

House of Lords Constitution Committee

Call for evidence re Rule of Law Inquiry

Submission

April 2025

Introduction and Summary

1. JUSTICE is a cross-party law reform and human rights organisation, working to strengthen the justice system – administrative, civil, and criminal - in the United Kingdom. Our vision is of fair, accessible, and efficient legal processes in which the individual’s rights are protected and which reflect the country’s international reputation for upholding and promoting the rule of law.

Definition and Importance

2. The rule of law is foundational to democracy, protecting individual rights and restraining arbitrary power. While its definition is multifaceted, frameworks like the Venice Commission’s Rule of Law Checklist and the World Justice Project’s Index help assess institutional integrity and practical access to justice. Central to the rule of law is the protection of human rights, equal treatment, legal certainty, and independent judicial oversight.

Understanding and Misconceptions

3. There is a widespread lack of understanding of the rule of law among the public and politicians, worsened by inadequate legal education and inflammatory rhetoric. JUSTICE calls for enhanced civic and legal education, including updated resources for lawmakers, and a statutory entitlement to citizenship education from primary school

Key Threats in the UK

4. Despite the UK’s strong global ranking, several domestic issues undermine the rule of law:
 - (a) **Weak legislative scrutiny:** Overuse of skeleton legislation and Henry VIII powers, limited pre- and post-legislative scrutiny.
 - (b) **Access to justice:** Severe cuts to legal aid, court backlogs, and “legal advice deserts” disproportionately affect vulnerable communities.

- (c) **Judicial independence:** Media and political attacks erode public trust. Statutory provisions have increasingly sought to limit judicial oversight.
- (d) **Judicial diversity:** The senior judiciary remains unrepresentative, risking public confidence and decision-making quality.
- (e) **AI in justice:** While offering opportunities, unregulated AI risks entrenching bias and undermining accountability.

Public and International Dimension

- 5. Civic society, education, and the media all have roles in strengthening the rule of law. Globally, the UK can be an effective advocate if it first addresses domestic shortcomings. Investment in the justice system, restoring public trust, and continued adherence to international obligations and human rights standards are crucial to maintaining influence and credibility.
- 6. JUSTICE concludes that upholding the rule of law requires coordinated efforts from all branches of government and society, grounded in education, accountability, and equal access to justice.

Defining the rule of law

Q1 What are the components of the rule of law?

(i) Why is the rule of law an important tenet of the UK constitution?

- 7. The rule of law is the foundation of a democratic society. When it is stable and secure, it safeguards the rights and freedoms of us all. This means ensuring that victims can expect a thorough investigation from the police and justice from the courts, as well as enabling renters to seek redress against negligent landlords so as to assert their rights, thereby upholding their basic living conditions. Beyond protecting individuals, the rule of law shields society from arbitrary state power, creates stability in domestic and international commerce, and upholds the independence and impartiality of the judiciary, which are all essential to maintaining public trust in the legal system.
- 8. We agree with Lord Reed, President of the UK Supreme Court, that the importance of the rule of law “is not always understood,”¹ by the public or their representatives. Although there is consensus that the rule of law *is* important, there seems to be little agreement on *why* it is important, or what values are

¹ R (UNISON) v Lord Chancellor [2017] UKSC 51, [66].

represented by its label. In one way, this is unsurprising: as Lord Sales observed, “a realistic account of the rule of law has to recognise that it is not one thing” but rather a “cluster of ideas,” and that the choice of the ideas to be incorporated within the concept in any one country “depends on the political and legal culture of that polity.”²

9. In our view, this lack of complete agreement should not be seen as a deficiency, but rather as an opportunity to engage the general public in shaping and reaffirming the values which underpin our democracy. Public debate about its content ensures that it is not seen as remote or the preserve of lawyers, but as a living principle that commands the confidence and understanding of all those whom it serves. Recent events, such as the public reaction to the so-called 'Partygate' scandal, demonstrate how breaches of legal standards by those in power can severely damage public trust in institutions. Open dialogue about the rule of law is therefore essential not only to strengthen its legitimacy, but also to restore and maintain public confidence.

ii. Which factors can be used to assess the health of the rule of law?

10. There are a number of factors which can assist in assessing the health of the rule of law, having regard to both the integrity of legal institutions and the lived experiences of individuals within the system. Two prominent frameworks for evaluating the rule of law are the Venice Commission’s Rule of Law Checklist and the World Justice Project’s Rule of Law Index. These metrics provide comprehensive, nuanced approaches to identifying the strengths and weaknesses of a legal system.

The Venice Commission

11. The Venice Commission, an advisory body of the Council of Europe, sets out essential components for evaluating the rule of law in its Rule of Law Checklist.³ These factors include:
 - (a) **Legality:** The principle that all state actions must be authorized by law and carried out in accordance with it. This applies equally to private actions, ensuring consistency and fairness in the application of legal obligations. It also includes compliance with international human rights obligations.

² Lord Sales, *‘The Robin Cooke Lecture: What is the rule of law and why does it matter?’* (12 December 2024).

³ Venice Commission of the Council of Europe, *‘Rule of Law Checklist’*, (2016).

- (b) **Legal Certainty:** Laws must be clear, stable, and accessible, allowing individuals to understand their rights and obligations in advance. The principle of non-retroactivity, particularly in criminal law, is vital for ensuring that individuals are not subject to arbitrary legal actions.
- (c) **Prevention of Abuse of Power:** There must be checks and balances to prevent the abuse of power by public authorities. Transparent, inclusive law-making processes and well-defined limits on public officials' discretion are necessary to ensure accountability.
- (d) **Equality Before the Law:** The law must be applied equally to all individuals, with similar situations treated in a similar manner. Protection against discrimination based on race, gender, religion, and other protected categories is essential to maintaining fairness in the legal system.
- (e) **Access to Justice:** All individuals must have access to effective, fair, and impartial judicial processes to vindicate their legal rights. This is crucial for ensuring that legal recourse is available to all, irrespective of their social or economic status.

12. The Venice Commission's framework is grounded in the constitutional traditions of European democracies, including the UK, offering clear criteria for evaluating the rule of law from a legal and constitutional perspective. Its guidelines are authoritative and help assess whether laws align with democratic principles and are applied fairly.

World Justice Project

13. In addition to the Venice Commission's framework, the World Justice Project ("**WJP**") provides another key tool for assessing the health of the rule of law through its Rule of Law Index.⁴ The WJP measures countries across eight distinct factors, which are critical for understanding both the institutional integrity and the practical impact of legal systems:
- (a) **Constraints on Government Powers:** This factor evaluates whether the government's powers are effectively limited by law, including through an independent judiciary and anti-corruption measures.
 - (b) **Absence of Corruption:** Assesses the integrity of public office, focusing on the extent to which public officials are free from corruption and abuse of power.

⁴ World Justice Project, 'WJP Rule of Law Index', (2024).

- (c) **Open Government:** Examines whether laws, legal processes, and government actions are transparent and accessible to the public, fostering trust and accountability.
 - (d) **Fundamental Rights:** Measures the protection of essential human rights, including freedoms of expression, assembly, and association, which are core components of a functioning democracy.
 - (e) **Order and Security:** Assesses personal safety and security, ensuring that individuals are protected from violence, harm, or arbitrary detention.
 - (f) **Regulatory Enforcement:** Evaluates whether laws and regulations are consistently and fairly applied to all individuals and organizations.
 - (g) **Civil Justice:** Looks at whether individuals can resolve civil disputes in a timely and fair manner, free from undue delay or bias.
 - (h) **Criminal Justice:** Assesses the fairness and effectiveness of the criminal justice system, including protection against arbitrary detention and punishment.
 - (i) **Informal Justice:** Evaluates the role and accessibility of alternative dispute resolution mechanisms and informal justice systems, ensuring that justice is available to all, including through non-legal avenues such as mediation and community-based conflict resolution.
14. The World Justice Project’s Index provides a practical, on-the-ground assessment, focusing on indicators like corruption, government accountability, and access to justice. This empirical, data-driven approach offers insights into how the rule of law operates in practice, highlighting real-world challenges and experiences of individuals.
 15. Both definitions also include human rights as a core factors. In JUSTICE’s view, the rule of law and human rights are not simply standalone, mutually reinforcing concepts. Rather, the rule of law itself requires adherence to a minimal baseline of human rights at its heart. Indeed, as the Venice Commission notes, “the Rule of Law would be just an empty shell without permitting access to human rights”.⁵
 16. This flows from the view that the rule of law requires a state to act in a lawful manner, which is respectful of its obligations, both domestic and international. As such, adherence to the rule of law would include respecting international human rights instruments like the ECHR. In essence: “It is a good start for public

⁵ Venice Commission of the Council of Europe, *‘Rule of Law Checklist’*, (2016), p.13.

authorities to observe the letter of the law, but not enough if the law in a particular country does not protect what are there regarded as the basic entitlements of a human being”.⁶

iii. Is useful assistance to be gained from definitions of the rule of law used by international or supranational organisations, or in the legal systems of other countries?

17. Yes. As set out above, the definitions from the Venice Commission and the World Justice Project offer helpful guidance in assessing the rule of law. More broadly, there is value in considering international examples as a basis for comparison with similar countries and learning from their experiences.
18. However, we must apply equal attention to appreciating how members of the public themselves understand and think of the rule of law. This is important because the rule of law must resonate and be entwined with the common values or expectations of society. This is important with respect to ensuring the rule of law’s legitimacy, thereby strengthening its position in our constitution.

Q2 How well is the rule of law understood by politicians and the public?

19. The rule of law is often poorly understood by both the public and politicians. In our view, a key driver is the insufficient provision of public legal education. Public legal education is not adequately prioritized in the UK, leaving many people without the tools to fully understand core, vital concepts regarding how our society is structured. This lack of education can lead to confusion and misinterpretation of what the rule of law actually means and how it functions in practice.
20. Likewise, many politicians, despite their key role in shaping laws within a notoriously complex Parliamentary system, are not given any introductory training on such concepts, their constitutional role (e.g., vis-à-vis the judiciary and the executive), or the rule of law more broadly. This gap in understanding can lead to decisions or public statements that inadvertently undermine the rule of law or mischaracterize its principles. For example, in times of political tension or public unrest, politicians may make sweeping remarks that fail to appreciate the need for the judiciary's independence or the importance of adhering to legal norms. This was seen most recently in the context of the decision by the Immigration Tribunal which was criticised by both the Prime Minister and the Leader of the Opposition during PMQs. The Lady Chief Justice expressed her disappointment with this exchange, noting that “It is for the government — visibly — to respect and protect the independence of the judiciary. Where parties, including the government, disagree with their findings, they should do so through the appellant

⁶ T. Bingham, *The Rule of Law*, (2010), p. 144.

process”.⁷ For this reason, JUSTICE updated its guide, ‘Law for Lawmakers’, in 2024.⁸ It explains key legal and constitutional principles to help politicians review new laws, table and write amendments to Bills, support their constituents, and gain a high-level overview of the justice system more broadly.

21. It is also important to note that, despite the general lack of understanding among the public, there is a strong public sentiment about the rule of law, particularly when it comes to perceptions of fairness and justice. Public reactions to high-profile instances, such as *Horizon*/Post Office Workers scandal, *Partygate*, the *Hillsborough* disaster, and the *Grenfell Tower* tragedy, demonstrate a deep-rooted belief in the importance of accountability and fairness. In each case, the public's demand for justice and the proper application of the law reflected a broader understanding of the rule of law as an essential mechanism to ensure that no one is above the law, regardless of their position or status.
22. As such, while the rule of law may not be fully understood in its legal and technical sense, the sentiment it represents is strongly felt by the public, and it is crucial that efforts are made to improve legal education and awareness among both the public and politicians to enhance understanding and support for this fundamental constitutional principle so as to ensure it remains the bedrock of our constitution in the years to come.

i. Has the rule of law been confused with the rule of lawyers?

23. Yes, there is a growing tendency to conflate the rule of law with the “rule of lawyers”, often resulting in disparagement of the judiciary and/or legal profession. This misunderstanding has been exacerbated by inflammatory rhetoric from political figures and the media, which increasingly targets lawyers and judges when their decisions conflict with political agendas. Such attacks are centred around the idea that judges are biased and/or are inappropriately thwarting the will of the executive (often conflated with the will of the people).
24. Such attacks are not a recent phenomenon. For example, David Blunkett as Home Secretary and subsequently in his column in the Sun made various attacks on the judiciary, including calling for judges “Bewigged menaces who make the law look like an ass” and that one judge needed “a brain transplant”.⁹ More recently, following the Court's ruling in *Miller* (2016), the Daily Mail's infamous headline “Enemies

⁷ A. Gray, ‘*Lady chief justice condemns Starmer and Badenoch over immigration comments*’, (Financial Times, 2025).

⁸ JUSTICE, ‘*Law for Lawmakers: A JUSTICE Guide to the Law*’, (2024).

⁹ D. Blunkett, ‘*Brief Encounter: David Blunkett*’, (The Guardian, 9 October 2006).

of the People" described the judges involved.¹⁰ Former Prime Minister and then Lord Chancellor Liz Truss, issued a brief, weak and delayed statement that failed to directly address and condemn the headline.¹¹ Similarly, in 2019, following the Supreme Court's unanimous decision which found Prime Minister Boris Johnson's prorogation of Parliament to be unlawful, then Leader of the House of Commons Jacob Rees-Mogg was reported by the Daily Mail to have accused Supreme Court judges of launching a "constitutional coup" and "the most extraordinary overthrowing of the constitution."¹²

25. Such derogatory framing of legal professionals undermines public trust, thereby causing real harm to the rule of law. The recent Goa Declaration by the Commonwealth Lawyers Association makes clear that, amongst other things:

- (a) *"The independence and impartiality of the judiciary must be upheld and protected by governments";*
- (b) *"Lawyers must not be identified with their clients and/their clients' causes or interests, as a result of performing their professional duties and functions"; and*
- (c) *"Lawyers must be free to perform all their professional duties without threats, intimidation, hindrance, harassment or improper interference or influence".¹³*

26. Both lawyers and the judiciary play a crucial role in supporting the rule of law and, in particular, facilitating access to justice in the UK. Hostile comments that attack these professions may undermine the public's perception of the judiciary's independence, as well as the motives of lawyers — both key components of access to justice. As such, government officials and parliamentarians should refrain from disparaging lawyers and judges for carrying out their jobs. The Government must therefore commit to the principles laid out in the Goa Declaration and continue to reject the use of inflammatory language against the legal profession.

¹⁰ J. Slack, *'Enemies of the people: Fury over 'out of touch' judges who have 'declared war on democracy' by defying 17.4m Brexit voters and who could trigger constitutional crisis'*, (Daily Mail, 3 November 2016).

¹¹ W. Worley, *'Liz Truss breaks silence but fails to condemn backlash over Brexit ruling'*, (Independent, 5 November 2016).

¹² J. Doyle, A. Martin and S. Doughty, *'Jacob Rees-Mogg accuses the Supreme Court of a 'constitutional coup' over its stunning ruling'*, (Daily Mail, 24 September 2019).

¹³ Commonwealth Lawyers Association, *Commonwealth Bar Leaders Declaration on Preserving and Strengthening the Independence of the Judiciary and on Ensuring the Independence of the Legal Profession*, (5 March 2023), p.3.

The operation of the rule of law

Q3 What threatens the effective operation of the rule of law in the UK?

27. The rule of law in the UK is overall in good health. The UK ranks highly on the WJP index – 15th out of 142 countries, scoring highly across all measures including government accountability, absence of corruption and effective civil and criminal justice system.¹⁴ International confidence in the UK's legal system is also reflected in the courts being the “go to” jurisdiction for global commercial disputes. However, we have identified some that do exist to the rule of law in the UK. Furthermore, we should ‘make hay whilst the sun shines’ and ensure whilst we are in a relatively strong position as regards to the rule of law, examine how we might be able to improve rule of law resilience so that future threats can be better dealt with.
28. In 2023, we published ‘[The State We’re In: Addressing Threats & Challenges to the Rule of Law](#)’, a report identifying the main rule of law challenges faced by the UK. At the time of drafting the report, we identified the following key threats to the rule of law:
- (a) Issues with the law making process, in particular:
 - (i) a lack of meaningful pre-legislative scrutiny and/or consultation, for example a lack of pre-legislative scrutiny of important pieces of legislation such as the Illegal Migration Act, and ignoring overwhelming views of stakeholders in consultation responses;¹⁵
 - (ii) overuse of skeleton legislation and delegated powers, combined with a lack of effective scrutiny of secondary legislation; and
 - (iii) overuse of Henry VIII powers.

See further our response to **Q4(i)** below.

¹⁴ World Justice Project, ‘*Rule of Law Index - United Kingdom Overall Score*’, (2024).

¹⁵ For example, the Bill of Rights Bill consultation which received 12,000 responses, with up to 90% of respondents opposed to key reforms, was completely sidelined.

- (b) A concerning trend of disregarding human rights, in particular in relation to freedom of speech and assembly¹⁶ and for particular groups such as migrants¹⁷ and prisoners¹⁸ (see further **paragraph 52** below).
- (c) Issues relating to inequality before the law, including issues with data collection, data quality and data publication to help understand if the law is being equally applied, and consistently implemented. Where the data does exist, it shows there are some significant disparities in the application of the law, for example the racial disproportionality that exists throughout the criminal justice system.¹⁹

Access to justice

29. We also identified the significant issue for many of **lack of access to justice**. In our view this is one of the most acute challenges to the rule of law in the UK; if laws are not enforceable in practice they become meaningless. We are particularly concerned that access to justice is unequal across the UK, with those from less advantaged socio-economic backgrounds and those in particularly vulnerable circumstances, least able to access the justice system to enforce their rights. This is not only an issue in and of itself as it undermines the principle of equality before the law, but it also risks undermining the public's trust in the justice system and the ability of it to fairly uphold the law. For example, a poll conducted in March 2025, found that 51% of British have no/not very much confidence in the police to tackle crime locally.²⁰ According to More in Common's 2023 research, 68% of Britons also believed that the police "have given up on trying to solve crimes like shoplifting and burglaries altogether."²¹ The perceptions were also affected by race and gender of the respondent, with Black people reporting lower trust in their local police than other groups.²²

¹⁶ A number of laws that have restricted the right to protest including the Police, Crime, Sentencing and Courts Act 2023, the Public Order Act 2023 and proposals in the current Crime and Policing Bill 2025. The health of the UK's civic space has been downgraded from 'narrowed' to 'obstructed' by the Civicus Monitor, a platform that monitors the state of civil society freedoms globally. Other countries rated as 'obstructed' include Hungary, Brazil and South Africa. Civicus Monitor, *'United Kingdom Downgraded in Global Ratings Report on Civic Freedoms'*, (16 March 2023).

¹⁷ For example the *Illegal Migration Act 2023* and the *Safety of Rwanda (Asylum and Immigration) Act 2024*.

¹⁸ See Victims and Prisoners Act which disapplies section 3 HRA within sections 69 to 72 of *Victims and Prisoners Act 2024*, relating to the release, licence, supervision, and recall of indeterminate and determinate sentence offenders

¹⁹ For example, see: JUSTICE, *'Mental health and fair trial'*, (2017); JUSTICE *'Tackling Racial Injustice: Children and the Youth Justice System'*, (2021); JUSTICE, *'Reforming Benefits Decision-Making'*, (2021); JUSTICE, *'Immigration and Asylum Appeals - a Fresh Look'*, (2018); JUSTICE, *'Increasing judicial diversity'*, (2017).

²⁰ YouGov, *'How much confidence Brits have in police to deal with crime'*, (31 March 2025).

²¹ More in Common, *'Where are the police? Britons' attitudes to crime, anti-social behaviour and the police'*, (30 January 2023).

²² R. Brown, A. Hobbs, *'UK Parliament POSTnote 693: Trust in the police'*, (25 April 2023).

30. Many individuals lack access to legal advice and representation to enable them to understand and effectively assert their legal rights. This is a particular issue in the areas of law in which individuals' most commonly have legal issues - employment, finance, welfare and benefits.²³
31. This issue is particularly acute since the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO") which decimated legal aid. LASPO resulted not only in a reduction in the scope of legal aid but even individuals who are eligible are often not able to easily access the advice they are entitled to. This is due to high demand, in particular in areas such as housing and immigration, and a decline in specialists in particular areas of law resulting in legal advice deserts in many areas of the country.²⁴ In addition, people lack of awareness that problems are legal in nature and/ or the existence and availability of legal aid or other forms of legal advice. Outside of legal aid, the wider advice sectors struggles with a lack of adequate and sustainable funding, insufficient structural support and issues with recruitment whilst facing unprecedented levels of legal need fuelled in large part by Covid-19 and the cost of living crisis.
32. In addition, there exist ongoing backlogs in many courts and tribunals. The Crown Court has over 75,000 open cases— a figure that has continue to rise since 2019, meaning victims and defendants are waiting years for trials. The magistrates court backlog is also on the rise – the latest statistics (December 2024) showing a 14% increase on the previous year.²⁵ This is not confined to the criminal courts. The County Courts are also plagued by delays. In London and the South East, small claims are taking well over a year to dispose of, whilst multi-track claims are taking an average of well over two years.²⁶ In the tribunals SEND appeals are not being listed for a whole year,²⁷ whilst there is a record number of asylum appeals pending before the First-tier Tribunal.²⁸
33. Further, access to justice requires that individuals are able to understand and effectively participate in the proceedings that seek to resolve their legal problems. Yet the justice system is often opaque to lay

²³ The Law Society, '[Legal Needs Survey](#)', (2023).

²⁴ The Law Society, '[Legal Aid Deserts](#)', (21 February 2024).

²⁵ Ministry of Justice, '[Criminal court statistics quarterly: October to December 2024](#)', (27 March 2025).

²⁶ House of Commons Justice Committee, '[Oral evidence: Work of the County Court, HC 677](#)', (8 April 2025).

²⁷ Tribunal Procedure Committee, '[Consultation on possible amendments to the Tribunal Procedure \(First-tier Tribunal\) \(Health Education and Social Care Chamber\) Rules 2008 regarding proposed changes to whether Special Needs appeals can be dealt with on the papers without the consent of both parties](#)', (September 2024),

²⁸ Ministry of Justice, '[Tribunals statistics quarterly: October to December 2024](#)', (13 March 2025).

people, including those involved in legal proceedings; a particular issue with rising numbers of litigants in person due to the lack of legal advice and representation detailed above.²⁹

34. Access to justice and equality before the law also require an independent judiciary and legal profession to ensure laws are applied and enforced effectively and impartially. Whilst the UK judiciary is renowned globally for its extremely high quality and independence, we have some concerns that an ongoing lack of judicial diversity particularly in the senior judiciary may threaten its legitimacy, and that there is a narrative of judicial and legal bias that may impact the public's perception of the independence of the judiciary and integrity of the legal profession.

Artificial intelligence (AI)

35. AI tools will inevitably pose new challenges and opportunities to the rule of law. For example, access to justice could be improved by AI tools providing legal information for those who cannot afford a lawyer, or by AI tools streamlining administrative tasks for litigants and courts. Furthermore, transcription of court proceedings and judgments could revolutionise open justice for wider society while providing a break through for directly impacted individuals, like victims, who currently face financial barriers to accessing transcripts.
36. However, there are real risks that AI has the potential not to improve the rule of law but to undermine it. For example, there is evidence that it can entrench and even supercharge racial disparities in criminal justice, rather than improving them. Predictive policing tools and algorithmic risk assessment tools used in the US have been shown to reproduce and further entrench human bias from their input data. Further examples include machine learning algorithms used in the Netherlands child tax credit scandal, which "learned" to profile those with dual nationality as being suspicious of fraud, leading to thousands being falsely accused, fined, some losing their houses and others even having their children removed into care. The Dutch Parliamentary Inquiry into the scandal, Duch toeslagan inquiry report "Unprecedented justice" named it "a serious breach of the rule-of-law", particularly noting the lack of consideration of individual circumstances in the face of data-driven institutional decision making. Such examples show a risk of arbitrary executive decision-making and discrimination. JUSTICE does not oppose all AI - far from it. But its integration in vital public services and across society needs to be done responsibly, with risks to human rights and the rule of law considered at each stage and safeguards secured.

²⁹ JUSTICE, '*Understanding Courts*', (2019).

Q4 What is Parliament's role in upholding the rule of law? Is it performing this role well, and how could it be improved?

37. In our view, Parliament's role in upholding the rule of law is twofold. Parliament is the central democratic institution responsible for creating the laws binding the UK's population and other state actors. As the legislative body, Parliament is best placed to ensure that the laws governing the UK are based on sound evidence, clear, stable, and rights-compliant. At the same time, through scrutiny of primary and secondary legislation and the work of Parliamentary committees in scrutinising the policy and work of Government, Parliament checks executive power by holding the government accountable for its actions.
38. We consider that there are issues with the legislating process which, if resolved, would result in a better upholding of the rule of law by Parliament. These are discussed in answer to **Q4(i)** below. In addition, the Government's extensive control over the parliamentary timetable significantly restricts Parliament's ability to hold the executive to account. This issue has been thoroughly examined by the UCL Constitution Unit in their 2021 report, *Taking Back Control: Why the House of Commons Should Govern its Own Time*, which argues that executive dominance over the Commons agenda undermines scrutiny.³⁰ They propose reforms such as votable agenda and protected non-government time. Similarly, the Hansard Society has consistently highlighted this problem, advocating for a cross-party Business Committee to enhance transparency and parliamentary involvement, as seen in their 2009 evidence to the Procedure Committee and 2025 submission to the Modernisation Committee.³¹
39. Further, in our view Parliament's role in upholding the rule of law can be improved by implementing the following recommendations.
40. **Educating Members of Parliament about the constitutional principle of the rule of law and their role in upholding it.**
- (a) As set out at paragraph 19 above, the meaning, and importance, of the rule of law is not equally understood by all Members of Parliament. This is unsurprising: in the absence of any form of public education that would introduce the principle to the British population, the MPs most likely to be familiar with the rule of law are those with experience in fields where the concept is frequently referred to – for instance, MPs who work in the legal sector. However whilst the legal profession is well represented in politics, it has never dominated the House of Commons. This is

³⁰ M. Russell and D. Gover, '*Taking Back Control: Why the House of Commons Should Govern its Own Time*', (UCL Constitution Unit, 2021).

³¹ Hansard Society, '*Evidence to the House of Commons Modernisation Committee: Priorities and strategic aims*', (1 April 2025).

no bad thing. A Parliament full of lawyers would be deprived of the wider experience of our community.

- (b) To help MPs uphold British constitutional values, those disparities in familiarity with the British constitutional and legal system must be removed. To do this there is a need for mandatory training, in particular for new MPs (although all MPs would likely benefit from a refresher) on (i) the concept of the rule of law and other constitutional concepts and the MPs' role in maintaining them; and (ii) the UK legal system and the place their legislative work holds within it.

- 41. **Creating a knowledge base on the UK's compliance with rule of law principles that MPs could consult when legislating.** Having often relied on it in our work, we know that the work of the various Parliamentary committees (including the House of Lords Constitution Committee itself) contains very valuable insights on how the UK adherence to rule of law principles could be improved. We think this work should be continued, but that there could be a more obvious effort to frame inquiries and evidence sessions that cover rule of law issues explicitly in the context of the rule of law. For example, the pre-appointment hearing of the chair of the Judicial Appointments Committee did not mention the rule of law,³² and more could be done on press standards when reporting on legal issues.
- 42. Crucially however, the current disaggregated form of rule of law related insights across different reports, committees, and publication schedules makes it difficult for a stakeholder to navigate them. In particular, it may be difficult for a MP to find the relevant information at short notice – for instance, when a point that could potentially run counter to the rule of law arises during debate on a bill. We therefore recommend making the insights as to best practices in legislating already contained in scrutiny mechanisms reports more accessible to law-makers (and civil society and the public), for instance, by creating a compendium of constitutional standards in law-making as well as drawing together the insights on rule of law issues from across different committees.
- 43. We are also of the view that Parliament could play a **greater role in the external promotion of the rule of law to the public.** An example of how this might be done is through the creation of a Parliamentary body or institution. For instance, in 2019, the Bundestag created the Forum Law Foundation, a federal foundation intended to address issues of law and the rule of law in Germany. Its programs include producing podcasts, quizzes, film festivals, and city tours about the rule of law and democratic

³² House of Commons Justice Committee, '*Oral evidence: Pre-appointment hearing: Chair of the Judicial Appointments Commission, HC 925*', (6 December 2022).

principles.³³ In the UK, although there are multiple NGOs working on rule of law-centric topics, there is no institution that would “bridge” this role by being rooted in the Parliament itself. While the Foreign, Commonwealth and Development Office-funded Westminster Foundation of Democracy fulfils a similar role, it does so in an outward-facing manner, by supporting democratic institutions overseas. We think that it is worth considering whether similar efforts should also be extended to the domestic level.

Q4(i) How can Parliament improve its legislating to better facilitate the rule of law

44. The legislative process would be improved if there was an **increased used of pre-legislative scrutiny**. We appreciate that it is not possible to carry out pre-legislative scrutiny for all Bills, however for constitutionally significant or otherwise contentious Bills, there would great benefit of allowing detailed examination of an early draft of a Bill by a Parliamentary select committee. This would provide for a greater opportunity to identify and rectify issues with the legislation when it is in a more malleable form. It also provides a greater opportunity to get input from stakeholders and experts. It would likely improve the quality of legislation and introduce greater accountability into the legislative process, both of which will enhance public confidence in the final product.
45. We are concerned about **an increased recourse to skeleton legislation,³⁴ which contain a substantial delegation of powers**, which means that law-making power has decisively shifted in favour of the executive — a shift that the Secondary Legislation Scrutiny Committee (“**SLSC**”) has expressed concerns that it might be “*strategic*”.³⁵
46. This raises twin concerns for the rule of law:
- (a) First, regularly endowing the executive with considerable law-making powers, which extend beyond mere gap-filling, is a departure from the constitutional principle that Parliament has supremacy when it comes to the legislative.
 - (b) Second, executive law-making necessarily entails the use of secondary legislative instruments, which lack the same level of Parliamentary scrutiny as primary legislation: statutory instruments are rarely debated in the Commons due to Government control over the Parliamentary agenda;

³³ Civil Liberties Union for Europe, *‘Liberties Rule of Law Report 2025’*, (2025), p.383.

³⁴ Skeleton legislation has been described as when “*little of the policy is included on the face of the bill*” but nevertheless Parliament is asked “*to pass primary legislation so insubstantial that it leaves the real operation of the legislation to be decided by ministers*”. See House of Lords, Delegated Powers and Regulatory Reform Committee, *‘Democracy Denied? The Urgent need to rebalance power between Parliament and the Executive’*, (2021), p.3 & p.26.

³⁵ Secondary Legislation Scrutiny Committee, *‘Government by Diktat: a Call to Return Power to Parliament’* (2021), p.12.

in addition Parliament has no power to amend statutory instruments and they are rarely rejected and they are often not debated.

Together, these concerns portend a *de facto* weakened voice of Parliament and, as a result, diminishing checks and balances on the Government's legislative agenda.³⁶

47. These issues are highlighted by the following examples:

- (a) Sections 73(4) and 74(6) of the Police, Crime, Sentencing and Courts Act (which amend the Public Order Act 1986), give the Secretary of State broad powers to amend the meaning of "serious disruption" through legislation. This impacts the threshold at which police can impose conditions on a protest. The Secretary of State subsequently used these powers to amend the definition to "more than minor" disturbance; a proposal that was rejected by Parliament during the course of the Public Order Act 2023.³⁷
- (b) The Retained EU Law (Revocation and Reform) Act 2023, which has the potential to affect vast swathes of substantive law, including employment rights, environmental protections and consumer safety standards, yet was introduced containing almost nothing by way of substantive policy on the face of the Act. Instead, the Act grants ministers the extremely broad power to revoke or reform these laws as they deem appropriate, with the only substantive restriction being that changes can "*not increase the regulatory burden*",³⁸ granting the executive power over large swathes of law, subject only to secondary legislative procedures.

48. We agree with the proposals put forward by the Hansard Society to address these issues in its report *Proposals for a New System for Delegated Legislation*, including: a set of 'Principles of Legislative Practice' and a list of 'Criteria on the Use of Delegated Legislation'; reform of the scrutiny procedure for statutory instruments with a greater role for Parliament in deciding the level of scrutiny required for each instrument; making statutory instruments amendable and an enhanced role for the House of Lords.³⁹

³⁶ JUSTICE, '*Current Threats to the Rule of Law*', (8 February 2023); Hansard Society, '*Delegated legislation: the Problem with the Process*', (2021).

³⁷ The Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023. This is the subject of ongoing litigation brought by Liberty. See Liberty, '*Liberty Back in Court Against Government's Unlawful Protest Legislation*', (4 December 2024).

³⁸ *Retained EU Law (Revocation and Reform) Act 2023*, s. 14 (5).

³⁹ Hansard Society, '*Proposals for a New System for Delegated Legislation*', (2023).

49. **Post-Legislative Scrutiny** is important to ensure laws are working as intended and don't have unforeseen adverse consequences. Extensive research undertaken by Thomas Caygill and the Westminster Foundation for Democracy, however, reveals a significant post-legislative scrutiny gap:

- (a) Since 2008, Government departments are meant to produce post-legislative memoranda for relevant Acts, three to five years post Royal Assent.⁴⁰ These are submitted to the relevant House of Commons Departmental Select Committee, which will decide whether it should undertake a more comprehensive post-legislative inquiry into the Act.
- (b) In the period between 2008–2019, however, only 91 memoranda were published, in comparison to 374 Acts of Parliament in the same period.⁴¹ Despite there having been some enthusiasm for the process early on, between 2012–2019, the number of memoranda produced steadily decreased “*to single figures each year*”.⁴²
- (c) However, in the same time period only 23 full, post-legislative inquiries took place in Parliament.⁴³ Furthermore, certain committees appear to be more active than others when it comes to post-legislative scrutiny. As Caygill points out, between 2008 and 2019, the Home Office published 18 post-legislative memoranda. Yet, the Home Affairs Committee only undertook one post-legislative inquiry in the decade preceding 2017.⁴⁴ Although not every piece of legislation will require a full-blown post-legislative inquiry, this significant discrepancy suggests that there is also a problem with committees picking up memoranda published by Governmental departments for post-legislative review.⁴⁵

⁴⁰ Then Leader of the House of Commons, Harriet Harman MP, announced by way of Written Ministerial Statement this “new process for post-legislative scrutiny” with Committees of the House of Commons providing a “‘reality check’ of new laws after three to five years”. *HC Deb, 20 Mar 2008, Vol 473, Col 74WS. 6* The full approach was detailed in the Government’s response to the Law Commission Report on Post-legislative Scrutiny, published simultaneously: [here](#).

⁴¹ The number of UK Public General Acts passed between 2008 and 2019 are as follows: 2008 – 33; 2009 – 27; 2010 – 41; 2011 – 25; 2012 – 23; 2013 – 33; 2014 – 30; 2015 – 37; 2016 – 25; 2017 – 35; 2018 – 34; 2019 – 31. See [here](#).

⁴² With the exception of 2014, when 11 were produced. The highest years were 2011 and 2012, when 19 and 20 memoranda were produced, respectively. T. Caygill, ‘*The UK post-legislative scrutiny gap*’, (*The Journal of Legislative Studies*, 2020), p. 397. Caygill also notes that perhaps this is not surprising, given that in that period (i.e., between 2011 and 2014) it was Labour legislation that was “*within the time-frame for post-legislative review*.” p.397. As such, he suggests that there might have been a bias in the selection of legislation for post-legislative review.

⁴³ T. Caygill, ‘*Post-legislative scrutiny in the UK Parliament*’, (Nottingham Trent University, 2021), p. 12.

⁴⁴ T. Caygill, ‘*The UK post-legislative scrutiny gap*’, (*The Journal of Legislative Studies*, 2020), p. 397, pp. 391 and 396.

⁴⁵ It is a far less systematic process for Committees. Unlike Government Departments, who are expected to produce post-legislative memoranda, the decision to initiate a post-legislative inquiry is discretionary for committees. It should also be noted that committees do not need memoranda in order to undertake post-legislative scrutiny.

50. To address this issue, we agree with Caygill, that:

- (a) consideration should be given to strengthening the requirement to conduct post-legislative scrutiny;
- (b) the House of Lords Liaison Committee could have a greater oversight role in ensuring departmental committees conduct post-legislative inquiries where appropriate; and
- (c) there should be a central, publicly accessible repository of post-legislative memoranda.⁴⁶

Q5 What is the Government's role in upholding the rule of law? Is it performing this role well, and how could it be improved?

51. The Government plays a key role in upholding the rule of law, but there are significant areas in which it must improve its practices and expand its approach to ensure this role is fully realised. For this reason, we welcomed the government's renewed commitment to the Rule of Law as seen in the Lord Chancellor's remarks that she will defend "the international rule of law" and uphold "human rights".⁴⁷ The Attorney General has also repeatedly echoed this sentiment, speaking of his determination to "to make the promotion of the rule of law a project we can all sign up to irrespective of our political allegiance".⁴⁸
52. First, it is essential that any Government recognises it is not above the law by virtue of having been elected to power. In a liberal democracy, elected governments are subject to the rule of law, meaning their actions must be consistent with legal principles and limitations, both domestically and internationally. This includes adhering to human rights principles, abiding by constitutional norms, and respecting commitments made through treaties and other international frameworks. The Attorney General's updated guidance on Legal Risk,⁴⁹ which promises to "to raise the standards for calibrating legality" is an important step forward in this respect.⁵⁰ We hope to see such commitments translated into practical action, which includes both ensuring that the government refrains from passing legislation which violates human rights principles, as well as rectifying previous transgressions, such as the disapplication of section 3 HRA within sections 69 to 72 of the Victims and Prisoners Act 2024, relating to the release, licence, supervision, and recall of indeterminate and determinate sentence offenders.

⁴⁶ T. Caygill, '*Post-legislative scrutiny in the UK Parliament*', (Nottingham Trent University, 2021).

⁴⁷ Ministry of Justice, '*Lord Chancellor swearing-in speech: Rt Hon Shabana Mahmood MP*', (16 July 2024).

⁴⁸ The Rt Hon Lord Hermer KC, '*Attorney General's 2024 Bingham Lecture on the rule of law*', (15 October 2024).

⁴⁹ The Rt Hon Lord Hermer KC, '*Guidance: Attorney General's Guidance on Legal Risk*', (6 November 2024).

⁵⁰ The Rt Hon Lord Hermer KC, '*Attorney General's 2024 Bingham Lecture on the rule of law*', (15 October 2024).

Although not yet in force, the government should repeal these provisions from the statute book at its earliest opportunity.

53. Second, the Government's role in setting the legislative agenda and its overall control of the machinery of government necessarily places it in a powerful position to promote a culture of respect for the rule of law. This responsibility, however, should also include its role fostering a broader understanding and commitment to the values of the rule of law, particularly within government itself. One major concern is the practice of fast-tracking legislation with minimal consultation or scrutiny, as seen with the Illegal Migration Act 2023 (“**IMA**”) or the Sentencing Guidelines (Pre-sentence Reports) Bill more recently. Despite the significant implications for human rights, no Equality Impact Assessment was conducted before the IMA’s passage through the House of Commons. This reflects a wider failure to conduct meaningful assessments of the impact of government policies on marginalised communities. The Government must lead by example, ensuring that legal principles are not only respected in form but also deeply embedded in practice. This includes undertaking comprehensive equality assessments and conducting thorough consultations with stakeholders before implementing new legislation.
54. Moreover, the Government must take active steps to ensure public institutions which serve to provide important oversight and scrutiny of state actions and ensure they operate within the bounds of the law, from the Information Commissioner’s Office to the Equality and Human Rights Commission (“**EHRC**”), are adequately resourced to carry out their functions. To take the latter as an example, the budget of the EHRC has been slashed by more than 75%, from £70.3 million in 2007 to just £17.1 million today.⁵¹ This drastic reduction in funding has significantly weakened the EHRC’s ability to address systemic inequalities. Discrimination often goes unnoticed or unchallenged due to inadequate data collection, lack of transparency, or the failure to conduct routine research on crucial issues such as ethnic representation in modern slavery cases. The Government must act to reverse these funding cuts and ensure that bodies like the EHRC have the resources they need to effectively monitor, identify, and address inequalities across society.
55. More broadly, the rule of law depends on a well-resourced justice system. Successive governments have eroded various aspects of access to justice and erected numerous barriers for individuals seeking to access the courts. From a lack of proper resourcing of the justice system to attempts to shield the actions of public authorities from legal accountability, it is clear that this constitutional principle is increasingly

⁵¹ HM Government, ‘*Tailored Review of The Equality and Human Rights Commission*’, (November 2018); EHRC, ‘*Annual report and accounts 2023 to 2024*’, (12 September 2024).

strained. It would not be an exaggeration to say that the ability of individuals to effectively access justice has been noticeably and dangerously curtailed.

56. By way of example, overall annual expenditure on legal aid dropped by a quarter between 2009 and March 2022.⁵² As noted above, the watershed moment was the passage of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which cut legal aid for a range of civil disputes, such as those pertaining to welfare benefits, employment and private law family cases. We welcome the Government's announcement last year to allocate greater resources to the justice system.⁵³ However, as the Institute for Fiscal Studies has noted, "In 2025–26, real-terms day-to-day spending by the Ministry of Justice is set to be 14% lower than in 2007–08, and 24% lower in per-person terms (per head of population in England and Wales)".⁵⁴ Our overall concerns regarding the direction of travel with respect to the adequate resourcing of the justice system, therefore, remain unabated.
57. Furthermore, while the Government is often justified in responding swiftly to emergencies, it is crucial that such urgency does not erode legal protections or bypass essential scrutiny. There is a fine balance between the need for efficiency and respect for sufficient, transparent and robust processes. The Government should avoid an approach where speed risks compromising public trust in lawmaking. Legislative processes must still allow for public consultation, parliamentary debate, and external scrutiny, particularly when laws have far-reaching implications for human rights. Measures such as creating internal guidance that promotes the importance of legal compliance, transparency, and public accountability would ensure that even under pressure, the Government's actions align with the rule of law.
58. Finally, we recommend that the Government take proactive steps to embed the rule of law more deeply into the fabric of society. This could include introducing public legal education in the national curriculum,

⁵² HM Government, *'Justice in numbers: Access to justice'*, (March 2025). This breaks down into a 30% drop in total criminal legal aid expenditure and a 10% in civil legal aid expenditure. Legal Aid Agency & Ministry of Justice, 'National Statistics: England and Wales bulletin Oct to Dec 2022', (2023). When looking at claim volume, the picture is complex, particularly for civil legal aid. Grants for civil representation have, for example, dropped by 35% since 2009, but so has the number of applications (they have dropped by 43%). It is possible that individuals do not think legal aid will be available and therefore do not apply. A significant drop in the civil legal aid sphere has occurred at the stage of 'legal help' (when an individual is given advice or assistance regarding a legal problem). It has dropped by nearly 90% since 2009. As for criminal legal aid, it tells a somewhat similar story. These statistics have been drawn from the Government's Legal Aid Statistics Dashboards.

⁵³ Ministry of Justice, *'Historic increase in legal aid to support most vulnerable'*, (29 November 2024); Ministry of Justice, *'Millions invested in legal aid to boost access to justice and keep streets safe'*, (19 December 2024).

⁵⁴ M. Dominguez and B. Zaranko, *'Despite recent increases, the Ministry of Justice budget has still not returned to pre-2010 levels'*, (IFS, 11 February 2025).

ensuring that the public are better equipped to understand their rights and responsibilities (as discussed in further detail in response to Question 7 below).

59. In sum, while the Government holds significant power in upholding the rule of law in the UK, it must ensure that this power is used responsibly. This includes strengthening the independence and capacity of oversight bodies like the EHRC, fostering a culture of transparency and legal compliance within government, and empowering citizens to engage with the rule of law more effectively.

Q6 What is the role of the judiciary in upholding the rule of law? Is it performing this role well, and how could it be improved?

60. An independent judiciary upholds the rule of law by enforcing the laws impartially and ensuring that government actions are lawful. The UK judiciary is globally respected for its independence, expertise and professionalism and perform their role in upholding the rule of law to the highest standards.

Judicial diversity

61. The move from a ‘tap on the shoulder’ from the Lord Chancellor to the creation of the Judicial Appointments Commission (“JAC”) in 2006 has overseen a much more open application and selection process in the hands of an independent body. However, we are concerned about the ongoing lack of diversity within the judiciary, in particular the senior judiciary.⁵⁵ The most recent statistics⁵⁶ show that:
- (a) The proportion of court judges who are Black is still 1%; the same figure it has been since 2014.
 - (b) Ethnic minority candidates are applying to be appointed but are much less likely than White candidates to be appointed. There has still never been a Black or ethnic minority Supreme Court justice.
 - (c) Candidates are still less likely to be successful if they went to a state school, rather than a private school, and if they are the first in their family to go to university, rather than those whose parents had a university education.
 - (d) Solicitors were 55% less likely to be successful than barristers – not only are solicitors a more diverse pool than barristers, but this is an issue for cognitive diversity on the bench.

⁵⁵ JUSTICE, ‘*Increasing Judicial Diversity*’, (2017); and ‘*Increasing Judicial Diversity: An Update*’, (2020).

⁵⁶ Judicial Appointments Commission, ‘*Statistics about judicial appointments*’, (2024).

- (e) Even in respect of gender, where there has been some year on year progress, things are moving slowly – last year saw just a 1% increase in the proportion of female judges overall, and declining proportions of female judges as the positions become more senior.

62. The ongoing lack of judicial diversity is an issue for the rule of law for the following reasons:

- (a) Judicial diversity is vital to ensure the legitimacy of the judiciary in the eyes of the public, and especially the trust of court users. The absence of judges from certain groups threatens to erode the public's confidence in the judiciary. As Lady Hale has explained: *People should be able to feel that the courts of their country are 'their' courts, there to serve the whole community, rather than the interests of a narrow and privileged elite. They should not feel that one small section of society is dictating to the rest. These days, we cannot take the respect of the public for granted; it must be and be seen to be earned.*⁵⁷ Additionally, the Lammy Review into outcomes for ethnic minority individuals in the criminal justice system cites the gulf between the backgrounds of defendants and judges as a fundamental source of mistrust in the system among BAME communities.⁵⁸
- (b) Increasing the diversity of our judiciary (including 'cognitive diversity') is also about improving the quality of judgments. A large body of evidence confirms that different but complementary perspectives are better for collective decision-making than homogenous ones.⁵⁹ This is critical when judges sit in panels, but is valuable also to judges sitting alone, who benefit from the wisdom of their colleagues whether through personal contact or reading their decisions; a number of judges we spoke to as part of our research on this issue lamented the absence of judicial colleagues from different social and ethnic backgrounds, with whom they can discuss aspects of a case before them.⁶⁰
- (c) The consequence of not recruiting from a wide enough pool is necessarily that the institution is not benefiting from the best available talent. As Lord Neuberger has asked: *"why are 80 per cent or 90 per cent of judges male? It suggests, purely on a statistical basis, that we do not have the*

⁵⁷ Lady Hale, '*Judges, Power and Accountability: Constitutional Implication of Judicial Selection*', (Constitutional Law Summer School Belfast, August 2017), p.4.

⁵⁸ D. Lammy, '*The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System*', (2017), p.37.

⁵⁹ I. Bohnet, *What Works*, (Harvard University Press, 2016), Chapter 11, pp.229-30; J. Surowiecki, *The Wisdom of Crowds*, (Anchor, 2005), Chapter 2. See also: D.L. Rhode, *Lawyers As Leaders*, (Oxford University Press, 2015), p.47: famously, some American presidents surround themselves with a "team of rivals" to avoid the "perils of insular thinking" (including Presidents Lincoln and Obama); The Rt. Hon. Sir Terence Etherton, '*Liberty, the archetype and diversity: a philosophy of judging*', (Public Law, 2010), p.11.

⁶⁰ JUSTICE, '*Increasing Judicial Diversity: An Update*', (2020), para 1.12.

*best people because there must be some women out there who are better than the less good men who are judges.”*⁶¹ The same is, of course, true in relation to other characteristics.

63. To address this issue we recommend:

- (a) the ability to contribute to a diverse judiciary should be taken into account in the assessment of ‘merit’;
- (b) the introduction of diversity “targets with teeth” i.e. publicly stated targets for selection bodies, with monitoring and reporting on progress to the Justice Select Committee;
- (c) the creation of a permanent Senior Selection Committee dedicated to senior appointments; and
- (d) creation of ‘appointable pools’ of individuals deemed to have met the high standard of appointability for a particular court. Candidates would then be selected from the pool to fill vacancies when they arose, with candidates from under-represented groups being given priority.

A number of further detailed recommendations are set out in our 2017 and 2020 reports on this topic.⁶²

Threats to the role of the judiciary

64. In addition to a lack of diversity, there are a number of other issues that threaten or hamper the ability of the judiciary to fulfil its vital role in upholding the rule of law:
65. **Attacks on the judiciary**, from both the media and politicians, as set out in paragraphs 23 - 26 above. It is crucial not only that the judiciary are in fact independent, but that the public believe that they are too, in order to uphold trust and confidence in the judiciary. Ultimately, if this does not exist, you may end up in a position where individuals may not follow court orders and will feel that the executive are also entitled not to follow court orders.
66. A number of statutory provisions that oust or restrict judicial oversight of executive action, including:
- (a) section 2 of the Judicial Review and Courts Act 2022 which ousts *Cart* judicial reviews;

⁶¹ House of Lords Select Committee on the Constitution, Oral evidence, 16 November 2011, Qu 251, cited in E. Rackley, *Women, Judging and the Judiciary: From Difference to Diversity*, (Routledge Cavendish, 2012), p.193.

⁶² JUSTICE, *‘Increasing Judicial Diversity’*, (2017); and *‘Increasing Judicial Diversity: An Update’*, (2020).

- (b) section 3 of the Dissolution and Calling of Parliament Act 2022 which prevents the courts considering questions relating to the use of the powers to dissolve Parliament, any decision relating to those powers or the limits or extent of those powers.
- (c) various provision of the Illegal Migration Act 2023 which severely limit judicial review of decisions to remove individuals from the UK (albeit these were never brought into force and are now going to be repealed by the Border Security, Asylum and Immigration Bill);⁶³
- (d) section 12 of the Illegal Migration Act 2023 (which is in force and will be unaffected by the Border Security, Asylum and Immigration Bill) which provides that it is for the Home Secretary to determine what a reasonable period of immigration detention is rather than for our independent courts and tribunals as was the case before;
- (e) clause 93 and 94 of the Crime and Policing Bill which proposes warrantless displacing judicial oversight of the exercise of police powers.
- (f) clause 8 of the Planning and Infrastructure Bill which restricts access to judicial review by making it harder to apply for permission in certain planning judicial reviews. The provisions also make it more costly and time consuming for the courts to deal with permission applications by removing the paper permission stage.

67. **Access to justice** – as detailed above, there are significant issues with access to legal advice and representation for individuals who do not have significant financial resources, as well as court and tribunal backlogs. This makes it more difficult for the judiciary to carry out their duties: increasing numbers of litigants in person not only pose issues for the litigants themselves, but also increase inefficiencies in the functioning of the courts, whilst backlogs put increasing pressure on the courts and inefficiencies such as impact on evidential quality.

68. **Transparency** of the justice system is important to the rule of law because it:

- (a) preserves the **legitimacy** of the justice system in the eyes of the public. For the rule of law to properly function individuals, organisations and the government must comply with the decisions made by courts. For such decisions to be legitimate in a democratic society the process by which they are reached need to be as transparent as possible;

⁶³ Illegal Migration Act, ss.5, 51, 53 and 54.

- (b) facilitates **scrutiny** of the justice system by allowing the public to engage critically with legal proceedings and hold institutions accountable. It also ensures actors within the system – government bodies and organisations – compliance with the law can be properly scrutinised by the public; and
- (c) increases the **accessibility** of the law itself by aiding legal literacy; it makes case outcomes visible and demystifies legal proceedings.

69. We acknowledge that open justice does not exist in vacuum – there are a variety of factors that may require the limitation of open justice in certain circumstances, including the fair administration of justice and privacy of individuals.⁶⁴ However, where possible the rule of law requires that the work of the courts and judiciary should be conducted as transparently as possible.

70. In our view there are some issues with the transparency of courts and tribunals and improvements that could be made. These include:

- (a) making court lists more accessible and easier to navigate;
- (b) increased access to court documents for both the media and the public (with appropriate management of the risks involved in this);
- (c) improved data collection to evaluate the functioning of the justice system, in particular its impact on marginalised groups and better publication of existing data;
- (d) changes to the Single Justice Procedure to increase transparency (to that end we are please to see the Government is consulting on possible changes to the SJP and private prosecutions to improve their transparency);⁶⁵
- (e) improvements to the functioning of Closed Material Proceedings under the Justice and (CMPs). The use of CMP is inconsistent with the principles of open justice. However, we recognise that its availability can be justified to the extent that it allows cases to brr bough that would otherwise not have been able to. That being said, we are concerned that:
 - (i) the Government’s approach to CMP is that is a class or general basis when CMP is available and adopts an excessively adversarial approach. This not only causes delays,

⁶⁴ JUSTICE, *‘Open justice: the way forward’*, (September 2023).

⁶⁵ Ministry of Justice, *‘Oversight and regulation of private prosecutors in the criminal justice system consultation’*, (March 2025).

but undermines the assurances given by the Government when the JSA was enacted that (i) CMP would not become commonplace, and (ii) a fine balance between open and fair justice and national security would be met.⁶⁶

- (ii) The approach of the courts towards CMP appears to be too ready to accept government claims for withholding information, which foregoes the necessary exacting scrutiny that we consider Parliament expected.
- (iii) Third, numerous procedural concerns arise out of the use of the CMP which exacerbate unfairness for litigants. These include delays, a lack of a library of judgments regarding CMP-related decisions which undermines the system of precedent, and costs risks for claimants and appellants who do not have sight of the closed material.⁶⁷

Q7 Is there a role for the public in upholding the rule of law?

Q7(i) Is there a greater role for education, the media and civic society in promoting the rule of law?

Role of education in upholding the rule of law

71. **We agree that there is a greater role for education in promoting the rule of law.** Public understanding of the rule of law is crucial for its preservation:
- (a) The rule of law is strengthened when there is wide acceptance and ‘buy-in’ from the public – education has a key role to play in facilitating this.
 - (b) Increased understanding of the importance of the legal system and our legislative processes will likely increase trust in these systems and compliance with the law.
 - (c) Public legal education (“**PLE**”) helps to increase access to justice – a crucial component of the rule of law. At present, almost two-thirds of the UK population are unaware of basic legal rights

⁶⁶ As the Special Advocates’ have stated, “[t]he way in which CMPs have been operated by State parties have the effect of increasing the unfairness, beyond the level of unfairness that is inherent in the regime of CMPs sanctioned by Parliament.” *Special Advocates’ Submission to Review*, (8 June 2021), p.48.

⁶⁷ JUSTICE, *‘Response to statutory review of closed material procedure in the Justice and Security Act 2013’*, (2021). We note the previous Government published their long awaited response to the 2022 Ousley Review in May 2024. However, the Government’s response was described as ‘profoundly disappointing’ by some Special Advocates due to the rejection of some of the review’s recommendations. We are unclear as to what has happened to the implementation of the recommendations which the previous Government had accepted or whether the new Government has accepted the previously rejected recommendations.

or the processes by which they are enforced,⁶⁸ even though 80% of Britons believe that understanding how the law works is vital and over half of 18 to 24-year-olds would like more emphasis on learning about the law in school.⁶⁹ Better public legal education would help those educated in the UK system an awareness of what rights they have and the mechanisms by which they can vindicate them. In particular, it could help people identify whether a problem they are facing is a *legal* problem, whether they need support in solving it, what advice might be available, and how they can go about getting it.

72. However, simply asserting that “the rule of law matters for growth, jobs and people’s livelihoods”⁷⁰ or explaining that the UK’s democratic model is intended to allow everyone to have their say is unlikely to resonate with a person struggling to vindicate their most basic legal rights or perceiving their local police force or Member of Parliament as untrustworthy or ineffective. For this reason, we think it is crucial that any such educational measures – which we discuss in detail below - are accompanied by measures intended to ensure the justice system is adequately funded, standards in public life are upheld, and all Britons can meaningfully vindicate their rights.
73. PLE currently is largely delivered through Citizenship curriculum for key stage 3 and 4. It must be followed by maintained schools but not academies or free schools. The teaching time dedicated to citizenship has declined by 57% from nearly 21,000 hours in 2012/13 to 9,000 in 2023/24. The insufficiency of this provision has been reputedly noted. A 2018 report by the House of Lords Select Committee on Citizenship and Civic Engagement found that citizenship education had been neglected and that the quality of citizenship education varied significantly.⁷¹
74. There are large local differences in the way in which PLE is taught (if it is taught at all). Access depends on the individual school and the school’s engagement with third sector organisations such as Young Citizens. Citizenship is often hidden within or conflated with PHSE.
75. The Select Committee’s report also found that citizenship education is more effective if started at an early age and recommended that there should be a statutory entitlement to citizenship education from primary school. This was reiterated by the House of Lords Liaison Committee which conducted a follow-

⁶⁸ Advice now, ‘*Public legal education*’.

⁶⁹ The Law Society and CILEX, ‘*Young people call for freedom, democracy and knowledge of the law, says new poll*’, (24 February 2020).

⁷⁰ The Rt Hon Lord Hermer KC, ‘*Attorney General’s 2024 Bingham Lecture on the rule of law*’, (15 October 2024).

⁷¹ House of Lords Select Committee on Constitution and Civic Engagement, ‘*The ties that bind: Citizenship and civic engagement in the 21st Century*’, (18 April 2018).

up to report in 2022.⁷² As of April 2025, this recommendation has not been implemented. Whilst there is a non-statutory framework for citizenship for key stages 1 and 2, schools are not required to follow it. Moreover, the framework focuses on concepts such as learning right from wrong, rather than any form of public legal education. The age of criminal responsibility in England and Wales is 10. If children as young as 10 can be held criminally responsible, they can and should learn about the legal system by the time they reach this age. We echo the Committees' call for a statutory entitlement to citizenship education from primary school.

76. In addition, citizenship education should entail a specific focus on human rights. In its 2021 report, the Independent Human Rights Act Review found that “There has been a perception that human rights did not apply to everyone, and that abuses of those rights happen to other people,”⁷³ accompanied by a lack of ownership of human rights. Those conclusions further substantiate our concerns that the UK population may not be aware of the rights they have, and that Britons may see some people having “more” rights than others. The IHRAR panel considered there is a need for the “development of a perception, reflecting the reality, that human rights issues concern, apply to and protect everyone in society”⁷⁴ and “strongly recommended” the government adopts a focus on civic and constitutional education at school, university, and adult education levels.⁷⁵ The panel also were “in little doubt” that “there is much room for increasing understanding of the UK’s constitution, and particularly, of the [Human Rights Act, the European Convention on Human Rights and the European Court of Human Rights].”⁷⁶
77. We agree. Currently the subject of human rights is not on the curriculum until key stage 4. In our opinion, human rights should be included as a core part of public legal education throughout the curriculum, including as part of statutory citizenship education in key stages 1 and 2. As concerns the incorporation of human rights considerations in university and adult education, inspiration can be gleaned from practices adopted abroad. In particular, we would highlight the role the civil society plays in delivering such training in other states: in Germany, the Society for Civil Rights NGO organised a series of university lectures aimed at familiarising law students and other interested students with basic constitutional

⁷² House of Lords Liaison Committee, *‘The Ties that Bind: Citizenship and Civic Engagement in the 21st Century, Follow-up report’*, (2022).

⁷³ IHRAR Panel, *‘The Independent Human Rights Act Review 2021’*, (October 2021), p.17.

⁷⁴ Ibid, p.17.

⁷⁵ Ibid, p.20.

⁷⁶ Ibid, p.19.

principles and the idea and relevance of rule of law.⁷⁷ In Poland, the Helsinki Foundation for Human Rights (also an NGO) runs a “School of Human Rights” project, a cyclical series of free classes and lectures about basic human rights law concepts and their application to modern issues.⁷⁸

Role of the media in upholding the rule of law

78. We agree that media should also play a role in advocating for and promoting the rule of law. We set out concerns above about the rhetoric used in the media and the impact this may have on public trust and confidence in the justice system. Whilst the regulation of the media and press standards is outside our area of expertise, we are of the view that the rule of law would benefit greatly from a more nuanced and informed debate both in the print media and, in particular, in online spaces.

The international dimension

Q8 How important is the rule of law for the UK’s economy and international influence?

79. The rule of law is foundational to the UK’s economic strength and international standing. A stable legal system, underpinned by judicial independence and access to justice, supports economic growth by ensuring certainty, reliability, and fairness in commercial transactions. Businesses operating in or with the UK benefit from confidence that their rights and obligations will be enforced impartially. As Lord Hodge has noted, one aspect of the UK’s reputation for the “provision of robust and reliable jurisdictions for the conduct of business” is the “historical commitment of its judges and practitioners to uphold the rule of law,” a “necessary precursor for legal certainty.”⁷⁹
80. Internationally, the UK’s legal system is a major asset. The English courts and legal profession are widely respected and remain a model for others, reinforcing the UK’s influence in global legal and diplomatic arenas. Continued investment in both the commercial and non-commercial elements of the justice system is essential to preserve this advantage and ensure the rule of law remains a central pillar of the UK’s economic resilience and global credibility. We therefore welcome this recognition in the government’s establishment of a Soft Power Council,⁸⁰ and would encourage all arms of government to consider how they can safeguard and promotes the benefit of strong rule of law compliance.

⁷⁷ ⁷⁷ Civil Liberties Union for Europe, *‘Liberties Rule of Law Report 2025’*, (2025), p.226.

⁷⁸ See HFHR, *‘Szkoła Praw Człowieka HR Lab’*; and *‘Empowering the High School Education on the Rule of Law Project’*, (2023).

⁷⁹ Lord Hodge, *‘The Contribution of the Common Law and the Courts to Economic Prosperity’*, (25 February 2025), p.4.

⁸⁰ HM Government, *‘UK Soft Power Council: membership and terms of reference’*, (17 January 2025).

Q9 What threatens the effective operation of the rule of law globally?

i. Which countries do you think are leaders in adherence to the rule of law, and why is this the case?

ii. How effective is the UK as an advocate for the rule of law on the international stage? How could this be improved?

81. Globally, the countries that consistently perform strongest on rule of law measures, such as Denmark, Norway, Finland, and Sweden,⁸¹ exemplify how robust legal systems depend on sustained investment, principled governance, and high public trust. These nations tend to fund justice systems adequately, promote transparency, and foster institutional cultures that value fairness and participation. Their legal frameworks are often less rigidly bureaucratic, relying instead on clear guidance and well-established democratic practice. For example:
- (a) In **Norway**, public consultations are largely guided by administrative practice rather than statute, enabling more flexible and trusted engagement with citizens.
 - (b) In **Finland** and **Germany**, consultation processes are structured to emphasise openness and collaborative governance, which in turn supports legal stability and legitimacy.
 - (c) In **Ireland**, the Irish Human Rights and Equality Commission publishes practical tools and data standards to help public authorities meet equality obligations.
 - (d) The **South African** government supports accountability by providing standardised templates for organisations to report on progress toward equality goals.
82. These examples suggest that countries which build inclusive, transparent, and adequately resourced legal and democratic systems are best placed to uphold the rule of law and ensure its resilience under pressure.⁸²
83. The UK's effectiveness as an international advocate for the rule of law has historically been tied to its ability to lead by example. Its independent judiciary, respected legal profession, and globally influential courts (especially in commercial law) have long been key sources of soft power. The UK also performs relatively well in comparative rankings: in 2024, the World Justice Project ranked the UK 15th globally,

⁸¹ World Justice Project, '*WJP Rule of Law Index*', (2024).

⁸² UN High Commissioner for Human Rights M. Bachelet, '*Impartial, independent rule of law is vital to sound societies*', (OHCHR, 6 February 2020); OECD, '*OECD Survey on Drivers of Trust in Public Institutions 2024 Results - Country Notes: Norway*', (10 July 2024); OECD, '*OECD Survey on Drivers of Trust in Public Institutions 2024 Results - Country Notes: Denmark*', (10 July 2024); The Council of Europe, '*Country Profile Denmark*', (2020).

and first in the world for transparency in the publication of laws and government data. In 2023, the European Court of Human Rights issued just one judgment against the UK for breach of the European Convention on Human Rights.

84. However, there remains significant room for improvement. To continue being a credible global advocate, the UK must strengthen its domestic compliance with rule of law standards. This includes:
- (a) Ensuring equal access to justice, particularly for marginalised groups.
 - (b) Safeguarding judicial independence from political attacks and undue media influence.
 - (c) Investing in public legal education so that citizens understand and can meaningfully exercise their legal rights.
 - (d) Committing to international human rights obligations in both rhetoric and practice.
85. By reinforcing these domestic commitments, the UK would not only protect the foundations of its own democracy and economy, but also position itself more credibly as a global leader in promoting the rule of law as a cornerstone of peace, prosperity, and human dignity.

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JUSTICE | 2 May 2025