



Lords Constitution Committee
Inquiry into the work of the Lord Chancellor and the Law Officers
Bar Council written evidence

About us

The Bar Council represents approximately 17,000 barristers in England and Wales. It is also the Approved Regulator for the Bar of England and Wales. A strong and independent Bar exists to serve the public and is crucial to the administration of justice and upholding the rule of law.

Scope of response

The Bar Council has provided limited points with considerable diffidence to the questions posed by the Committee without taking a political position, or criticising individuals.

However, we do not believe that we are well placed to offer evidence on the following questions:

- How the roles of the Lord Chancellor and Law Officers are operating;
- Whether the position of the office holders in the executive means they are able to remain impartial and to uphold the rule of law and defend the independence of the judiciary.

Nothing we say should be taken as criticism of any individual, or as the adoption of a political position.

The role of the Lord Chancellor

1. Since May 2015 there have been six Lord Chancellors. Such a rapid turnover is undesirable in an office intended to uphold the fundamental and timeless concept of adherence to the rule of law across Government.
2. Although we would much prefer to see Justice Ministers in place for longer than a year and we believe that they would be likely to be more effective if they had longer in post, we accept that this is ultimately a matter for Government.
3. The Lord Chancellor plays a critical role as the guardian and promoter of the rule of law. When occasions arise which require the Lord Chancellor to remind Government Ministers of the importance of the rule of law, that is likely to lead to tension and perhaps disagreement. It may be that if the Lord Chancellor is perceived to be “just another Minister” their effectiveness is likely to be blunted.

4. In 2017, the Lord Chief Justice was correct when he said that the then Lord Chancellor was “constitutionally absolutely wrong” for not publicly backing the judges who had been described as “Enemies of the People” after deciding that the Government would require Parliamentary consent to give notice of the UK’s withdrawal from the European Union.
5. The qualifications for being a good Minister in the Ministry of Justice and a good Lord Chancellor do not seem to us to be necessarily the same. Although we believe it to be an advantage for the Secretary of State for Justice to have a legal background, we do not consider it to be essential (for instance a background in the prison system might be an equally advantageous qualification).
6. However, it seems to us that it will invariably be a great advantage for a Lord Chancellor to have had a distinguished legal career in their own right, since such a person is more likely to command the confidence of the judiciary, of the legal professions, and of other Ministers in Government, and therefore likely to be much more effective in fulfilling the key role of that office.
7. It seems that this view is reflected in and supported by the fact that the 2005 Constitutional Reform Act requires the Prime Minister to recommend a person who is “qualified by experience”.

The role of the Law Officers

8. Questions 5, 7 and 8 are best answered by others.
9. Question 6 is best addressed by those prosecuting agencies and perhaps those who have direct experience of the role played by Law Officers in such decisions.
10. As with the office of Lord Chancellor, the qualities and qualifications required to fulfil the ministerial responsibilities are not necessarily the same as the non-ministerial roles.

The Bar Council March 2022