

Annex A

Terms of Reference

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

Introduction

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

Overall aims

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

Problem statement

- Civil society actors and others have expressed strong concern that corrupt overseas oligarchs and kleptocrats are using the services of British-based law firms to consolidate their wealth and consolidate impunity for their actions, while the rights of victims are neglected.
- Actors within the legal profession have expressed their own concerns that challenges to their ability to act for certain clients are challenges to the right to representation and the principle that lawyers should not be identified with their clients.

- Both the public interest and the legal profession will be best served by there being an understanding between the profession and society as to whether reasonable boundaries should be placed around such activity, on what principles those boundaries should be drawn, and where they might be.
- It would be further desirable to move the terms of debate to encourage lawyers and law firms, in upholding the rule of law and principles of justice, to be dis-enablers of kleptocracy and grand corruption.
- This is not primarily conceived as an anti-money laundering problem, as the funds involved are not usually of provably criminal origin. This casts it as a question of choices made on the basis of factors such as ethics, reputation and adherence to firms' ESG values.

Taskforce objectives

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

- To examine in detail the standards, rules and practices governing the ways in which lawyers and law firms determine which clients they choose to represent in areas other than criminal proceedings.
- To consider the ways in which new standards, rules or practices might be introduced in relation to such choice.
- To consider the ethical issues which currently apply to such choice and to consider the basis for new approaches to the way in which ethical standards might be developed and articulated in relation to such choice.
- To develop implementable policy proposals which are likely to command the support of all relevant stakeholders including both members of the legal profession and civil society.
- To provide an approach that may be noted by other jurisdictions.

Taskforce operating model

- The Taskforce will meet at least quarterly, with a minimum of four and maximum of six meetings.
- Members of the Steering Committee will be invited to attend the Taskforce meetings as Observers. In addition, Observers may be invited from government or regulators, or elsewhere, to participate in the Taskforce meetings or specific meetings or parts of meetings. Members of the Consultation Group, and other experts, may be invited to submit oral or written evidence.
- There will be a period of consultation and evidence gathering with key groups, for which purposes we will convene a Consultation Group, divided into six sub-groups:
 - City law firms and practitioners; General Counsel at law firms; General Counsel at client companies, for example banks; the Bar; Civil Society; Academics.
- The Taskforce will not aim to produce original research, but the Secretariat will collate existing research and related materials to provide background briefing documentation for the Taskforce meetings and the Steering Committee, with the assistance of the Centre for the Study of Corruption at the University of Sussex.

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

Cessation of Taskforce

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

Consensus

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

Outputs

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

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

Terms of Reference

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

Amendments to Terms of Reference

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

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

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