



**House of Lords Constitution Committee  
Inquiry into the rule of law  
Bar Council written evidence**

## About Us

The Bar Council represents approximately 18,000 barristers in England and Wales. It is also the Approved Regulator for the Bar of England and Wales. A strong and independent Bar exists to serve the public and is crucial to the administration of justice and upholding the rule of law.

## Executive Summary

1. The UK has a longstanding reputation across the world for leading, upholding and respecting the independence of judges and the rule of law. This hard-won reputation is at risk and easily lost. All sections of society have a part to play in upholding the rule of law. For it to be maintained in the long term, public commitment to this fundamental principle is essential.
2. Parliament has an important role to play in the effective operation of the rule law. The government and its ministers bear responsibility for upholding the rule of law and respecting the separation of powers when they bring forward legislation. MPs also bear great responsibility given that Parliament is the final decision-making body for scrutinising, shaping and passing laws. This gives it the ultimate responsibility for upholding the principles on which the UK constitution rests.
3. However, recent and repeated public attacks on the legal profession and on the independence of our judiciary by politicians, coupled with negative rhetoric, continue to undermine the trust and confidence in our justice system – both at home and abroad. These comments threaten the effective operation of the rule of law by associating lawyers with their clients, conflating it with the rule of lawyers, and diverting the public further away from the true understanding of the rule of law.
4. Parliament can improve its legislating by adopting pre-legislative scrutiny more consistently, limiting the use of delegated powers, consolidating complex laws for clarity, and explicitly referencing rule of law principles in debates. Greater public engagement and expert input during committee stages would further strengthen legislative quality. These reforms would not only enhance adherence to the rule of law but may also bolster public trust in Parliament's ability to safeguard democratic values.
5. We also strongly encourage the government to support the ratification of the Convention on the Protection of the Profession of Lawyer, adopted by the Committee of Ministers of the Council of Europe on 12 March 2025.<sup>1</sup> This binding legal instrument helps ensure that

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<sup>1</sup> [Council of Europe adopts international convention on protecting lawyers - Portal](#)

lawyers can practise without fear, prejudice or improper restraint, thereby safeguarding their fundamental role in upholding the rule of law and access to justice.

## Defining the rule of law

### Question 1: What are the components of the rule of law?

- Why is the rule of law an important tenet of the UK constitution?
  - Which factors can be used to assess the health of the rule of law?
  - Is useful assistance to be gained from definitions of the rule of law used by international or supranational organisations, or in the legal systems of other countries?
6. There are subtly differing interpretations of what the rule of law is and what exactly it means, but we consider that the components considered to be core by the Venice Commission in their Rule of Law Checklist<sup>2</sup> are an excellent starting point:
- a. The principle of **legality** is at the basis of every established and functional democracy. It includes supremacy of the law: State action must be in accordance and authorised by the law. The law must define the relationship between international law and national law and provide for the cases in which exceptional measures may be adopted in derogation of the normal regime of human rights protection;
  - b. **Legal certainty** involves the accessibility of the law. The law must be certain, foreseeable and easy to understand;
  - c. Preventing the abuses of powers means **having in the legal system safeguards** against arbitrariness; providing that the discretionary power of the officials is not unlimited, and it is regulated by law;
  - d. It is paramount that the law guarantees the absence of any discrimination on grounds such as race, colour, sex, language, religion, political opinion, national or social origin, birth etc. thus affording **equality before the law**. Similar situations must be treated equally and different situations differently. Positive measures could be allowed as long as they are proportionate and necessary.
  - e. **Access to justice** implicates the presence of an independent and impartial judiciary and the right to have a fair trial. The independence and the impartiality of the judiciary are central to the public perception of the justice and thus to the achievement of the classical formula: “justice must not only be done; it must also be seen to be done”.
7. The Rule of Law, understood in this way, must therefore amount to a vital aspect of the UK constitution because it is linked to the protection not only of human rights but of democracy which is what underpins our constitution (a constitutional monarchy) i.e., the rules, laws and principles by which we are governed as well as creating and delimiting the powers that different political institutions hold. The constitution of the UK cannot be found in one written source unlike some of our European neighbours. Parliament can make and unmake law without the limitations of any constitutional text. The concept of parliamentary sovereignty, developing still from its zenith in the jurisprudential theories of Albert Venn Dicey, has been

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<sup>2</sup> [Venice Commission of the Council of Europe – The Rule of Law Checklist](#)

under close scrutiny in recent times, especially in relation to the UK's withdrawal from the European Union.

8. The closest we get to a written constitutional document is the Magna Carta agreed at Runnymede in 1215 between King John and a group of English barons who had been part of a rebellion against him. In chapter 39 and 40 it stated that:
  - a. 39. *No free man shall be seized or imprisoned or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.*
  - b. 40. *To no one will we sell; to no one deny or delay right or justice.*
9. Thus Magna Carta became significant in placing formal limits on the King's power and formalising the idea that the monarch should not be above the law. This is, no doubt, our 'origin story' in terms of the rule of law, but it is limited in its scope and content.
10. The constitution howsoever it is comprised or collated from various sources (Acts of Parliament, Treaties, the common law (decisions made by courts) and conventions to name key but by no means the only sources) is a fundamental check on otherwise unfettered powers of the constitutional monarchy over the subjects of a democratic nation.
11. It has been said that the benefit of an uncoded constitution allows for flexibility and means that successive generations can have influence rather than being bound by those who went before. The relevance of the constitution can in this way move with the times with ease, so long as those who apply it, uphold it and promote it, speak with largely one voice as to what the rule of law means. Others argue that it is unclear or ambiguous, that it allows for governments with a majority in the House of Commons to proceed relatively unbound by any checks and balances and that citizens are not well equipped to challenge the government because they are not certain of their own rights or the boundaries or power as permissibly exercised.
12. Given the UK's own distinct (political) history, which unlike, for example, its European neighbours, has not meant the birth of a written constitution in the wake of a revolution, and that it remains a constitutional monarchy, again unlike many other of its neighbours, we suggest that there is limited useful assistance to be gained from definitions of the rule of law used by international or supranational organisations, or in the legal systems of other countries. Certainly there are points of interest and comparison, but not all other nations speak with one voice as to what the rule of law means and how it should be applied. The UK, in the absence of a codified or written constitution, is in a minority internationally, the fellow members of which are Israel, Canada, Saudi Arabia and New Zealand. The reasons for this differ. However, it is important to note that the British Parliament dates back to the 13<sup>th</sup> century.
13. Bearing all of this in mind, factors which we consider to be useful in assessing the health of the rule of law in the UK are:
  - a. The openness / transparency of government and legislature;
  - b. The level of corruption;
  - c. The maturity of laws concerning discrimination and human rights and their enforcement;

- d. The number and nature of challenges in the courts to the government generally and their disposal;
  - e. The number and nature of challenges to major legislation which the government seeks to introduce and their disposal;
  - f. The independence of the judiciary;
  - g. The resources available to the courts and tribunals including judicial resources;
  - h. The timeliness of criminal and civil proceedings;
  - i. The condition and rights of prisoners;
  - j. The extent to which legal aid is available to citizens;
  - k. The international standing of the country with other jurists.
14. We also note the helpful analysis undertaken by the World Justice Project<sup>3</sup> in this regard and consider that the factors and sub-factors used to create the Rule of Law Index are apposite.

## Question 2: How well is the rule of law understood by politicians and the public?

### - Has the rule of law been confused with the rule of lawyers?

15. The public does appear to have an understanding of one of the basic tenets of the rule of law – namely, that the law should be followed by and applied to everyone (see the Law Society’s poll findings summarised in I. Stephanie Boyce’s Gray’s Inn keynote speech on the rule of law<sup>4</sup>).
16. There also does seem to be some degree of understanding of the rule of law amongst politicians; in her evidence to the Post Office Horizon IT Inquiry on 11 November 2024, Kemi Badenoch MP correctly noted that one of the functions of the rule of law is to create a fair system in which everybody is treated equally and everyone can receive justice but that respect for the rule of law does not preclude seeking to reform the law.
17. Under the Attorney General’s Guidance on Legal Risk<sup>5</sup> (published in November 2024), government lawyers are now required to carefully scrutinise policies which may carry a high risk under international law. However, a “high risk” is to be assessed by reference to the likely response of the international community as a whole and to the political, diplomatic and reputational consequences of implementing the policy in question. As Policy Exchange has noted in its report ‘From the rule of law to the rule of lawyers’<sup>6</sup>, these are principally political issues to be weighed by ministers, as distinct from legal questions for lawyers.
18. Government lawyers are also now required to advise ministers that where (a) a policy is underpinned only by a “tenable” legal argument (i.e., a policy which has a 70% chance of being found unlawful, were a legal challenge to be brought), (b) the policy undermines fundamental human rights and (c) the policy is unlikely to be challenged in court or receive judicial scrutiny, it may not be appropriate to implement that policy.

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<sup>3</sup> [WJP Rule of Law Index](#)

<sup>4</sup> [The rule of law: what does it really mean? | The Law Society](#) (15 Feb 2022)

<sup>5</sup> [Attorney General’s Legal Risk Guidance](#)

<sup>6</sup> [From the Rule of Law to the Rule of Lawyers? Policy Exchange](#)

19. It is problematic that no definition of “fundamental rights” is set out in the Attorney General’s guidance. However, we do not consider that, overall, the aspect of the guidance critiqued by Policy Exchange conflates the rule of law with the rule of lawyers.
20. Instead, the guidance requires government lawyers to **encourage ministers to uphold the rule of law** by avoiding policies which (a) are much more likely than not to be unlawful, which (b) erode fundamental rights, in circumstances (c) where the relevant policy is unlikely to be challenged in court (such that the illegality may never come to light). We do not consider that a government lawyer who offers such advice would be overstepping their role or acting contrary to the rule of law.

## The operation of the rule of law

### Question 3: What threatens the effective operation of the rule of law in the UK?

21. The rule of law cannot effectively operate without sufficient checks and balances and mechanisms to hold our institutions accountable. Political and media attacks, associating lawyers with their clients have become a disappointingly common occurrence. Recent examples include:

#### Criticism by politicians/ government of the judiciary and lawyers

22. There have been several examples of this type of criticism of lawyers and the judiciary such as an MSP condemning what she called “bigotry, prejudice and hatred coming from the Supreme Court”, which the Faculty of Advocates argued created a “risk of danger” to the judiciary<sup>7</sup> and media commentators undermining the independence of the judiciary<sup>8</sup>. The former Home Secretary and the former Prime Minister following the publication of the Illegal Migration Bill also made damaging statements such as: ‘activist blob of left-wing lawyers’ and commenting that the Leader of the Opposition (as he was at the time) is ‘just another lefty lawyer’. In a tweet, former Prime Minister Rishi Sunak MP said: “The Labour Party, a subset of lawyers, criminal gangs - they're all on the same side, propping up a system of exploitation that profits from getting people to the UK illegally”<sup>9</sup>.
23. Prior to that, the Daily Mail ran the infamous headline: ‘Enemies of the People’, referring to the decision made by the High Court in the *Miller* case concerning the invocation of Article 50 of the Treaty on the European Union and personal attacks on the Judges followed. This was compounded by the Lord Chancellor’s delay in responding to defend the independence of the judiciary and to condemn attacks on the judiciary, as reported in the press<sup>10</sup>. The Bar Council passed a resolution<sup>11</sup> calling on the Lord Chancellor to condemn the attacks on the judiciary.
24. These are illustrative examples but there are many more<sup>12</sup>. These comments represent a threat to the effective operation of the rule of law in that these wrongly associate lawyers with the causes of their clients, creating a potential for division and misunderstanding from

<sup>7</sup> [Lawyers criticise Maggie Chapman's comments on Supreme Court gender ruling - BBC News](#)

<sup>8</sup> [Activist judges are getting too big for their wigs](#)

<sup>9</sup> [Row as Rishi Sunak claims Labour on the ‘same side’ as trafficking gangs | The Independent](#)

<sup>10</sup> [Liz Truss breaks silence on judiciary but fails to mention Brexit ruling backlash | The Independent | The Independent](#)

<sup>11</sup> [Bar Council calls on Lord Chancellor to condemn attacks on judiciary](#)

<sup>12</sup> [Friday briefing: Years of attacks have dragged the legal profession into the culture wars | Barristers | The Guardian](#)

the public, and imply that the judiciary is not there to apply the law, but is overreaching and going beyond its function, and that this is not democratic. This has the danger of misinforming the public and failing to educate the public as to the constitution and the separation of powers.

25. For instance, the cab rank rule prevents barristers from refusing work because they disagree with the actions or views of those seeking their services. It promotes access to justice and promotes the rule of law, in that it demonstrates the impartiality of the justice system and is consistent with the principle of equality before the law. It removes the appearance of barristers being associated in any way with the views of their clients.
26. The UN Basic Principles on the role of Lawyers<sup>13</sup> states, 'All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.' It has been described as the 'cornerstone' of the profession by the Chair of the Bar Council, Barbara Mills KC in a recent press release<sup>14</sup>.

### **Delays and backlogs in the court system**

27. Delays caused by backlogs in the justice system present a threat to the effective operation of the rule of law in that this decreases access to justice for all parties and there is an issue of evidence not being fresh in the minds of witnesses. The consequences were highlighted in the Public Accounts Committee's session of 9 January 2025 and summarised in a recent Bar Council blog<sup>15</sup> which concluded that:
28. "The PAC session painted a grim picture of a justice system under immense strain. While witnesses highlighted incremental progress, such as expanded digital systems and increased judicial recruitment, MPs demanded bold, systemic reforms to address the root causes of the backlog. With trial dates stretching into 2028 and victim attrition rates rising, the justice system risks becoming synonymous with failure rather than fairness. The Leveson Review offers hope for meaningful reform, but immediate measures must be intensified to restore trust and efficiency."

### **Access to justice as it relates to openness and transparency of government, legislature and public court proceedings**

29. Open justice should mean that reported decisions, listings, and certain documents are accessible to the public. There is a lack of uniformity across courts and tribunals in these areas which our consultation response<sup>16</sup> addresses in some detail. It can be very difficult for non-professionals to locate case law because there is no reliable and public database where these are available across all jurisdictions, including from lower and specialist courts (such as the Court of Protection) as well as older decisions (for example, from the Immigration Tribunal). There is no one dedicated place where the public can search for decisions meaning the law is, in practice, inaccessible to many.
30. Publication of court listings is problematic and prevents effective engagement with the court. They are published too late in the day when the court is not able to take telephone calls and

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<sup>13</sup> [Basic Principles on the Role of Lawyers | OHCHR](#)

<sup>14</sup> [The cab rank rule is the profession's cornerstone, Bar Council says](#)

<sup>15</sup> [Justice in crisis: Public Accounts Committee scrutinises Crown Court backlog failures](#)

<sup>16</sup> [Bar Council - MoJ Open Justice consultation response](#)



answer queries, and often omit essential information such as the name of the judge's clerk and any reporting restrictions.<sup>17</sup> This could be much improved by standardising the format of the lists across the courts and making them available to the public earlier in the day.

31. Accessing documents – such as pleadings and witness statements – as a non-party is very challenging. Our response highlights the lack of guidance from most courts and tribunals of the procedure for requesting documents pursuant to the Civil Procedure Rules. This is despite the Supreme Court's guidance on this issue in *Cape Intermediate Holdings Ltd v Graham Dring (for and on behalf of the Asbestos Victims Supports Groups Forum UK)* [2019] UKSC 38.
32. In a speech<sup>18</sup> by Mr Justice Nicklin on transparency and open justice, it was stated that technology will not allow large number of observers in some remote hearings. It was observed that this issue arose from the pandemic rather than a change in policy towards open justice. Therefore, the development and effectiveness of remote justice is haphazard and, as set out in this speech by Mr Justice Nicklin, there are 'resource implications both in terms of availability of the necessary equipment and the HMCTS staff needed to process the requests for remote attendance (which under current legislation requires approval of the judge). Staff numbers have been decreasing year on year and the increase in remote hearings has meant additional resources required'. The fact that hearings are now remote should not change the fundamental principle of open justice, and ideally should enhance it and promote accessibility and legal education.
33. The principle that justice must not only be done, but seen to be done, applies equally to remote hearings, and this is a key principle when evaluating the operation of the rule of the law in the UK.

#### Availability of legal aid, equality before the law and resources more generally

34. "It is a principle of our law that every citizen has a right of unimpeded access to a court... [It] is a 'basic right'. Even in our unwritten constitution it must rank as a constitutional right."<sup>19</sup>
35. This principle is echoed within international instruments including the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems<sup>20</sup> and the Venice Commission, Rule of Law Checklist<sup>21</sup>.
  - a. In our Spending Review Submission<sup>22</sup>, we have set out a number of priority areas which include:
  - b. Removing the cap on court sitting days to help tackle the court backlogs
  - c. Match-funding 100 criminal pupillages (barrister traineeships) a year to ensure there are enough barristers for the caseload

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<sup>17</sup> See HMTCS latest reporting restrictions on criminal cases [procedure rules](#): under Criminal Procedure Rule Part 6, legal professionals are responsible for notifying media representatives when applying for discretionary reporting restriction orders.

<sup>18</sup> [Speech by Mr Justice Nicklin: Transparency & Open Justice - Opportunities and challenges - Courts and Tribunals Judiciary](#)

<sup>19</sup> Steyn LJ, *R v Secretary of State for the Home Department, ex parte Leech* [1994]

<sup>20</sup> [United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems](#)

<sup>21</sup> [Venice Commission of the Council of Europe – The Rule of Law Checklist](#)

<sup>22</sup> [Bar Council spending review submission: fixing the foundations of the justice system](#)

- d. Immediate uplift of 15% in criminal fees for barristers and the establishment of an independent fee review body to sustain the publicly funded Bar long term
  - e. Capital spend to repair and rebuild the court estate and a long-term infrastructure plan
  - f. Removing means testing for legal aid for both parties in cases involving domestic abuse
  - g. Funding measures to tackle violence against women and girls in the family court system, as well as in criminal courts
  - h. Restoring legal aid for early legal advice to improve access to justice and save costs to the public purse
36. It is clear that many of these relate to access to justice and availability of legal aid and promoting equality before the law. There has been much discussion as to these issues including in our response to the widening of access to legal aid<sup>23</sup> and the barriers to justice which include legal aid availability, access to courts, funding for law centres and court backlogs<sup>24</sup>.

#### **Question 4: What is Parliament's role in upholding the rule of law? Is it performing this role well, and how could it be improved?**

##### **- How can Parliament improve its legislating to better facilitate the rule of law?**

37. Parliament plays a vital role in upholding the rule of law by ensuring that legislation is carefully scrutinised, accessible, and consistent with constitutional principles. However, recent studies and reports highlight areas where improvements are needed to better facilitate the rule of law in the legislative process.
38. One key recommendation is to enhance pre-legislative scrutiny. Publishing draft bills more frequently would allow for thorough examination and consultation before formal introduction, enabling Parliament to influence legislation at an early stage when changes are easier to implement.<sup>25</sup> The House of Lords Constitution Committee has emphasised the importance of this approach, noting that it improves legislative quality and ensures laws are more accessible and comprehensible. For example, consolidating complex areas such as immigration and sentencing law into single texts would make legislation clearer for practitioners and the public.<sup>26</sup>
39. Another issue is the increasing use of expedited timetables and secondary legislation, which limits opportunities for parliamentary input. The Institute for Government has noted that rushing bills through Parliament risks producing poor-quality laws that lack proper scrutiny. This problem was exacerbated during urgent legislative periods such as Brexit and the COVID-19 pandemic, where ministers introduced significant amendments at late stages without sufficient parliamentary oversight. To address this, Parliament could adopt reforms such as embedding pre-legislative scrutiny as a standard practice and expanding oral evidence sessions during committee stages to include expert input from civil society groups.

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<sup>23</sup> [Slow steps of progress on widening access to legal aid](#)

<sup>24</sup> [JW23: Improving access to justice requires urgent focus](#)

<sup>25</sup> [The legislative process - How to empower parliament, Institute for Government](#)

<sup>26</sup> [Better preparation for better legislation: Lords call for changes to law making process - UK Parliament](#)



40. Delegated legislation also poses challenges for rule of law adherence. Henry VIII clauses, which allow ministers to amend primary legislation through secondary measures, are often criticised for undermining legal certainty and parliamentary sovereignty.
41. Parliament could further strengthen its role by explicitly linking legislative debates to rule of law principles. The Bingham Centre has recommended that parliamentarians make direct references to the rule of law during proceedings to highlight its relevance across policy areas such as criminal justice, immigration, and human rights.<sup>27</sup> This approach would enrich debates by framing seemingly isolated issues within broader constitutional values, fostering vigilance against incremental actions that weaken the rule of law.
42. Additionally, Parliament should explore innovative methods of engaging with the public on legislative matters. In its report “Delivery vs deliberation? Lessons in law-making from the last parliament”, The Institute for Public Policy Research has suggested using citizens’ juries or other deliberative mechanisms to inform MPs’ consideration of bills. Such initiatives could enhance democratic accountability and ensure legislation reflects public concerns while adhering to constitutional norms.

**Question 5: What is the Government’s role in upholding the rule of law? Is it performing this role well, and how could it be improved?**

43. The rule of law is a cornerstone of the UK’s constitutional framework, ensuring government actions are constrained by legal principles and subject to accountability. It requires laws which are clear, stable, and applied equally to all, and that governmental power is exercised fairly, within legal limits, and in accordance with democratic processes. The government has a fundamental responsibility to uphold the rule of law while implementing its policy agenda and balancing its democratic mandate with constitutional constraints. The government’s legal obligations extend across multiple dimensions of governance, including adherence to domestic and international legal frameworks, respect for judicial independence, and ensuring access to justice for all.
44. Overall, the current government is performing this role well, but there are challenges as referred to in answer to Question 3. In addition to those already addressed, instances of government departments knowingly acting against judicial determinations (see: *XY v The Secretary of State for the Home Department* [2024] EWHC 81 (Admin) as an example) are damaging to the government’s role in upholding the rule of law.
45. To improve its performance in upholding the rule of law, the government must prioritise transparency in legislative processes, respect judicial independence, adhere to international commitments, and address barriers to justice. These measures would not only enhance domestic governance but also reinforce the UK’s reputation as a nation committed to legal integrity. A renewed commitment from politicians across all parties is essential to restoring confidence in the justice system and safeguarding democratic principles for future generations.
46. We also strongly encourage the government to support the ratification of the Convention on the Protection of the Profession of Lawyer, adopted by the Committee of Ministers of the Council of Europe on 12 March 2025.<sup>28</sup> This binding legal instrument helps ensure that

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<sup>27</sup> [Bingham Centre for the Rule of Law, The Rule of Law in Parliament – A Review of the 2015-16 Session \(2017\)](#)

<sup>28</sup> [Council of Europe adopts international convention on protecting lawyers - Portal](#)

lawyers can practise without fear, prejudice or improper restraint, thereby safeguarding their fundamental role in upholding the rule of law and access to justice.

**Question 6: What is the role of the judiciary in upholding the rule of law? Is it performing this role well, and how could it be improved?**

47. The role of the judiciary in upholding the rule of law is to apply the law fairly and impartially. Judges should be independent from outside influences. The judiciary must be, and must be perceived to be, independent and impartial and able to carry out their jobs without fear or favour.
48. The judiciary is performing its role well, but it faces unwarranted challenges, which include unjustified criticism by parliamentarians, ministers and the media, as referred to in answer to Question 3. Sometimes these challenges are immense and unjustified, and come from a place of ignorance of our constitutional settlement and a lack of understanding of the separation of powers.
49. The Commonwealth Lawyers Association, 'Commonwealth Bar Leaders Declaration on Preserving and Strengthening the Independence of the Judiciary and on Ensuring the Independence of the Legal Profession', (2023), makes clear that, amongst other things: a) "The independence and impartiality of the judiciary must be upheld and protected by governments".
50. The All-Party Parliamentary Group on Democracy and the Constitution's report, 'An Independent judiciary –Challenges Since 2016', (2022) lists examples of the independence of the judiciary being impinged since 2003 and concluded that "ministers have, from a constitutional perspective, acted improperly in attacking judges...doing so in a way that might reduce public confidence in the judiciary".<sup>29</sup>
51. The issue of lack of availability of legal aid and increase in litigants in person in some areas may also present a challenge to the judiciary seeking to promote equality before the law- a key tenet of the rule of law- and slowing down the administration of justice due to laypersons often needing more time and explanation given they are not qualified lawyers.
52. As set out in answer to Question 3, the principle of open justice is sometimes threatened and this needs to be carefully considered given that this protects the justice system against arbitrariness and demonstrates to the public how the law is applied and is a fundamental component of public education.
53. The court system being under strain in terms of funding, insufficient resources and court backlogs (some arising from delays caused by the pandemic) also creates a tremendous amount of pressure on the judiciary and can affect judges' wellbeing as reported in the UK Judicial Attitude Survey 2024<sup>30</sup> where judges and court staff reported high workloads and low morale, impacting their ability to perform their duties effectively.
54. Further, the same UK Judicial Attitudes Survey revealed<sup>31</sup> a worrying rise in the number of judges concerned about their safety. The number of salaried and fee-paid judges who say they have experienced bullying also increased. This is in the context of the Nauru Declaration

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<sup>29</sup> [Judicial Independence Inquiry: Parliamentary Report finds Ministers' attacks on Judges threaten the constitution – ICDR](#)

<sup>30</sup> [Published 2024 IAS England&Wales UK Tribunals](#)

<sup>31</sup> [Safety, bullying, stress and a recruitment crisis: latest findings of judges' survey revealed | Law Gazette](#)

on Judicial Wellbeing recently being adopted.<sup>32</sup> The diversity of the judiciary is fundamental to promoting the effectiveness of the rule of law. The Judicial Diversity and Inclusion Strategy 2020-2025<sup>33</sup> sets out the following:

- a. “For the judiciary diversity, inclusion and equality are fundamental to the rule of law and to what judicial office holders do. Public confidence in and the legitimacy of the judiciary are sustained by a judiciary that reflects the broad composition of the society it serves.”
55. This is something which the Lady Chief Justice reiterated during her annual press conference<sup>34</sup>. The Judiciary should better represent society so as to ensure that the public can have more confidence in the decisions which are being made which affect their lives, and feel included within the process.
56. Overall, it is clear that the judiciary is an integral part of upholding the rule of law, but that challenges and strains as outlined above can sometimes put pressure on this fundamental function. More can be done to improve the public perception (and importantly correct it) and to defend the judiciary from attacks, as well as working to ensure access to justice, increasing resources for courts and legal aid and increasing transparency and open justice as far as possible.

### Question 7: Is there a role for the public in upholding the rule of law?

57. There could be a range of measures that could be adopted such as:
- a. **Voting in elections.** Since 1945, turnout for general elections has ranged from 83.9% in 1950 to 59.7% in 2024.<sup>35</sup> By voting in elections, the public indirectly contribute to the process of law-making, which in turn contributes to the (perceived) legitimacy of the law.
  - b. **Participation in juries.** When members of the public act as jurors, they can help to uphold the rule of law by making decisions based upon the evidence they have heard, rather than based upon e.g. discriminatory beliefs about protected characteristics.
  - c. **Responding to witness appeals from the police.** This helps to ensure that the law can be enforced justly.
  - d. **Refraining from witness intimidation or other acts which pervert the course of justice.** We note Margaret O'Malley's analysis of the many forms which witness intimidation can take in modern times.<sup>36</sup>

### - Is there a greater role for education, the media and civic society in promoting the rule of law?

#### 58. Education

- a. A key tenet of the rule of law is accessibility and ensuring the public understand the law. While the onus primarily lies on the legislative drafters to ensure the law is comprehensible, education about rights and basic legal principles will help to the

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<sup>32</sup> [UN declares 25 July as International Day for Judicial Wellbeing | Law Gazette](#)

<sup>33</sup> [Judicial Diversity Strategy 2020 – 2025](#)

<sup>34</sup> [Lady Chief Justice's annual press conference 2025 - Courts and Tribunals Judiciary](#)

<sup>35</sup> [2024 general election: Turnout](#)

<sup>36</sup> [Witness Intimidation in the Digital Age, The Prosecutor, 2014](#)

public to understand the law. If the public are aware of their rights, they will be better equipped to identify when they have a problem that they need to seek legal advice and assistance with, and in turn, the law is more likely to be enforced.

## 59. Media

- a. Holding politicians to account when they fail to comply with the rule of law.
- b. Refrain from using language that misleads the public about e.g. the independence of the judiciary.
- c. Reporting on court proceedings. Open justice is central to the rule of law as it helps to ensure that trials are conducted properly. However, it is also important that journalists do not prejudice ongoing criminal proceedings.

## 60. Civic Society

- a. **Education.** There are a number of civic society bodies working to promote the rule of law e.g. the Bingham Centre for the Rule of Law, which feeds into public education about the rule of law (see above).
- b. **Access to Justice.** Civic society organisations can help litigants-in-person to navigate the legal system and thereby assert their rights e.g. Citizens Advice, the Chancery Litigant in Person Support Scheme (CLIPS), Shelter.
- c. Notwithstanding the excellent work of such organisations, much remains to be done to ensure people are aware of their rights and can enforce them in fields, such as housing. A 2022 survey conducted by Shelter Scotland found that 60% of adults in Scotland know little or nothing about their housing rights.<sup>37</sup> In a 2017 survey by Citizens Advice 35% of the 762 respondents stated that one of the barriers to using formal routes to seeking repairs included being unaware of their rights.<sup>38</sup>

## Question 8: How important is the rule of law for the UK's economy and international influence?

61. The UK is effective as an advocate for the rule of law and the rule of law is important for the UK's economy. International influence is evidenced by the pre-eminent position of the UK's courts and its arbitration provision.
62. As regards the impact of the rule of law on the UK economy, reference is made to the 2024 Nobel Prize for Economics awarded to one Turkish and two British economists for their work on the link between institutions which establish fundamental economic freedoms and rule of law and economic success.<sup>39</sup>
63. On the position of the UK courts and arbitration, one of the main sources of useful data is the Law Society's International Data Insights Report (2024).<sup>40</sup> This examines the performance of English courts (the Commercial Court) in comparison to international courts and arbitration centres in other jurisdictions including New York, Dubai, Singapore and Hong Kong. Its conclusions include that the London Commercial Court is one of the main international centres for commercial litigation. It attracts a large number of international

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<sup>37</sup> [Housing rights knowledge low Shelter Scotland research finds on World Homelessness Day - Shelter Scotland](#)

<sup>38</sup> [Housing insecurity in the private rented sector in England: drivers and impacts, UK Parliament POST](#)

<sup>39</sup> [The Price in Economic Sciences 2024](#)

<sup>40</sup> [Global position of English law: International Data Insights 2024 | The Law Society](#)

parties. 64% of litigants who appeared before the court between April 2023 and March 2024 came from foreign jurisdictions, representing a total of 84 nationalities.

64. Businesses around the world frequently choose arbitration as the preferred method of dispute resolution. International businesses are free to choose the seat (the law and supervising courts which deal with procedural issues) and the governing law. London is one of the most important and attractive centres for arbitration in the world.<sup>41</sup> The evidence for this includes the following:
- a. The London Court of International Arbitration (“LCIA”) is one of the world’s leading institutions providing administration of arbitration and other Alternative Dispute Resolution proceedings for parties regardless of their location. Typically, over 80% of parties in pending LCIA cases are not of English nationality.<sup>42</sup>
  - b. London (with Singapore) were the most preferred seats for arbitration in 2021.<sup>43</sup>
  - c. The Law Commission Review of the Arbitration Act 1996 Consultation Paper 257 (September 2022) Chapter 1 paragraphs 1.1 – 1.2
    - i. “Arbitration is a major area of activity. For example, the Chartered Institute of Arbitrators, headquartered in London, has more than 17,000 members across 149 countries. Industry estimates suggest that international arbitration has grown by about 26% between 2016 and 2020, with London the most popular seat. Domestic arbitration continues to grow, for example in areas like family law.
    - ii. Some arbitral institutions report their caseload figures. Others do not, but have provided us with rough figures on a confidential basis. Overall, we estimate that there are at least 5000 domestic and international arbitrations in England and Wales every year, potentially worth at least £2.5 billion to the economy. The actual figures may be much higher.”
65. Finally, as an example of soft power, the Standing International Forum of Commercial Courts (“SIFoCC” of the “Forum”) was established in London. In 2016 Lord Thomas, former Lord Chief Justice of England and Wales (and a former judge of the Commercial Court in London) issued an invitation to counterparts around the world to come together to create the Forum.
66. The inaugural meeting was held in London in 2017. Senior judges (many at Chief Justice level) from 25 jurisdictions convened to support collaboration between the world’s commercial courts and agreed the Forum should continue as a standing institution. This judicial initiative aligns with global efforts to support the rule of law and prosperity, and to promote international legal services. It has three objectives including to assist courts to work together in order to make a stronger contribution to the rule of law, and through that contribute to stability and prosperity worldwide.
67. Since then, SIFoCC has continued to evolve and grow in membership. The 5<sup>th</sup> full meeting was held in Doha, Qatar in 2024. Membership has reached 57 jurisdictions including 70% of the G20 nations with members spanning 6 continents with both common law and civil law traditions. Meetings have been held in a different SIFoCC member jurisdiction but have always kept the same structural foundation: a two-day judicial roundtable discussion.

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<sup>41</sup> [Bar Council response to the Law Commission Review of the Arbitration Act 1996 consultation paper](#)

<sup>42</sup> <https://www.lcia.org/LCIA/introduction.aspx>

<sup>43</sup> <https://www.qmul.ac.uk/arbitration/research/2021-international-arbitration-survey/>



### Question 9: What threatens the effective operation of the rule of law globally?

68. There are several factors that can impact on the rule of law globally. In brief, they are:
- a. The rise of authoritarian/populist rulers who often manipulate legal frameworks to consolidate powers, suppress opposition, and erode judicial independence.<sup>44</sup>
  - b. Systemic corruption within key institutions which undermines trust in legal systems.
  - c. Persistent breaches of international law which gradually erodes the authority and credibility of international legal institutions.
  - d. Attacks on judicial independence that impact on the perceived impartiality/partiality of the judiciary as well as its effectiveness.
  - e. Any suppression of civil liberties which prevents access and fair usage of the relevant justice system.
69. In responding to a question from the floor when giving the 2009 International Rule of Law Lecture of the Bar of England and Wales, Chief Justice Gubbay of Zimbabwe identified the beginning of the end of the rule of law in Zimbabwe as being the point when the then Prime Minister Mugabe and his ministers considered that they were free openly to criticise judges for their judgments as opposed simply to the Government taking the case to the appeal court. This observation should continue to be borne in mind.

#### - Which countries do you think are leaders in adherence to the rule of law, and why is this the case?

70. The World Justice Project [WJP] has produced an annual Rule of Law Index since 2008. It now includes 142 countries. Denmark, Norway, Finland, Sweden and Germany respectively rank overall the highest in their adherence to the rule of law principles. The UK is ranked 15<sup>th</sup>.<sup>45</sup> The factors taken into consideration are:
- a. Constraints on government powers
  - b. Absence of corruption
  - c. Open government
  - d. Fundamental rights
  - e. Order and security
  - f. Regulatory enforcement
  - g. Civil Justice
  - h. Criminal Justice
71. The five top countries are consistently highly scored across the board on all of the above factors. They also score “High” in terms of income group. The UK is also considered part of the same income group, but scores considerably lower in terms of Regulatory Enforcement, Civil Justice and Criminal Justice, in particular after 2018 as the WJP data shows that the overall performance of the UK with regard to these indicators deteriorated.

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<sup>44</sup> [The global assault on rule of law | International Bar Association](#)

<sup>45</sup> [WJP Rule of Law Index | Global Insights](#)



72. The WJP concluded that between 2023 and 2024, the rule of law weakened in a majority of countries. One of the key aspects in decline was the “constraints on government powers” factor as well as a lessening of adherence to fundamental rights and worsening access to justice. This final factor identified longer delays, less effective alternative dispute resolution mechanisms, and increased government influence. It stands to reason that the leaders of the WJP index have either improved or maintained their high standard in the key factors whereas other countries have not.

- **How effective is the UK as an advocate for the rule of law on the international stage? How could this be improved?**

73. The UK has historically been a strong advocate for the rule of law on the international stage, as can be seen from its support for the International Court of Justice since 1930<sup>46</sup> and it being part of its foreign policy, where funds are provided to initiatives abroad promoting the rule of law.<sup>47</sup> However questions have been raised as to whether foreign policy decisions have been prioritised over the adherence to the rule of law principles instead.

74. On 26 November 2024 the House of Lords scheduled a debate on the importance of the rule of law.<sup>48</sup> It set out the relevant principles and the overall importance of the concept as a whole. It is difficult to measure effectiveness as an advocate for such a concept, beyond the frequency with which is raised and adhered to domestically and internationally. The House of Lords Constitution Committee launched an inquiry in 2022 on government’s adherence to the rule of law, as its commitment to the principle has been called into question in recent years.<sup>49</sup>

75. Under the current government there has been a recent and public re-affirmation of the rule of law as a fundamental British principle. In terms of any improvement of the UK’s advocacy, various proposals have been made<sup>50</sup>:

- a. Increase diplomatic engagement to promote the rule of law in other jurisdictions and use its influence in international organisations to do the same.
- b. Ensure domestic issues relating to the rule of law are addressed and maintained, to lead as an example.
- c. Provide funding to on-the-ground organisations in the UK other countries who can promote the principle more effectively. Ensure that domestic experts are funded to help provide teaching.
- d. Support the jurisdiction of the International Court of Justice and the International Criminal Court and provide pressure for more countries to become signatories.

**The Bar Council**  
**April 2025**

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<sup>46</sup> [Britain and the International Rule of Law - GOV.UK](#)

<sup>47</sup> [What we do | ROLE UK](#)

<sup>48</sup> [Rule of law: Principles, challenges and government commitments - House of Lords Library](#)

<sup>49</sup> [Britain and the International Rule of Law - GOV.UK](#)

<sup>50</sup> [How to Advance the Rule of Law Abroad | Carnegie Endowment for International Peace](#)