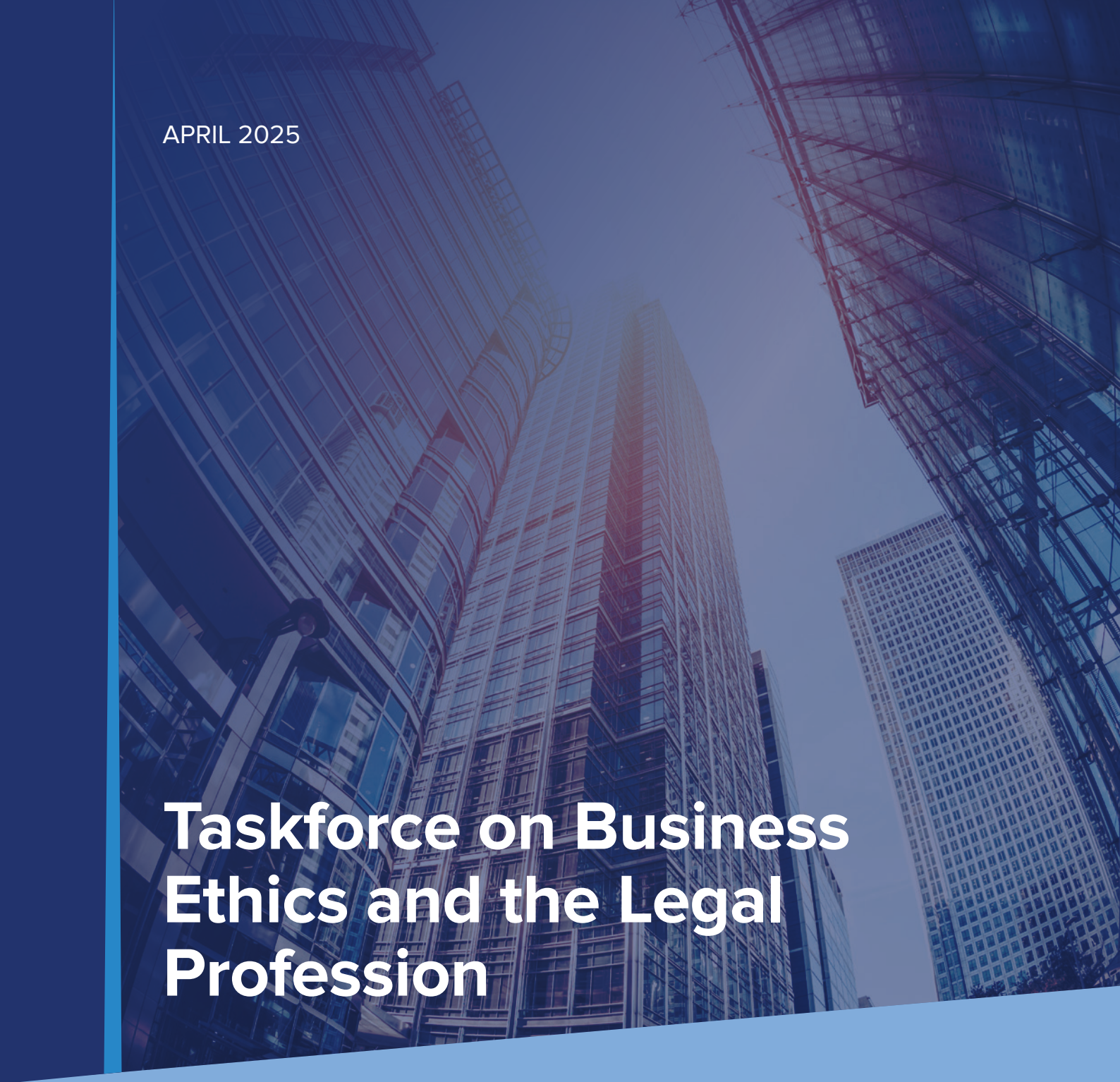

APRIL 2025

Taskforce on Business Ethics and the Legal Profession

A review of client acceptance by Solicitors in England & Wales in relation to Kleptocracy, State Capture and Grand Corruption

Hosted by

ibe Institute of Business Ethics

Acknowledgements

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All Taskforce members are serving in a personal capacity and not as representatives of their institutions.

Taskforce on Business Ethics and the Legal Profession

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Contents

The IBE's Role in the Taskforce on Business Ethics and the Legal Profession

The Institute of Business Ethics (IBE) is committed to fostering ethical leadership and actionable change.

The Institute has played a role in convening and supporting the Taskforce on Business Ethics and the Legal Profession, which was established to respond to growing concerns about the ethical implications of client relationships with oligarchs and kleptocrats. The Institute was part of the steering committee that brought together a multi-stakeholder group of experts, including legal practitioners, civil society representatives, specialists in regulation, and academics.

Over an eighteen-month period, the Institute supported the Taskforce's work in co-ordinating consultations, gathering evidence, ensuring the inclusion of diverse perspectives. Acting as a convener, the Institute supported the process for open dialogue on challenging questions surrounding ethical boundaries, professional standards, and the role of the legal profession in addressing kleptocracy and grand corruption.

Through this process, the Taskforce has developed its recommendations, which are included in this report. The report's recommendations of promoting an ethical culture backed up by good governance and internal procedures are in line with IBE's approach to business ethics, and IBE is committed to maintaining a dialogue with the legal profession on these important issues.

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Executive Summary

Transparency, Accessibility and Accountability

- In this report we reassess the solicitor's duty to uphold public trust and confidence in the profession and how it applies to the existing Anti-Money Laundering ("AML") legislation, guidance and practice. We recommend firms when considering a client mandate and their AML obligations should not simply ask: 'Can we defend this at a tribunal?' but instead: 'Can we defend this in public?' The answer in the first instance will be driven by concepts and suspicions of illegality. The answer in the second instance will be driven by acceptability to internal and external stakeholders and also to the wider public.

- We identify a gap in the current AML-based approach to wealth and funds that may well be the proceeds of kleptocracy, state capture or grand corruption. The existence of this gap has been highlighted by civil society, by parliamentarians and by academics. It arises because it may not be possible to establish that such funds are the proceeds of conduct that would amount to a criminal offence in this jurisdiction, whether because the illicit origin of wealth has been successfully obscured, or because conditions of state capture enable kleptocrats to 'legitimise' their gains. We have made recommendations with a view to addressing this gap without requiring legislative change.

- We put forward recommendations for transparency, accessibility and accountability, through which firms will safeguard their own reputations and the reputation of the profession as a whole, which otherwise risks being undermined by the perception of law firms as enablers of corruption.

- To this end, we put forward a decision-making framework incorporating a six-step model gating process for solicitors' firms in England and Wales, that firms may adopt or adapt to mesh with their existing process when determining client acceptance. This incorporates consideration of the public interest and the collective reputation of the profession. We do not suggest this process should be mandatory but recommend a 'comply or explain' approach. It is designed to prevent the provision of legal services that risk facilitating kleptocracy, state capture or grand corruption. This reflects our recommendation for profession-led change to the approach to client and matter acceptance, which can be implemented within the existing regulatory framework. This leaves for further evaluation, in light of experience in implementing that approach, whether greater regulatory intervention is needed.

- We propose one important change in the way in which provenance of funds is assessed. We recommend that the gating process for client acceptance should include identifying whether there are factors indicating a risk of kleptocracy, state capture or grand corruption, and, where such risk factors exist, requiring firms to be satisfied as to the acceptable provenance of the client's wealth and any relevant funds, failing which this should be treated as a clear red flag. This approach (the 'Legitimate Provenance of Wealth Test') is designed to address the gap in the AML-based approach, described above. As with our other recommendations, this would be a voluntary 'comply or explain' rather than mandatory approach, but a firm that chooses to ignore that red flag without a strong public interest justification (which we expressly recognise may exist in some cases) for taking on the client, may expect scrutiny or indeed criticism of its decision.

- The Legitimate Provenance of Wealth Test adds a broad requirement for law firms to have processes which demonstrate to their satisfaction the legitimacy of any wealth associated with potential clients where there is a risk that they might be tainted by kleptocracy, state capture or grand corruption. [1] This exercise of professional judgment will be a matter for public accountability and reputational consequences rather than legal examination. It is intended that this should be an additional defence against the flows of capital which are currently able to navigate money laundering regulations without restricting the application of those regulations.

- We note that the principal client acceptance consideration for nearly all firms that we consulted - aside from the constraints of AML and sanctions issues - was the effect on the firm's own individual reputation of taking on the client.

- We contrast this with the broad common law and regulatory regimes (Bolton v The Law Society [1994] WLR 512 [2] and the Solicitors Regulation Authority (SRA) Principles) [3] which recognise a duty to maintain public trust and confidence in the profession as a whole. The collective reputation of the profession relates, in turn, to its role in upholding the public interest, over and above the interests of individual clients or that of the lawyers themselves. We conclude that the need for firms to have regard for the collective reputation of the profession in their decision-making should be a key consideration.

- We acknowledge that firms have a free hand (outside of AML or sanctions constraints) as to their choice of clients. They should nonetheless approach such decisions on a principled basis and should expect to be judged publicly by reference to the way in which they exercise that choice.

- For this model of profession-led change to work, greater transparency from firms is a pre-requisite. We therefore recommend that firms should establish a greater degree of transparency around their client acceptance process, both for internal and external audiences. We consider that the drivers for change will be the risk of exposure to external criticism, and the effect on the firm's ability to recruit staff or win and retain clients. In short: as a matter of good business ethics and in the interests of the profession as a whole, be careful about what you might be facilitating when accepting a mandate and be more transparent about how that decision was made in order to demonstrate that you have a thoughtful approach.

- We recommend that the representative bodies and regulators should actively promote wider discussion of the significance of the reputation of the profession as a whole and the ways in which individual firms might have regard to this in reaching their own decisions.

- Our recommendations are designed to promote cultural change within the profession itself, rather than rules-based intervention imposed from outside, as the profession's response to charges of 'enabling'. Whether anything more is warranted or required should be assessed in light of how effective this approach proves itself to be.

[1] This builds on the distinction already made by bodies such as the Legal Sector Affinity Group between 'source of wealth' and 'source of funds'

[2] *Bolton v Law Society*. 1994. 1 W.L.R. 512 (06 December 1993)

[3] Solicitors Regulation Authority. 2019. "SRA Principles". *SRA Standards and Regulations*. https://www.sra.org.uk/solicitors/standards-regulations/principles/

- We note, however, that this approach will only work if there is actual change on the part of the profession. This may, for example, include new/revised ethical (as opposed to compliance) training, governance structures to embed independence and 'speak-up' processes which enable greater internal debate, as well as wider transparency by firms in relation to choices they make. We are not prescriptive about how this should be approached as the key point is that the profession itself must demonstrate its willingness to lead change.

- We encourage the profession to develop a set of corporate governance principles to be adopted on a 'comply or explain basis', for which adapting an existing model such as the Wates Principles[4] may be considered appropriate.

- Finally, we note that if our proposals for greater transparency and accountability are adopted in respect of client acceptance, this would raise challenging questions for firms going beyond the territory of kleptocracy, state capture and grand corruption, which is the subject of this report. We do not address in this report how other issues (such as climate change) should be addressed when making choices on clients and mandates but we suggest that the profession should engage in debate as regards developing proper, principled, and transparent processes for dealing with such decisions.

[4] "The Wates Principles on Corporate Governance for Large Private Companies", Financial Reporting Council, effective 4 October 2023, https://www.frc.org.uk/library/standards-codes-policy/corporate-governance/the-wates-corporate-governance-principles-for-large-private-companies/

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Section 1

Taskforce Rationale and Problem Statement

As set out in the recitals to our Terms of Reference (Annex A), the creation of the Taskforce was prompted by Russia's full-scale invasion of Ukraine which reinvigorated the debate in the UK around the relationship between the provision of legal services and the proceeds of kleptocracy, state capture and grand corruption. Those Terms of Reference pose in a short sequence of propositions the 'problem statement' that we have been asked to consider: in short, what boundaries are reasonable today to define a lawyer's freedom (or duty) to act for individuals or entities in respect of whom there are concerns as to kleptocracy or association with grand corruption or state capture?

As a preliminary matter, we need to adopt a working definition of the mischiefs at the heart of our problem statement. These are topics of academic and practitioner debate, some literature in relation to which can be found in our Bibliography. While a shorthand consensus may be hard to achieve, our working definitions are:

Kleptocracy: a government in which corrupt individuals rule on the basis of extensive self-enrichment rather than the public interest, expropriating the wealth and resources of the state and of private citizens.

State capture: a type of systemic corruption whereby narrow interest groups take control of the institutions and processes through which public policy is made, directing public policy away from the public interest and instead shaping it to serve their own interests.

Grand corruption: the abuse of high-level entrusted power, usually with significant impact and potentially large private gain. [5]

These circumstances create the type of wealth in respect of which this Report is urging enhanced vigilance and a change in approach to client and matter acceptance.

The issues raised in this Report have been experienced by several firms in recent years, including a case in which the Solicitors Regulation Authority ("SRA") referred Dentons to the Solicitors Disciplinary Tribunal ("SDT"). In a 94-page ruling issued in 2024, the SDT

[5] Definitions taken from Barrington, R., E. Dávid-Barrett, R. Dobson Phillips, & G. Garrod. (Eds.). 2024. *Dictionary of corruption*. Newcastle: Agenda Publishing

gave a rare insight into the internal processes, dynamics and decisions of a firm during client acceptance. [6]

In discussion it has been at times put to the Taskforce that the problem posed by such clients is optical more than substantive; that adequate guard-rails already exist (in the form of the AML regime and regulation) and we are confronting a perceptions issue which could be fixed by better PR from firms and the profession. Our consultation and research process indicated very clearly, however, that this is a real problem that requires real solutions, not simply an image problem that requires a PR rebrand. We have identified four inter-related aspects of the problem:

1.1 There are significant flows of the proceeds of corruption into the world's financial markets, including the United Kingdom

Although estimates vary, the proceeds of kleptocracy, state capture and grand corruption, which flow through and into the world's financial centres, are of significant size. For example, Wathne and Stephenson (2021) find it is credible to state that "illicit financial flows from developing countries, including but not limited to the proceeds of corruption and other illegal activities, were estimated at roughly US$660 billion per year" in the 2000s. There are no reliable recent statistics on illicit financial flows (IFFs), or the proportion of those IFFs which relate to the proceeds of corruption, but also no reason to think that an annual figure of $660 billion might have reduced since the time of that research. Many campaigners would view this as a low estimate (for example, the US think-tank Global Financial Integrity's statistic for the same period was $1.26 trillion (Kar & Freitas 2011)). In 2024, the National Crime Agency reported that "[i]t is a realistic possibility that over £100 billion is laundered through and within the UK or UK-registered corporate structures each year". [7]

1.2 Policymakers and academic researchers have identified a central role played by lawyers in these financial flows

The beneficiaries of this wealth are assisted by professionals in several fields. There is an extensive emerging academic literature which particularly highlights the key role played by lawyers as 'professional enablers' (a provocative term, but so described in the literature) of such corrupt capital flows (for example, Cooley, Heathershaw & Sharman 2018; Arshinoff, Humphreys & Tassé 2022; Prelec & de Oliveira 2023; Heathershaw et al 2023; Lemaître and Visser 2023), building on the work previously done in the field of organised crime (for example, Middleton 2008; Middleton & Levi 2014; Levi 2022). This hypothesis has been supported and empirically reinforced by investigative journalists both through media articles and longer works – for example Kleptopia (Burgis 2020), Butler to the World (Bullough 2022) and American Kleptocracy (Michel 2021). Policymakers on both sides of the Atlantic have adopted the term and concept of 'professional enablers', with parliamentarians calling for tighter legislation and regulation.

1.3 There is, in practice, a gap in AML legislation and regulation which allows lawyers to service such assets and individuals while staying within the law

The consultations with the legal profession and with civil society reveal an important question as to the adequacy of existing AML laws and regulations. Some have expressed

[6] "Judgement – Case No. 12476-2023", Solicitors Disciplinary Tribunal, last modified 21 June 2024, https://solicitorstribunal.org.uk/case/12476/

[7] "National Strategic Assessment 2024 – Illicit Finance", National Crime Agency, https://www.nationalcrimeagency.gov.uk/threats/nsa-illicit-finance-2024

the view that, particularly in light of the 2023 Legal Sector Affinity Group (LSAG) Guidance, the existing framework of legislation and guidance is sufficient to deal with the challenges outlined in Section 1.1 above and that the answer lies in more diligent use of that framework or better-resourced enforcement.[8] Others have contended that important shortcomings in the existing framework, notably in situations of state capture, mean that additional action is required if the flows of funds referred to above are to be significantly curtailed. There is a considerable body of academic literature on the subject of state capture (for example, Hellman, Jones & Kaufmann 2003; Perdriel-Vaissiere 2012; Heathershaw 2021; Moiseienko 2022; Dávid-Barrett 2023; Kaufmann 2024).

The Taskforce's Terms of Reference do not extend to a detailed analysis of the AML framework and recommendations for improvements of that framework. We have, however, begun our work with a recognition that the flows of funds referred to in Section 1.1 above are a significant problem for the UK and that they have arisen notwithstanding the framework of legislation and guidance which has existed for some time. At the very least, therefore, even if one takes the view that the existing AML framework is in principle capable of addressing these issues, in practice there is a demonstrable problem on the ground. It is further arguable that rules that were originally conceived of to combat organised crime and, later, financing of terrorism are not aptly drafted so as to be readily translatable to kleptocracy, state capture and grand corruption, or at least that their application in that context becomes uncertain and therefore their effectiveness is limited.

The central planks of the Proceeds of Crime Act 2002 ("POCA" or the "Act") are the presence of criminal conduct and criminal assets. The Act states that criminal conduct includes overseas conduct which would constitute an offence in the UK if it occurred in the UK. Criminal assets are assets which derive from criminal conduct.

This 'single criminality test' ensures that many sources of funds which are not criminalised in the country of origin are nonetheless brought within the ambit of POCA because the funds derive from acts or omissions which would constitute criminal conduct in the UK. It has been suggested to us that this is all that is needed to counter the flows of funds referred to above.

However, academic and civil society commentators increasingly point out that kleptocracy is normally facilitated by state capture. State capture occurs when narrow interest groups take control of the institutions and processes through which public policy is made (Dávid-Barrett 2023). State capture manifests across three distinct pillars. The first is improper influence over the formation of laws and policy. The second is administrative corruption where improper influence is exerted over the implementation of laws and policy. The third relates to improper influence over the system of formal checks and balances and the broader accountability ecosystem. A feature of corruption at large scale, often due to state capture, is that those who are enriched in such regimes have no criminal convictions and no prospect of a criminal conviction, and in many cases will not have fallen foul of the laws that they themselves control. Moreover, any evidence of activities or actions that would be considered criminal in other jurisdictions, not just their own, is systematically hidden or destroyed. This is due to the political capture of law enforcement, the judicial process, and law-making itself, as well as the destruction of archives, records and other evidence, the silencing or elimination of witnesses and the dismantling of accountability mechanisms such as an independent media.

[8] See Annex C for further elaboration of this point

Administrative corruption may likely produce actions which, whilst not constituting criminal acts in the country of origin, would be criminal acts if carried out in the UK. It is also feasible that wealth could be acquired through processes carried out within a legal framework in a way which favours state captors but which would not amount to a criminal act if carried on in the UK (for example, through privatisation or public procurement processes). Where the institutions and processes through which public policy is made are captured, it is likely, or at least possible, that criminality cannot be attributed in the way envisaged by POCA.

Furthermore, whilst AML regulation mandatorily requires checks on source of wealth in the case of a PEP (politically exposed person), depending on how long ago a kleptocrat left office, that definition may no longer apply and whether such checks are required then becomes a more open textured, risk-based, judgment call, with clear scope for wealth that is the product of kleptocracy or grand corruption to enter the financial system. Likewise, the wealth may have been accumulated by individuals who have never held public office, and whose association with political leaders (although close) does not bring them within the definition of a PEP which would normally trigger money laundering concerns.

Civil society commentators additionally point out that the absence of transparency and the opaque nature of heavily structured financial flows mean that it is increasingly difficult in practice to uncover the evidence necessary to demonstrate that POCA may apply to particular funds. Moreover, in situations of state capture, the accountability mechanisms that might be expected to assist transparency or help provide evidence – such as the judiciary, law enforcement apparatus, the media, historical archives and civil society – are often unable to function in a free and independent manner.

We consider that there is in practice a need to construct additional barriers to the flow of such funds through the approach firms adopt to client take-on and that this requires the exercise of judgment beyond the application of the single criminality test.

1.4 There is an emerging question over the state of professional ethics within the legal profession, which has widened in focus from professional conduct to the ethics of client and matter acceptance

The legal profession has faced several challenges in recent years. In relation to the subject of this Taskforce, the Russian invasion of Ukraine has caused intense scrutiny on London-based law firms representing individuals and entities associated with the Putin regime. Beyond this, several issues have converged which have cast the profession in an unfavourable light. These include the Post Office Horizon scandal, the #MeToo movement and the use of NDAs to limit or prevent disclosure by victims, the use of SLAPP suits against journalists and campaigners in a number of fields, and the records of the clients of major law firms with regard to the protection of human rights and adverse environmental impacts. The profession's imperfect efforts to provide a coherent and credible response to these challenges have opened the door to criticisms from government and the media, adding to the sense that the profession is on the back foot. This escalating ethical debate had been to some extent foreseen by the extensive recent literature on legal professional ethics – for example in the writing of Moorhead (2015; 2023), Vaughan (2016; 2023; 2024), Clark (2021) and Sommerlad (2013; 2015), themselves building on the long-standing

work of legal scholars such as Wendel (2010) and Abel (2017). The professional tensions highlighted by this extensive academic research are now being played out in real-life scenarios. This has itself attracted the attention of regulators (Legal Services Board 2023), as well as campaigners and politicians, some of whom have called for a 'crackdown' on lawyers,[9] as well as new legislation, revised professional regulations and stronger enforcement.

The recent Hamlyn Lectures delivered by Professor Richard Moorhead have drawn together many of these critical strands.[10]

With these criticisms in mind, the Taskforce set out to examine the current rules, practices and approaches used by the UK's legal profession when choosing which clients to represent and which matters to take on, and to consider the basis for new approaches to developing enhanced standards for such choices, with specific reference to addressing the concern that legal services are enabling kleptocracy, state capture and grand corruption. Especially of interest were the acceptability of the provenance of client resources, the uses to which those resources are put, and how current practices align with professional ethical standards. To achieve this, the Taskforce embarked on a process of extensive and collaborative multi-stakeholder consultation to identify areas for strategic recommendations. The Taskforce held consultations with senior lawyers from City law firms, civil society representatives, academics from the legal ethics and corruption spheres, due diligence providers, strategic advisors, banking and corporate General Counsels, and business ethics experts, among others. A more detailed description of the consultation process can be found in Annex B.

9 David Lammy, "Keynote speech" (Institute for Public Policy Research, United Kingdom, 21 May 2024) https://ippr-org.files.svdcdn.com/production/Events/Kleptocracy-Speech-FINAL.pdf

10 "Our Key Publications", The Post Office Project, https://postofficeproject.net/our-outputs/our-key-publications/#

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Section 2

Public Profession or Guns for Hire?

Our consultations have highlighted several important issues which, whilst they are relevant to the Taskforce's Terms of Reference, are also of potentially wider significance to the solicitors' profession and its future development. They are recorded here as a preamble to the Taskforce's specific recommendations because they may be of additional value as a starting point for future proposals for the development of the profession's approach to ethical standards. All are important aspects of a recurrent theme running through our discussions: the extent to which lawyers today are identified, and position themselves, primarily as members of a public profession or as zealous advocates for their clients? To put it more simply, what is the role of the lawyer?[11]

2.1. Access to justice and the rule of law

In the immediate aftermath of the invasion of Ukraine, arguments escalated – and were publicly articulated by some firms, representative bodies and legal commentators – to the effect that principles of access to justice and the rule of law required that any person or entity seeking legal representation should be entitled to receive it, irrespective of their probity or moral standing. From that perspective it followed that any law firm providing representation should be able to do so without being tarnished or associated with the perceived or actual shortcomings of their clients. Law firms and lawyers were, on this view, neutral actors who, by acting as such, upheld the rule of law and the justice system. We note that in this Report we focus more specifically on access to representation and adopt that terminology.

[11] We note that several themes flagged in these opening observations were discussed in a client due diligence roundtable reported in: Reyes, E. "Take on me: Client due diligence roundtable", *Law Society Gazette*, last modified 23 June 2023. https://www.lawgazette.co.uk/roundtables/take-on-me-client-due-diligence-roundtable/5116433.article

The regulatory regime relating to client and matter acceptance is described in Annex C of this Report. In short, it affords solicitors' firms discretion as to their choice of clients and the work they do for them. It imposes no obligation on law firms to accept clients for whom they do not wish to act, or to take on new work for established clients.[12][13] There is, however, a general duty to uphold the proper administration of justice and public trust and confidence in the profession.

Stephen Mayson,[14] a leading authority on legal regulation and the role of the profession, observes that law is a public profession owing duties to the public and the public interest that transcend clients' interests (Mayson 2024). Precisely how, and to what extent, those duties apply when acting is the subject of debate. The theme of law being a public profession was recurrent in our deliberations, but we are focused on a narrower question also raised by Mayson: if solicitors are generally free to engage their personal morality in deciding whether or not to represent a client or cause, how far should personal or indeed professional morality impinge if at all on that decision without risk of unfair criticism?

A consensus exists that firms should be free to accept clients in criminal matters to ensure that representation is available to all, irrespective of status or character. This consensus is underpinned by the legal aid regime and is accompanied by an acknowledgement that law firms, in providing representation on criminal matters, should not be identified by reference to the acts or character of their clients.

This Report is focused on civil mandates, however. There is certainly no consensus that factors concerning the proper administration of justice encourage or necessitate the representation of clients in relation to purely commercial transactions. In deciding whether to act for a particular client on, for example, a bond issue or a merger, a law firm will exercise its own discretion in deciding whether to act. This discretion is primarily driven by the firm's own (largely commercial) interests - including the association of its brand with the client and transaction. Indeed, we observe that, particularly in today's business world, firms alongside other advisers often actively encourage such an association despite the risk of undermining concepts of professional neutrality.

The arguments as to the administration of justice and access to representation do return to the fore in relation to civil contentious matters, particularly on a defence instruction. The freedom relating to accepting or refusing transactions applies here also - but with an added complication. A functioning civil justice court system is widely viewed as being a public good that imports duties, standards and transparency into areas which may otherwise be unseen and unregulated.

This issue of how decisions are made is dealt with in greater detail later in section 5 of this Report. There, we recommend an approach, with a proposed model, as to how a firm might reasonably balance competing factors when exercising its general discretion on whether to act.

[12] We note, for example the press release issued by the SRA in March 2022 observing that firms were reviewing their client lists after the invasion of Ukraine by Russia: 'The general position is that firms can choose who they act for, and can choose not to act for any reason (unless unlawful, for example under equalities legislation). The question of terminating a current retainer is one for the common law, and turns on whether there is "good reason" for the termination.' See: "The importance of complying with Russian financial sanctions", Solicitors Regulation Authority, last modified 15 March 2022. https://www.sra.org.uk/sra/news/russian-conflict-and-sanctions/

[13] In these respects, the rules governing the solicitors' profession differ from those governing the Bar

[14] Prof. Mayson is a member of this Taskforce

Several broad consequences flow from this debate. First, law firms should not only individually consider, develop and implement coherent principles as to how they as a business choose to exercise that discretion, but there should also be greater visibility of their approach and thinking. This topic is at the heart of this Report and our conclusion.

A second consequence falls outside our brief but is of considerable significance. The Report considers issues flowing from kleptocracy, state capture and grand corruption. It is clear, however, that the way in which law firms exercise their discretion as to choice of clients and matters can be affected by considerations beyond kleptocracy and related issues. Matters such as climate change, human rights, corporate purpose, diversity and political affiliation can influence the exercise of that discretion. Those matters will also give rise to complex ethical, reputational and organisational challenges for law firms.

2.2 The status of the solicitors' profession

The consultations confirmed that almost all large law firms consider their own reputation to be of paramount importance when deciding whether to take on a new client or matter. This is unsurprising. The consultations also confirmed, however, that the reputation of the wider profession was almost completely absent from these client and matter acceptance discussions - or at least it was not expressly articulated in this way.

This issue is considered in more detail later in the Report (Section 5) in so far as it relates to client and matter acceptance. It does, however, have broader ramifications for the profession. In *Bolton v The Law Society* [1994] WLR 512, Lord Bingham (then Sir Thomas Bingham, MR) said: "A profession's most valuable asset is its collective reputation". He went on to add: "The reputation of the profession is more important than the fortunes of any individual member".

The consultations revealed related issues beyond the scope of this Report which ought to be of concern to the profession. The first was the lack of interest shown by many firms in the reputation of the profession more broadly when considering their own interests. This is further reflected in an apparently widespread ambivalence about what marks out a profession in the contemporary business world.

Professional status brings many benefits which are welcomed (and fiercely protected) by professionals - but they are not a free ride. Lord Bingham concluded by saying: "Membership of a profession brings many benefits but [the primacy of collective reputation] is part of the price".

It was once thought that professions imposed ethical obligations which went far beyond the standards of the business world generally and indeed that is the tenor of some of the key cases that have considered professional misconduct by lawyers (such as *Bolton*, referred to above, and *Wingate and Evans v SRA* [2018] EWCA Civ 366 in which the Court of Appeal described the concept of integrity as "a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members").

This is a theme developed and amplified by Mayson[15] who has considered in detail the concept of a public profession and the associated ethical obligations. In his analysis,

[15] Mayson 2024, chapters 7 and 8

lawyers are members of a profession which has the function of serving the public interest (defined in multi-faceted terms) and, as such, they can only expect to enjoy the privileges of their profession if they accept the concomitant duties towards the public interest, which includes but is not limited to their duties towards the integrity of the legal system itself.

It became apparent to the Taskforce that there is scope for confusion as to what difference there may be between professional ethics and generally recognised business ethics, which are increasingly wrapped into corporate Environmental, Social and Governance ("ESG") approaches. In each area, there are fundamental principles of transparency and good governance, in which the legal profession arguably lags the good practice exhibited by many of their own corporate clients.

ESG principles prioritised by other business sectors also affect the legal profession. For example, the ethical questions over client acceptance which our Taskforce has been exploring in relation to kleptocracy, state capture and grand corruption may also be relevant to a law firm's policy on climate change - a commonality being that in each case, law firms have a choice as to whether to take on the mandate. These wider ESG issues are beyond the remit of this report. However, we do flag the need for debate within the profession as to how they might be approached.

ESG and business ethics specifically for law firms involve additional duties because of their 'public profession' status. In other words, it follows from that status that there is a set of professional ethics that are at the core of a law firm's ESG responsibilities, which do not apply in the same way to other business sectors.

The thinking within the profession about this melding of professional ethics, business ethics and ESG principles needs to be developed further.

Even as regards those areas where legal services most obviously and directly engage the public interest, there is little evidence of firms articulating for themselves how they will comply with their duties, or measuring whether they have done so. The SRA Principles (SRA 2019) set out "the fundamental tenets of ethical behaviour" that the SRA expects the profession to uphold. The first two Principles require members of the profession to act "in a way that upholds the constitutional principle of the rule of law, and the proper administration of justice" and to act "in a way that upholds public trust and confidence in the solicitors' profession". These two principles are distinct but are closely connected. Their central importance makes it surprising that, in general, large commercial law firms appear to have no articulated position on how in practice they will comply with these Principles in their work, no strategic goals which relate to maintaining public trust and confidence in the profession, and no clear measures for assessing their success in living up to these duties.

While there were limited exceptions, the feedback from most consultees suggested that a firm's individual reputation was exclusively prioritised over that of the profession as a whole, but that the building blocks for firm reputation were unclear - or at least there was limited public articulation of those building blocks.

In our view, the profession should consider how to reflect the duties of a public profession in the behaviours it expects of itself both collectively and as individual businesses.

2.3 A profession at risk of insularity?

The consultations identified an apparent disconnect between the views of external stakeholders and observers on the one hand and law firms and practising lawyers on the other. This is evident both at a macro level when considering the possible role of the City as a destination for funds of dubious provenance as well as at a micro level when considering the possible role of law firms in providing services to clients deploying funds of dubious provenance.

The language employed by representatives of different consultation groups is illustrative of the disconnect. Some external commentators talk of "enablers" and "dirty money" (both potentially pejorative and emotive labels) whilst, as we have observed, the profession itself will talk of access to justice (or representation), the rule of law and AML compliance – characterising law firms as 'gatekeepers.' External critical observers tend to consider the role of the profession within the macro-economic context of the activities of the City of London, whereas the profession looks predominantly at individual law firm practices and clients in isolation.

This Report addresses these tensions in greater detail in so far as they relate to client and matter acceptance and makes recommendations in that context. There remains, however, the wider issue of the absence of a visible and constructive dialogue between the profession and many of its external observers.

Civil society organisations often find it hard to access useful information about how law firms work and what principles govern their operation. Observers from other business sectors identify the apparent absence from the world of legal services of many of the advances made in other sectors to promote sound business ethics. Scholars of legal ethics suggest deficiencies in training, absence of codified approaches, inadequate transparency, and structures failing to encourage and reward ethical behaviours in the solicitors' profession.

While these criticisms may not be well-informed, the response from the profession has not been effective. Some members and representatives of the profession seek to deflect challenge by suggesting that the protective cloak of privilege and client confidentiality precludes them from answering questions that relate to a law firm's internal processes, when in reality that protection properly relates to their clients' affairs, rather than a firm's own.

Firms are entitled to assert commercial confidentiality on their own behalf, not simply that of their clients. Indeed, the prevailing view appears to be that the private ownership of most law firms enables them to conclude that their own business affairs are private unless they decide otherwise. While some matters are legitimately private, dogmatic over-reliance on the confidentiality of all proprietary processes – even to the extent of being unwilling to publish a code of conduct – patently risks uninformed, and therefore misplaced, criticism from outside. It may also blind practitioners to legitimate societal concerns as to their conduct and drive them into overly legalistic responses which underestimate and are unduly dismissive of the concerns underpinning the criticism.

Two principal reasons cast doubt over the prudence of this approach. The first is that, as has been observed, the solicitors' profession has express regulatory and common law duties related to public confidence and trust in its activities. It is implausible that these duties can be met without a level of transparency sufficient to create and support

that confidence and trust. The second reason is that continued insularity could leave critics of the profession with little alternative than to push for legislative or regulatory interference and required disclosures. We suggest that most informed observers, and many practitioners, would prefer to see leadership and cultural change as the profession's primary response.

2.4. Legislation, regulation and culture

In many of our consultations, concerns were expressed that further legislative or regulatory intervention might be proposed and that this could be ineffective and unfairly burdensome. The profession adopts a slightly equivocal stance on this issue. Many early responses took the line that firms were and should continue to be free to do anything that was not prohibited by law or regulation. This minimalist legalistic view implies that campaigners should seek to change the law if they seek behavioural change. However, if this view is also accompanied by an instinctive aversion to further regulatory or legislative intrusion the profession is allowing little room for constructive change.

Prevailing regulatory and legislative prohibitions still leave lawyers in the position of navigating something of an ethical minefield, with only professional reflection and the exercise of discretion to guide them. How is this best tackled without resorting to increased regulation? The answer may lie in cultural change, specifically change in law firm governance structures, reporting practices and strategic goal setting. Our recommendations are focused primarily on facilitating this. Importantly, this would involve law firms embracing a greater degree of transparency and accountability in respect of their affairs than has historically been the norm, albeit within the limits imposed by client confidentiality. We noted during consultation that cultural change within law firms is often accelerated by pressure both from existing and prospective employees and from clients. Greater transparency should operate to inform that pressure.

The consultations with civil society and academic scholars also revealed a range of views as to whether more laws and regulations are the best response to problem areas which are already replete with legislation and regulation. It was recognised that the structure and culture of law firms could play a significant role in offering solutions across a range of contexts. However, without greater transparency over law firm principles and processes, the risk is that those seeking change will make ill-informed proposals.

The broader issue for the profession to consider is whether it is a strategic weakness for the profession not to engage transparently with its internal and external stakeholders and not to offer comparable levers of accountability to what are now the norms in the wider business world. We have noted the risk that this lack of engagement tends to leave external critics with little choice but to press for legislative or regulatory change.

There was regular reference in the consultation to the role of regulators. The high-level principles governing the solicitors' profession are built around a limited number of broad concepts, including the rule of law, the proper administration of justice and public trust and confidence. These concepts are complex and what they require of members of the profession is not always clear-cut. Some consultees complained of an absence of guidance from regulators as to their meaning in the context of legal practice. Others questioned the effectiveness of regulatory enforcement, given the lack of definition around the obligations.

Here again, we noted some contradictions. On the one hand, the argument was made that, if regulators wished general precepts concerning the administration of justice and rule of law to be observed, they should provide detailed guidance as to what these terms mean so that firms knew exactly what was required of them. On the other hand, there was a concern that regulators, by intervening in such a way, would be overreaching themselves in an excessively prescriptive way.

A more strategic approach may be for the profession to recognise the need to own the definition of its collective reputation and to contribute to shaping the ways in which it should serve the public interest goals contained in the high-level regulatory principles. Such a recognition would encourage the profession to engage in the debate on its public interest role and to think collectively about it in a way that also clarifies and shapes the role of regulators.

The June 2024 SDT decision relating to Dentons[16] demonstrates the challenge of seeking reliable evidence when vetting a client, such that it becomes all too easy for a partner who is personally invested in the client relationship to dismiss concerns as “unproven”.

Box 1

The Legitimate Provenance of Wealth Test

The adoption of the Legitimate Provenance of Wealth Test – elaborated in Sections 4.5 and 5.2 below - would most likely lead to the rejection of mandates like that in the Dentons decision because the firm would be unable to satisfy itself that the client’s wealth had a legitimate source. It is a non-justiciable standard against which firms may be judged reputationally. It provides a significant additional means of addressing the flows of funds referred to in Section 1 of this Report. The framing of this standard reflects the level of accountability to which a public profession should expect to be held. ‘Legitimate’ refers to the non-justiciable nature of the judgments that we encourage. This also reflects the need for a public profession to maintain public confidence through the voluntary choices it makes, rather than relying on legal defences which can appear technical and an example of lawyers ‘gaming the system’.

[16] Solicitors Disciplinary Tribunal, 2024

3

Section 3
The International Context

Looking beyond common law jurisdictions, Annex D to this Report provides an overview of key soft law principles that provide a governance framework for the conduct for the global profession. The focus is on those which have been agreed and promulgated by international organisations since 1990 (notably the *UN Guiding Principles on Business and Human Rights*,[17] World Economic Forum's ("WEF") *Unifying Framework for Gatekeepers*[18] and the Organisation for Economic Co-operation and Development's ("OECD") report on 'professional enablers').[19] It also references the disconnect between different legal systems as to whether the public interest has a role to play in how lawyers discharge their duties.

While the concept of public interest remains contentious in an international context (we touch on its relevance to the Taskforce in the next section), greater harmony and consensus have more recently been reached in the realm of business and human rights and its applicability to the legal profession. The adoption of the 2011 United Nations Guiding Principles on Business and Human Rights ("UNGPs") has gradually galvanised the business world but was not, until more recently, widely regarded as integral to the business model of the legal profession, either in terms of individual law firm management or how lawyers advise their clients.

Following the adoption of the UNGPs, the International Bar Association ("IBA") began its work on creating guidance for lawyers, bars and law societies. After significant debate on the content and extent of the documents, guidance was finally published in the form of the IBA *2015 Business and Human Rights Guidance for Bar Associations and 2016 Practical Guide on Business and Human Rights for Business Lawyers*. Both were intended as a reference toolkit for lawyers, law societies and bars, in response to the UNGPs and other laws, policies and standards that promote business respect for human rights.

[17] United Nations. 2011. *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.* New York, Geneva: United Nations

[18] World Economic Forum. 2021. *The Roles and Responsibilities of Gatekeepers in the Fight against Illicit Financial Flows: A Unifying Framework*

[19] OECD. 2021. *Ending the Shell Game: Cracking down on the Professionals who enable Tax and White Collar Crimes.* Paris: OECD Publishing. https://doi.org/10.1787/79e22c41-en

Several years later, and underpinned by a more robust and widespread recognition of the importance of corporate social responsibility (more often now subsumed within the notion of 'ESG' – Economic, Social and Governance considerations), the far-reaching, updated guidance on business and human rights for lawyers and bars were passed, both unanimously and without debate, by IBA Council in 2023 and 2024 respectively.[20] [21] The IBA's ongoing 'Role of the Lawyer' initiative[22] has identified several issues which remain the subject of global debate and focus, in addition to other areas where a degree of consensus has been reached.

The UN Basic Principles and Subsequent Debate

The *United Nations Basic Principles on the Role of the Lawyer* ("UN Basic Principles") are regarded as the most authoritative set of international norms on the position of lawyers. They have been referenced in many cases, notably in international courts, although typically to underscore access to justice, the right to a fair trial and the rights of lawyers and their ability to practice freely and without fear of persecution.

Principles 12-14, inclusive, reference a lawyer's duties and include the requirement to maintain the 'honour and dignity of the profession' (12); the duty to assist clients in every appropriate way (13); and to promote "the cause of justice" and act "in accordance with the law and recognised standards and ethics of the legal profession" (14). Principle 15 states that "Lawyers shall always loyally respect the interests of their clients". Principle 18 is also significant, stating that lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions. This is fundamental to preserve the independence of the legal profession. Principle 18 is recognised as requiring that lawyers should not be subjected to legal or regulatory sanction for doing no more than discharging their duties. However, we suggest that it would not be inconsistent with Principle 18 for the public to expect lawyers to adopt a considered and principled approach to decisions as regards which clients they take on, or the nature of work and advice they give any client, in circumstances where lawyers are free to choose and where their duties also include those that are encapsulated in Principles 12 and 14.

The only other globally recognised framework addressing the legal profession in this way has been issued by the IBA. The most recent and unanimously approved 2024 version of the IBA *International Principles on Conduct for the Legal Profession*[23] ('IBA Principles') contains 10 principles common to the legal profession worldwide. The principles seek to create a "generally accepted framework to serve as a basis on which codes of conduct may be established by the appropriate authorities for lawyers in any part of the world". Each principle is accompanied by an explanatory note and, in some cases, an "international implications" section, that provides further clarity on the application of the principle.

[20] International Bar Association. 2023. Updated IBA Guidance Note on Business and Human Rights: The role of lawyers in the changing landscape. London: International Bar Association

[21] International Bar Association. 2024. Updated IBA Business and Human Rights Guidance for Bar Associations (2nd edition). London: International Bar Association

[22] Previously referred to as the Gatekeepers' Initiative, see: "IBA launces new project examining the role of lawyers as ethical gatekeepers", International Bar Association, effective from 2 June 2022, https://www.ibanet.org/IBA-launches-new-project-examining-the-role-of-lawyers-as-ethical-gatekeepers

[23] International Bar Association. 2018. *International Principles on Conduct for the Legal Profession*. London: International Bar Association

One of the central aims of the IBA Principles is to increase understanding among lawyers, decision-makers and the public, as to the importance of the lawyer's role in society. There is also a call for lawyers not only to act in accordance with the professional rules and applicable laws in their own state (and wherever they may practise), but also to act in accordance with their own conscience. This fits with references in ethical codes applicable in other jurisdictions and aligns with the Council of Bars and Law Societies of Europe ('CCBE') *Charter of the Core Principles of the European Legal Profession*. The lawyer's duties do not begin and end with the faithful performance of what he/she is instructed to do, but involve a number of legal and moral obligations. It is worth citing the preamble to the 2006 Charter:

> *"In a society founded on respect for the rule of law the lawyer fulfils a special role. The lawyer's duties do not begin and end with the faithful performance of what he or she is instructed to do so far as the law permits. A lawyer must serve the interests of justice as well as those whose rights and liberties he or she is trusted to assert and defend and it is the lawyer's duty not only to plead the client's cause but to be the client's adviser. Respect for the lawyer's professional function is an essential condition for the rule of law and democracy in Society".*[24]

For the purposes of this Report, IBA Principle 5 regarding client interests is of greatest relevance. This has generated extensive debate in terms of its practical meaning and remains a matter upon which no global consensus has been reached. The principle states:

> *"A lawyer shall treat client interests as paramount, [aligning with Principle 15 of the UN Principles] subject always to there being no conflict with the lawyer's duties to the court and the interests of justice, to observe the law, and to maintain ethical standards".*

The accompanying explanatory note provides limited details on what this means in practice. It confirms that a lawyer should do their utmost to serve their client's cause in an ethical and lawful way and not engage in conduct that is intended to mislead or adversely affect the interests of justice. What that means in practice, however, remains moot and the discussion remains live as referenced above, with differing perspectives set out regarding the duty of a lawyer to operate within the law, how and when they should have regard to their own moral guardrails, or some wider perception of what societal harm may ensue from such representation.

The relevance of the UNGPs to lawyers and law firms has evolved since their introduction in 2011. That evolution is tracked in summary in Annex D.

[24] Council of Bars & Law Societies of Europe. 2019. *Charter of core principles of the European legal profession & Code of conduct for European lawyers*. Brussels: Council of Bars & Law Societies of Europe

4

Section 4

Principles Behind the Recommendations

With the benefit of the international context, and after discussion of the observations in the opening sections in this Report, we formulated several underlying core principles on which our recommendations are based. These principles are distilled in this section.

4.1. The significance of the legal profession

Societies that are based on the rule of law require a competent and effective legal profession. Lawyers are a fundamental component of this system, representing individuals and entities and so contributing to achieving a just outcome under the law. The Taskforce emphasises the significance of the legal profession's role in maintaining the rule of law and in turn a fair society. The profession is granted certain rights and privileges which are linked to this role, resting on an assumption that the profession's activities are informed by professional ethics. If the public no longer believes that to be the case, the standing of the profession (with its attendant benefits and privileges) is likely to face increasing challenge. We therefore took, as a founding principle,[25] that lawyers have both a responsibility to society and a self-interest to act with due regard to professional ethics.

4.2. Governance

Law firms are both businesses and professional entities. Reconciling these sometimes conflicting drivers may not always have been a priority for many firms, such that commercial considerations may have at times superseded traditional professional obligations. Society might reasonably expect that, as businesses, law firms would have in place corporate governance standards, systems and controls which are broadly in line with companies of an equivalent size operating in other sectors, such that the larger firms might have corporate governance equivalent to the larger companies, for example the *Wates Corporate Governance Principles for Large Private Companies*.[26]

A theme that arose from the consultations was the nature of the partnership structure and the conflicts of interest that – depending on remuneration arrangements - may arise from this between partners (with a vested interest in their own ability to generate and service clients) and those who oversee the client acceptance processes of the firm (with a duty to consider other wider interests). This increases the need to demonstrate publicly that

[25] Noting particularly the discussion by Stephen Mayson of the status of the public profession: Mayson 2024, pp. 41-48

[26] Financial Reporting Council, 2023

processes exist to address these conflicts. We recognise also that conventional corporate governance and ESG approaches may not map directly onto a partnership structure. The Taskforce has taken this into account in its deliberations, and we believe that the recommendations we make are compatible with the structures within which the profession currently operates and address the particular challenges posed by those structures.

Furthermore, a recent development in corporate governance has been the incorporation of ESG (Environmental, Social and Governance) matters into companies' corporate strategies, with accompanying transparency and reporting to provide accountability to a range of external stakeholders. This form of accountability was initially voluntary but is now increasingly demanded by emerging legislation – particularly in the European Union. Each sector and business has certain facets that are particularly relevant to its own operations. We concluded that the profession's status as a 'public profession' brings with it professional values and ethical duties of its own in this area which should be clearly understood and publicly visible.

4.3. Transparency

It is fundamental to the core function of the profession and the maintenance of the rule of law that lawyers and law firms respect the confidentiality and privacy of their clients. However, as we also observed, this does not require law firms themselves to be secretive about how they do business. Although the extent to which they decide to shed light on their processes and methodologies is a matter for each firm, it was put to us that larger firms tend to lag companies of equivalent size in other sectors regarding transparency both internally and externally and that this is particularly evident given the scrutiny law firms are now receiving from a range of stakeholders.

We have transparency at the core of our recommendations, following the principle that transparency enhances accountability, which in turn justifies an approach based predominately on profession-led change. This is not to ignore legitimate commercial confidentiality, simply to note the benefit of adopting a more judicious approach to the circumstances when confidentiality is claimed and when transparency would be preferable.

4.4. Reputation

A core question for the Taskforce has been that of motivation. Why should law firms turn away profitable business from wealthy clients unless AML regulations require them to do so? And how can the incentives to do so be altered? Our underlying principle here has been that most law firms will wish to safeguard their own reputations for acting in line with society's expectations about their ethical conduct. It was clear in our consultation that, when evolving their acceptance criteria, firms assess the risk of their own 'brand association' with representation of a particular client on the proposed mandate – *"Is this really a matter for us? What will our people and clients think?"* Part of that assessment often involves a political judgment and firms take a view on the extent to which, for example, they want to undertake work that is aligned with a political party or "cause". They should remain free to do so.

The Russian invasion of Ukraine, and the association of certain law firms with high-profile clients who have subsequently been placed on sanctions lists, has illustrated how firms may face reputational damage through their client acceptance decisions. Ultimately,

safeguarding the firm's reputation is a business priority in managing their processes and thoughts over decisions around client mandates, and this is acknowledged in our recommendations.

However, there is a second important aspect to reputation. Having reviewed the relevant literature and spoken to leading authorities on this subject, our proposition is that firms and practitioners also have an obligation to uphold the reputation of the solicitors' profession as a whole. The Taskforce came into existence due to concerns about the damage to the profession's reputation and a sense that this important and long-standing principle has been pushed to the background in recent years. In the face of challenges to the probity of the legal profession from politicians, the media and campaigners, we believe that lawyers and their firms should look closely at their wider responsibility towards the collective reputation of the profession.

4.5. The applicability of AML regulations regarding the provenance of wealth

In section 1.3 we explore the reasons why AML laws and regulations risk being ineffective in addressing funds obtained through kleptocracy, state capture and grand corruption, and why lawyers and law firms, who act for individuals who have benefited from such systems and their related entities, are often doing so within the law. However, the enrichment of such clients has taken place in the absence of the rule of law in their home countries, and their wealth has frequently been accumulated in circumstances that cannot be satisfactorily explained or justified, in circumstances where there are factors indicating a risk that it may represent the proceeds of kleptocracy, state capture or grand corruption. We have taken as a further underlying principle that this situation has created a potential gap that in practice is not adequately filled by current legislation or regulation.

Legislation has already acknowledged this gap and, to some extent, tried to fill it. The creation of Unexplained Wealth Orders (UWOs) sought to reverse the burden of proof by requiring those whose wealth was of suspect origin to explain to the court's satisfaction the origin of their wealth. We believe a similar principle could be applied by firms, on a voluntary basis, to supplement the AML compliance and due diligence process. Our research and consultation found that in general, when undertaking AML due diligence, firms focus primarily on whether there is credible evidence that a prospective client's funds or assets are of illicit origin - although encouragingly, firms following the 2023 LSAG guidance will take a more risk-based approach to questions on source of wealth. But we note from our consultations that this does not appear to be standard market practice. In any event, any AML or due diligence approach that is built solely on the FATF-based foundation of the likelihood of a predicate offence will have difficulty in encompassing the issues arising from state capture.[27] For the reasons outlined above, there is an overwhelming probability that funds or assets will not be found to be of illicit origin (and certainly not provably so), even in the most egregious kleptocracies.

The result of this change in approach would be to replace absence of illegality with 'reasonable assurance' that the source of client wealth and funds involved are clean and untainted by kleptocracy, state capture or grand corruption such that this becomes the threshold which firms apply when deciding whether to act – what we call the 'Legitimate Provenance of Wealth Test.'

[27] See Financial Action Taskforce (FATF) Guidance to Recommendations 10 and 12 : https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/Guidance-PEP-Rec12-22.pdf

4.6. Rights and the public interest

In its initial literature review, the Taskforce took full note of the standard explanations that have been used by the legal profession to justify acting for clients who may be associated with kleptocracy, state capture or grand corruption. These explanations have involved principles of access to justice, specifically the access to representation, and the duty to the client and the rule of law. We have concluded that access to justice does not necessarily equate to a right to representation and that there are distinctions to be drawn according to the extent to which the provision of legal representation serves the wider public interest. On that basis, distinctions can be drawn between access to representation in criminal matters and in civil matters (and still further within different types of civil matters).

For example, few would contest that there is a right to representation for an individual or entity charged by the state in a criminal matter and providing access to that representation clearly serves the public interest in the rule of law and administration of justice. At the other extreme, there cannot be said to be a 'right' to representation in a commercial or transactional matter, such as a bond issuance, and whether providing such representation serves a wider public interest than that of the parties may be more open to debate (though the case can be made that access to representation in such matters is capable of supporting the rule of law (Moorhead *et al* 2023)). Our recommendation on the approach to client and matter acceptance acknowledges these distinctions.

Our approach (modelled in Section 5) in part navigates these distinctions by inviting decision-makers to consider whether the provision of services might "damage the public interest" in a way which outweighs "any public interest in representation". Much has been written in many contexts about the public interest and how best it is defined. For current purposes the Taskforce adopts Mayson's definition offered in his report *Legal Services Regulation: The Meaning of the 'Public Interest'*:

> *"The public interest concerns objectives and actions for the collective benefit and good of current and future citizens in achieving and maintaining those fundamentals of society that are regarded by them as essential to their common security and well-being and to their legitimate participation in society"* (Mayson 2024: 21).

The Taskforce further agrees with Mayson in defining lawyers as a 'public profession,' on the premise that the privilege and licence to be a lawyer is granted on behalf of the public and there is a consequential obligation on members of such a profession to be accountable to the public for securing (or not) the public interest. The Taskforce notes that simply not doing that which is prohibited is inadequate for a public profession. Further, and as articulated in Section 6 of this Report, the Taskforce adopts Mayson's expectation that decisions and actions justified as being in the public interest will properly entail transparency, accessibility and accountability.

4.7. A profession-led approach

The Taskforce held extensive discussions on the relative merits of legislation, (self) regulation and profession-led change in relation to client acceptance and related public interest duties. While not ruling out further developments in legislation and regulation – and indeed, there are recommendations on both counts in Section 7 – the Taskforce prefers profession-led change in the first instance. The multi-stakeholder composition of the Taskforce lends particular importance to this set of recommendations, since a consensus emerged that giving a profession-led approach the time and space to

work would have support from civil society and campaigners, provided that there were indications that clear progress was being made. In the absence of that, those groups would be inclined to press for greater legislation and/or regulation.

From within the profession, while allowing for a degree of equivocation, there was resistance to externally-imposed rules-based solutions, partly because it might add to the regulatory burden and add cost without necessarily solving the problem. From civil society, there was an acknowledgement that adding more layers of legislation/regulation might not produce the desired result, and that past such efforts aimed at resolving AML issues had resulted in loopholes being quickly identified, as well as minimal progress being made by under-resourced law enforcement agencies.

However, profession-led change based on voluntary codes and ethical principles rather than enforceable rules re-emphasises the need for transparency to demonstrate progress. Such an approach also necessitates a focus within firms on culture and leadership. The Taskforce broadly favoured a 'comply or explain' approach, such that if a firm decides not to follow voluntary but widely-endorsed codes or guidance in this area, it should expect to be asked to produce a publicly-available explanation or justification.

4.8. Limits to our scope

Several references have been made already in this Report to matters we touched upon as relevant or interesting to our discussion but ultimately as being beyond our remit. They are topics for others to explore:

- **Strategic Litigation Against Public Participation ('SLAPPs'):** SLAPPs, the term used to describe misuse of the legal system to discourage public criticism and reporting or action to address serious concerns (such as corruption/money laundering), raise issues relevant to a public profession and public trust and confidence in it. SLAPPs are the subject of wider debate. This Report is primarily focused upon client and matter acceptance rather than the conduct of firms when acting on particular matters, which is the main issue being ventilated in that debate (for example, the abuse of "without prejudice" designations on correspondence). We recognise that a different approach may be required towards legislation and/or regulation dealing with the conduct of SLAPPs.

- **General governance issues:** further consideration should in our view be given to whether the profession should itself collectively develop a Code of Governance Principles for large law firms – adapting existing codes such as the Wates Principles - which might cover the firm's:
    - Purpose and values
    - Management and governance structure and composition
    - Commitments to reporting and transparency
    - Stakeholder responsibilities and engagement for a public profession
    - Commitments to ethical sustainability.

- **Other ESG topics (e.g. climate change and human rights):** we recognise other highly topical, and often politicised, issues are amenable to the approach we are recommending for kleptocracy concerns. The model we propose in the following section could be adapted by firms themselves to consider public trust and confidence in the profession in these contexts too but we are not advancing that here.

- **The Bar:** This Report is directed to client acceptance decisions by solicitors' firms in England and Wales and our consultation process has been focused accordingly.

5

Section 5

Triage in Client and Matter Acceptance

A Model Six-Step Gating Process for Firms to Adopt or Adapt

Firms and legal advisers in the UK will today manage a formal or informal cascade of business acceptance questions to drive a decision whether to accept a new client, take on new work for an existing client and, when circumstances informing the original decision change or new information comes to light, cease to act (not least because AML compliance requires an assessment of the risks associated with the client and matter). Each firm's approach and articulation will be different. Discretion may be limited and delegated to the instructed lawyer, or broader and managed by a client committee. Some firms adopt an institutional decision tree for new work, others simply mandate question prompts to be addressed by those handling matter acceptance decisions as part of onboarding due diligence and ongoing review. We also noted that the resources available to firms differed greatly (and some expressed the desirability for basic due diligence resources to be more readily available to all firms).

Consultees from law firms were generally reticent about sharing with us the detail of their onboarding due diligence and methodology. There were also apparent differences of approach on the extent to which even the architecture of a firm's process was shared with staff and clients – everyone recognising that specific cases necessarily attract confidentiality. We note there was anecdotal evidence, however, that where firms encourage a degree of transparency in the process, for example through publication of elements on the firm's intranet, consultees acknowledge that this appears to help improve the integrity of, and increase confidence in, decision-making. Openness over process can help defuse criticism around potentially more controversial mandates. This is particularly the case where a firm can demonstrate that those making the 'final call' are not those who have the most, or indeed any, direct financial incentive in the mandate.

While approaches differ, themes echo. Informed by our consultation, we conclude that the relevant business acceptance questions which firms routinely consider break broadly into two categories:

(i) Firm-Specific Criteria: to which the answers will be specific to the individual firm and its market, for example:

a. the alignment of the proposed mandate with the firm's expertise and reputation for particular types of work (for example a specialist M&A firm will likely decline a family law dispute, just as a generalist firm will decline a complex derivatives transaction);
b. commercial issues, such as the immediate availability of expertise and capacity and the potential impact of the new work on existing client relationships; and
c. the acceptability of the proposed terms of engagement (such as remuneration terms); and

(ii) Professional Criteria: where we might expect a broader market consistency or even consensus on the decision whether to act (admitting nonetheless for some discretion in approach and likely outlier firms where the position is not clearly prohibited by law or regulation).

Firms evolve their own Firm-Specific Criteria. We suggest that these are naturally subsidiary to the Professional Criteria which in effect stand as threshold issues before specific commercial matters need to engage at all.

Accordingly, we propose a model gating process that we recommend all firms not already using such a process should adopt or adapt as a threshold aspect of client and matter acceptance and a core strand to their commitment to professional and business ethics. We further recommend, however adopted or adapted, that transparency is given to this as an important element of the firm's processes overall to increase stakeholder understanding of the firm's approach to clients and mandates. The approaches shared with us in consultation ought relatively easily to embrace the principles behind the model as an extension of existing and familiar due diligence.

Our aim is to drive greater consistency within the profession (and, if the model is widely adopted, greater professional transparency towards the outside world) in business acceptance processes and outcomes so far as they engage with the Professional Criteria. In other words, success here is not unanimity in decisions reached, but a high degree of consistency in *how* firms go about reaching a decision and their willingness to explain their process for making it.

5.1. Preliminary question: contentious mandates in scope?

In discussion, an important point occupied us from the outset. Should we treat litigation mandates as outside our review? Specifically, we recognise that greater conformity in approach by firms creates a tension: widespread refusal to act (even on the basis of a professional rationale) risks denial of access to representation to some individuals or a group. This tension arises most acutely in the case of representation on contentious mandates. We identified these as instructions primarily where rights are being asserted,

defended or challenged through litigation, arbitration or some regulatory process. They can extend to instructions which seek to clarify an aspect of the law. By their nature, these instructions are distinct from most transactional matters. They can also be an important feature in the exposition of the common law.

Protections and restrictions exist and evolve to mitigate against abuse of due process by litigants. There are also regimes to require appropriate transparency throughout – both in terms of what parties must disclose to one another and (in the case of litigation at least) the openness of the litigation itself to scrutiny by the Courts and, usually, by the public. That said, a key sanction for abuse of the litigation process is an award of costs in favour of the successful litigant, which in practice may not effectively deter the well-funded litigant benefitting from the proceeds of kleptocracy.

We concluded after debate that the right approach for the Taskforce was to treat litigation mandates as 'in scope' for our recommendations on business acceptance, but to allow for a more permissive outcome on acting – consistent with balancing recognised public benefits inherent in the administration of justice. In reaching this conclusion we also noted that our Terms of Reference did not extend to questions of representation on criminal matters. The balancing exercise we are recommending would nonetheless support a decision to accept a criminal defence role in most if not all circumstances – such a decision in principle being entirely consistent with advancing the administration of justice.

5.2. A Model Six-Step Gating Process for Firms to Adopt or Adapt

Every firm today will consider whether applicable law and/or professional duties prohibit acting. This question can be formulated as follows:

Step 1: Consider whether any of the following exist to preclude acting altogether (or only with the adoption of mitigating actions)?

- An existing retainer or retainers create(s) a professional conflict.
- Obligations of the local bar rules or legal regulators prohibit or restrict provision of the service sought.
- Government sanctions prohibit or restrict provision of the service sought.
- An applicable financial crime or money laundering regime prohibits or restricts provision of the service sought.
- The client, firm or its people will in some other respect be committing a breach of applicable law in acting on the mandate.

Step 2: Assuming no prohibition, consider whether acting nonetheless undermines public trust and confidence in the rule of law and the profession.

- Solicitors have a duty to act in a way that "upholds the constitutional principle of the rule of law…and…in a way that upholds public trust and confidence in the…profession" (*SRA Principles 1 and 2*). Solicitors also have duties not to "unfairly discriminate by allowing your personal views to affect your professional relationships and the way in which you provide your services" (*Rule 1.1 of the SRA Code of Conduct for individuals and for firms*).

When addressing Step 2, with these duties, and broader considerations of professional and business ethics, in mind:

Step 3: Consider whether acting for this client in providing the legal services sought creates an unacceptable risk of undermining that public trust and confidence in the rule of law and the profession?

- In assessing this risk, does the proposed mandate involve providing services to the client of which reasonable people might strongly disapprove as being damaging to the public interest *and* which disapproval outweighs any public interest in favour of representation by the profession?[28]
- Specifically, can you be satisfied that the proposed mandate will not facilitate the activities of kleptocrats or grand corruption? Are there factors which suggest a connection to a regime that is known to present a risk of kleptocracy, state capture and/or grand corruption?[29] What is the nature of the mandate and is there a risk that by accepting the mandate you would in some way facilitate kleptocracy, including by assisting in dealings with the proceeds of kleptocracy? Will the advice or services cause, contribute or be linked to the likely harm and, if so, how?

Step 4: The Legitimate Provenance of Wealth Test: where you identify factors indicating a risk of kleptocracy, state capture and/or grand corruption, can you be satisfied as regards the client's source of wealth and that any funds involved (whether in any transaction to which the mandate relates, or in paying your fees for acting) are clean and untainted by kleptocracy and grand corruption? (The following steps can be integrated within the firm's existing processes for conducting AML risk assessment and due diligence checks, albeit adapted for this purpose.)

- As part of that assessment, has the client established to your reasonable satisfaction its ownership and control structure and the source and destination of all relevant funds?
- Do you have reasonable assurance of provenance of funds with reasonable explanation of the source of wealth?
- Consider:
    - the quality, detail and transparency of the "Know your client" documentation provided;
    - the apparent candour in answers to questions; and
    - the reputation of the client with the following:
        - HMG and regulators
        - Fellow professional advisers
        - Media and market commentators
        - Public Interest Groups
        - Credible local intelligence or due diligence sources

[28] The premise of the guidance is that the reputation of the profession in the eyes of the public is undermined if solicitors are perceived as willing to offer legal services in ways that undermine the rule of law or which are widely perceived by reasonable members of the public as seriously damaging to other aspects of the wider public interest (for example, facilitating the activities of kleptocrats). Equally, however, the rule of law is undermined if decisions on representation are made on a basis which is unprincipled, discriminatory, or which would result in the wholesale denial of legal services solely because of the unpopularity of the client with segments of the public, as opposed to the impact on the public interest of providing the legal services in question to that client

[29] Reliance alone upon the home origin of the client as the reason for refusal risks challenge as being discriminatory

Step 5: In assessing any significant public interest *in favour* of acting, notwithstanding any apparent elements of risk, consider whether representation of the client:
- will be consistent with a recognised public interest benefit
- can be justified, consistently with your firm's stated values, to:
    - your staff and potential recruits
    - your existing clients and clients you aspire to attract
- can be satisfactorily managed subject to existing duties of the profession (including upholding the administration of justice and acting with integrity and independence); and
- will be subject to external scrutiny and controls.

Step 6: If the provisional decision is to act (i.e. risk is acceptable), do you have
- adequate supervision and monitoring processes in place; and
- contractual protections to allow you to cease acting if the circumstances or available information change?

5.3. Observations on the Recommendation to adopt or adapt this model

Several points arise from this and deserve elaboration. First, our recommendation invites an appreciation of the public interest and recognised public goods. As referenced in Section 4 on the principles behind our recommendations, we have adopted Professor Stephen Mayson's articulation of the public interest with its two dimensions: the fabric of society itself; and the legitimate participation of citizens in society. Both dimensions should be considered in a decision to act or to decline to act.

Secondly, as noted in Section 4.5, the Legitimate Provenance of Wealth Test implies a change of approach for a firm that may be currently relying strictly on AML compliance. It is not simply that a red flag on ownership or funds requires interrogation; absent reasonable assurance of provenance, we recommend that the firm should decline to act. We appreciate that involves a likely shift in mindset on matter acceptance but it is one the Taskforce agreed was justified by its Terms of Reference and could be adopted, voluntarily, by firms. Whilst this approach seeks to address the potential shortcomings of AML compliance that are discussed in section 1.3, in practical terms the steps we identify can be integrated within a firm's existing structures and processes for AML compliance. For example, existing policies can be expanded to provide guidance on relevant risk factors indicating possible kleptocracy, state capture and grand corruption and as regards the sources to be consulted for due diligence on clients who may present such risks.

Whilst our focus is on providing a process for the decision whether to take on the client, if the balancing exercise outlined above results in a decision to do so notwithstanding a risk of facilitating kleptocracy (because the public interest in providing representation outweighs that risk), the issue then becomes one of ensuring compliance with the firm's duties in the conduct of the mandate and an ethical approach to whether to cease to act. Certain of our recommendations in Section 7 are directed to this.

Finally, we recognise the dilemma that a greater consistency of approach by firms inevitably limits (or at its extreme might oust) the principle of access to representation in which there is an established public interest. In short, today an individual firm declining to act on its interpretation of matter acceptance questions based solely on an assessment of its own interests might be quite consistent with the rule of law and the public interest.

The firm need not be troubled that its refusal to act means that representation will be declined altogether for that client. The firm can usually be confident that another will step in. There is no wider jeopardy. If the profession were to move as one, however, with the risk that certain clients may be denied representation altogether on certain matters, a greater public good must be served to justify that end. Transparency around process, and a resulting greater confidence in the integrity of that process, can help serve such a greater good. It will provide assurance that decisions to offer or refuse representation in challenging cases are informed by a cogent assessment of the public interest considerations, thereby supporting public confidence in the profession. Each case still needs to be tested, however, by informed discussion within the firm, for example against a challenge of unfair discrimination. Transparency and accountability should assist and reinforce, not replace, professional judgment.

Our recommendation that firms approach client and matter acceptance by first looking through a professional, not merely a proprietary, lens requires that we tread carefully. Some may support an approach by which the first question a firm asks when considering any mandate (irrespective of any kleptocracy concern) concerns whether it involves advancing a client, cause or culture that might reasonably be considered so damaging to the public interest that it should be avoided *in the interests of the wider profession*, not merely the firm. Such an approach allows for a refusal to act based on a perceived conflict between accepting instructions (of any nature) and a wide interpretation of the prevailing duty to uphold public trust and confidence in the profession and the rule of law. This is ultimately to advocate the pre-eminence of *professional* association risk: colloquially, is the mandate lawful but too awful? This is territory for legitimate debate but raises issues that go beyond the scope of this Report.

Given our Terms of Reference, we have deliberately focused and limited the gating model to concerns relating to facilitating kleptocracy, state capture and/or grand corruption and in that context the provenance and use of client wealth and funds. In short:

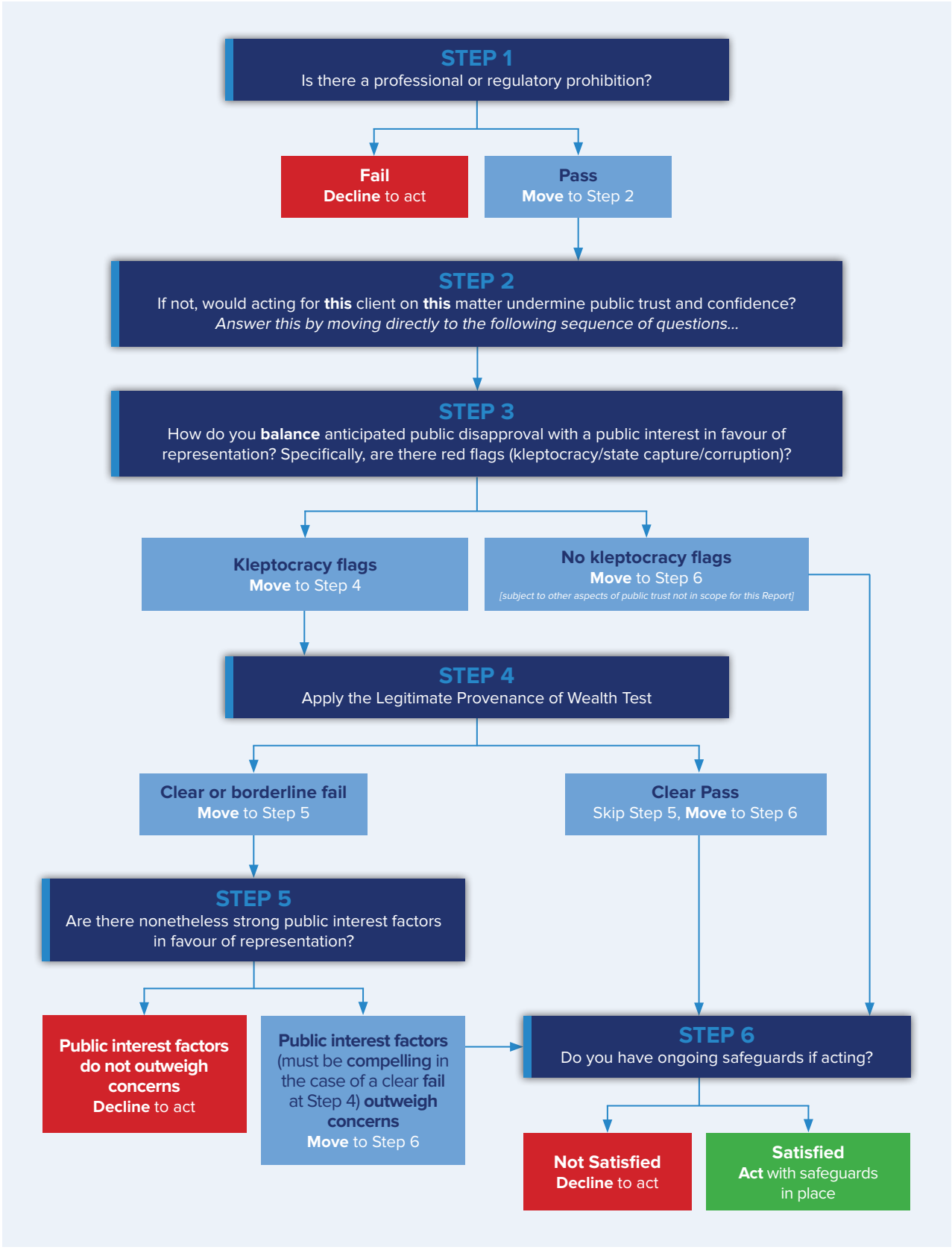
> *Is kleptocracy, state capture or grand corruption being facilitated by this instruction? If the reasonable conclusion is that it might be, then in the public interest a firm should not act.*

Figure 1

Model Six-Step Gating Process

Summary

This diagram summarises the full text. It is for illustrative purposes only, and needs to be read alongside the more detailed commentary in Section 5.2.



6

Section 6

A framework for accountability

We have sought in this Report to explain *what* it is that we are addressing, beginning with the problem statement for lawyers taking on new work and exploring the professional context in which they make that decision. We moved then to a recommended approach to *how* that decision should be made and the principles underpinning that approach. In closing, we consider *why* that approach fits within a broader framework for accountability and greater transparency in firms which we believe enhances the profession's reputation as a whole. This is consistent with Stephen Mayson's proposition that decisions and actions justified as being in the public interest will properly entail transparency, accessibility and accountability (Mayson 2024: 10, 85). In this section we look at how that transparency, accessibility and accountability might be achieved in practice.

6.1. The regulatory and ethical guardrails

Firms are subject to or subject themselves to several boundaries on their freedom to take on business (some of which are covered in more detail elsewhere in this report). These include notably, and in general terms, these principal elements:

- The SRA Principles, including those we have noted referencing the rule of law, the proper administration of justice and the public interest. These are a core part of the licence given to law firms to practise in the privileged position of a profession enjoying status and a somewhat protected market.

- Mandated or recommended disclosures, particularly applicable to firms having corporate form, including on topics such as ED&I and modern slavery, which require disclosure of data, metrics but also governance processes and risk factors, assessments and mitigating actions.

- Voluntary disclosures, made (a) at least initially for reasons such as positive reputation management, active communication to clients, employees, recruitment markets and other stakeholders, (b) as a media management tool, (c) to communicate more broadly to stakeholders on matters to meet expectations as to responsible law firm activity, for instance regarding social mobility or sustainability. These voluntary disclosures create, for the firms that make them, soft obligations to deliver and often to improve consistent with message. That said, the consequences of failing to do so are largely intangible, if nonetheless real.

- A firm's own primarily internal initiatives, such as the adoption of a stated purpose, or a codified set of values, codes of conduct, the architecture of incentives but also business strategy. All of these influence and inevitably, although electively, limit choices, direction and activity.

These last three elements (or the substance of them) are major contributors to the image, perception, self-perception and reputation of the firm. They communicate in a managed and highly intentional way how the firm wishes itself to be seen, but rarely do these three elements address directly how the firm, through the work it does and the work choices it makes, fulfils its obligations, whether in a narrow way (included in the balancing exercise we have recommended when deciding what clients to accept) or in a broader way (as a positive contributor to the public interest, meeting society's expectations of the profession and contributing to society's needs).

6.2. A practical approach

With these thoughts in mind, we recommend that law firms consider the building blocks of transparency and accountability set out in the recommendations in Section 7 below – not merely following them but purposively interpreting the intentions and building them into their own reporting, communications, governance and engagement processes.

We see it as a responsibility of a firm's management and its senior leaders to seek to align the firm's business activities (what work it chooses to do) with its stated objectives and positioning. Formalised principled objectives used in a firm's communications and publicity need to be reflected in operational reality to avoid suggestions of 'ethics-washing' or similar, thus undermining both the firm's and the profession's reputation for integrity. The primary accountability here is an internal one to employees and colleagues but other stakeholders also have a legitimate interest.

The underlying principle to these suggestions is to encourage the normalisation of consideration of the Professional Criteria (referred to in Section 5) in day-to-day decision-making and in service delivery. Cultural change requires leadership by senior partners and those then charged with making decisions need the authority to drive it. Reference to this aspect or consequence of client work may accordingly have a place in codes of conduct, ethics policies, staff handbooks or similar. We believe it to be the responsibility of a firm's management to elevate the firm's position with respect to observance of the Professional Criteria so that it becomes an active element of a firm's reputation, and in turn the reputation of the profession as a whole.

We consider that if the profession-led approach to developing the idea of a public profession is to succeed, progress and change will need to be delivered in a way that is demonstrable and independently monitored. The profession may wish to consider encouraging and facilitating the involvement of the press and civil society in achieving this independent endorsement, notwithstanding the unfamiliar level of scrutiny that this may involve.

6.3 The importance of training

Training is an essential component of implementing the recommendations of, and securing the outcomes envisaged by, this Taskforce. Effective training will include the firm's articulation of the role of the lawyer as a professional, including developing an understanding of what is in practice required by SRA Principles 1 and 2 (see the discussion in Section 2.2). The training would cover how these align with the firm's values and form part of induction, ongoing training (CPD), performance appraisal and exit processes.

The training should equip staff, in their day-to-day roles to understand the firm's view of and commitment to the following issues:

- the nature of a public profession and the responsibilities it entails;
- the public interest and how the firm approaches balancing the competing duties which it entails;
- the collective reputation of the profession alongside that of the firm and how public trust and confidence in it can be supported;
- the significance of the rule of law and the proper administration of justice and the importance of these concepts for the day-to-day practice of law.

The training will recognise that many of these concepts are complex, contested and evolving but should seek to equip staff to arrive at practical resolutions of the dilemmas they may pose.

7

Section 7
Recommendations

This Report has focused, as required by our Terms of Reference (Annex A), on how we consider solicitors' firms based in England & Wales should approach client and matter acceptance in respect of business offered where there are concerns as to kleptocracy, state capture and grand corruption, as well as the approach to ongoing matter management. This has drawn us into a broader discussion of professional and business ethics, the relevance and responsibilities today of a public profession and the benefits of bringing greater transparency to certain law firm processes. As such, these recommendations extend to practical measures that reinforce business ethics generally, but with kleptocracy, state capture and grand corruption being the underlying mischief in our sights.

Overriding objective: to place professional and business ethics at the core of the firm's decisions to represent clients, consistent with the UN Guiding Principles. To that end to promote greater selectivity and transparency over those decisions and the services offered to clients where there is a risk those clients may be associated with kleptocracy, state capture or grand corruption and/or whose funds may be of corrupt (but not provably criminal) origin. Put colloquially: *as a matter of good business ethics and in the interests of the profession as a whole, be careful about what you might be facilitating when accepting a mandate and be more transparent about how that decision was made in order to demonstrate that you have a thoughtful approach*.

Law firms should

Governance

- **Adopt and implement** policies, processes and standards for client and matter acceptance that **reflect**:
  - The firm's commitment to ethical and responsible behaviour
  - The special role that society has granted to lawyers and law firms to protect the administration of justice and the rule of law
  - The Taskforce's model "Six Step Gating Process" in Section 5.2 above which includes explicit consideration of whether
    - acting might undermine public trust and confidence in the profession; and
    - the firm is satisfied that the mandate will not facilitate the activities of kleptocrats or grand corruption

- **Demonstrate** that those decisions are made independently of short-term or individual incentives
- **Commit** to appropriate ethical (as distinguished from compliance-focused) training on these policies, processes and standards being given to all lawyers and business support teams
- **Encourage** a speak-up culture.

Transparency

- **Publish** a statement or statements (adjusted as appropriate for internal and external consumption) that confirm:
    - The firm's own articulation of its commitment to ethical and responsible behaviour
    - The management structure, personnel and processes in place for reaching and reviewing decisions on client and matter selection, including accountability
    - How ethical standards and compliance responsibilities are embedded in the firm's practice and organisational structure
    - The firm's commitment to training on professional and business ethics
    - The existence of and access to confidential internal reporting mechanisms
- **Operate** a programme for internal transparency and oversight of policies, for example through discussion in town hall events with colleagues and/or oversight by an internal ethics committee (possibly with some external membership to provide independent challenge)
- **Explain** through this programme how its client and mandate acceptance choices and overall client service delivery over a given period have taken account of and performed against its ethical standards and how its work choices align with its adopted values, purpose, ethical and strategic priorities
- **Encourage** the lawyers responsible for specific client mandates to be ready to explain the client and matter acceptance decision (at least) to those in the firm being asked to contribute to performance of the mandate, having appropriate regard to normal processes to protect client confidences
- **Report** regularly, for example through a meaningful statement on ethics and integrity in annual reports, financial and narrative disclosures, and/or website disclosures (again, subject to appropriate processes to protect client confidence) on how the firm's client acceptance and review processes and client service have reflected the firm's commitment to ethical and responsible behaviour
- **Maintain** an anonymised log of the number of clients and matters declined annually on reputational or ethical grounds.

Reputation

- **Commit** to contribute to the collective reputation of the profession, and to take the public trust and confidence in the profession into account when making client and matter acceptance decisions.

Regulators should

- **Articulate** the principles by which law firms can reconcile their professional duties with the public interest – for example, clarifying in guidance how the principle of access to representation still affords a law firm discretion over whether to act and enhancing the guidance or requirements around governance and transparency for law firms, reflecting ESG advances in other sectors.

Professional bodies should

- **Publicly support** these recommendations and provide guidance for how their members can apply them.

Civil society, parliamentarians and academia should

- **Review** adherence to these recommendations after two years with a view to revisiting them if there has not been substantial progress (including the potential need for regulatory reinforcement).

Government should

- **Recognise** the legislative gap regarding the proceeds of corruption not being adequately covered by existing AML laws and regulations and consider appropriate responses.

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A

Annex A
Terms of Reference

Taskforce on Business Ethics and the Legal Profession
to examine the role of lawyers and law firms in relation to kleptocracy and grand corruption

Introduction

Recent debates arising from the Russian invasion of Ukraine, carried out in parliament, the media and within the legal profession, have led to a wider discussion on grand corruption and the choices made by law firms when taking on or retaining clients. At the heart of this are questions about the values that underpin the legal profession, how those values relate to the rule of law and the public interest, and consequences for the wider reputation of the City. A multistakeholder Taskforce is proposed to bring greater clarity to those issues. The Chair will be Guy Beringer KC (Hon) and the Taskforce will be hosted by the Institute for Business Ethics, with the project overseen by a Steering Committee comprising Guy Beringer, Lucy Wolley-Dod, Sam Eastwood, Robert Barrington and Rachael Saunders.

Overall aims

To examine the rules, practices and approaches adopted by the legal profession in the UK in relation to taking on new clients and retaining existing clients, with particular reference to the acceptability of the provenance of such clients' resources, the uses to which those resources are put and the nature of their activities. These aims will feed into the outputs and outcomes identified below. The prime area of focus is kleptocracy and grand corruption, but it is likely that both the process and any resulting lessons or statements of principle may be applicable to other ESG issues.

Problem statement

- Civil society actors and others have expressed strong concern that corrupt overseas oligarchs and kleptocrats are using the services of British-based law firms to consolidate their wealth and consolidate impunity for their actions, while the rights of victims are neglected.

- Actors within the legal profession have expressed their own concerns that challenges to their ability to act for certain clients are challenges to the right to representation and the principle that lawyers should not be identified with their clients.

- Both the public interest and the legal profession will be best served by there being an understanding between the profession and society as to whether reasonable boundaries should be placed around such activity, on what principles those boundaries should be drawn, and where they might be.

- It would be further desirable to move the terms of debate to encourage lawyers and law firms, in upholding the rule of law and principles of justice, to be dis-enablers of kleptocracy and grand corruption.

- This is not primarily conceived as an anti-money laundering problem, as the funds involved are not usually of provably criminal origin. This casts it as a question of choices made on the basis of factors such as ethics, reputation and adherence to firms' ESG values.

Taskforce objectives

Within the context of the problem statement, and related areas identified by the Taskforce:

- To examine in detail the standards, rules and practices governing the ways in which lawyers and law firms determine which clients they choose to represent in areas other than criminal proceedings.

- To consider the ways in which new standards, rules or practices might be introduced in relation to such choice.

- To consider the ethical issues which currently apply to such choice and to consider the basis for new approaches to the way in which in ethical standards might be developed and articulated in relation to such choice.

- To develop implementable policy proposals which are likely to command the support of all relevant stakeholders including both members of the legal profession and civil society.

- To provide an approach that may be noted by other jurisdictions.

Taskforce operating model

- The Taskforce will meet at least quarterly, with a minimum of four and maximum of six meetings.

- Members of the Steering Committee will be invited to attend the Taskforce meetings as Observers. In addition, Observers may be invited from government or regulators, or elsewhere, to participate in the Taskforce meetings or specific meetings or parts of meetings. Members of the Consultation Group, and other experts, may be invited to submit oral or written evidence.

- There will be a period of consultation and evidence gathering with key groups, for which purposes we will convene a Consultation Group, divided into six sub-groups:
    - City law firms and practitioners; General Counsel at law firms; General Counsel at client companies, for example banks; the Bar; Civil Society; Academics.

- The Taskforce will not aim to produce original research, but the Secretariat will collate existing research and related materials to provide background briefing documentation for the Taskforce meetings and the Steering Committee, with the assistance of the Centre for the Study of Corruption at the University of Sussex.

- An approximate meeting schedule is:
  - Meeting 1: introductions; agree problem definition, ToRs and rules of procedure; review existing research and state of play; pool initial ideas.
  - Meetings 2 & 3: consultation, evidence gathering and scoping policy options [provision for up to 2 additional meetings if required by volume of material or unresolved issues].
  - Meeting 4 [or 6]: review draft report and policy options.

Cessation of Taskforce

The Taskforce will formally cease with the publication of the final report; however, the Steering Committee and Secretariat will remain in place for a further four months to oversee the dissemination, pathways to impact and follow-on hosting arrangements.

Consensus

The Chair will aim to achieve a consensus view on policy proposals to be put forward in the name of the Taskforce. This does not mean that unanimity will be achieved, but a duty of the Chair will be to ensure that the views of the variety of stakeholders on the Taskforce have been adequately taken into account, and that consensus is based on the support of all types of stakeholder in the Taskforce. Members of the Taskforce who do not wish to be associated with the final proposals will have the option to remove their name(s) from the Taskforce and its output(s).

Outputs

The desired outcome is, through a collaborative, multi-stakeholder process, to place reasonable boundaries around British lawyers choosing to represent kleptocrats and others involved in grand corruption. The following outputs from the project will contribute to this outcome:

i. Developing effective tools and recommendations that can be implemented by law firms, regulators or others (connected where appropriate and possible to other related initiatives).
ii. Creating a strong network of influential lawyers and others who are committed to progressing this area of work.

Terms of Reference

This document was agreed as the Taskforce's ToRs at the first meeting on September 25 2023.

Amendments to Terms of Reference

Subsequent to the meeting on September 25 2023, and based on the Taskforce discussions, it was agreed to limit the project scope to Solicitors in England & Wales.

This amendment to the original ToRs is reflected in the summary ToRs on the IBE website: https://www.ibe.org.uk/legal-profession-taskforce.html

Having taken into account the emerging research and literature on the subject of state capture, and views expressed by taskforce members, during the writing of the final report, the references to 'kleptocracy and grand corruption' were amended to 'kleptocracy, state capture and grand corruption.'

B

Annex B

Taskforce Process and Procedures

Origins of the Taskforce

The Taskforce was initiated by a small group of individuals who were concerned by the negative reaction to the role of the legal profession after the Russian invasion of Ukraine. This group subsequently formed into a Steering Committee for the project.

Institutional and Governance arrangements

The Steering Committee identified the Institute of Business Ethics (IBE) as a potential institutional home for the project. After discussion with the IBE, the project was taken on as an IBE project, and an online presence[30] established on the IBE website. An IBE representative joined the Steering Committee.

The Steering Committee drew up draft Terms of Reference (ToR), incorporating a problem statement, purpose, scope and governance arrangements. The ToRs are to be found in Annex A of this report.

The Taskforce's Chair and Deputy Chair were appointed from amongst the Steering Committee, which agreed there should be up to ten additional Taskforce members.

Potential Taskforce members were approached by members of the Steering Committee, aiming to strike a balance between practising and retired lawyers, academics and representatives of civil society. They were shown the draft Terms of Reference and invited to join by the Chair or Deputy Chair.

The ToRs were approved by the full Taskforce at its first meeting.

[30] "Taskforce on Business Ethics and the Legal Profession". Institute of Business Ethics. https://www.ibe.org.uk/legal-profession-taskforce.html

Consultations

The Steering Committee and Taskforce members identified 7 groups with whom they wished to undertake consultations, as well as publishing a notice on the IBE website inviting written submissions. The initial consultation groups were:

- City law firms and practitioners
- Law firm General Counsels
- The Bar
- Banking and corporate General Counsels
- Academia
- Civil society
- Regulators.

Investigative Journalists were subsequently added to this list.

Taskforce members were invited to identify or nominate individuals within these groups, and make introductions where possible. They were contacted by the Chair, Deputy Chair or Research Assistant, and invited to participate in a consultation meeting. The vast majority of meetings involved one consultee; in a minority of cases, there were small groups.

31 consultation meetings were held with 63 individuals, under the Chatham House Rule.

The purpose of the consultation was to inform the Taskforce through discussion with well-informed individuals rather than to undertake structured research interviews.

All Taskforce members were invited to attend any meeting, and in practice either the Chair and Deputy Chair attended all meetings, along with one or two other Taskforce members per meeting with a particular interest or specialism.

All meetings were written up in anonymised notes, which were circulated to Taskforce members.

Research

The Taskforce's Research Assistant conducted a literature review and on-going desk research throughout the project to provide relevant academic research and case study information.

A regular email to Taskforce members circulated material in the public domain that was relevant to the Taskforce's deliberations, including government policy documents, public documentation produced by law firms and regulators, statements and speeches by politicians and public figures, and articles from both specialist and mainstream media.

Along with the notes from the consultation meetings, this body of material formed the substantive background material for the Taskforce's deliberations.

A secure online folder was created, accessible only by Taskforce and Steering Committee members, and the Research Assistant, to store this background material and notes from Taskforce meetings.

Development of Recommendations

The Taskforce sub-divided into four workstreams, each tasked with scrutinising a specific area. The workstreams were:

1. Purpose and role of the profession
2. Law firm procedures
3. Transparency, accountability and culture
4. Boundaries and definitions (including Litigation).

Each workstream provided a written report back to the Taskforce, which was discussed at a Taskforce meeting. The Chair and Deputy Chair developed a set of initial recommendations based on the workstream reports and meeting notes, several drafts of which were shared with and commented on by the full Taskforce.

Final Report

The basis of the final report was the text provided by the workstreams. The Taskforce delegated a drafting group to draft the report. Successive drafts were circulated to Taskforce members, and discussed in full Taskforce meetings. Comments and feedback were also received from Taskforce members by email.

A small number of points were identified on which the drafting group felt further legal clarification was required. The Taskforce received pro bono advice from relevant experts on these points.

Summaries of the draft report and recommendations were shared with a number of individuals in law firms, civil society and academia to test the report's concepts, tone and recommendations. Amendments to the draft were made in light of feedback from these groups.

The final report was signed off by the Taskforce at its final meeting, subject to a small number of non-material amendments and updates, which were subsequently approved by email.

C

Annex C

Regulatory Framework Governing Client on-/off-boarding Decisions

1. Summary of current rules on onboarding/offboarding

1.1 Onboarding

The legislative environment

The Money Laundering and Terrorist Financing Regulations (MLRs) outline the legal obligations and responsibilities of the regulated sectors, including legal professionals. These obligations are particularly relevant at the onboarding stage of a client relationship but also require ongoing monitoring. Obligations include:

- The identification and assessment of the degree to which their business is subject to money laundering and terrorist financing risks. All information pertaining to risk assessments and related materials are also subject to record-keeping requirements with relevant persons being required to be able to produce these to supervisory authorities on request.
- Compliance with customer due diligence (CDD) requirements. Law firms are required to identify their clients and verify their identification, identify and thoroughly understand the beneficial ownership of the client where that client is a legal entity, as well as run background checks and, depending on the risk of money laundering identified (at the client or matter level), determine the source and nature of a client's funds and wealth. Enhanced due diligence (EDD) is required inter alia [31] where any transaction or business relationship involves a person established in a "high-risk third country", a politically exposed person (PEP) or their family member or known associate, or any other situation that presents a higher risk of money laundering or terrorist financing according to the firm's risk assessment. Conversely, where a business relationship or transaction is assessed to present a low risk of money laundering or terrorist financing, simplified due diligence is permitted.
- The establishment and maintenance of policies, controls and procedures to mitigate and manage money laundering and terrorist financing risks as identified in its risk assessment.
- Requirement to cease transactions where CDD measures are not possible.
- Record-keeping obligations relating to CDD and any supporting documents.

[31] EDD is also required where the relevant person discovers that a customer has provided false or stolen identification documentation or information and the relevant person proposes to continue to deal with that customer, and in any case where—

(i) a transaction is complex or unusually large,

(ii) there is an unusual pattern of transactions, or

(iii) the transaction or transactions have no apparent economic or legal purpose.

The MLRs apply to specific areas of legal services, including:

- The buying and selling of real property or business entities
- The management of client money, securities and other assets
- The opening or management of bank, securities or savings accounts
- The organisation of contributions necessary for the creation, operation or management of companies
- The creation, operation or management of trusts, companies, foundations or similar structures.

As such, various areas of legal service, for example the provision of legal advice, advocacy work and representation, fall outside of the scope of the MLRs. In such cases, law firms are able to exercise discretion as to the extent to which they carry out the full range of AML checks required in other areas.

The Proceeds of Crime Act 2002 (POCA) requires that anyone who suspects that certain client/customer or prospective client/customer activity might indicate their involvement in money laundering or terrorist financing, reports suspicious activity or transactions to the National Crime Agency (NCA). The legislation applies to the regulated sector (including the legal profession) but guidance from the NCA[32] stipulates that even those outside the regulated sector may be at risk of committing an offence under POCA if they do not report suspicions.

As part of their client due diligence procedures, law firms are also required to ensure that by taking on a client/matter they are not in breach of the UK's sanctions regime.

The Legal Sector Affinity Group publishes extensive guidance[33] to support firms in understanding and implementing obligations placed on them by the MLRs. This guidance also includes advice to firms on risk factors to consider when conducting a risk assessment. This guidance mirrors advice set by the Financial Action Task Force. Academic research has repeatedly highlighted the failures of the AML regime to adequately capture the proceeds of kleptocracy and grand corruption, for several reasons:

The AML regime has proven itself most effective at targeting exiles, as opposed to incumbent businessmen and political elites who are most likely to be profiting from kleptocracy (Mayne & Heathershaw 2021).

The AML regime is designed to prevent the facilitation of the laundering of the proceeds of crime, not counter kleptocracy:

> *"Kleptocrats do launder money, but most of their funds will be 'legal' – meaning either illegal activity will be ignored or even ruled legal by the corrupted courts of a kleptocracy, or there will be a system of political patronage – which is corrupt but may not break any national laws. An example of this would be a government contract awarded to a crony or family member of the head of state, as in Kazakhstan, or to oligarchs, as in Russia"* (Heathershaw & Mayne 2022).

[32] "Introduction to Suspicious Activity Reports (SARs)", National Crime Agency, March 2021, https://www.nationalcrimeagency.gov.uk/who-we-are/publications/158-introduction-to-suspicious-activity-reports-sars#:~:text=By%20submitting%20a%20SAR%20to,you%20must%20submit%20a%20SAR

[33] Legal Sector Affinity Group. 2023. *Anti-Money Laundering Guidance for the Legal Sector 2023.* https://www.lawsociety.org.uk/topics/anti-money-laundering/anti-money-laundering-guidance

As such, systems designed to look for proof of an existing predicate offence are unable to detect many of the proceeds of kleptocracy, and at worst offer plausible deniability to those inclined to take on high-value, high-risk matters.

Regulatory considerations

CDD obligations placed on regulated firms by the MLRs are reinforced by the SRA Code of Conduct for Firms[34] which requires regulated entities to have effective governance structures, arrangements, systems and controls to ensure compliance with their legal and regulatory obligations. Firms and individual solicitors (the latter under the Code of Conduct for Solicitors, RELs and RFLs), are required additionally to identify their clients, regardless of whether the retainer is in scope of the MLRs.

Firms are also required to carry out conflict checks to identify potential conflicts of interest to ensure impartial and independent representation for clients. Where client conflicts arise, they can potentially be overcome in certain cases (where there is a substantially common interest or the clients are competing for the same objective) and all parties give informed consent, where 'ethical screens' or other safeguards are established and it is reasonable for the firm to so act.

Firms may not refuse to provide a service based on characteristics protected under the Equality Act 2010.

1.2 Ceasing to act

The SRA Code of Conduct for Solicitors, RFLs and RELs does not explicitly stipulate that a solicitor must have a 'good reason' to discontinue representation of a client. However, it is a fundamental principle that solicitors are required to act in the best interests of their clients. In the absence of a specific provision to the contrary, an entire agreement cannot be terminated without just cause. There is, however, an implied term allowing a solicitor to terminate a retainer with reasonable notice for valid reasons. These reasons may include:

- In some cases, when a client loses mental capacity;
- The client insisting the solicitor does something that would put the solicitor in breach of their professional obligations;
- The client's failure to provide necessary funds for disbursements or to offer adequate instructions;
- The client obstructing the solicitor or hindering their ability to manage the matter effectively;
- A significant breakdown in trust and confidence between the solicitor and the client.

In conclusion, as the SRA stated in a news release relating to compliance with Russian financial sanctions:

> *"The general position is that firms can choose who they act for, and can choose not to act for any reason (unless unlawful, for example under equalities legislation). The question of terminating a current retainer is one for the common law, and turns on whether there is a 'good reason' for the termination"* (SRA 2022).

[34] "SRA Code of Conduct for Firms". 2018. Solicitors Regulation Authority. Last updated 6 April 2023. https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/#rule-4

D

Annex D

International Context – Additional Notes

Overview

The role of lawyers, the boundaries within which they operate and the appropriate understanding and effect of relevant ethical principles, have been the subject of debate among practitioners, regulators, academics and civil society for decades. This is not limited to domestic discourse. These issues, notably the disconnect between professional duties, comprehension of ethical principles and public expectation, have more recently been the focus of international consideration. The International Bar Association and its ongoing Role of the Lawyer initiative[35] – more on which follows – has identified issues which remain the subject of ongoing debate and disconnect, in addition to areas where a degree of consensus has been reached.

By way of wider context for the issues addressed in this Report, this section will provide a brief overview of key soft law principles that provide a governance framework on conduct for the global profession. The focus will be on those which have been agreed and promulgated by international organisations since 1990, including the United Nations, WEF and OECD. It will also reference the disconnect between different legal systems as to whether the public interest has a role to play in how a lawyer discharges their duties.

As noted in Section 2.2, the Introduction to the SRA Principles[36] positively positions the public interest as the north star for lawyers should a conflict arise with an individual client's interests. The principles that safeguard this public interest include "...the rule of law, and public confidence in a trustworthy solicitors' profession and a safe and effective market for regulated legal services and the public".

While the concept of public interest remains contentious globally, greater harmony and consensus have more recently been reached in the realm of business and human rights and its applicability to the legal profession. The adoption of the 2011 UN *Guiding Principles on Business and Human Rights* ('UNGPs') has gradually galvanised the business world, but, until recently, was not widely regarded as integral to the business model of the legal profession, either in terms of individual law firm management or how lawyers advise their clients.

Notwithstanding a common recognition of the importance of corporate social responsibility (more often now subsumed within the notion of ESG considerations), there was significant

[35] International Bar Association 2022

[36] Solicitors Regulation Authority 2019

debate on the content and extent of the IBA's 2015 Business and Human Rights Guidance for Bar Associations and 2016 Practical Guide on Business and Human Rights for Business Lawyers. Both were intended as a reference toolkit for lawyers and bars, in response to the 2011 UNGPs and other laws, policies and standards that promote business respect for human rights. As referenced in Section 3, in more recent times there has been greater consensus reached on these issues, with the updated guidance on business and human rights and the role of lawyers in the changing landscape passing unanimously and without debate by IBA Council in 2023.[37]

International soft law context

Relevant soft law principles and frameworks have been issued and agreed by bar associations and international bodies over the past forty years. Key documents include:

- 1990 *UN Basic Principles on the Role of the Lawyer*;
- 2006 *Charter of Core Principles of the European Legal Profession* (updated in 2019);
- 2011 *UN Guiding Principles on Business and Human Rights*;
- 2011, 2018 and 2024 versions of the *IBA International Principles Codes of Conduct*;
- 2013 *IBA Anti-Corruption Guidance for Bar Associations* (currently under review);
- 2019 *IBA & OECD report of the Task Force on the Role of Lawyers and Commercial Structures*;
- 2021 WEF (supported by the World Bank and UNODC StAR initiative) report *The Role and Responsibilities of Gatekeepers in the Fight against Illicit Financial Flows: A Unifying Framework*
- 2023 *Updated IBA Guidance Note on Business and Human Rights: the role of lawyers in the changing landscape* (updating the 2016 IBA guidance for business lawyers);
- 2024 *Updated IBA Guidance on Business and Human Rights for Bar Associations*.

(i) The Role of the Lawyer

Section 3 in the main body of the Report references the UN Basic Principles as being the starting point and most authoritative set of international norms on the position of lawyers. Articles 12-15 and 18 have been of particular interest in this regard.

The most recent and unanimously approved version of the IBA International Principles on Conduct for the Legal Profession contains 10 principles common to the legal profession worldwide. The purpose of the principles and areas of debate are addressed in Section 3.

Recent attention has been upon the role of the lawyer, notably in terms of whether they should always seek to further their clients' interests as far as the law permits, or whether there are other factors which they should consider when advising on a course of action.

The Explanatory Note to Principle 5 provides limited detail on what this means in practice. It states that a lawyer should do their utmost to serve their client's cause ethically and lawfully and not engage in conduct that is intended to mislead or adversely affect the interests of justice. What that means in practice, however, remains a live question. Civil and common law systems are not entirely aligned, with differing perspectives regarding the duty of a lawyer to operate within the law, and how, when and whether they should have regard to their own moral guardrails, or some wider perception of what societal harm may ensue from such representation.

[37] International Bar Association 2023

In 2019 the IBA and OECD task force published a joint report on *The Role of Lawyers and International Commercial Structures*.[38] The work – commissioned and undertaken in response to the revelations from the Panama and Paradise papers in 2016[39] – outlined the role of lawyers in "detecting, identifying and preventing illegal conduct in commercial transactions, in particular transactions with an international character, where the risks of such conduct may be higher".

The report was intended to assist governments in policy formation and lawyers in how to conduct themselves, consistent with their underlying domestic legal and ethical obligations. The eight principles were recommended to bar associations, encouraging their adoption and recommending that they engage with their governments on how the principles could help in administering justice and upholding the rule of law. The principles included reference to lawyers not facilitating illegal conduct and undertaking appropriate due diligence to avoid doing so inadvertently, and the need to apply lawyer client confidentiality (or professional privilege) appropriately.

The report noted at that time in most jurisdictions, "a lawyer is under no legal or ethical obligation to report conduct that the lawyer knows or suspects might involve bribery or corruption, tax evasion or any other serious crime, save for specific reporting obligations under anti-money laundering, counterterrorism financing and, most recently, Common Reporting Standard (CRS) and tax avoidance rules.[40] In no jurisdiction does a disclosure obligation on a lawyer arise as a consequence of the use of the lawyer's work-product by the client for marketing or other purposes".

Concerns were raised that the report gave an overly negative view of the profession and overplayed incidents of lawyer wrongdoing. References were made to international and domestic laws and recommendations (notably global standards for client due diligence requirements issued by the Financial Action Task Force – 'FATF') being sufficient, asserting that the report overstepped, misled and was superficial.[41]

Detailed analysis of the issues raised in 2019 is not appropriate for this report, other than being used to illustrate the ongoing difficulty in reaching global consensus on the duties and role of the lawyer in a more granular context.

[38] IBA & OECD 2019

[39] This refers to the public disclosure in April 2016 of approximately 11 million electronic files sourced from the Panama law firm Mossack Fonseca, whose services included the incorporation and administration of offshore companies

[40] England and Wales has the broadest reporting laws covering money laundering, terrorism financing, proceeds of crime and serious tax evasion. The information provided by EU based bar associations and law societies for the purposes of this 2019 report, pre-dated the adoption by the EU on 25 May 2018 of Directive 2018/822, amending Directive 2011/16/ EU with respect to mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements. The directive took effect on 25 June 2018 and requires 'intermediaries', including lawyers, to report transactions and arrangements that are considered by the EU to be potentially aggressive

[41] Council of Bars and Law Societies of Europe. 2019. "CCBE Observations in response to the OECD-IBA 'Report of the Task Force on the role of lawyers and international commercial structures'". 8 July 2019. https://www.ibanet.org/MediaHandler?id=13A45514-6D77-4D23-91FA-3852DFA0C9FF&.pdf&context=bWFzdGVyfGFzc2V0c3wzMzMzMDZ8YXBwbGljYXRpb24vcGRmfGhlYS9oMzIvODc5NzA1NTc0NjA3OC8xM0E0NTUxNC02RDc3LTREMjMtOTFGQS0zODUyREZBMEM5RkYucGRmfDA5NjkwMTUzOGJlZTEwMjk3MzBiYTQ3YTRkYTRhNDk0MTQ1YzkyZDk5YjIxMmI4NTMzYzE4ZDljNWM2ODBhYmI

The 2021 WEF Unifying Framework on the role of 'gatekeepers' in the fight against illicit financial flow[42] was aimed at private sector intermediaries, whose role provided strategic advantage to prevent or interrupt illicit financial activity and transactions. Such intermediaries included lawyers, accountants, real estate agents and art dealers, and members of all professions took part in a task force that determined and agreed the 3 core principles and 5 practices. The framework sought to promote the 3 principles of (i) Integrity, (ii) Transparency and (iii) Accountability, with enhanced policy development, culture and collaboration evolving in response.[43]

The framework did not seek to undermine regulation, but was intended to operate as 'a mechanism for recognition, ownership, consensus building and collaboration within a diverse community of private sector professionals.' It recognised that self regulation is 'essential for the realization of true integrity, transparency and accountability – above and beyond compliance.'

To implement the principles in a meaningful way, gatekeepers were asked to implement five core practices:
1. Establish clear, concrete and up-to-date policies
2. Promote effective due diligence
3. Centre a culture of integrity through training and incentives
4. Foster a "speak-up" culture
5. Collaborate across industries and sector

The Framework did not elicit specific disagreement from any quarter, but any direct impact is hard to measure. Its unique angle was in identifying those who operate as private sector gatekeepers and reminding them of the need for continuous focus and improvement, the benefits of cross-sector and transnational collaboration and in sharing good practice,

(ii) The evolution of business and human rights and the role of the lawyer

As referenced in the overview in Section 3 and above, the relevance of the UNGPs to lawyers and law firms has evolved since their introduction in 2011.

The recently updated IBA guidance explicitly includes questions for lawyers and law firms to consider, including "what is the connection between the nature of the lawyer's advice and services and the likely harm (i.e., will the advice or services cause, contribute, or merely be linked to the harm), and what is the connection between the client's conduct and the likely harm?". This guidance demonstrates a desire to promote best practice among lawyers and law firms. It urges them to operate as "wise counsellors" and not purely technical legal experts, in addition to promoting a global standard that bar associations and regulatory bodies can use to further incorporate ethical considerations in their guidance and work.

42 The term 'illicit financial flow' was described in the report as the movement of funds that are illegal in their source, transfer, or intended use, such as the proceeds of tax evasion, capital for terrorist financing, or corruption

43 World Economic Forum 2021

Updated guidance for bar associations was issued in 2024. It incorporates the additional 2023 guidance aimed at lawyers and provides a roadmap of what bar associations can do to help their members understand and apply the UNGPs in their legal practice.

This is an area where consensus has been reached – at least to a point. While the updated guidance has passed with global bar association consent, the views on the extent to which a lawyer should consider and apply soft law in their decision making and advice, are not universally shared.

International Bar Association Project

In June 2022, the IBA announced that it was embarking on the 'Gatekeepers' Project' to consider the global discourse surrounding the role of lawyers as potential enablers of illicit financial flow. This followed negative reports on the legal profession from several sources over recent years. Reports published in 2021 from the UN FACTI Panel[44] and the OECD,[45] referenced the role of lawyers and accountants in facilitating illicit financial flow, referring to them as 'enablers' requiring greater oversight, and recommendations that governments adopt global standards.

Outrage intensified in 2022, alleging law firm hypocrisy and a moral vacuum regarding their presence and business activity in Russia. In the immediate aftermath of the invasion of Ukraine, many international law firms closed their Russia-based offices, prompting further adverse commentary on the legal profession and its role in enriching the Russian war machine, with specific focus on oligarchs and their connected nefarious business networks.

In recent years and in addition to concerns over the legal profession's role in facilitating improper financial activity, international stakeholders (notably the OECD, UN and World Bank) and NGOs have published reports highlighting the profession's role in enabling or failing to mitigate the climate crisis, frustrating the achievement of the United Nation's Sustainable Development Goals, its improper use of Non-Disclosure Agreements (NDAs) and facilitation of SLAPP lawsuits – where aggressive and often unjustifiable pursuit of weaker parties compromise media freedom and the wider interests of justice.

The existential question for the global profession has extended beyond those lawyers who are either directly or indirectly complicit in corruption, and now considers the wider scourge of tactical game playing – being 'lawful but awful' and operating within ethical grey areas. By deploying arguably legitimate tactics for abusive purposes in a range of legal practice areas, designed to achieve the best outcome for the client at the expense of others, the profession could be scarring itself – perhaps irrevocably. There may be no illegality or regulatory breach committed by the lawyer, and the retort voiced by many members of the profession often is that it is for government to make the law, and that lawyers can apply and operate within it accordingly.

[44] FACTI Panel 2021

[45] OECD 2021

A recent report of an event convened by Chatham House in collaboration with the IBA in 2024, explored whether lawyers are achieving the right balance in terms of how they approach the question of client interests.[46] Those in attendance included lawyers and bars from a range of jurisdictions, policy makers, academics and civil society. The report considered criticisms regarding the alignment of legal practices with societal concerns, such as environmental issues and corruption, and called for ongoing dialogue to navigate these ethical challenges.

Most recently in January 2025, a working paper published by the United Nations Development Programme FIG (Finance, Integrity and Governance) Initiative following its second symposium in 2024 considers these issues.[47] Its recommendations align with and build upon the 2021 UN FACTI panel report. It criticises self-regulation and legal privilege, stating that greater transparency and information sharing would be achieved by reforming international standards to limit professional confidentiality where it is being exploited. Furthermore, it suggests that there should be a move away from industry associations to self-regulate professional service providers.

Engagement with international working groups and initiatives such as these is key to explaining the risks and challenges of such far-reaching recommendations. The intention of the IBA's ongoing global initiative is to examine the role of lawyers within wider society and to help clarify their ethical responsibilities and obligations when providing legal services. The project is a collaborative and proactive effort, seeking ways to engage in meaningful dialogue with those criticising the profession, while also explaining the dangers behind potential undermining of its core values.

[46] "Soft law could help lawyers pursue more ethical practice, Chatham House report suggest", International Bar Association, 15 November 2024, https://www.ibanet.org/Soft-law-could-help-lawyers-pursue-more-ethical-practice,-IBA-report-suggests

[47] UNDP 2024

Find out more

This report is available on the website of the Institute of Business Ethics: https://www.ibe.org.uk/legal-profession-taskforce.html.

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