegations received for authorised persons | No of members excluded | No. of authorised persons excluded |
| 2017 | 45 | 30 | 7 | 1 |
| 2018 | 68 | 31 | 2 | 1 |
| 2019 | 66 | 41 | 7 | 0 |
| 2020 | 66 | 24 | 11 | 7 |
| 2021 | 53 | 27 | 4 | 1 |

Notes:

* CILEX Regulation regulate all CILEX members, not just authorised persons, which is reflected in the statistics.
* The number of exclusions in any one year does not necessarily relate to the year in which the complaint was received.
* A member would have been subject to disciplinary proceedings in the last 5 years even if the complaint was received before 2017.
* Some of the misconduct cases from 2019 are still ongoing.