



## Justice Committee

**The Rt Hon Alex Chalk KC MP**  
**Lord Chancellor & Secretary of State for Justice**

By email only

21 March 2024

Dear Alex,

### **The regulation of the legal professions**

The Justice Committee concluded its work examining the regulation of the legal professions in December last year. The Committee has not looked at this area since 2016, and we felt strongly that some degree of parliamentary oversight of what is a complex regulatory landscape was overdue.

We took evidence, both in writing and orally,<sup>1</sup> from the representative bodies, and their regulatory counterparts. That is the Bar Council and the Bar Standards Board ('BSB') for barristers, the Law Society and the Solicitors' Regulation Authority ('SRA') for Solicitors, and CILEX and CILEX Regulation Limited ('CRL') for chartered legal executives. We also heard from the Legal Services Board ('LSB'), which has oversight of the frontline regulators. In addition, we received written submissions from the Council of Licensed Conveyancers (another frontline regulator), the Legal Services Consumer Panel, and Professor Stephen Mayson, Honorary Professor at University College London and an expert in legal services regulation responsible for the recent independent review of legal services regulation in England & Wales. We thank them all for the evidence they provided.

We also put out a public call asking people to tell us what questions they thought the regulators should be asked. We received more than 40 responses from members of the public, mainly regulated professionals, and are very grateful to them for their assistance and for the insights they provided.

Inevitably, much of what we heard during the oral evidence sessions was topical: the proposed re-delegation of CILEX regulatory functions to the SRA, the SRA's role in the aftermath of the collapse of Axiom Ince and so on. We will touch on these issues below. Where possible we have taken a step back and tried to look at the wider context.

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<sup>1</sup> Justice Committee, Regulation of the legal professions, HC 266, [28 November 2023](#) and [5 December 2023](#)



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In summary, we heard about a legal services market which has already changed a great deal since the Legal Services Act 2007 came into force, and is likely to change even more as the effects of technological advancement are felt. We saw some indications that the needs of consumers are not being met as much as they should be. We also heard about a vital and internationally significant industry which makes a major contribution to the economy.

The success of the legal services in England and Wales should not deter the Government from examining the problems with the current regulatory framework. The Post Office Horizon Scandal will inevitably have damaged the public's perception of the legal professions. It is imperative that the public can see that the regulatory framework is robust and responsive enough to identify and punish egregious breaches of regulatory standards.

### **The Legal Services Act 2007**

We asked each of the witnesses who gave oral evidence to set out their view of the Legal Services Act 2007.

The professional bodies and the regulators who gave evidence expressed different degrees of support for the 2007 Act. Nick Vineall KC, the then Chair of the Bar, described the 2007 Act as a "good compromise", which sought to strike a balance between regulators that are close to the professions, whilst providing the requisite degree of independence.<sup>2</sup> Nick Vineall KC also sought to emphasise that the regulators are not created by the 2007 Act, and that instead it is the professional bodies that are the approved regulators, who are then required to delegate their regulatory function. It is a striking feature of the 2007 Act that each approved regulator has a different relationship with the body responsible for the regulation.

Overall, the professional bodies and the regulators would not welcome a wholesale review of the 2007 Act and the instability that such a review might cause. However, in our view it would be wrong for the Government to ignore the conclusion of Professor Stephen Mayson's independent review that many of the recent issues relating to regulation are evidence of the fundamental flaws of the 2007 Act.<sup>3</sup> Professor Mayson's evidence highlighted the following areas to us: the scope of regulation, regulator performance and enforcement, professional integrity and regulatory oversight. The Legal Services Consumer Panel also emphasised in their evidence that the current regulatory framework does not provide a sustainable

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<sup>2</sup> Justice Committee, [Oral evidence: Regulation of the legal professions](#), HC 266, 28 November 2023

[Q1](#)

<sup>3</sup> [Written evidence submitted by Professor Stephen Mayson \(RLP0004\)](#)



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model of consumer protection or support.<sup>4</sup> We recognise that there is relatively little appetite in the sector for far-reaching regulatory change, however, it is undeniable that the case for re-examination of the legislative framework underpinning regulation is growing stronger and stronger.

### Review of the Legal Services Board

The Bar Council told us that the Government should undertake a review of the Legal Services Board.<sup>5</sup> Its principal reason for advocating such a review is because it believes the Legal Services Board (LSB) is acting beyond its statutory functions as set out in 2007 Act. The Council also pointed out that the last such review occurred in 2017, and so is now overdue.

In its written evidence, the Council draws attention to section 49 of the Legal Services Act 2007, which provides that “In preparing a statement of policy, the LSB must have regard to the principle that its principal role is the oversight of approved regulators”. The Bar Council’s written evidence notes that the LSB decided in 2021 to devise a strategy for the legal services sector as a whole ([Reshaping Legal Services](#)). According to the Bar Council, such an approach is beyond the LSB’s statutory remit, which it argues is limited to oversight of approved regulators. The legal services sector, they point out, is much broader than those that provide regulated services, as it includes unregulated providers of legal advice, such as charities, Citizen’s Advice and trade unions.

Professor Stephen Mayson’s evidence set out that he shared the Bar Council’s concern in respect of the LSB’s approach of going beyond oversight of the regulated sector, as “working towards that position can only be funded by those who are currently regulated rather than by those who are not”.<sup>6</sup> Jonathan Rees, Chair of CILEX regulation, was also critical of the LSB’s approach, arguing that it should be operating as a coach working with the regulators rather than as a “pedantic headmaster”.<sup>7</sup>

The LSB does not accept that it is acting outside of its statutory remit in setting a strategy for the sector as a whole. Their own view of the 2007 Act is that it requires them to “promote a set of open-ended regulatory objectives as far as reasonably practicable, having regard to better regulation principles”.<sup>8</sup>

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<sup>4</sup> Written evidence submitted by the Legal Services Consumer Panel (RLP0003)

<sup>5</sup> Written evidence submitted by the Bar Council (RLP0002)

<sup>6</sup> [Written evidence submitted by Professor Stephen Mayson \(RLP0004\)](#)

<sup>7</sup> Justice Committee, [Oral evidence: Regulation of the legal professions](#), HC 266, 5 December 2023 Q74

<sup>8</sup> [Written evidence submitted by the Legal Services Board \(LSB0006\)](#)



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The then Chief Executive of the Legal Services Board, Matthew Hill, told us that they accepted that all arm's length bodies should be subject to review from time to time, but they objected to the idea that one was needed because of their approach to their strategy.<sup>9</sup>

The Committee accepts the LSB's analysis of their statutory remit. The 2007 Act is broadly drawn, and it is for the leadership of the Board to decide how to interpret that remit. However, we share the Bar Council and Professor Stephen Mayson's concern that the LSB's wide-ranging approach to its remit risks raising expectations that cannot be delivered upon. We would acknowledge that the nine challenges for the legal services sector identified in the 2021 strategy are real and pressing, however, it is unclear to us whether the LSB is capable or equipped to tackle all of these sector wide challenges. For example, the challenge of "reforming the justice system and redrawing the regulatory landscape" does not seem to be something that either the LSB alone or the LSB and the regulators can themselves achieve.

Considering the evidence as a whole, we conclude that it is now right to carry out a review of the Legal Services Board and we recommend this to the Government.

In addition, we also formally request that the Government adds the role of the Chair of the Legal Services Board to those which are subject to pre-appointment scrutiny by the Justice Committee. The Committee believes that parliamentary scrutiny of this appointment would make a valuable contribution to the operation of the regulatory framework. The role of Chair of LSB would in our view meet the criteria set out in the Cabinet Office Guidance that as it is a post "where it is vital for the reputation and credibility of that organisation that the post holder acts, and is seen to act, independently of Ministers and the Government".<sup>10</sup>

## Internal governance rules

Section 30 of the Legal Services Act 2007 requires the Legal Services Board to make rules (known as "internal governance rules"). The 2007 Act states that the rules should set out requirements that the approved regulators should meet to ensure any regulatory functions are not prejudiced by its representative functions. The 2007 Act also requires that the rules should ensure that the exercise of regulatory functions should be 'so far as reasonably practicable taken independently from decisions relating to the exercise of its representative functions'. The latest version of the internal governance rules was produced by the Legal Services Board in 2019.<sup>11</sup>

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<sup>9</sup> Justice Committee, [Oral evidence: Regulation of the legal professions](#), HC 266, 5 December 2023 Q232

<sup>10</sup> Cabinet Office Guidance: pre-appointment scrutiny by House of Commons select committees para 8

<sup>11</sup> [Internal Governance Rules 2019 \(legalservicesboard.org.uk\)](https://legalservicesboard.org.uk)



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A number of witnesses raised the internal governance rules with us, and some expressed concerns over their effect upon the relationship between approved regulators and the relevant regulator. Professor Chris Bones told us that the internal governance rules limited the ability of an approved regulator to “hold their delegated regulated bodies to account for the discharge of their delegated functions”.<sup>12</sup> Nick Vineall KC argued that there was a danger that internal governance rules would drive a wedge between the approved regulator and the body that has been delegated responsibility for regulation.<sup>13</sup>

The Committee’s evidence sessions exposed a degree of confusion over the extent to which the internal governance rules prevented an approved regulator criticising its regulatory body. For example Ian Jeffery, chief executive of the Law Society, said “it is pretty clear that we are not allowed to comment—certainly not freely—on aspects of the SRA’s performance”.<sup>14</sup> Alan Kershaw, Chair of the LSB, wrote to the Committee to clarify the position under the rules. He explained that in fact the rules do not expressly prohibit public criticism, but that they do provide that an approved regulator must inform the regulatory body if it plans on making a “decision, plan, communication or other arrangement which may undermine the discharge of regulatory functions”.<sup>15</sup> Therefore it is possible for an approved regulator to criticise its regulatory body under the internal governance rules if it provides notice to the body of its intention to do so before making the statement.

Even if public criticism of regulators is permitted under the rules, it is clear that public criticism of independent regulators by the approved regulators is undesirable. It is damaging to public confidence for bodies which have such significant statutory responsibilities to be openly criticising each other. While there may be circumstances where criticism can be justified, at present there does appear to be considerable institutional conflict, which is at least in part because there is a lack of consensus around how the relationship between the approved regulators and the body responsible for regulation should work. The LSB have indicated that they intend to review the operation and effectiveness of the internal governance rules. We support this review and would encourage the LSB to consider whether recent events indicate that the internal governance rules should be further clarified and strengthened.

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<sup>12</sup> Justice Committee, [Oral evidence: Regulation of the legal professions](#), HC 266, 5 December 2023 Q45

<sup>13</sup> Justice Committee, [Oral evidence: Regulation of the legal professions](#), HC 266, 28 November 2023 Q8

<sup>14</sup> Justice Committee, [Oral evidence: Regulation of the legal professions](#), HC 266, 5 December 2023 Q85

<sup>15</sup> [Letter from Alan Kershaw, Chair of the LSB to the Chair of the Justice Committee dated 13 December 2023](#)



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### CILEX re-delegation

As you will be aware, the CILEX board is currently taking forward a proposal to withdraw delegated regulatory functions from CILEX Regulation (CRL), and re-delegate those functions to the SRA. The SRA has published a plan setting out how it thinks this re-delegation could work and what the advantages might be. This was inevitably at the forefront of the minds of some of those we heard from. Since their Chair and Chief Executive spoke to us, CILEX's board has published the response to their consultation on this issue.<sup>16</sup> They have signalled their intention to proceed with the re-delegation. Anna Bradley, Chair of the SRA, has indicated following the SRA's January 2024 board meeting that their consultation on taking on the regulation of CILEX lawyers had garnered a mixed response.<sup>17</sup> Ms Bradley explained that solicitors' representatives were concerned that the change risked diluting the solicitors' brand. Ms Bradley set out that further work needs to be done before any decisions can be taken and that in particular, the SRA would need to consult on arrangements to regulate CILEX paralegals and students. On 20 March the SRA announced that it was consulting on "proposed changes to our regulatory arrangements to allow us to regulate those CILEX members that are not authorised to carry on any reserved legal activities".<sup>18</sup>

Setting aside the merits of the change, the proposed re-delegation by CILEX raised serious concerns around the model of the 2007 Act. It is difficult to see how the 2007 Act can provide a stable and efficient model for independent regulation when it is possible for an approved regulator to decide to re-delegate regulatory authority to another body. We were struck by the costs already incurred by CILEX, CLR, the SRA and the LSB, with the likelihood of more to come.

In regards to the merits of CILEX's proposals, we are sceptical of the argument that re-delegation and the proposed change to the titles of CILEX lawyer, from Chartered Legal Executive to Chartered Lawyer, would represent a simplification that would help consumers. The regulatory landscape created by the 2007 Act is highly complex and specialist knowledge of the legislative framework is necessary to understand how it operates. In relation to the new proposed titles for CILEX lawyers, there is a risk that by creating a more recognisable title for legal executives, ie lawyer, it becomes harder for the public to recognise the distinction between a solicitor, who is qualified to operate across all areas of the law and legal executives who are qualified only in the specific area of the law in which they are qualified. There is a respectable

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<sup>16</sup> CILEX, [enhancing-public-trust-confidence-consultation-summary.pdf \(cilex.org.uk\)](#) (January 2024)

<sup>17</sup> [Reflections on the January 2024 Board meeting - Anna Bradley 31 January 2024](#)

<sup>18</sup> SRA, Arrangements for Regulating Non-Authorised CILEX Members: Consultation 20 March 2024





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argument for simplifying legal titles, as there is for the regulatory landscape, but such a change would need to be through an Act of Parliament.

### The SRA

The main strength of the regulatory framework under the 2007 Act is that it facilitates bespoke regulatory arrangements for each of the distinct branches of the legal profession that provide regulated services. For example, the SRA is responsible for the regulation of 160,000 practising solicitors. Solicitors deal directly with the public and are responsible for handling client funds. The collapse of Axiom Ince has led to questions around the future of the SRA compensation fund and the role of the SRA. The Committee received a significant amount of correspondence from solicitors who criticised the way that the SRA has handled the collapse of Axiom Ince and the way it was communicating with solicitors. Although a certain amount of tension is to be expected between a regulator and those it regulates, the correspondence we received did indicate that the SRA may not be seeking the views of the profession as proactively as it might. We encourage the SRA to ensure that it communicates clearly and effectively with solicitors before it takes the big decisions that may have a profound impact on their working lives.

The Post Office Horizon scandal has brought to public attention the role of in-house lawyers, and the particular challenges they face in balancing their professional duties as lawyers with their status as employees. There may be occasions when what would seem to be in the interests of their employers does not sit easily with their obligations as regulated professionals.

All of those we heard from noted the importance of this group of lawyers and that their numbers were likely to increase in the coming years. The SRA regulates more than 34,500 in-house solicitors across more than 6,000 organisations. In early 2023 the SRA carried out a review of regulated in-house solicitors, surveying more than 1,200 people.<sup>19</sup> The SRA's review of in-house solicitors reported that 5% of respondents had experienced pressure to suppress or ignore information which could conflict with their regulatory obligations and 10% of respondents felt their regulatory obligations had been compromised. The SRA's Chief Executive, Paul Philip said "The findings of this review are generally encouraging". The thematic review was criticised in a letter signed by General Councils from a range of businesses and organisations, who argued that it "understates the severity of the risks present in the in-house environment and misinterprets or is inadequate in its conclusions as to their cause."<sup>20</sup> When asked about this during our evidence session, Paul Philip, SRA Chief Executive, said:

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<sup>19</sup> SRA, In-house solicitors thematic review, 2023

<sup>20</sup> The Lawyer, The SRA report into ethical culture in-house is being spun – and GCs aren't happy, 24 April 2023



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The tone of the review, some people felt, was an attempt to sweep things under the carpet. Can I just put on the record that that is not the case? The reality is that we have put more resource into dealing with this incredibly important and growing part of the profession.

It is vital that the SRA and the Law Society work together to address the challenges facing in-house lawyers. The fact that 10% of respondents to the SRA's review reported that their regulatory objectives had been compromised shows the scale of the challenge. It is critical that the public can have confidence that in-house lawyers are being provided with the support they need from the Law Society and the SRA to uphold their regulatory and ethical obligations. We welcome the recent publication of the SRA's draft guidance for in-house solicitors.<sup>21</sup> We would encourage the Law Society and the SRA to take a proactive approach to the needs of in-house lawyers and to demonstrate that they understand the challenges they face at present.

### **The Bar Standards Board**

The Legal Services Board's November 2022 Performance assessment found that the BSB had provided insufficient assurance in two of the five assessment criteria (well-led and enforcement) and only partial assurance in the other three criteria (Regulatory approach, authorisation and supervision).<sup>22</sup> It was the worst performing of all nine regulatory bodies assessed by the Legal Services Board in November 2022. The most recent performance assessment by the Legal Services Board, from January 2024, has found the BSB to offer partial assurance in relation to the only two criteria assessed: well-led and effective approach to regulation.<sup>23</sup> The most recent assessment found that the BSB needs to make improvements to its operational performance and that the threshold that it sets for regulatory intervention is too high. It is concerning that the BSB continues to fail to meet the standard of sufficient assurance for any of the assessed criteria by the Legal Services Board.

The Bar Standard Board's Strategy for 2022-2025 sets out its intention to review its Governance to mitigate the risk that "the BSB's own capacity and culture does not support its effectiveness as an independent regulator".<sup>24</sup> It added that "Incorporating the BSB as a separate legal entity might bring benefits in terms of transparency, accountability and operational freedom that should be explored." Kathryn Stone, the Chair of the BSB, explained to us that incorporation was not an

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<sup>21</sup> SRA, Working in-house, 4 March 2024

<sup>22</sup> LSB, Regulatory performance: Performance assessment November 2022

<sup>23</sup> LSB, Regulatory performance: Performance assessment February 2024

<sup>24</sup> BSB, BSB Strategy 2022-2025 (2022) p.10





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immediate priority.<sup>25</sup> We appreciate and support the BSB's prioritisation of operational improvements. However, the BSB should consider whether greater institutional independence could also help to facilitate improvements in its effectiveness as a regulator.

### Summary of recommendations and conclusions

The Committee's overall recommendations and conclusions based on the evidence received are as follows:

- The Post Office Horizon Scandal will inevitably have damaged the public's perception of the legal professions. It is imperative that the public can see that that the regulatory framework is robust and responsive enough to identify and punish egregious breaches of regulatory standards.
- The Legal Services Act 2007 does not appear to be provide a stable long-term framework for the regulation of the legal professions. The Committee is concerned by the amount of discord and disfunction between the approved regulators, the regulatory bodies and the LSB. We recognise that there is relatively little appetite in the sector for far-reaching regulatory change, however, it is undeniable that the case for re-examination of the legislative framework underpinning regulation is growing stronger and stronger.
- Considering the evidence as a whole, we conclude that it is now right to carry out a review of the Legal Services Board and we recommend this to the Government.
- The Committee would like to formally request that the Government adds the role of the Chair of the Legal Services Board to those which are subject to pre-appointment scrutiny by the Justice Committee.
- The Committee supports a review of the internal governance rules and would encourage the LSB to consider whether they should be further clarified and strengthened.
- In regards to the merits of CILEX's proposals, we are sceptical of the argument that re-delegation and the proposed change to the titles of CILEX lawyer, from Chartered Legal Executive to Chartered Lawyer, would represent a simplification that would help consumers.

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<sup>25</sup> Justice Committee, [Oral evidence: Regulation of the legal professions](#), HC 266, 28 November 2023 Q27



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- We would encourage the Law Society and the SRA to take a proactive approach to the needs of in-house lawyers and to demonstrate that they understand the challenges they face at present.
- We appreciate and support the BSB's prioritisation of operational improvements. However, the BSB should consider whether greater institutional independence could also help to facilitate improvements in its effectiveness as a regulator.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'R. Neill'.

**Sir Robert Neill MP**  
**Chair**  
**Justice Committee**