**Mandate of the Special Rapporteur on the Independence of Judges and Lawyers
Questionnaire on the Role, Composition and Functions of Bar Associations**

1. *Please provide information on the way the legal profession is organised and regulated in your country. What are the legal bases for its establishment (e.g. constitutional provisions; ordinary law or other)? Please also indicate the main legal provisions protecting the right of lawyers to freely join or create a local, national or international association, and mention the existing associations.*

This response is made on behalf of the Law Society of England and Wales (henceforth ‘the Law Society’) which represents, promotes and supports members of the solicitors’ profession in England and Wales. Separate bodies are responsible for solicitors elsewhere in the United Kingdom (Scotland and Northern Ireland) and for members of the other legal professions in the United Kingdom. The Law Society is a chartered corporation composed of all solicitors on the roll, and it elects its governing body, the Council from the profession at large. Council itself elects the three ‘office holders’, namely the President (who chairs Council), Vice President, and Deputy Vice President.

The Law Society was founded by Royal Charter in 1845 (the Charter has been subsequently amended, most recently in 1954).

Under the Legal Services Act 2007 (‘the Act’) the Law Society is the ‘approved regulator’ for the solicitors’ profession in England and Wales. However, all front-line regulatory activity is carried out by the Solicitors Regulation Authority (SRA), of whom separate enquiry should be made if more detail is required. The Board of the SRA formally reports to the Law Society’s Council, but Internal Governance Rules made under the Act protect the ‘principle of regulatory independence’ and mean that the Law Society has no role in any regulatory decision taken by the SRA or in its administrative operations. The Law Society is also obliged to provide the SRA with a level of resources that enable it to discharge its functions.

All solicitors are automatically on the roll and therefore members of the Law Society (unless they have positively opted to withdraw, which very few do). There are also ‘local law societies’ in some (not all) areas of the country. These have no formal link to the Law Society, but the Law Society seeks to work collaboratively with local law societies where possible. Solicitors may also join any international organisation for which they are eligible. It is worth noting that the Law Society, although representing, promoting and supporting solicitors, does not, and may not, act as a ‘trade union’.

1. *Does a professional association of lawyers play a role in the regulation of the profession? If so, please provide information on:*
2. *the exact denomination of the body;*
3. *the legal basis for its establishment (e.g. constitutional provisions; ordinary law or other);*
4. *whether the association has been established as an ‘independent’ and self-governing association;*
5. *the composition and appointment process of the executive body of the association.*

Some of this information has already been provided above. The Law Society, established by Royal Charter and composing all members of the profession, regulates solicitors in England and Wales as ‘approved regulator’ but delegates all actual regulatory activity to the SRA. The existence and functions of the SRA are set out in the Act, and they are also embodied in the Law Society’s constitutional documents, in particular in the Law Society’s General Regulations which govern, among other things, the membership and terms of reference of the Law Society’s boards and committees.

The SRA operates independently of the Law Society. The Law Society’s Council consists of 100 seats, 61 of which are filled by election among solicitors in geographical constituencies across England and Wales, and the remainder of which are filled by election or nomination from solicitors sharing a demographic characteristic (eg ethnic minority solicitors) or practice area or type (eg solicitor sole practitioners, immigration law solicitors). The SRA Board is appointed under a protocol agreed between the Law Society and the SRA. The Board must have between 11 and 15 members, and must always have at least one more lay member than solicitor members; there must be a lay Chair. Appointments are made, following an external recruitment process, by a panel comprising a member of the SRA Board, a member of the Law Society Council, and one independent member.

1. *Please provide information on the relationship between the association of lawyers and the Executive, Legislative and Judiciary powers. In particular, please provide information on the role of the Ministry of Justice and/or the judiciary in relation to the establishment and functioning of this association.*

There is no formal relationship. The Law Society is independent of government (including the executive civil service) and of the judiciary. However, there are good working relationships between all parties, including active contact as part of the Law Society’s role in representing solicitors including lobbying Government ministers and civil servants.

1. *Please provide information on the role that professional associations of lawyers play with regard to:*
2. *the admission process to the legal profession and the licensing of lawyers;*
3. *the conduct of disciplinary proceedings against lawyers;*
4. *the provision of legal aid;*
5. *the protection of individual lawyers from any form of intimidation, hindrance, harassment or improper interference in the exercise of their functions;*
6. *the development and implementation of legislation concerning the free exercise of the legal profession and the administration of justice.*

4(a) – these matters are dealt with by the SRA (see above)

4(b) – these matters are dealt with by the SRA (see above) and the independent Solicitors Disciplinary Tribunal.

4(c) – Legal Aid is a matter for the government’s Legal Aid Agency: <https://www.gov.uk/government/organisations/legal-aid-agency>

4(d) – Respect for the rule of law and its principles is of utmost importance to safeguard the independence of the judiciary and the legal profession. This is fundamental for establishing a reliable and credible judicial system that will have the required legitimacy for its effective operation. Lawyers are perfectly positioned to play a vital role in upholding the rule of law and human rights. They help in establishing and maintaining democracies, and in building prosperous economies due to their skills and influential position in society.

The [Lawyers at Risk programme](http://communities.lawsociety.org.uk/international/international-rule-of-law/lawyers-at-risk/) (part of the Law Society’s [International Rule of Law programmes](http://communities.lawsociety.org.uk/international/international-rule-of-law/)) supports lawyers who are hindered in carrying out their professional duties through threats, intimidation, disciplinary measures, prosecution in politically motivated cases, disappearance or murder. This support is provided through intervention letters sent to State authorities regarding specific cases of lawyers under threat, trial observations, appeals to UN Special Rapporteurs. The programme also aims to address the structural circumstances that give rise to such threats. In accordance with the UN Basic Principles on the Role of Lawyers, the Law Society’s Lawyers at Risk programme also supports human rights defenders who exercise the functions of a lawyer and legal assistants, as well as those lawyers who have lost their license to practise, have been disbarred, or have not been admitted to the Bar for reasons other than proven misconduct.

4(e) - The Law Society works closely with the government to ensure that solicitors in England and Wales can exercise their functions free from intimidation, hindrance, harassment or improper interference.

1. *Is membership in the professional association of lawyers mandatory to practice law in your country? In case membership is a prerequisite to practice law, please provide detailed information on the measures the State has taken to ensure access to justice in cases where there is a shortage of lawyers in the whole country or part of its territory.*

Membership of the Law Society, and payment of the Practicing Certificate fee, is compulsory in order to practice law in England and Wales.

There is a general concern about access to justice following the substantial cuts in scope for civil legal aid arising from the implementation of the Legal Advice Sentencing and Punishment of Offenders Act in April 2013. In addition to the scope cuts, the Law Society is concerned about the overall sustainability legal aid provision as there have been no fee increases since the early 1990s and some areas of civil and crime work have actually suffered fee cuts. There is no specific commitment by the State to address these issues, other than to consider the impact of the scope cuts and levels of remuneration in the current Mistry of Justice review of LASPO.

The Law Society has identified specific problems relating to the following areas of law:

**Crime**

The Law Society recently launched a campaign highlighting a looming crisis in the numbers of criminal duty solicitors, including illustrating the issue with a ‘heat map’ of England and Wales, showing the numbers of criminal solicitors over 50 and below 35. The campaign has so far received very good coverage on the BBC News, the Guardian and numerous other print media.

The ‘Heat Map’ can be accessed here: <https://the-law-society.carto.com/builder/85de6858-77ba-4568-b225-41ffeed3b6df/embed>

The aim is to raise the awareness of the public; Members of Parliament and the Government about his issue, and for the Government to engage with The Law Society in undertaking a review of the sustainability of criminal legal aid.

**Family Law**

In some areas of England and Wales, there is simply not enough advice and support available for those who need it. In addition, for some areas still in scope, such as domestic violence, process-driven conditions have been put in place which make it hard, and sometimes impossible, for individuals to access legal advice. Rights of Women undertook research with Women’s Aid and Welsh Women’s Aid which demonstrates the problems for women affected by domestic violence have in accessing legal aid:

* 71% of respondents said it was difficult (37%) or very difficult (35%) to find a legal aid solicitor in their area
* 34% of respondents were having to travel between 6 and 15 miles to find a legal aid solicitor
* 23% had to travel more than 15 miles

For some areas still in scope, initial free legal advice is now only available by telephone through the government’s Mandatory Telephone Gateway. However, this has been underused, and it has been argued by many organisations that this has created a barrier to face-to-face advice for clients for whom telephone advice provision is not appropriate. Victims of serious domestic abuse, for example, are unlikely to enjoy unfettered access to the phone.

**Housing Law**

Data from the Legal Aid Agency shows a number of areas of the country have little or no provision of legal aid advice – otherwise known as legal aid deserts. A desert is an area where advice is not available through legal aid or where there is only one provider locally. This means that people will face difficulty, and might be prevented from accessing the advice they need.

Government data provided to the Law Society shows that large areas of the country have little or no provision of housing legal aid advice. Almost a third of the legal aid areas in England and Wales have one or no local legal aid housing advice providers.

In addition to housing advice deserts, data indicates that there are an increasing number of advice deserts in other areas of law. A report by the National Audit Office issued in November 2014 found that in 2013- 14 there were 14 local authorities where no legal aid funded work was started. Legal aid providers in a further 39 local authorities started fewer than 49 pieces of legal aid work per 100,000 people,