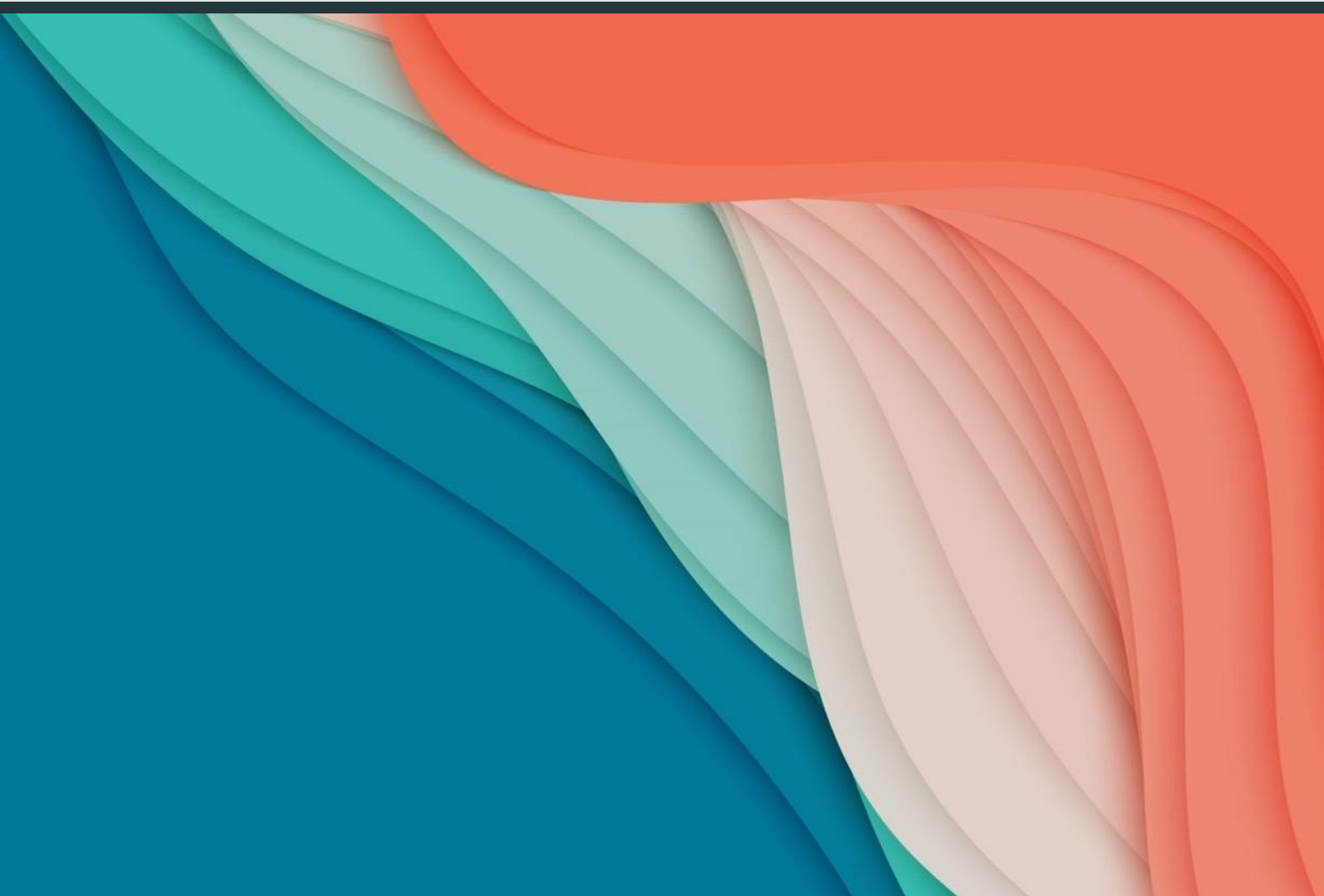




WHY DOES IT MATTER THAT LAWYERS SHOULD UPHOLD THE RULE OF LAW?

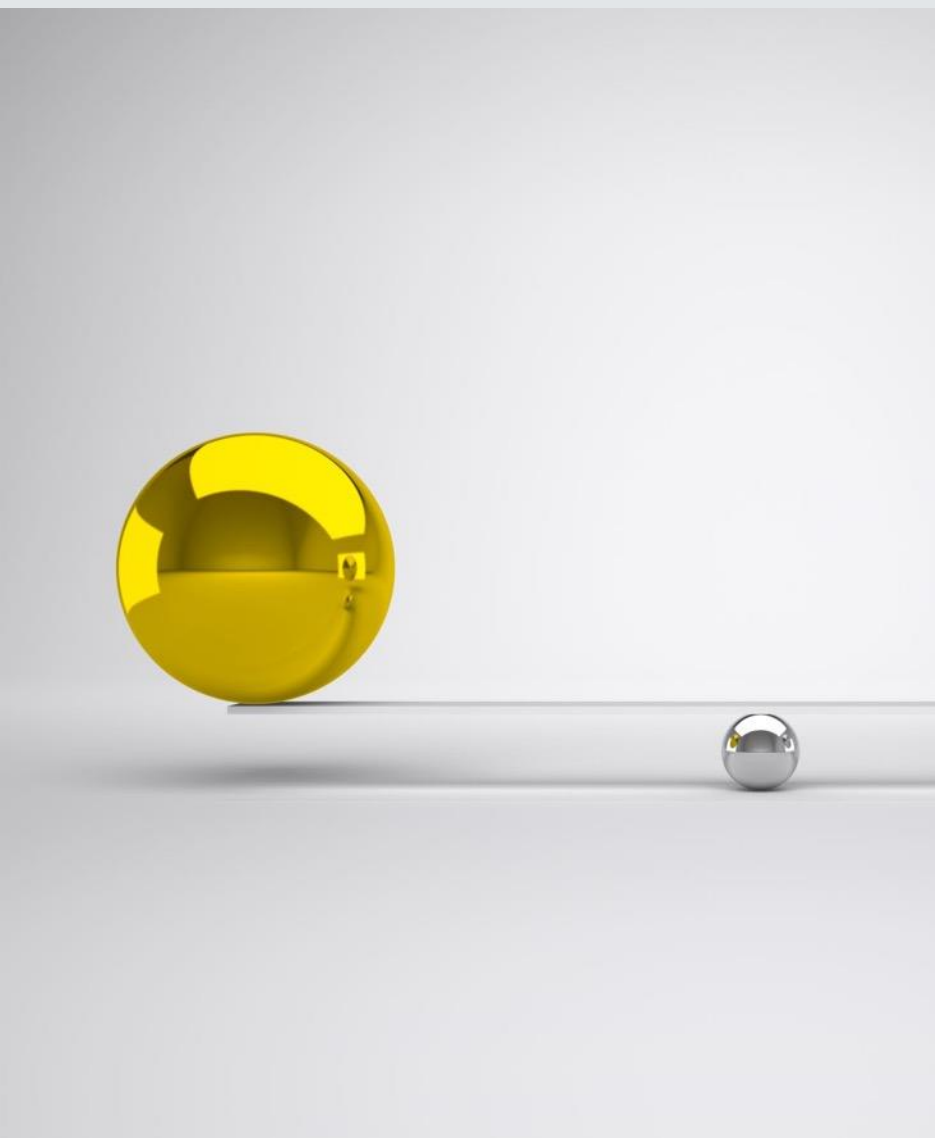
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Why look at the rule of law?

The work of the legal profession is under attack, from the left and the right; and for different things.

What can regulators, firms, employers, representative groups and others do to instantiate an active commitment to the rule of law in their respective communities? What does the rule of law offer?



THE RULE OF LAW AND LEGAL SERVICES REGULATION

Section 1(1)(b) of the LSA 2007. Statutory obligation to 'support'.

Four frontline regulators have specific ROL duties on those they regulate. Three others arguably have implicit ROL obligations in other duties. Two are silent.

Only very limited guidance from legal services regulators on the ROL to those in practice.

The Rule of Law

A deeply contested concept.

Lack of agreement within government, Parliament, between judges, among academics, practising lawyers, and the public on 'the rule of law'.

We will not and could not agree as a group today on our collective, preferred meaning of the rule of law. But that's also not a problem.

Lawyers and the Rule of Law

Lawyers are products of systems where societies have rules.

Lawyers act as agents of the rule of law. This is an important social role.

They are also partisan servants of their clients.

The debate on what a professional commitment to the rule of law looks like has been limited, till now.



‘It is in the interests of the whole community that lawyers give their clients sound advice, accurate as to the law and sensible as to their conduct.’

Lady Hale in *Three Rivers*



Seven Elements of a Legal
and Professional Commitment
to Uphold the Rule of Law



1. Lawyers are products and agents of the rule of law.
2. Lawyers help challenge inappropriate exercises of power.
3. Lawyers assist clients in knowing the law and enforcing their rights, counselling clients towards legality.
4. Lawyers are part of the justice system that includes third party access and the proper resolution of disputes.
5. The rule of law applies just as much to lawyering outside of court as it does within.
6. Lawyers' professional codes, handbooks etc are part of the infrastructure of the rule of law.
7. It is legitimate for lawyers to have views on what is or is not 'good' law.

Our work provides examples of how a lawyer's work **can implicate duties to the rule of law and **can** be profoundly important to the health of our legal system and to the lives influenced by law.**

It is a critical test of the freedom inherent in our democratic society that those accused (usually by the State) of committing criminal offences can and should be represented by **capable** criminal advocates, **independent** in spirit who, **subject to** the rules of **law** and **procedure** which operate in our courts and to the dictates of **professional propriety**, are prepared to put the interests of their clients at the forefront and irrespective of personal disadvantage. Similarly, advocates instructed to prosecute crime must be **impartial, balanced and fair**.

*Lumsdon v
General
Council of the
Bar & Ors*

[2014] EWHC 28
(Admin) (20 January
2014).

These are the **values**, to the great advantage of the rule of law in this country, that have long been embedded in the practice of advocates before our criminal courts. Those who have the responsibility for the regulation of advocates (whether barristers or solicitors) are imbued with the same sense of the centrality of **independence** and mindful both of the need to maintain **standards** and the critical importance of supporting professional independence.

*Lumsdon v
General
Council of the
Bar & Ors*

[2014] EWHC 28
(Admin) (20 January
2014).

In other words, our analysis can assist with, but could not be the sole basis for, a judgement on the efficacy and proportionality of regulatory interventions in this area.



Taking on clients

Non-identification

Access/Discrimination

Complicity

Disputes

Misleading (facts/confidentiality/intention)

Vexatious/wasteful/excessive/disproportionate
action

Litigation for improper ancillary purposes

Silencing putative witnesses/complainants

Non-contentious work

Exploiting uncertainty in facts and law

Mutual irresponsibility

False, narrow or unjust frames

'Independently' investigating claims misleadingly

Unfairly creative (non-)compliance with the law

Turning a blind eye

The Post Office Scandal: Where were the lawyers?

- Threatened, sued on, terminated on “unfair” contracts “oppressively”.
- Charged (incl theft) without evidence. Overcharged.
- Failed to evidence. Influenced evidence improperly
- Negotiated inappropriate plea deals.
- Failed to disclose evidence (of bugs, remote access etc) deliberately.
- Set up (oversaw?) poor investigations and complaints schemes to delay and whitewash.
- Misleading/egregious litigation and appeal strategies.
- Abuse of privilege/SLAPPs/NDAs/redaction