

Justice Committee

Oral evidence: [Regulation of the legal professions](#),
HC 266

Tuesday 28 November 2023

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Members present: Sir Robert Neill (Chair); Tahir Ali; James Daly; Edward Timpson.

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Witnesses

[I](#): Nick Vineall KC, Chair of the Bar, Bar Council.

[II](#): Kathryn Stone OBE, Chair of the Bar Standards Board; and Mark Neale, Director-General of the Bar Standards Board.

[III](#): Professor Chris Bones, Chair of CILEX; and Linda Ford, CEO of CILEX.

[IIII](#): Jonathan Rees, Chair of CILEx Regulation; and John Barwick, CEO of CILEx Regulation.

Examination of witness

Witnesses: Nick Vineall KC.

Chair: Welcome to this session of the Justice Committee—the first of two sessions looking at regulation of the legal profession. I welcome all our witnesses; we have separate panels running one after the other.

Before we begin, we must, as we do in every session, make our declarations of interest. I am a non-practising barrister and a former consultant to a law firm.

Edward Timpson: I am a barrister and former Solicitor General with a practising certificate. I am not currently undertaking any court work. I am a former chair of CAFCASS and former chair of the Child Safeguarding Practice Review Panel. My brother is chair of the Prison Reform Trust.

James Daly: I'm afraid my declaration is not up to that. I am a practising solicitor and partner in a firm of solicitors.

Chair: Mr Ali hopes to join us shortly but does not have any declarations to make.

Our first witness is chair of the Bar. It is good to see you, and thank you for your time in coming to help us.

Nick Vineall: Thank you for inviting us.

Q1 **Chair:** What is the Bar's take on the Legal Services Act? Is it still fit for purpose? If not, why not?

Nick Vineall: We think it is a good Act. It is fit for purpose, and it is important that its purpose is put into effect as Parliament intended—we might come on to that a bit later.

The Act was a compromise. With the Clementi review, some wanted regulation to be taken away from the professions and others wanted it to stay exactly where it was. A compromise was reached. We think it was a good compromise, finding the right balance between regulators who are close to the professions and understand them and the requisite degree of independence.

Not everybody understands it. An important point about the Act is that it does not seek to regulate all providers of legal services. A lot of advice—debt advice, advice from trade unions to their members, advice in citizens advice bureaux—will be given by people who are not regulated and do not fall under the Act. We think that is important—it is a kind of frontline for advice—and it was the right call to make it like that. That has an important consequence: the unregulated part of the sector does not fall under the aegis of the Legal Services Board, the oversight regulator.

Another thing that people forget is that if you look in the Legal Services Act you will not see any reference either to the Bar Standards Board or the Solicitors Regulation Authority. What you will see reference to is the



approved regulators such as the Bar Council or the Law Society. If the approved regulator has a representative function, it must delegate its regulatory function in such a way that independence is achieved.

Chair: A non-linked body.

Nick Vineall: Exactly. You are all lawyers so I am sure that you understand, but at the end of our little briefing document we tried to capture that and the fact that the different professions do this slightly differently. The Bar Standards Board is not a separate legal entity, but in CILEX, the Chartered Institute of Legal Executives, they have incorporated a separate body, a subsidiary to which they delegate functions. I have shown that in our briefing document with a separately coloured semi-circle.

It is the same with the Law Society, the approved regulator of solicitors. It has incorporated the SRA. There is choice, we would say, in how the arrangements work, which we think is quite a good thing. We are a tiny profession. We are only 18,000 practising barristers.

Chair: You do not hold client money. You do not have referral fees, for example.

Nick Vineall: Exactly. We think that the Act is quite neat. It has a lot of checks and balances, with the LSB as an oversight regulator.

You will remember that when the Act was passed arm's length bodies were subject to triennial reviews. When the Act was passed, everybody would have expected the Legal Services Board to have a review every three years. Those rules have changed. There is now no regular review of the Legal Services Board. You cannot mark your own homework indefinitely. We think that every confident, transparent regulator ought to welcome external review of its activities every now and again. There has not been a review of the LSB since 2017, and it has since changed course. We think it is time for a 360-degree review.

Q2 **Chair:** I understand that you want a review not of the Act itself—

Nick Vineall: No.

Chair: But of the LSB. You referred to the Bar Standards Board and to the fact that in some cases the frontline regulator, for want of a better word, is separately incorporated. Would the Bar Council favour the Bar Standards Board incorporating as a legal entity?

Nick Vineall: We do not see any need for that. It is independent. It is a board of the Bar Council but its members are independently appointed and it has an independent chair—if I may say so, a strong and independent chair—and we think it works well.

Again, it is consistent with the intention of Parliament that we are the approved regulator. We decide how best to exercise those functions. We have decided to delegate to a board. When we look at the other two professions in my diagram, which have delegated to a separately



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incorporated regulator, I don't think it flies off the page that that is working better than the model we have. We feel that what we have at the moment works well for us and works well in the public interest.

Q3 James Daly: Will you define what you mean by "regulator" or what you think we should take the word to mean?

Nick Vineall: The approved regulators in the Act are the bodies that the Acts says shall be approved regulators.

Q4 James Daly: I understand that. I am not trying to be pedantic, but "regulator" covers a lot of different things. A regulator can judge complaints about a barrister's conduct or regulate whether the profession is making sufficient strides in diversity and equality. You have talked about different things. What does a regulator do as far as you are concerned?

Nick Vineall: The principal functions of a regulator, but not the only ones, are the education qualifications and conduct of practising lawyers, and I think that is reflected in the Act. Those will not be the only things a regulator does. You have to look at the regulatory functions in the Act, and whenever those functions are exercised regulators must have regard to the statutory objectives—and, as I think you were hinting, the statutory objectives go wide.

Q5 Edward Timpson: I wish to go back to the Bar Standards Board, in particular the level of performance and some of the criticism from the last review by the Legal Services Board around its leadership and enforcement. You made your inaugural speech in January this year. I appreciate that some water has passed under the bridge since, but you said then that the level of performance was not acceptable. What has changed since then? What do you think the Bar Standards Board should be doing to improve its approach to enforcement?

Nick Vineall: I don't think we have a problem with enforcement in the sense of enforcing the sanctions that the BSB imposes—I don't think there is a difficulty with that; they disbar, or whatever they do. That happens.

You are absolutely right: we were very disappointed—you might say displeased—by the BSB's performance in how quickly it was getting through the case load of misconduct cases. Unless that is done with an appropriate degree of haste, it is bad for the public interest and for the profession. I did not feel shy about expressing my views on that. I am pleased to say that there has definitely been a response from the BSB, putting in place various steps to improve productivity and performance—and it is working; there has been a significant change.

Technically, I am the approved regulator. We delegate those functions to the BSB, but if it is not going right it is a problem for me, which is why I felt it appropriate to make those criticisms. The LSB made some criticisms that overlapped, and it is right that it should do that.

Q6 Edward Timpson: Are you able to give the Committee more detail on the



significant change you have seen during your tenure?

Nick Vineall: I do not have the figures to hand, but we see them when we get the BSB papers. The time from first complaint to resolution is much improved. We can give you those. It is not an impression; it is a data-driven assessment.

Q7 **Edward Timpson:** We have received submissions to the Committee, knowing we were to have this session, about the role that the Bar Standards Board should play in relation to chambers, with some believing that it is more than enough already and others welcoming a potentially greater role. What should that role be, and how should it manifest itself in future?

Nick Vineall: As you will know very well, chambers do not provide legal services, so they are not regulated. Barristers are regulated but, as we all know, barristers operate in chambers and what goes on in chambers has a profound impact on people's careers and for equality of opportunity for barristers to improve their practices. So what happens in chambers is very important.

The Bar Council is very keen to lead and encourage best practice in chambers, sharing model policies, best practice, and so on. A chambers management working group has tried over the past year to see what we can do to improve the sharing of best practice. We have done so in conjunction with the clerks and practice managers—the people who really matter for those purposes and who certainly are not regulated by the BSB, the LSB or anybody.

We can bring those people together, and we hope that when the BSB looks at what is happening already in the profession it may take the view the regulatory levers are not required. Regulatory levers always impose minima. At the Bar Council, we are more ambitious. We are keen to spread best practice. If the BSB takes the view that we are doing that, I hope that it may think that regulatory levers are not appropriate.

Q8 **Edward Timpson:** You said that there has been no review of the LSB since 2017, since when it has, to use the phrase that I think you used, changed course. We have heard some concerns that maybe it is going beyond its remit, looking, for instance, at regulation around the conduct of lawyers' clients rather than lawyers themselves—trying to put itself forward as a regulator of the legal sector as a whole, potentially causing problems between the approved regulators: the Bar Council and the Law Society. Those things have come to us as a Committee; it is not a view of the Committee but evidence we have received. What issues might the LSB have with the current approach that the LSB takes to its work? What do you think should be done about it?

Nick Vineall: We think that there are three areas—in a sense, you have touched on all of them—that could usefully be looked at. The first is the broad issue of overreach and setting up a strategy for the sector. It is slightly troublesome to us that on several occasions the LSB has expressed



the view that it thinks that the regulatory system would be better for consumers if there were a single regulator. It is entitled to that view, but it is not the job Parliament has given it. There is a risk that it regulates as it thinks the system ought to be rather than in accordance with the system that Parliament created.

It decided, after 10 years of operation in which it didn't have a strategy for the entire legal services sector, that it would have one. One can, in a sense, say rhetorically, "Either it went 10 years without a strategy that it ought to have had or it is now doing something that goes beyond its remit." We think that question could sensibly be looked at. That is the first overarching thing. I think Professor Stephen Mayson shares the view that at any rate that ought to be looked at.

The second thing relates to IGRs—I am sorry but it's another acronym: the internal governance rules—which, in my profession, govern the relationship between the Bar Council and the BSB. The rules are important. There need to be rules to achieve the appropriate degree of separateness between approved regulators, who are also representative bodies, and those to whom they delegate those functions. There is a danger if the IGRs drive too strong a wedge between the approved regulator and the body to which it delegates its functions, because then you move away from that compromise that Parliament achieved of not having totally separate regulation but also not having it within the professions.

The third thing is the tendency correctly to identify problem issues—or issues that need attention, one being SLAPPs and the other being the use of non-disclosure agreements—and for the LSB to think it should take the lead because there is a regulatory problem. I accept that maybe the approved regulator—maybe the SRA—has not adequately supervised solicitors' conduct in relation to SLAPPs. That is possible, and if there were evidence that that had gone wrong it would be right for the LSB to do something about it. But if you look at the consultations and the material that comes out of the LSB, it goes much broader into general questions that, it seems to us, are not really for a regulator nor necessarily amenable to a regulatory solution. We may need to legislate to deal with SLAPPs; I am not going to express a view on them now. But I do not think that they are essentially regulatory problems, and the same applies to NDAs. The danger is that the LSB will see problems through a regulator's prism: that there must be a regulatory solution.

All that is against the background of this year a 14% budget increase at a time when bits of the legal profession are under real strain. Ultimately, it is the professions that pay, and ultimately it will be the consumers who pay.

Q9 Edward Timpson: You suggested that the Government should look at reviewing the role of the LSB—for many of the reasons you just articulated, I assume. In doing so, what fora are available to you, apart from this Committee, to make that case? How regularly do you meet the LSB to



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discuss these issues?

Nick Vineall: We meet with the LSB, and earlier in the year we wrote asking whether they would support a call for such a review. I have to say that I was disappointed that they didn't. It is difficult, in a way, to understand that, because you would expect them to welcome that feedback. At the moment, they do not seem to be persuaded that it is appropriate, so we have to agree to differ over it.

Q10 **Edward Timpson:** Have you been able to raise it directly with the Law Officers, Lord Chancellor or Ministers in the Ministry of Justice?

Nick Vineall: We have mentioned it to them. I wrote to the Ministry of Justice either at the tail end of last year or the beginning of this year asking. The response from Minister Freer was that they felt that the time was not yet right but that they would keep the matter under review. We feel that the time is now right and we would welcome your support.

Q11 **James Daly:** I do not like the Legal Services Act. As a solicitor, I think it was a disaster to give ownership of law firms to non-qualified people, and it and many other pieces of legislation have led to an undermining of the professions—completely.

I think that you and I are probably on the same page, and I can only speak in straightforward terms in these Committees rather than in legal speak. I think what you are saying is that the Bar Council—the Bar—wishes to be as lightly regulated as possible, and I completely agree with that.

I have a briefing that states that one of your predecessors has said that the Bar is a low-risk profession. I do not understand—help me, as perhaps it is a thing I missed—how the Legal Services Act 2007 improved regulation of the Bar. What did it do that it meant it was better after the Act than it was before the Act?

Nick Vineall: I am not sure that it actually improved it, but it did provide an answer to those who looked at the old system and said it was too cosy.

Q12 **James Daly:** You have answered the question. If it didn't improve it, we are wasting our time, are we not? Legislation exists, hopefully, to improve a situation.

The problem that this is answering is one that others outside the legal profession want to impose on the profession. You have to come at it from the point of view that the legal profession is so innately corrupt that it requires independent regulation. I disagree.

What has happened as a result is that we have two-tier regulation. Regulation of the Bar is—I don't know what the phraseology is—quite light, whereas regulation of the solicitors' profession is far more restrictive, time-consuming and impactful on businesses. Do you agree?

Nick Vineall: I don't think I would accept that regulation of the Bar is light. I would say it is appropriate to the risk to consumers inherent in the Bar. It is the Chair's point: broadly speaking, we do not hold clients' money so



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we cannot have collapses like the Axiom Ince collapse, with lots of money going short. For the most part, we are a referral profession.

James Daly: I understand that, but under the Legal Services Act anybody could open a law firm and hold client money. It seems utterly perverse. I will leave it there, but I challenge the notion that the Legal Services Act was a good Act. I don't think it was a good Act.

Nick Vineall: I see it from the perspective of the Bar.

- Q13 **James Daly:** I asked you what regulation means. I have here the eight regulatory objectives. As lawyers, we talk about the rule of law, but outside this room nobody has an idea what that means.

One of the things that is important in where we are with the Bar and the solicitors' profession is that the profession you came into at the Bar is completely different now, with completely different challenges and many differences. You can see that through the challenges that people from working-class backgrounds and people from diverse racial backgrounds have in getting into chambers. I asked what you perceived a regulator to be. I wonder whether the regulator concerns themselves with those questions about the profession rather than concentrating on the conduct in individual cases.

Nick Vineall: I think they do, and I think they are right. One of the regulatory objectives is an independent, strong, diverse legal profession.

- Q14 **James Daly:** They have been spectacularly unsuccessful, haven't they, if that is what they are trying to do?

Nick Vineall: I'm not sure about that. I'm not suggesting everything is rosy in the garden, but there is an important message about the intake to the Bar. The present intake—this is one of the things over which the profession has pretty good control because we decide whom we take into pupillage—is almost exactly 50:50 men and women, and on race it almost exactly mirrors the population percentages in that demographic. Is it perfect—

- Q15 **James Daly:** I can tell you it is not perfect, and I can give you statistics to challenge that. Around 35% of the intake of the Bar is privately educated.

Nick Vineall: I was going to come on to social mobility. We have much less robust data on that, largely because people won't tell us or answer the questions we need to monitor it. I have been concerned about that. I said right at the beginning of the year that one of the things I want to do is to get contextual recruitment tools available to chambers. We partnered with a fabulous organisation called Rare, which makes available contextual recruitment tools. From the next pupillage round, chambers will be able to use them. They are really interesting. They put A-level grades in the context of other A-level grades within that school. You might have an A and two Bs, the best result in your school—



- Q16 **James Daly:** I understand that, but the regulator can never challenge this idea. Forgive me, but I fall into this category completely: if a lot of middle-aged white men are deciding who is going to be the next pupil, there could be a suggestion of inbuilt bias for people who come with a double first from Oxford rather than from the local comp, meaning that they will always get preference. The regulator can do nothing about that bias. Am I being unfair?

Nick Vineall: The profession is the place to look for change, and I think we have changed. There is a lot of training. If you are to sit on a pupillage committee you need to have done equality and diversity training. There is a thing on the Bar Council website. You can see it stratified by time. There have been huge changes.

- Q17 **James Daly:** What is the regulator doing? What is the regulator's input to change that?

Nick Vineall: The regulator does make some rules about how we recruit, and they have been useful.

- Q18 **James Daly:** In the 2021 survey of barristers' working lives commissioned by the Bar Council, one in three respondents—30%—reported personal experience of bullying, harassment or discrimination within the first two years. It's quite a big figure.

Nick Vineall: It is a big figure.

James Daly: Do you recognise that? What is the regulator doing about it?

Nick Vineall: We are making available reporting tools, including anonymous reporting tools, which are very useful for this reason: sometimes people do not want to make a formal complaint and do not necessarily want to do it in their own name, but one of the problems here is repeat offenders—judges about whom people repeatedly complain. Using those tools allows us to spot some of the patterns of what I might call repeat offenders.

We encourage people, if they have a proper complaint of bullying, to make that complaint at a judicial complaints office. It encourages us to encourage people. As they would say, they cannot deal with complaints unless they are made. When complaints are made to the Bar Council, we deal with them. We pass them on to the BSB, if given permission to do so.

- Q19 **James Daly:** Do you think that in 15 years' time, when your successor is still here, as a result of a lack of regulation and the general drift of the profession, the profession you know will be dying out, and that although the Bar will try to protect itself, the equivalent of CILEX, or somebody else partially qualified, will be coming in to take up the slack? One of the great indictments of the regulator is that the Bar is full of people of your level of qualification and below, but zero to six years there is a dearth of people, I argue strongly, coming through and having the opportunities to do that. I see a real risk to the Bar. Given the recruitment processes and the way in



which the profession is proceeding, we will have a major problem in 10 to 15 years' time. Or is that just my normal pessimistic outlook on life?

Nick Vineall: I would say that you are partly right and partly wrong. In relation to the Bar, other than the junior criminal Bar, I don't think you should be concerned. There is a real concern in relation to criminal practice. Junior criminal practice is okay for the first couple of years, but when people settle down, and want to get a mortgage and predict what they will do from one week to the next, the rates paid are not sufficiently attractive to persuade young barristers to stay doing crime.

That is the challenge. I don't think it is a regulatory challenge. It is a challenge that ultimately says, "How much do we care about the criminal justice system, and how well are we prepared to fund it?"

Chair: Thank you very much for your evidence. We are very grateful to you. We are on a deadline as it appears that votes might disrupt proceedings, so we will move swiftly to our next panel.

Examination of witnesses

Witnesses: Kathryn Stone and Mark Neale.

Chair: Will the witnesses please introduce themselves?

Kathryn Stone: I am the chair of the Bar Standards Board.

Mark Neale: I am the director general of the Bar Standards Board.

Chair: Thank you both very much for coming to give evidence to us today. I know that you are comparatively new in post, Ms Stone. It is nice to see you in a different context.

Kathryn Stone: It is, indeed; thank you.

Q20 **Chair:** Welcome back to the building, in any event. You have heard the questions that we put to the chair of the Bar. Perhaps I can start in much the same way. From your organisation's perspective, is the 2007 Act still fit for purpose, or should it be reviewed?

Mark Neale: Broadly speaking, I think it is fit for purpose. As Nick said, it was trying to achieve two things: to entrench the independence of the legal professions, which is very important, and to provide for independent regulation in the public interest. The pattern of regulation established, in which the Bar Standards Board delegates to an independent regulator responsibility for that independent regulation in the public interest, is a good attempt to meet those two objectives.

Q21 **Chair:** Back to your own organisation, the LSB's last performance review was, in effect, pretty critical. It was pretty damning, frankly, wasn't it—that the BSB was falling significantly behind its targets in key areas by quite a margin, as set out in the figures on both leadership and enforcement in particular? What steps have you been taking to respond to



that?

Kathryn Stone: I was very pleased to hear the chair of the Bar Council acknowledge the improvements that have been made in recent times. Of course, the LSB's latest published performance assessment is now almost a year old. The next assessment, the draft of which we have had sight of, to comment on, acknowledges that we have made considerable improvements in a number of areas, timeliness and productivity being two key areas. Of course, the quality of our decision making remains very high.

I can assure the Committee that the fiercest critic of the performance of the Bar Standards Board is the board itself. My board has been very careful to hold the executive to account in respect of timeliness, productivity and quality of decision making. We have set up a committee that looks specifically at performance, and instigated an end-to-end review of performance, and there are a number of other measures to ensure that we are never in a position again to receive such critical commentary from the Legal Services Board, the Bar Council or anyone else.

Mark Neale: I very much agree with that. There are key respects in which we recognise we need to do better. We have always prioritised the quality and fairness of decision taking. That has remained very high and is independently audited, but we have to do better at moving cases through our system quicker.

We, like other regulators, face challenges from rising case loads and rising complexity. We need to be better at using data and intelligence to inform the proactive role of regulation in the public interest. That is exactly what we are setting out to do.

Q22 **Chair:** Is it a question, therefore, of resourcing, and quality and numbers of staff? Or is it a question of adequacy of powers, or what?

Mark Neale: It is very much more the former than the latter. I think we have the right powers, but we found last year that we were struggling to recruit to the posts that we created in order to address the problems that we knew we faced, and we have since reformed our pay structure in order to put pay on a much more competitive basis. That has paid dividends and contributed to the much improved performance that Kathryn mentioned.

Chair: That is very helpful.

Q23 **Edward Timpson:** Before I ask you a few questions about the relationship with the Bar Council, may I ask a little bit more about the make-up of the board itself and the number of cases, generally, that you are dealing with? I of course accept that no case is the same, and the point that has been made about complexity and the different amount of input needed to process a case. As things stand, do you have a full complement on your board? What skill ranges do you have available to you?

Kathryn Stone: We do, indeed. Half our board are barristers and half are lay members. Our barristers range from a number of years' call to very



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senior silks. Our lay members are incredibly experienced people from a range of backgrounds, predominantly from regulation. We are very pleased to have people with business acumen and commercial experience and, as I said, people from a regulatory background. There is a lay majority and the chair holds the casting vote in any vote that is taken. Thankfully, we have never got to that. We operate on a basis of a collegiate and collaborative response to our decision making. I am absolutely confident that we have a range of knowledge, skills and experience around our table that is able to act as a critical friend to the executive, and that our governance is absolutely as it should be.

Q24 Edward Timpson: On the point about case load, how many cases would the board be looking at over a 12-month period?

Mark Neale: The board itself does not look at cases, but in a typical year we probably receive between 1,500 and 2,000 reports on barristers—effectively, complaints. Of those 1,500 to 2,000 complaints, we probably take around 150 to 200 forward to investigation. So of the reports that we receive, we assess the great majority as not requiring regulatory action.

Q25 Edward Timpson: To be clear, is the decision whether to pass that on for further investigation made by the board or by individual caseworkers?

Kathryn Stone: It is made by the executive.

Mark Neale: It is made by the executive, but before a case goes to a tribunal the decision is taken by an independent decision-making body, which also has a lay majority on its panels. So where there is a requirement, or a need, for independent input, that is provided by an independent body.

Q26 Edward Timpson: That is very helpful. On the theme of independence, do you think the Bar Standards Board is sufficiently independent of the Bar Council to carry out its functions?

Kathryn Stone: This goes to the relationship that we have with the Bar Council. I would say that we have an entirely appropriate relationship with the Bar Council. Both organisations are concerned with the promotion of high standards and the promotion of the public interest. Obviously, our regulatory decision making is completely independent of the Bar Council. I know that the chair of the Bar Council is very keen to stress that, too. They have no involvement in our decision making.

Q27 Edward Timpson: In your latest strategy statement, the issue was raised of potentially incorporating the BSB as a separate legal entity. Could you explain a little about what benefits that course of action would bring to the board?

Kathryn Stone: My board has no intention of considering incorporation at this time. Our priority is performance. We have been very clear with the executive that that is where our priority lies. We must focus on performance, timeliness and productivity. Incorporation is something that



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we would consider when, and only when, productivity, timeliness and performance are significantly improved.

- Q28 **Edward Timpson:** By that, are you suggesting that there isn't any relationship between potential incorporation and the ability to improve performance, productivity and so on?

Kathryn Stone: I think we see the two as separate and we are not considering incorporation at all at the moment.

- Q29 **Edward Timpson:** You will have heard concerns raised earlier about the current approach of the Legal Services Board, and the effect that that is having on the IGRs—the internal governance rules. How would you, from the BSB's perspective, respond to some of that concern?

Mark Neale: We certainly feel that we have full independence of decision making under the current internal governance rules. That is key to our ability to act as a public interest regulator. The advantages of incorporation, if we went down that route, would largely lie in operational freedoms, not in decision-making freedoms.

- Q30 **Edward Timpson:** Mark, in July you said that there were "unexamined practices" at the Bar "which may have out-lived their usefulness and no longer work in the interests of consumers or, indeed, of the diversity of the Bar itself." Could you elaborate on that and maybe give some examples of the type of practices that you are referring to?"

Mark Neale: Yes. I am thinking of practices that have worked well over time for barristers and the Bar, but perhaps work less well for the public interest and consumers.

To take some examples, let us look at the future supply of barristers, which has come up, and which is very important to access to justice. The supply of barristers is largely the result of the cumulative decisions taken by chambers about whom they are going to recruit, and whom they are going to award tenancy to. The total of those cumulative decisions may be the right answer about the future supply of barristers generally, and in particular specialisms, but it may not, and we, as the regulator, certainly want in our next strategic plan to look at the market to assess whether the supply of barristers is secure for the future, because at the moment it is an ageing profession, and eventually that is bound to tell on the number of practising barristers.

That is one example. Another example would be the referral arrangements that guide how barristers acquire their clients. They work well for the Bar, but our surveys of consumers find that they mean that consumers have no choice about the barrister to whom they are referred. That is an issue in its own right but it also has an impact on diversity at the Bar. We have seen from our analysis that the pay of women barristers and barristers from minoritised backgrounds is lower than that of their white counterparts even when you control for seniority, geography and specialism. It may be that referral is playing some part in those inequalities of income.



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Another example is that if you visit chambers often, as I do, you will note that in London, particularly, they are very often rooms off staircases that are very inaccessible for disabled clients, pupils or barristers.

Those are the issues that I had in mind, where I think it is right for a public interest regulator to make a challenge to established practice.

- Q31 **Edward Timpson:** That goes to the heart of the question I asked about the role of chambers. As an entity, they are not regulated—it is the individual barristers who carry that—but are you suggesting that your remit could move into that arena, either in a thematic way or potentially actually looking at each individual chambers and whether they meet a wide array of standards that you would set?

Mark Neale: We think chambers are very important because they play a huge role in the socialisation of barristers, and their development, and in the culture of the Bar. We already have a role with chambers, because we make some rules about barristers' management. For example, we make rules on equality, and on transparency—setting out for consumers what services are provided and the price of those services. We make rules on money laundering.

What we are trying to do with this initiative is to set some expectations of chambers' role across a broader range of areas, including standards, diversity and inclusion, and access. Bullying and harassment, for example, would very much be part of that.

- Q32 **Edward Timpson:** When I first took on tenancy—going back to the last millennium—I was thrilled to be given the responsibility of being fire and safety officer in chambers, which was a coveted role, I assure you. Who is responsible for compliance with Bar Standards Board standards and guidance within a set of chambers? I was never given that information, as far as I am aware. Who would you turn to if you were looking to ensure that some of the things you have spoken about were being complied with? Who would take that responsibility?

Mark Neale: The answer is that it varies. All barristers, as you will know, have a responsibility for the proper management of their own chambers, but clearly some barristers hold particular positions within chambers. Chambers will often have a head of chambers, for example. There will often be committees overseeing equality and diversity, and a chair of that committee. In undertaking our work we would engage with those barristers primarily responsible within chambers for the objectives that we are seeking to fulfil through our regulation.

- Q33 **Edward Timpson:** Essentially, you find the person within chambers who has that role or the group of people who have been nominated to perform that role. It is not standardised.

Mark Neale: It is not standardised, no. We would engage with the chambers through the constitutional mechanisms that a particular chambers had established.



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Q34 **Chair:** Things like accessibility—a subject close to my heart—are very worthy, but are they actually matters of standards? Or is that really going beyond the remit of the Bar Standards Board?

Mark Neale: No, I think we do need to set some standards for access to chambers and, indeed, in the new year we will be consulting on revised equality rules that will have something to say about standards for access to chambers.

Q35 **Chair:** Have you spoken to the Inns of Court about it?

Mark Neale: Yes, we have. We have had very good dialogue with the Inns of Court and, indeed, I have written to the planning authorities for the various inns in London.

Q36 **Chair:** What about English Heritage? A lot of them are listed.

Mark Neale: It is interesting that you say that; we are thinking about holding a roundtable with English Heritage present, precisely for the reason you outline.

Chair: That is good to hear. My experience from practice is that there can sometimes be an issue with trying to make changes.

Q37 **James Daly:** I do not expect you to have the exact figure, but roughly how many people per year are going through the Bar professional training course, and how many people are offered pupillages by chambers? What are those two figures, in rough terms?

Mark Neale: The answer for the last year is that there were about 2,200-plus enrolments on the vocational Bar training courses and just over 500 pupillages—so it is broadly a ratio of one to four.

Q38 **James Daly:** We know is that we have a surplus of people who want to be barristers but are not getting the opportunity to get a pupillage. What is the reason for that?

Mark Neale: The reason is that there is a restricted supply of pupillages because, of course, there are many students eager to join the barrister profession. One answer to that is to increase the supply of pupillage places. We are very keen to promote that. For example, we are working with a trailblazer group on an apprenticeship route.

Q39 **James Daly:** Do you think chambers are too big? Could you break them down in size? I understand there are issues like how you financially maintain a building, especially if it is listed and everything like that, but the more chambers we have the more opportunities there are for people to get a pupillage. Or is that not right?

Mark Neale: I am not sure that that equation quite works. The great majority of chambers are small. We published some figures in a consultation document last month. There are 341 chambers with two barristers or more. Of those, roughly half have 25 barristers or fewer and roughly two thirds have 50 barristers or fewer.



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Q40 James Daly: That is very helpful, but the one thing we know is that we have a surplus of people who want to be barristers. The Chair raised the issue of standards and we had a helpful briefing from the Bar Council. I read with interest: "For instance, at the moment the Bar Council is unhappy about steps being taken by the BSB to make it easier to pass the Bar exams". Does that essentially mean that we have a surplus of people who want a job but you want to make it easier for people to pass their exams?

Mark Neale: I am afraid the Bar Council is wrong, because we are not making it easier for students to pass the Bar exams. The standards are the standards as they are and will be.

Q41 James Daly: I fully accept what you have said, but if standards are the quality of the legal representation, having people who have not passed the required academic qualifications would seem a strange definition of standards. Or would that be wrong?

Mark Neale: There has been no dilution of standards and, indeed, maintaining high standards is one of the four objectives that the Bar Standards Board set for its reforms of Bar training, which are now more or less fully implemented.

Q42 James Daly: The legal profession, like every other profession, has a lot of people who are very good at it and a lot of people who are not so good at it. The thing that is most important to the client is whether they get the correct standard of representation per case. How would you regulate that?

Mark Neale: We have a lot of work under way on standards during practice at the Bar. We make requirements on continuing professional development and we are reviewing those requirements. This is also an area where we want to see chambers playing a more active role—playing a role in brokering feedback to barristers, so that when barristers are reflecting on their continuing professional development they have something to bite on: feedback from the judiciary, solicitors and clients.

Q43 James Daly: As I say, there are, as with every profession, people whose professional development is not what it was. Do you think the people who head chambers are protecting those barristers and making sure you do not know about the drop in standards, with them and with others?

Mark Neale: I do not think we have seen evidence of a drop in standards among practising barristers and I very much hope that chambers would not see it as their role to protect a barrister who was struggling with his or her practice.

Q44 Chair: I am very grateful to you. Ms Stone, you took the view that a review of the Act was not necessary. I understand that. What about a review of the LSB?

Kathryn Stone: I think, Chair, that is a matter entirely for you. It would be inappropriate for us—

Chair: You do not want to express any view on it.



Kathryn Stone: No.

Chair: Fair enough. Thank you very much for your time and your evidence.

Examination of witnesses

Witnesses: Professor Chris Bones and Linda Ford.

Chair: Will the witnesses please introduce themselves?

Professor Bones: I chair the CILEX board.

Linda Ford: I am chief executive of CILEX.

Q45 **Chair:** Ms Ford, it is nice to meet you, and it is good to see Professor Bones again.

Perhaps I can cut to the chase. The Legal Services Act has been on the statute book since 2007. Does it still work? Is it still fit for purpose, or should we perhaps be looking at a review of it?

Professor Bones: That is a big question to start with. Perhaps I can split it into two. The first is about the short term. I am sure that if there is a major reform of legal services regulation, it will be some way out.

In the short term, there are probably three things about which we are concerned and which we think could be addressed within the framework of the current Act that would improve its performance. The first is the internal governance rules that are currently imposed on the sector by the Legal Services Board, in particular the role of the approved regulator and the ability to hold delegated regulated bodies to account. In their current form, the IGRs do not provide sufficient ability for either the Legal Services Board or approved regulators, of whom we are one, like the Bar Council and Law Society, to hold their delegated regulated bodies to account for the discharge of their delegated functions, or compliance with fiduciary duties and the articles of legal entities—for example, our regulator is a wholly owned subsidiary.

There are three specific things. One is the performance review process—the mechanism by which regulated bodies are held to account. It provides only a snapshot of performance against a very limited set of measures. It does not include, for example, whether activities expose the approved regulator—the owner of the corporate body—to financial or reputational risk. At times, the provisions in the IGRs constrain an approved regulator in holding its delegated regulated body to account directly—for example, where there are conflicts in acting as directors of a corporate subsidiary and where there are issues of financial health.

Secondly, sanctions and powers are applied to an approved regulator even in circumstances where there is failure as a designated regulator. Therefore, we at CILEX can be fined, held to account or publicly rebuked for something we have never done, been associated with or have any control over.



The third thing is that appointments to delegated regulatory boards are not subject to the public appointment process. As delegated bodies carrying out a public function under the Legal Services Act, we believe there should be a degree of scrutiny, transparency and independent review of public appointments. That is the first one concern.

The second concern is about regulatory overlap. At the moment, we have not only multiple layers of legal services regulation, the LSB and so on, but multiple regulators in the sector. You have oversight by the LSB, OPBAS, the FCA and regulation of our members by our regulator and SRA. Seventy-five per cent of our members work in SRA-regulated firms.

The issue here is not the importance of regulation to protect the consumer—that is very important—but that the method by which this has come about has created a huge amount of complexity. With complexity comes cost, and as cost is placed on firms so cost goes through to consumers. There is a strong argument for working out, for example, who does financial regulation and money laundering. Is it one or the other?

The final point for us is regulatory objectives. Our view is that at the moment the Legal Services Board has a very broad view of its role and definition. I am not sure they are the best people to take a view on climate change or judicial appointments. I think they could and should have a much more focused view about the performance of the delegated regulatory bodies to which they are accountable.

Q46 Chair: That is helpful. Would there be merit perhaps in a review of how they operate?

Professor Bones: I absolutely think that is the case. The larger point is whether there is an argument for a much bigger review of legal services regulation. There are two points from us. We do not think consumers are best served by the current method of regulating by profession rather than activity. Increasingly, that is exposed as a fault line when you think about the greater disintermediation using technology to deliver legal services. The question the Committee might want to consider is: who is regulating the writer of the algorithm? If the individual is not a regulated lawyer—by and large, they are not—the person who writes the algorithm that delivers the service, the decision or view is unregulated, even in an area where there is reserved practice and regulatory control.

The second point is that there are areas currently not regulated where there is consumer risk: immigration, estate planning and so on. The third is that there is a set of vulnerable consumers with no regulatory cover at all—small businesses that take corporate legal services. Of course, “corporate” is excluded from any part of the Legal Services Act. We believe there is much great interest in moving to an activity-based view and to think about that in terms of consumer protection.

Q47 Tahir Ali: What is the difference between a chartered legal executive and other lawyers, solicitors or barristers?



Professor Bones: A chartered legal executive is a specialist lawyer. A solicitor qualifies as a generalist lawyer. Interestingly, if you think about legal services today, it is broadly a much more specialist industry than generalist industry. The old role of the high street solicitor doing your divorce, your will and other family matters, or your criminal charge for speeding, is probably way out and not often practised.

Most solicitors practise in civil, criminal or family law. CILEX lawyers specialise and qualify in one of those specialisms. Our specialisms are conveyancing of property, civil litigation, personal injury, private client, family, commercial and public law.

We try hard to build a way of qualifying that is open access to become a chartered legal executive or CILEX lawyer. With practice rights, you do not need to have a formal education qualification, so it is a non-graduate legal degree. You can start at a foundation level, come into legal practice and work as a paralegal and qualify right the way through. You can end up fully qualified with practice rights at the same level as a solicitor and operate at the same level as a solicitor.

Recently, thanks to Government changes, CILEX lawyers have been able to apply for the same entry points as solicitors into the judiciary. It has just opened up recorders and upper-tier tribunals as well as district judges, deputy district judges and other tribunal judges.

Q48 **Tahir Ali:** How would you characterise the attitude of other legal professionals to chartered legal executives?

Professor Bones: I would like to differentiate between the professions and the professional bodies. If you talk to our friends at the Bar, Nick and his colleagues, chartered legal executives instruct barristers in the same way a solicitor would, so as barristers they have the same relationship with solicitors. Our colleagues in the Bar have been broadly supportive and engaged with the building of practice rights and the movement of the profession as being recognised as having the same qualification level in law as solicitors.

Individual solicitors and employers are broadly very positive about the people they employ. Seventy per cent of our members work in solicitors' firms. There are now 1,000 who are partners in firms regulated by the SRA or our own regulator, CRL. The issue for our lawyers, at times, is the attitude of the professional body that represents solicitors, the Law Society.

I would like to give you an example to try to characterise the problem. Only 40% of our members go to university, which means 60% have come from backgrounds such as legal administrators and legal secretaries. Seventy five per cent of them are women. I think, of two of our leading women advocates and litigators, one of them works in criminal practice in the south-east and the other works in the family court and often represents clients in the Court of Protection. For the latter, the Law Society continues to misrepresent our members as somehow part-qualified and not quite of



the same standard. Our senior litigator in the Court of Protection was challenged by a solicitor as being unqualified and in front of the judge had to justify herself and her professional qualification before she was allowed to proceed.

We are talking here about mid-20th century behaviour. It is insulting generally to women in law, but particularly insulting to people who come from socially disadvantaged backgrounds. Seventy seven per cent of our members went to non-selective state schools. They did not get the best break in life and many did not get the publicly funded university education that solicitors do.

As for the attitude of the Law Society, which has been picked up by some of its members, claiming we are not as qualified, I have a prized letter in my possession from a past president of the Law Society that explains that our members cannot be as well qualified as theirs because it costs more to be a solicitor and takes longer. This is the sort of attitudinal and cultural change that needs to shift. I do not criticise solicitors who hear that and feel there is a right to challenge our members, but I do criticise misinformed and erroneous descriptions of the profession that say in some way that these people are lesser lawyers or less qualified.

Q49 Tahir Ali: Have the roles and opportunities available to chartered legal executives changed in the past two years? If so, how?

Professor Bones: It has in three ways. Almost 10 years ago, there was the introduction of practice rights—in other words, the ability for a chartered legal executive to practise unsupervised in reserved areas. That is now fully established across the three branches of law for advocates and litigators in lower courts.

The second was the opening up of judicial appointments to the profession recently this year—recorders and higher-tier tribunal judges. The third is recognition of the equivalence of qualifications to those of solicitors. This year, the Institute for Apprenticeships reviewed the new professional qualification, the CPQ, for our members and graded it a level 7 qualification alongside that for solicitors and funded it to the same degree. These are pushing forward our members in a very progressive way.

Chair: Ms Ford, if you want to come in at any time do not hesitate to do so.

Q50 Edward Timpson: This may be an opportunity to do so. This follows on from some of the discussion about how chartered legal executives are viewed more widely within the legal profession. One of the proposed changes that CILEX is putting forward is to change their title to chartered lawyers, as opposed to chartered legal executives. Could you explain the reasons behind trying to bring forward that change?

Linda Ford: There are two drivers. The first is consumer confusion. CILEX has undertaken research over a number of years, and it shows us that most consumers have not heard of a chartered legal executive and, when



they have, they do not understand what it means. They do not automatically associate them with being lawyers or those who are highly trained and qualified. The outcomes of that research identified that “chartered” is a term with which they are familiar by way of chartered accountants, chartered surveyors and so on, and there is a general understanding of lawyers as a concept.

We fully appreciate that the term “lawyer” cannot be protected and there is no intention to do that. In our proposals, we are trying to create a title that recognises that they are both chartered lawyers but also specialists. The proposals on which we have been consulting recently are to introduce the specialisms in which they qualify into the titles—for example, chartered property lawyer, chartered litigator, and so on—to help both consumers and employers to understand the context in which our professionals are trained and qualified, and to simplify the structure.

One of the things that has caused confusion about titles—there was a question about the difference between a chartered legal executive and, say, other legal professionals—is the added complication that we have chartered legal executives who were qualified under the old qualification that did not include practice rights. Now, practice rights are included, so we have CILEX lawyers who have those independent practice rights and the ability, for example, to be litigators and advocates.

We are trying to simplify the title structure, which is already complicated, to something much closer to what it says on the tin: chartered property lawyer, chartered litigator, and so on.

Q51 Edward Timpson: In what timescale would you be looking to try to introduce this change of title?

Linda Ford: It will require a charter change through the Privy Council. We have a board meeting tomorrow to look at the consultation outcomes and make a decision, and we would hope to put in a charter application thereafter. That takes a bit of time, but we would hope to introduce it in early 2024.

The other half of the proposals around title is to introduce something called chartered paralegal. At the end of 2022, CILEX acquired the Institute of Paralegals, a professional body for paralegals. That is part of our strategy to try to professionalise the paralegals who work in delivering legal services in order to create a standard structure, career framework and professional status, because a number of those paralegals will never go on to qualify and do not even want to qualify as fully qualified lawyers. We want to recognise those and, through a public-facing register, help employers, consumers and providers of services to be able to differentiate and understand that those who are within the scope of regulation have a qualification and have been assessed against a set of standards and, therefore, have that public protection around them.

Q52 Edward Timpson: Would these changes be retrospective? If you are



already a paralegal or legal executive, I am trying to think about access, public understanding and the avoidance of confusion. How is that going to work?

Linda Ford: Certainly, for the chartered paralegal process there is an assessment process. We are not proposing to grandfather anyone in. All paralegals will need to demonstrate and be assessed against that standard. There are different ways of doing that by way of a recognised qualification that they already have, or validation of their experience through an assessment process. That is what we are proposing for chartered paralegals.

For chartered legal executives, under the new qualification that Chris mentioned they automatically get practice rights on qualification. For the future qualified it is not an issue. There is a top-up process available for existing chartered legal executives to get practice rights. We already have a number who are doing that. Again, they have to demonstrate and meet the standard to gain the new title.

Q53 **Edward Timpson:** Professor Bones, it will probably come as no surprise to you that in relation to the chartered lawyer proposal the Law Society has criticised the new title in that it will itself confuse consumers of legal services. You might have answered this in your earlier response to Mr Ali about how they are viewed more widely by the Law Society and others. How would you respond, perhaps to try to quell some of their concerns?

Professor Bones: What is fascinating is that when you talk to employers, who are the people who sell the legal services through to the market, there is virtually universal support for the move. As I have said before, the Law Society has a view; the vast majority of the profession that it represents has a different view. I do not think there is very much to quell in the market among legal firms.

I point out that there is already a chartered tax lawyer as a regulated profession, so chartered property lawyers, chartered family lawyers or whatever alongside would seem pretty much a sensible move to try to clear up titles in the sector generally. I do not think there is a big issue in the market.

One thing that is certainly clear from the research we have done is that nobody knows what a chartered legal executive is. Lots of people know what a lawyer is. To have this regulated, defined and reassured title to consumers, where they know they are getting legal services from a lawyer, is important for consumer confidence. We have examples—I am more than happy to share them with you—of our members being challenged as to their qualification status because they are not a lawyer.

Chair: Send us any examples after the hearing.

Professor Bones: We certainly will.

Q54 **Edward Timpson:** People know what “chartered” means. Is there a risk



that some people will think a chartered lawyer is better than a lawyer—they are getting an even better lawyer?

Professor Bones: I could not possibly comment on that. If we are clear, it is clearly accessible and the information is out in the public domain and it is simply expressed, people will know they are getting a qualified professional. People do know what a chartered surveyor or chartered accountant is. We think that by trying to relate the title to the area of practice—family, civil, criminal—that is clear and reassuring, and certainly less confusing than the current set-up.

Linda Ford: The other point about being more specific about “chartered” in the title is that our research shows there is recognition by the public that that generally means regulated. There is a problem in legal services, in that the public have an assumption that they are far more regulated than they actually are. We think that something that is more clearly defined for those within the scope of regulation is more explicitly helpful to the consumer.

Q55 **Edward Timpson:** Would you say a little bit more about how chartered legal executives are currently regulated?

Linda Ford: We have a delegation arrangement under the Legal Services Act with CILEx Regulation Limited. I believe you are to hear from them next. We delegate all the discharge of our regulatory functions to them, which includes setting the standards for qualification and the authorisation process by which they are granted a practising certificate. Their practising certificate is in their specific area of specialism. The qualification they do is in one of the recognised legal specialisms. They then go on to be authorised as chartered legal executives, which allows them to commission oaths, for example, and then add on the practice rights to practise independently in one or more of those specialist areas. Part of the delegation is also to hold them to account by the professional codes, the practice guidance and any kind of regulatory investigation process that is included.

One of the things we have been looking at is the scope of public protection that comes from regulation—protection for consumers around compensation fund arrangements, professional indemnity insurance and those kinds of things. Our regulated members have to do continuing professional development and have to have those things in place as well.

Q56 **Edward Timpson:** In fulfilling your responsibility to hold CILEx Regulation to account, what is your assessment of that organisation’s current performance as an arm’s length body?

Professor Bones: We are not allowed to hold them to account under the IGRs—that is one of the biggest issues a number of us have with our regulatory arrangement—nor are we allowed to comment publicly on what we think about their performance.

Edward Timpson: Even among friends?



Professor Bones: Even among friends.

Q57 **Chair:** Is that part of the agreement that you have with them?

Professor Bones: I am afraid those are the IGRs. In fairness, while I might sound critical of that, I think it would be entirely appropriate, if we had comments, to share them with our regulator first rather than with you, but there are very clear rules about critiquing regulation.

Linda Ford: The mechanism we use is the legal services performance review process. That is a publicly available assessment of each regulator, including their own, and that is the material to which we have access.

Q58 **Edward Timpson:** To test this a little further, if I were to ask you what role the Legal Services Board's internal governance rules play in shaping your relationship with CILEx Regulation, could you tell us a little bit about that?

Linda Ford: They completely define it, is the easiest way to answer that. Essentially, it puts in place the parameters of what we can and cannot do, everything from information sharing, as we have just discussed, to being able or not to make any judgment on their performance.

Sitting underneath the internal governance arrangements we have protocols that govern the working relationship on a day-to-day basis. That allows us to do some collaboration, where appropriate, but it keeps the professional body out of what is categorised as interference in the way in which they discharge regulations.

I will give you a working example. The additional rights we have been talking about in reserved areas are matters on which we may as a representative body receive a lot of member feedback. How we would pass that feedback on to the regulator is very controlled. It would independently consider that and make decisions about whether to change their regulatory arrangements and review that authorisation process, for example.

I would say the framework is used as a test to allow us to determine what we can and cannot influence and where the line is in terms of collaboration or accountability.

Q59 **Edward Timpson:** You will have heard in the earlier evidence from the Bar Council some concerns about the approach of the Legal Standards Board. It set out a number of aspects of that. Do you have any response? Are there concerns that you share?

Professor Bones: We and the Bar share a number of concerns, particularly around overreach and the way the IGRs operate and disable the holding to account of a wholly owned subsidiary of the corporate body, which introduces a degree of stress into relationships. Given that in the IGRs there is no defined role or process associated with being an approved regulator, which is our role, as opposed to a delegated regulatory body, a number of us probably feel that the IGRs were constructed in such a way



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that assumes there would be only one set of individuals who would be bad actors and one set of individuals who would always be on the side of the angels. I think that in any relationship and any balanced regulatory arrangement where there are three levels, the IGRs need to reflect a balanced role and set of accountabilities on all sides.

- Q60 **James Daly:** Before I ask my questions, perhaps I may refer once more to my entry in the Register of Members' Financial Interests, because that will become relevant in this respect.

Professor Bones, I do not accept something you said. I do not believe you have any evidence whatsoever to suggest that the solicitors' profession universally—all of them—accepts what you are talking about in respect of legal executives. I will be nice and say it is not correct.

Professor Bones: I am sure there are individuals who disagree. I have to say that the feedback that we have had from people who have engaged with us has been, from my understanding, very supportive. There are individual voices that disagree; of course there are.

- Q61 **James Daly:** I would go further than that. I think that what you are proposing here today is the deliberate destruction of the solicitors' profession. What you are proposing is the deliberate undermining of the standards that are involved in being a solicitor, with no concern for that whatsoever. As those who have watched this Committee for four years will know, I very rarely say positive things about the Law Society, but in this they are absolutely correct. I have found your evidence today quite dispiriting for the thousands of solicitors out there.

Linda Ford: I think there is more to do in helping the Law Society and the solicitors' profession generally to understand how far the chartered legal executive profession has come, what we now have by way of rights and standards and what is in the new qualification. Through the mapping process that we have done both for the apprenticeship and for things like the work we have been doing on Crown prosecutor status, we have shown where there is direct comparability of the competencies, albeit delivered differently.

- Q62 **James Daly:** I think that what you are trying to do effectively is create a legal profession on the cheap where standards, intellectual rigour and academic standards do not matter. The idea that you can regulate paralegals is for the birds. If we are to follow what you have suggested here today, we are turning the legal profession literally into a situation where anybody without a qualification can call themselves a lawyer and be judged as having similar parity. We will see a complete deterioration of standards if your proposals are followed. I think it would be a very sad day for the legal profession in general and the profession of which I have been proud to be a member for the past 20 years if these proposals went ahead.

Professor Bones: Clearly, we respectfully disagree. We will provide to the Committee the standards and so on. The Department for education and science and the Institute for Apprenticeships have gone through the



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standards with a fine-toothed comb and declared them to be the same postgraduate level as for a solicitor. The law school we operate is Ofqual-ed and Ofsted-ed, like any other institution that delivers education. I take your general defence of your profession.

James Daly: It is not a defence; it is your deliberate attempt to destroy it.

Professor Bones: It is a view firmly and well held, but there is an alternative view. I think there is a new and growing set of alternative methods of qualifying to deliver high-quality legal services to consumers properly regulated to proper standards. I think that is the way legal services are developing.

- Q63 **James Daly:** We have already talked about why you want the same body to regulate solicitors and chartered legal executives. The reason is the same reason why you want the same title: you want to create parity where parity does not exist. Rather than going on the basis of academic rigour or what solicitors are doing, you want to amend titles and have the same regulator because that gets very quickly to the endgame you want, which effectively is to have no differences among legal professionals. Everybody just has the general title "lawyer" and that would be it. I think that is a retrograde move.

I am sure that in answering the question you will refer to the various bodies you are under at this moment, but I am right, am I not, that it is about parity? It is about you wanting exactly the same parity as solicitors and you will do anything in these proposals to achieve that.

Linda Ford: We want distinction in the legal profession; we are not looking to combine all the different routes into one alternate profession as an end goal. We are strongly of the view that we should maintain the distinction of both the routes and the types of professionals that those different routes create, but we do want the system to recognise that where the Legal Services Act and the authorisation rights that come out of it create parity, that parity is recognised, visible and understood by those providing and using legal services.

- Q64 **Chair:** Is there not a danger that having the same body regulating both solicitors and CILEX blurs the distinction rather than makes it clearer?

Professor Bones: We are getting into a topic that is quite difficult to talk about because we are in the middle of a formal process. I think the answer is that it depends on how that is executed and whether or not there are distinctive and different regulatory environments.

- Q65 **Edward Timpson:** I want to provide some historical context. Other professions have created a very large regulatory authority looking over them. For instance, the Health and Care Professions Council has among its professions arts therapists, biomedical scientists, chiropodists, clinical scientists, dietitians, hearing aid dispensers, occupational therapists and so on. Until quite recently, among those professions was social work, but



the regulator was deemed to be so large that much more specialist and understood regulatory oversight of those professions meant there was a need for a separate regulator. We now have Social Work England, which was set up under the 2017 Act. Is there a risk that we go through all of this but end up having to go full circle in recognising some of the concerns raised by the Committee about having a homogeneous regulator for a range of different skillsets?

Professor Bones: At the moment, we have one that supervises the solicitor profession, so it supervises conveyancers, family lawyers and so on. The difference between the legal services and health and care professions is that our members deliver exactly the same services as solicitors; they convey, they do family law, they litigate and so on. There is probably a very big difference in the comparison you are making.

Where you do have a strong argument is our longer-term point about consumer interest. Ultimately, the question is whether legal services should be regulated by activity and not by profession, because property lawyers, conveyancers, licensed conveyors, solicitors and chartered legal executives all deliver services to the consumer at the same level.

There is some argument for the longer term, but we are where we are. The Legal Services Act was the fudge, so we have to try to operate within it. That is the logic of the process we are undertaking at the moment.

Chair: Thank you very much. We are very grateful to you.

Examination of witnesses

Witnesses: Jonathan Rees and John Barwick.

Chair: Welcome, gentlemen. It is good to see you, Mr Rees and Mr Barwick. Please introduce yourselves.

Jonathan Rees: I am the chair of CILEx Regulation.

John Barwick: I am chief executive of CILEx Regulation.

Q66 **Chair:** I will start with the same question I have asked everybody else. What is your take on the Legal Services Act 2007? Is it still fit for purpose? Does it work? Should there be a review of the Act?

Jonathan Rees: My short answer is that the Act is, as Professor Mayson described, very cumbersome. But it is a product of the time and the Legal Services Act was being drafted some 20 years ago. It is unlikely there will be a root-and-branch review but there are three areas where we do need to look at it.

It is really from the other end of the telescope of what you have been hearing. It is important to bolster the independence of regulators. Regulation works best when regulators are independent and can act without fear or favour. Clearly, if a regulator is under threat of abolition or is leaned on in some way—you heard just now an ambition that we should



be held to account, which is, indeed, the job of the Legal Services Board—then that is going to have a chilling effect on what a regulator does. What a regulator does must be to act in the public and the consumer interest.

Oddly enough, I do agree with Professor Bones and with what the chair of the Bar Council said: it is time to review the internal governance rules—the LSB rules. They were last reviewed in 2018. There is clearly a difference of view on which direction we might take them in, but it is worth us having that debate.

The second issue, again alluded to by the chair of the Bar Council, is that lots of people provide legal services who are not regulated at all. In that sense, CILEx Regulation is unusual in that we regulate 7,600 chartered legal executives. We also regulate about 9,000 paralegals. One of the concerns we have with CILEX's proposals is that they will be taken out of independent regulation.

There have been reports by the SRA and the LSB on the growth of the unregulated market—it is still small, at only about 8% to 10%, but it is growing. Will writing and estate administration are not regulated by any form of statutory regulation. Most consumers do not realise that. Therefore, it is worth looking at whether we have the balance right on that.

On the third issue—you will ask me subsequently about what we think about the LSB—I will not do Kathryn's cop-out answer. It is time for a review of the LSB. There has not been one since 2017. It does many things really well. I want to put on the record that the work they do around EDI, around vulnerable consumers, and around technology is really good. But there is a legitimate question about whether it makes sense for a regulator to increase its budget by 9%. You will find out next week whether they agreed the proposal to increase it by another 14%. That has a huge impact on us because, essentially, we have to find, out of a budget we have already set, another £70,000 to pay for them. That means we have to reduce two members of staff.

The question is: is it right that the oversight regulator should be taking money from frontline regulators? There is a legitimate question and that is why we think it is time for there to be a review.

Q67 Tahir Ali: Can you briefly outline the role played by CILEx Regulation?

John Barwick: Building on Ms Ford's answer, there are three essential elements to CILEx Regulation's role: authorisation, supervision and enforcement. Authorisation is setting people against the qualifications that they are required to meet and any work-based learning component required to achieve the practice rights.

When they are qualified, it is holding them to account against our standards and our code, and monitoring their continuing professional development, CPD. There are requirements that we put in place for that, and it is sampled.



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Lastly, but importantly around consumer confidence and redress, is enforcement activity. Those we regulate are required to make declarations around prior conduct that may affect their standing. Then there is ongoing enforcement with respect to any misconduct issues. We investigate those and they are adjudicated by panels independent of the organisation. That, in a nutshell, is what CILEX Regulation does.

Q68 **Tahir Ali:** How many people work for your organisation?

John Barwick: Twenty-one.

Q69 **Tahir Ali:** Do you believe you have the resources and powers needed to regulate chartered legal executives effectively?

John Barwick: Yes, certainly, we have the powers. Building on the point Jonathan makes, it is important, as a regulator, that they are able to exercise those powers freely and independently, unfettered.

Regarding resourcing, we have been able to perform consistently against those expectations set by the Legal Services Board. We have been able to deliver effective and efficient regulation without having to increase the practising certificate fee, which is charged annually. We have kept that at the same level for the past few years. We are able to operate efficiently within that envelope, yes.

Q70 **Edward Timpson:** You will have heard the discussion before you came to give evidence in relation to the way regulation is set up and whether it should be by way of profession or by way of activity. The reason I am going back to that is to ask how your task of regulating chartered legal executives differs from the regulation of other legal professionals. There will be some synergy, I am sure, but what are the differences, if they do exist?

Jonathan Rees: The first point—I do not want to labour it because I have already said it—is that we regulate about 9,000 paralegals. That is an important difference.

The second point is that, unlike barristers or solicitors, we do regulate—we provide a bespoke service as opposed to a one-size-fits-all. We regulate a wide range of different titles: CILEX practitioners, chartered legal executives, CILEX advocates, associate prosecutors, ACCA probate practitioners. Some of these are really very niche. The thrust of your question and, indeed, what Professor Bones was saying, is right. As we move forward, it might be better to regulate by, as it were, specialism rather than by simply the historical legal status.

That said, let me give you a specific example. We have made an application to the LSB for higher rights to be given to CILEX practitioners; in other words, advocates can plead in the higher courts. That is really important but it only affects about 50 people, maximum. That is where you would see a distinction between us and the SRA, which is regulating about 166,000 people in a totally different way. Indeed, it is one of the reasons why we



do not think that CILEX's proposal to transfer regulation to the SRA makes any sense.

Q71 Edward Timpson: In a way, you have answered some of the question from Mr Ali about resources and what you have available for you to carry out your functions as effectively as you can. What are the other main challenges that, as an organisation, you are facing?

Jonathan Rees: The challenges we face are clearly to ensure that our education requirements stay up to date. We have just overhauled our education requirements.

Secondly, there are challenges around continuing competence, and it is one of the LSB initiatives that we firmly support. But what we want to do is ensure that there is a risk-based approach so that we are not over-egging the pudding.

Let us take the example of immigration lawyers, who have been much in the news over the last six months. It may be that, on continuing competence, we want to look at those much more closely than we would look at some other areas.

More generally—we have not really talked about this—there are huge challenges around technology. There are huge challenges—and here we are totally at one with the Legal Services Consumer Panel—and lots of people out there do not get the same access to legal services. There is quite a lot of evidence that people from black and ethnic minority backgrounds do not get the same access. So we do not have any concerns about not having enough challenges to deal with.

Edward Timpson: Anything to add, Mr Barwick?

John Barwick: Jonathan has touched on it. There are two things I will add. The first is the broad challenge around equality, diversity and inclusion generally. As has been documented, as a progression route into the legal profession, CILEX provides an excellent route if you look at the demographics. But there are still barriers to progression within that CILEX route to partner level. Further work needs to be done on that.

There is the broader issue of what regulators are here for, and that is around consumer protection. A lot has been said about what consumers may think. There is a question around the evidence base and the transparency of that, with consumers being able to navigate the system and understand who they are commissioning work to do.

There is work that we have partnered with the LSB and other regulators on around a thing called Legal Choices, which is trying to put a lot of information together, as almost a one-stop-shop to help consumers navigate, but there is a long way to go to help that. That is the risk where you add additional titles, which are quite nuanced—what that actually means. Then, you look at the reserved activities—probate, for example, is very narrow. It is a bit of a minefield for consumers to navigate.



Q72 Edward Timpson: Does the existing regulatory system promote the interests of consumers of legal services sufficiently?

Jonathan Rees: In broad terms yes, because we collectively are trying to make information available to consumers much more. John mentioned Legal Choices; we would like to see an impact on that. You will know that when a lot of people need a lawyer, it is not a daily occurrence. It happens when they are vulnerable. Therefore, they very often go on word of mouth.

I can understand some of what the Competition and Markets Authority has been saying—"Let us have more price transparency, let us have quality indicators," and so on—but it is about helping different types. It is about market segmentation, and helping different types of consumers to access legal services in the way they want.

That is one of the things that we are very keen to do. We regulate a relatively small number of firms, but we think that there are lots of chartered legal executives who could set up more firms, and we have some. They are more likely to be closer to some of those people who find it more difficult to access a more traditional solicitors' firm. That is one of the proposals we want to take forward in the next year or so.

Q73 Edward Timpson: Will the proposal to rename chartered legal executives as chartered lawyers help people who are trying to access legal advice?

Jonathan Rees: No. In a sense, at the moment we regulate, and the LSB approve, two titles. They are chartered legal executive—we can have a debate about how well that is recognised in the outside world, but I believe it is fairly well recognised within the legal profession—and CILEX practitioner. To introduce a whole raft of new titles, whether that be chartered lawyer, chartered CILEX lawyer, and so on, will be very difficult for consumers. Our view is that we need to see a lot more evidence behind that.

The other factor is that if there is to be, as it were, legally recognised titles, it is our job, as a regulator, to put them forward to the LSB. We have not had any of those discussions yet. The term "chartered" is well-recognised, and I believe we all agree with that. The term "lawyer" is really difficult because anybody can call themselves a lawyer, and to start to have a discussion as to, "Do you mean a lawyer with a small 'l' or a capital 'L'?" is going to be difficult. You will have seen the response of the Legal Services Consumer Panel, the Law Society and others, all of which are pretty sceptical about these proposals.

Edward Timpson: That is a scepticism that you share.

Jonathan Rees: Yes.

Q74 Edward Timpson: We have talked about the role of the Legal Services Board vis-à-vis your responsibilities. How would you characterise your relationship with them? Is it cordial? Do you meet regularly? What are the areas where the functionality of that relationship could be better?



Jonathan Rees: We do meet regularly, so we have a good, open dialogue. We also receive regular performance assessments. I would like to see the LSB be more of a coach working with the regulators, trying to spread best practice and not, as it were, what I sometimes describe as a pedantic headmaster ticking us off. It is a cultural shift, which the new chair will be very keen to encourage.

Q75 Edward Timpson: Might the review of the internal governance rules help to foster a more constructive relationship?

Jonathan Rees: The internal governance rules are about the approved regulator, in our case CILEX and us, or the Law Society and the SRA, and so on. That is where that tension comes. The issues with the LSB are much more about getting that relationship that says, "Look, they are doing something really good over there. Why do you not do that?" They do a bit of it, but, in my view, they do not do enough of it.

Edward Timpson: Would you like to add something, Mr Barwick?

John Barwick: Yes, if I can give a perspective because I am the third week into this role. Interestingly, Mr Timpson, you mentioned the Health and Care Professions Council, because I used to be the chief executive of that up until last year. There are some contrasts. The HCPC has an oversight regulator, the Professional Standards Authority, and there are some similarities with what the LSB does.

My impression of the LSB is that it has tremendous power and influence. Much of its work seems to be around the application of its roles, and that is certainly a key role. It is in a really privileged position to drive change, but there needs to be a consensus as to the boundaries of that agenda. Working in consumers' interests, there is a role for the LSB to generate research and pull people together. That was my experience with the Professional Standards Authority. They are often leaders in research, taking issues and bringing the parties together. I would like to see more of that.

Q76 James Daly: We have three minutes left, so forgive me—you have probably got my point of view. I am just going to ask some very straightforward questions.

It seems to me that the evidence you have given, Mr Rees, is that within the framework we have your organisation is doing a pretty good job in regulating CILEX. Would that be my understanding of your evidence?

Jonathan Rees: Yes. We did a consultation in the summer where we asked and received a record response. More than two out of three people said they did not think there was any advantage in changing the present system. More than three out of four said it was very important to have a regulator that understood your profession, which is what we do.

Q77 James Daly: On that basis, common sense would suggest that if we accept—and we accept the findings of your members—that you are doing



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a good job, it seems rather silly not to continue to allow you to do a good job.

We have heard evidence regarding CILEX's proposed redelegation of regulation to the Solicitors Regulation Authority. Can I say that that is rather more a political move than a practical move? It seems to be about wanting to allow them to call themselves whatever title they think it appropriate to call their members. Is this more to do with that, and to blur the lines between the solicitors' profession and the CILEX profession, than it is about good regulation? It is very unfair for me to take the SRA's name in vain, but if you are doing a good job as the regulator for this authority, you should continue to do that.

Jonathan Rees: That is our view. If change is going to be made, there is always a huge cost to the change. What those costs are needs to be set out. It is really boring and bureaucratic—I was a bureaucrat—but there need to be impact assessments. You also need to make sure the change you are making is lawful. Our view is that what they are proposing is not lawful.

James Daly: Apart from that, it is a good proposal.

Chair: That is very clear. Gentlemen, thank you very much for your time and for your evidence.