Speech by Guy Beringer, CBE, KC (Hon)
2nd April 2025
at the Launch of the Report of
The Taskforce on Business Ethics and the Legal Profession
at Stewart's

Good evening. I am Guy Beringer and I chaired the Taskforce which produced the Report which we have launched today.

I will say a few words in a moment about the recommendations in the Report and the general themes which emerge from it. Before doing that, I would like to thank all the members of the Taskforce and the Steering Group which sat behind it. The report you have is the product of a great deal of voluntary effort on the part of all involved and I hope they feel it was enjoyable and worthwhile. I should particularly commend Robert Barrington, Michael Bennett and Patricia Robertson for the significant and generous roles they all played in bringing the Report into being.

I must also record our gratitude to Georgia Garrod of Sussex University who instilled some order into our proceedings.

I must also mention the great contribution of the IBE who have provided a platform for our work and who, I hope, will provide a ready-made forum for the profession to use in the future. In particular, I must thank Lauren Branston, from whom you have just heard and Rachael Saunders for their help.

Finally, we are delighted to record our thanks to the Joffe Trust who have funded our work and without whom it would not have been possible.

Let me start with our recommendations. Our principal recommendations for law firms relate to Governance, Transparency and the Reputation of the profession as a whole.

We also have recommendations for regulators, professional bodies, civil society, parliamentarians, academia and Government.

I will leave you to read these at leisure, but you will see they are built around a model six step gating process for the acceptance of new clients or matters. At the heart of this is a Legitimate provenance of Wealth Test where a firm needs to be satisfied that its client's wealth is untainted by kleptocracy or grand corruption. This is not a justiciable test which can simply be discharged by due diligence and the absence of illegality. It requires a firm to feel confident that it can defend its decision under public scrutiny. Some firms already subject themselves to this test. We believe that all firms should adopt it or else justify its absence publicly. This adopts the 'comply or explain' approach which is common to the UK's corporate governance codes.

This particular proposal illustrates the general theme of the Report which is the need for a new approach to the ethical challenges faced by law firms which is designed to increase public trust in the profession as a whole. Many law firms are big businesses which have legitimate commercial goals in terms of financial returns for their staff and partners. We note that the sustained financial success of the sector is, in part, built on the barriers to entry which have been erected in terms of the requirements for professional qualifications and the monopoly granted over reserved activities.

It is true that many parts of a law firm's activities are not reserved activities, but it remains the case that law firms have derived significant competitive advantage from these protections which essentially provide barriers to entry to other potential competitors. But there is a contract with the public in return for these advantages which now needs to be taken out of the bottom drawer and re-read. Legal services is a public profession which owes duties to the public. If the public come to believe that these duties are not being fulfilled, it will begin to dismantle the advantages which were given in return. This is the backdrop to the recommendations in our report.

One reason for apparent public unease is explained by the so-called gap which is left by existing Anti-Money Laundering rules and laws. There is a consensus that large volumes of tainted funds flow into the world's financial centres each year. London is considered to be a prime example of this. We explain in the Report that, in the case of funds of kleptocratic origin, there is an explanation for this. Where you have state capture (in other words, where a ruling elite control the various organs of the state and exploit them), two things happen. The first is that wealth may not derive from technically criminal channels. Where the apparatus of the state has been captured by a ruling elite, there is no need for straightforward theft. Licensing, privatisation, public/private partnerships and a host of other techniques will serve just as well. The requirement for a criminal offence may not therefore be met.

The second feature of state capture is the difficulty in obtaining reliable evidence of any wrongdoing if it has occurred. Systems which are founded on the adequacy of due diligence will be easily defeated by the absence of provable illegality where state capture has occurred. That is why we have advocated the Legitimate Provenance of Wealth Test that I have already referred to. As I have explained, this is a non-justiciable test which relies on judgment which is publicly credible and has no safe haven in the absence of illegality.

This raises the question of why should law firms have a particular responsibility in this area? There are many other actors who play significant roles.

The answer lies in the public interest. I recommend that anyone who wants to understand this properly should read Professor Stephen Mayson's paper on the topic. It is not a simple proposition, but Stephen essentially argues that the public interest is a foundational concept for the profession and it is part of the unwritten contract for a public profession that I referred to earlier. The sustained economic success of the commercial end of the profession rests on the public being happy to allow it to continue to enjoy the barriers to competition that I mentioned.

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, as I have just explained, 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.

That takes me to another theme of the Report. Is the best response to a possible loss of public confidence a regulatory and legislative one? We say that that the best course for the profession is to lead the change itself and to pre-empt the regulatory and legislative response. Let me try to explain what lies behind this conclusion.

The underlying profession-wide principles here are complex and they are contested. Take the public interest. There is no single public interest. There will always be a range of public interests. They have to be balanced and compared in order to see which should prevail and how. You may say that there is a public interest in having a working civil dispute resolution system in which all are represented. You may equally say that there is a public interest in ensuring that oligarchs should not be able to use that system to protect their wealth. Which element of the public interest should prevail and how? Stephen Mayson takes 70 pages to consider the public interest as a foundation principle for the profession so it does not lend itself to a set of black letter rules.

Then take public confidence in the profession, another core principle. This will regularly alter. Something that was acceptable 10 years ago is likely to be unacceptable now. It is also notoriously difficult to measure. Not a great candidate for regulations or laws, then. Take the rule of law, another core principle. Even Lord Bingham could not get that down to close to 70 pages.

These are the foundational precepts of the profession. They have been so for many years. They are contested concepts, complex concepts and ever-changing concepts. Why would a regulator or a legislator be able to reduce them to a list of rules by which businesses must be run on a daily basis?

Our point is that the profession must lead thinking on these issues in a way which commands public confidence. That will mean engaging with civil society. If this is not done, the only alternative will be more regulation and more law. This is likely to lack the nuance and the adaptability which will be required. It may be the end of the public profession - something of

an own goal, you might think. I fear I may be sounding a bit presbyterian here so let me end on a more upbeat note.

One of the pleasures of working on this Report was the breadth of background and views of its Members who covered commercial lawyering, civil society academic endeavour and general business experience. We found a surprising degree of consensus on fundamental issues and a desire to ensure that the notion of a public profession could be made to work in the modern business world.

We recommend that the profession itself should adopt a more proactive and transparent approach which involves all those who are interested in it, whether they be practitioners, academics or civil society campaigners. This will make transparency, public accountability and public trust a more realistic prospect. We cannot ignore the fact that current trends internationally may encourage law firms to cultivate their privacy and keep a lower public profile. Such a reaction would be understandable - but I think it would be a mistake.

The principal reason why the public might lose trust in the profession would be the absence of transparency and constructive dialogue between it and wider society. Our deliberations have shown that it is possible to have a fruitful and constructive dialogue between the profession and civil society.

We believe our recommendations are good for the profession, good for the reputation of the City of London and ultimately good for the UK's growth agenda - providing a haven of the rule of law, governed by professionals with high integrity, in the midst of a turbulent world.

I look forward, therefore, to an era where the Institute of Business Ethics finds willing partners like the City of London Law Society to build together a thriving chapter on professional ethics which provides strategic support and guidance to law firms and their leaders, with civil society a frequent guest at the table. I hope this will lead to a consensus as to where the public interest lies in matters relating to kleptocracy, state capture and grand corruption (as well as wider issues) and how best to support firms navigating such unruly ethical waters.

I should stop now and give you a chance to put some questions to any of us.

Before you do that, I would like to introduce Julian Chamberlayne, the Risk and Funding Partner here at Stewart's. I must, however, first thank him, his partners and staff for so generously hosting us here today for this event. Law firms do need to make quite complex calculations these days about what events they should, or should not host and it is to Julian's great credit that he very swiftly and willingly agreed to have us here this evening. I know he will have some interesting things to say about Stewart's own approach to the issues covered by the Report and their plans for developing their thinking in the future.

Guy Beringer
2nd April 2025