

APRIL 2025

Taskforce on Business Ethics and the Legal Profession

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

Summary of the full Taskforce Report

Hosted by



Institute of
Business Ethics

List of Taskforce members

Steering Committee

The project has been overseen by a Steering Committee comprising:

- **Robert Barrington**, Professor of Anti-Corruption Practice, Centre for the Study of Corruption, University of Sussex
- **Guy Beringer** KC (Hon), former Senior Partner, Allen & Overy LLP
- **Sam Eastwood**, Partner, Mayer Brown LLP
- **Rachael Saunders**, former Deputy Director, Institute of Business Ethics
- **Lucy Wolley Dod**, former Partner, Norton Rose Fulbright LLP

Taskforce

- **Guy Beringer** KC (Hon) – Chair, former Senior Partner, Allen & Overy LLP
- **Robert Barrington** – Deputy Chair, Professor of Anti-Corruption Practice, Centre for the Study of Corruption, University of Sussex
- **Michael Bennett**, former Partner and GC, Linklaters LLP
- **Sara Carnegie**, Legal Director, International Bar Association
- **Sarah de Gay**, Lawyer, Non-Executive Director, Independent Committee Member and Honorary Professor
- **Duncan Hames**, Director of Policy and Programmes, Transparency International UK
- **Susan Hawley**, Executive Director, Spotlight on Corruption
- **Stephen Mayson**, Honorary Professor, Centre for Ethics and Law, University College London
- **Julie Norris**, Partner, Regulatory Team, Kingsley Napley LLP
- **Patricia Robertson** KC, Fountain Court Chambers
- **Jeff Twentyman**, Honorary Professor-in Practice, UCL Faculty of Law and former Chair of Sustainability and Responsible Business, Slaughter and May LLP

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

Taskforce on Business Ethics and the Legal Profession

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Published by the Institute of Business Ethics 2025

Registered address: Institute of Business Ethics, 71-75 Shelton Street, London WC2H 9JQ

Company Number: 11594672

Charity No: 1180741

Overview

Introduction

Traditionally viewed as guardians of justice and the rule of law, law firms now face increasing scrutiny for their role in facilitating financial flows tied to kleptocracy, state capture and grand corruption. Firms have a duty to place professional ethics at the centre of their decision-making when considering which clients to represent. Fulfilling this duty will reduce safe havens for the proceeds of corruption, thereby advancing the pursuit of justice. It will also enhance the international reputation of the City of London.

The Taskforce's recommendations are built on the historic public duties of the profession, which have lost emphasis in recent times but which are of increased relevance today. Through profession-led change, lawyers must adapt to a rapidly changing world as well as upholding their long-standing responsibilities to society.

Trust, accountability and responsible leadership are no longer optional. They are essential for the profession's survival and success. Individual and collective efforts by firms to implement these recommendations, if widely embraced, will not only improve the law firm's reputation but enhance the reputation of the profession as a whole.

Context

The Russian invasion of Ukraine in early 2022 catalysed discussion in the media, parliament and within the legal profession itself on the choices made by law firms when taking on or retaining clients in circumstances other than for criminal defence. At the heart of this issue are questions about the values underpinning the legal profession, how those values relate to the rule of law and the public interest, and the reputational consequences for the City of London. These concerns are set within the wider context of international criticism which views the City of London as being too accessible for funds of dubious provenance.

In 2023, a Taskforce on Business Ethics and the Legal Profession was established, hosted at the Institute of Business Ethics (IBE), to embark on a review of the current rules, practices and approaches used by UK law firms to determine which clients to represent and which matters to take on – specifically in relation to kleptocracy, state capture and grand corruption. This report presents the Taskforce's findings and provides guidance to law firms based in England & Wales on an approach to taking on new work that ensures professional standards and accountability are at the forefront of client and matter acceptance.

The report challenges the profession to rethink its role—as not just a service provider but as a steward of public trust.

The problem

The dual identity of law firms—as commercial enterprises and as part of a public profession—creates inherent tension. While lawyers provide essential expertise that drives commerce, they also bear a responsibility to uphold justice and fairness in the interests of the public. This balance has been tested in recent years, with high-profile cases of law firms representing the beneficiaries of kleptocracy, state capture and grand corruption. While these clients may comply with legal frameworks, the ethical implications of enabling - and profiting from - unexplained wealth are impossible to ignore.

Estimates suggest that \$660 billion to \$1.26 trillion of illicit wealth flows into global financial systems annually, often facilitated by professionals working within legal frameworks but at the edge of ethical boundaries. Current Anti-Money Laundering (AML) legislation and regulations fail to address this effectively. This is addressed in the full Report. Observers also suggest that varying approaches to due diligence and the lack of transparency in the legal profession are partially responsible. Public and political confidence in the legal profession has eroded as lawyers have been characterised as enablers of kleptocracy, state capture and grand corruption, even when their actions comply with the letter of the law.

Most law firms wish to safeguard their reputations by being seen as acting in line with society's expectations. The desire to preserve their reputations is what is already holding some law firms back from working with kleptocrats and the beneficiaries of the proceeds of corruption. While this is a step in the right direction, further steps must be taken to return the legal profession's responsibility to the public interest to the heart of the client acceptance process.

Summary of recommendations

The Taskforce calls for a profession-wide commitment to responsible leadership which demonstrably reflects the profession's duty to act in the public interest. Recommendations for the profession include:

- Adopting the 'Legitimate Provenance of Wealth Test', which requires credible explanations for clients' wealth and addresses gaps in AML frameworks. This is not conceived as a legal test but as an exercise of judgment that will need to be defended with internal and external stakeholders.
- Implementing client acceptance procedures to reflect best practice – we provide a model 6-step gating process based on existing best practice, for law firms to adapt or adopt, including questions such as:
 - Is there a credible explanation for the source of the client's wealth?
 - Is there a risk that the proposed mandate may facilitate the activities of kleptocracy, state capture or grand corruption?
 - Does that risk outweigh the public interest in access to representation?
 - Could representing this client harm public confidence in the profession?
- Fostering transparency and accountability through publishing information and data by which the firm can be viewed both by reference to its stated values and to its peers.
- Contributing to the collective reputation of the profession whereby firms must consider how their actions impact the broader legal profession and public confidence.
- Progressing this through profession-led change in the first instance; however, the Taskforce believes that if no significant improvement has been demonstrated by the profession within two years of the Taskforce's Report, then alternative approaches will need to be considered.

Additional recommendations in Section 7 of the full Report are addressed to regulators, professional bodies, civil society, parliamentarians and HM Government.

Executive Summary

Transparency, Accessibility and Accountability

- In the Taskforce's Report we reassess the solicitor's duty to uphold public trust and confidence in the profession and how it applies to the existing Anti-Money Laundering ("AML") legislation, guidance and practice. We recommend firms when considering a client mandate and their AML obligations should not simply ask: 'Can we defend this at a tribunal?' but instead: 'Can we defend this in public?' The answer in the first instance will be driven by concepts and suspicions of illegality. The answer in the second instance will be driven by acceptability to internal and external stakeholders and also to the wider public.
- We identify a gap in the current AML-based approach to wealth and funds that may well be the proceeds of kleptocracy, state capture or grand corruption. The existence of this gap has been highlighted by civil society, by parliamentarians and by academics. It arises because it may not be possible to establish that such funds are the proceeds of conduct that would amount to a criminal offence in this jurisdiction, whether because the illicit origin of wealth has been successfully obscured, or because conditions of state capture enable kleptocrats to 'legitimise' their gains. We have made recommendations with a view to addressing this gap without requiring legislative change.
- We put forward recommendations for **transparency, accessibility and accountability**, through which firms will safeguard their own reputations and the reputation of the profession as a whole, which otherwise risks being undermined by the perception of law firms as enablers of corruption.
- To this end, we put forward a decision-making framework incorporating a six-step model gating process for solicitors' firms in England and Wales, that firms may adopt or adapt to mesh with their existing process when determining client acceptance. This incorporates consideration of the public interest and the collective reputation of the profession. We do not suggest this process should be mandatory but recommend a 'comply or explain' approach. It is designed to prevent the provision of legal services that risk facilitating kleptocracy, state capture or grand corruption. This reflects our recommendation for profession-led change to the approach to client and matter acceptance, which can be implemented within the existing regulatory framework. This leaves for further evaluation, in light of experience in implementing that approach, whether greater regulatory intervention is needed.
- We propose one important change in the way in which provenance of funds is assessed. We recommend that the gating process for client acceptance should include identifying whether there are factors indicating a risk of kleptocracy, state capture or grand corruption, and, where such risk factors exist, requiring firms to be satisfied as to the acceptable provenance of the client's wealth and any relevant funds, failing which this should be treated as a clear red flag. This approach (the 'Legitimate Provenance of Wealth Test') is designed to address the gap in the AML-based approach, described above. As with our other recommendations, this would be a voluntary 'comply or explain' rather than mandatory approach, but a firm that chooses to ignore that red flag without a strong public interest justification (which we expressly recognise may exist in some cases) for taking on the client, may expect scrutiny or indeed criticism of its decision.
- The Legitimate Provenance of Wealth Test adds a broad requirement for law firms to have processes which demonstrate to their satisfaction the legitimacy of any wealth associated with potential clients where there is a risk that they might be tainted by kleptocracy, state capture or grand corruption.¹ This exercise of professional judgment will be a matter for public accountability and reputational consequences rather than legal examination. It is intended that this should be an additional defence against the flows of capital which are currently able to navigate money laundering regulations without restricting the application of those regulations.

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

- We note that the principal client acceptance consideration for nearly all firms that we consulted - aside from the constraints of AML and sanctions issues - was the effect on the firm's own individual reputation of taking on the client.
- We contrast this with the broad common law and regulatory regimes (*Bolton v The Law Society* [1994] WLR 512² and the Solicitors Regulation Authority (SRA) Principles³) which recognise a duty to maintain public trust and confidence in the profession as a whole. The collective reputation of the profession relates, in turn, to its role in upholding the public interest, over and above the interests of individual clients or that of the lawyers themselves. We conclude that the need for firms to have regard for the collective reputation of the profession in their decision-making should be a key consideration.
- We acknowledge that firms have a free hand (outside of AML or sanctions constraints) as to their choice of clients. They should nonetheless approach such decisions on a principled basis and should expect to be judged publicly by reference to the way in which they exercise that choice.
- For this model of profession-led change to work, greater transparency from firms is a pre-requisite. We therefore recommend that firms should establish a greater degree of transparency around their client acceptance process, both for internal and external audiences. We consider that the drivers for change will be the risk of exposure to external criticism, and the effect on the firm's ability to recruit staff or win and retain clients. In short: as a matter of good business ethics and in the interests of the profession as a whole, be careful about what you might be facilitating when accepting a mandate and be more transparent about how that decision was made in order to demonstrate that you have a thoughtful approach.
- We recommend that the representative bodies and regulators should actively promote wider discussion of the significance of the reputation of the profession as a whole and the ways in which individual firms might have regard to this in reaching their own decisions.
- Our recommendations are designed to promote cultural change within the profession itself, rather than rules-based intervention imposed from outside, as the profession's response to charges of 'enabling'. Whether anything more is warranted or required should be assessed in light of how effective this approach proves itself to be.
- We note, however, that this approach will only work if there is actual change on the part of the profession. This may, for example, include new/revised ethical (as opposed to compliance) training, governance structures to embed independence and 'speak-up' processes which enable greater internal debate, as well as wider transparency by firms in relation to choices they make. We are not prescriptive about how this should be approached as the key point is that the profession itself must demonstrate its willingness to lead change.
- We encourage the profession to develop a set of corporate governance principles to be adopted on a 'comply or explain basis', for which adapting an existing model such as the Wates Principles⁴ may be considered appropriate.
- Finally, we note that if our proposals for greater transparency and accountability are adopted in respect of client acceptance, this would raise challenging questions for firms going beyond the territory of kleptocracy, state capture and grand corruption, which is the subject of the Taskforce's Report. We do not address in the Report how other issues (such as climate change) should be addressed when making choices on clients and mandates but we suggest that the profession should engage in debate as regards developing proper, principled, and transparent processes for dealing with such decisions.

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

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

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

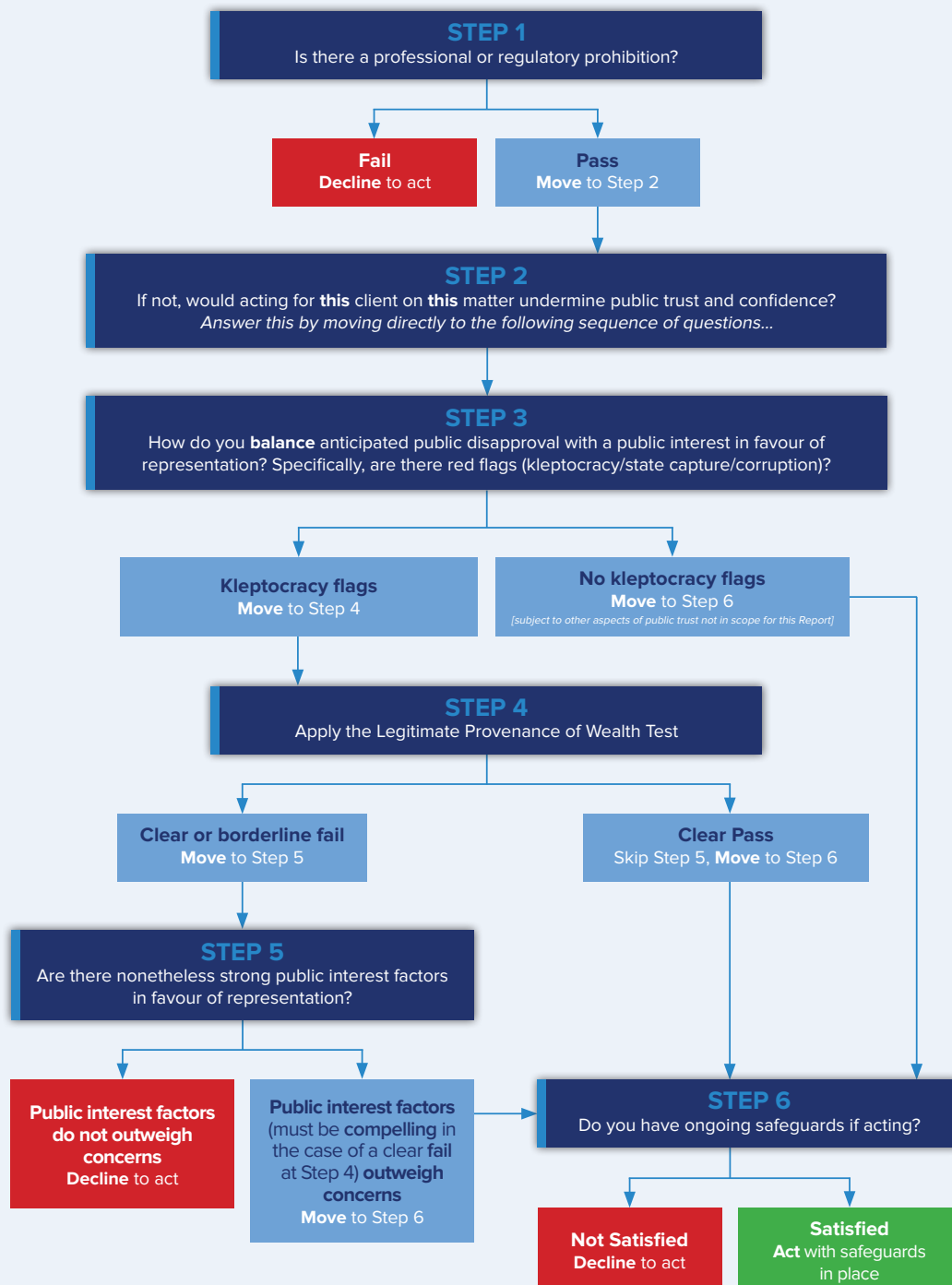
Triage in Client and Matter Acceptance

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

Firms routinely consider client acceptance criteria in two broad categories:

- Firm-Specific Criteria
- Professional Criteria

Firms evolve their own Firm-Specific Criteria. We suggest that these are naturally subsidiary to the Professional Criteria which in effect stand as threshold issues before specific commercial matters need to engage at all. Accordingly, we propose a model gating process that we recommend all firms adopt or adapt as a threshold aspect of client and matter acceptance and a core strand to their commitment to professional and business ethics.



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

Where to find the full version of the Taskforce's Report

This is a summary version of a longer report which is available on the website of the Institute of Business Ethics: <https://www.ibe.org.uk/legal-profession-taskforce.html>. This document should be treated as a summary, and the full Report should be referred to in order to gain the overall picture of the background, problem definition, gap analysis, consultation process, international context, underlying principles, explanatory text, model client acceptance procedures, and rationale for the recommendations.



Terms of Reference (extract)

The Taskforce's overall aims, as set out in the Terms of Reference, were: '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...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.' The Taskforce has focussed on solicitors in England & Wales. The full Terms of Reference can be found in Annex A of the full Report.

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

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

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

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

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

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To contact the IBE please email info@ibe.org.uk