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Article

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Cobblers: Lawyers' Views on the Quality of Legislation

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ABSTRACT

This article explores the question of whether there are any characteristic features of the way law is made in the UK that lead to problems of legislative quality on the basis of a survey of 559 legal professionals including practising barristers and solicitors as well as academics. The article begins by discussing how 'quality' is to be understood and outlining the nature of the survey. It goes on to set out how respondents characterize problems of quality in the legislation they are familiar with, what the consequences of any defects might be, what causes these defects, and what can be done to remedy them. The article goes on to discuss some of the broader implications of the results of the survey drawing on the observations of Sir William Dale.

INTRODUCTION

The central purpose of this article is to examine whether there are any features connected with the way legislation is produced in the UK that lead to defects in its quality. This raises, of course, the basic question: what is a high-quality piece of legislation? Unsurprisingly, many definitions of quality tend to emphasize the ability to produce some form of desirable outcome. Yet the outcome itself can be as narrow as getting the law through parliament, as with Thring's famous dictum, 'laws are made to pass as razors are to sell',[1] or as broad as the ability to achieve 'real regulatory results corresponding to … economic–social objectives'.[2] From whose perspective the legislation produces desirable outcomes is another source of imprecision. For those affected most directly by the legislation perspectives may also vary. Thus, for example, what might be regarded by law enforcement officers as a well-crafted tool for combatting crime could be seen as a host of ill-defined oppressive measures for innocent people caught up in them. Then there are different 'users' of legislation. Lord Renton, whose report in 1975 offered guidelines for improving legislative quality, argued that the needs of the 'legislator' on the one hand and, on the other, those of the 'ultimate user of legislation', primarily members of the legal professions, were often in conflict

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[1] George Engle, 'Bills Are Made to Pass as Razors Are Made to Sell: Practical Constraints in the Preparation of Legislation', 4(2) *Statute L Rev* 7 (1983).

[2] Tímea Drinóczi, 'Concept of Quality in Legislation—Revisited: Matter of Perspective and a General Overview', 36 (3) *Statute L Rev* 211 (2015).

not least because of the legislator's desire to try to regulate for every detailed eventuality and the general belief of courts and legal professionals that they are better placed to judge how a general principle should be applied in practice.[3] Xanthaki adds another important perspective to be taken into account when she points out that 'the law does not speak to lawyers alone' but also to citizens: not only the 'average man or woman in the street' but rather 'each and every user … This includes the above average, the average, and the below average people'.[4]

Faced with such difficulties in deciding what good quality legislation might look like, it is not surprising that stylistic features of legislation are often used as a guide to judging whether legislation is good or bad. Thus features related to its wording and structure can be a way of judging the quality of legislation. Such judgments include examination of the 'clarity, precision and unambiguousness' of a law.[5] Xanthaki places judgements of quality based on outcomes as well as wording and style as part of a 'pyramid' with 'efficacy' at its top and, moving down through 'effectiveness', 'efficiency', 'clarity', '[lack of] ambiguity' to 'simplicity/plain language', and 'gender neutral languages' at the bottom.[6] Yet, as she goes on to point out, these criteria hardly set out clear guidelines for distinguishing between high-quality and low-quality legislation as terms such as 'effectiveness' or 'simplicity' remain vague and subjective. Moreover, it might be argued that simplicity, lack of ambiguity, and clarity itself might not necessarily always be desirable objectives in law-making. This touches on what Stumpff describes as one of the oldest questions in legal philosophy that of asking

> whether it is better, or more just, or more predictable for legislatures to spell out as much as possible in advance, or instead simply to repose discretion in the eventual decision maker (or, indeed, whether the eventual decision maker always effectively does have discretion, whatever the legislature intends or says).[7]

Setting out the principles according to which the law should be applied, complete with the unavoidable 'fringes of vagueness' in those circumstances where the application of these principles remains contentious and unclear, may be preferable to the ultimately insatiable quest for a level of terminological precision that seeks to squeeze out ambiguity and discretion in interpretation.

'Legislative quality' is thus impossible to define in an abstract sense. But why should any of this matter? If one wanted to argue that a particular law or body of legislation was of poor quality and something needed to be done to improve it, any such debate could be done on a law-by-law basis and the specific defects, shortcomings, and infelicities dealt with on that basis; one would not need an overarching definition of, or way of identifying, good and bad legislation. Such is the premise, indeed, of the work of the Law Commission which, as will be seen in our discussion below, comes out very well as a guarantor of what is widely seen as good quality legislation by scrutinizing different bodies of law, identifying problematic features, and suggesting reforms that would make the laws under discussion work better.

The reason one might still hanker after a general definition of legislative quality derives from the desire to understand whether there are any broad features about the way law is made that make it more likely that defects, shortcomings, and infelicities, however defined, will be built

[3] David Renton. 'The Legislative Habits of the British Parliament', 5 *J Legis* 7 (1978).

[4] Helen Xanthaki. 'Misconceptions in Legislative Quality: An Enlightened Approach to the Drafting of Legislation' in A. Daniel Oliver-Lalana (eds), *Conceptions and Misconceptions of Legislation* (Cham, Switzerland: Springer, 2019) at pp. 23–49.

[5] Esther Majambere. 'Clarity, Precision and Unambiguity: Aspects for Effective Legislative Drafting', 37(3) *Commonwealth Law Bull* 417 (2011).

[6] Helen Xanthaki. 'United Kingdom Quality of Legislation: An Achievable Universal Concept or an Utopian Pursuit?' in Marta Travares Almeida (ed), *Quality of Legislation – Principles and Instruments* (Baden Baden: Nomos Verlagsgesellschaft mbH & Co. KG, 2011) at pp. 75–86.

[7] Andrew Morrison Stumpff. 'The Law Is a Fractal: The Attempt to Anticipate Everything. Seventh Annual Loyola University Chicago School of Law and Northwestern University School of Law Labor and Employment Colloquium', 44(3) *Loyola Univ Chicago Law J* 649 (2012).

into legislation, or at least not excluded from it. This is a particularly important point if one considers arguments by political scientists that the UK is especially bad at producing legislation. For King and Crewe the British politico-administrative system is especially 'blunder' prone.[8] For Dunleavy the fact that the UK parliament passes what he claims to be the 'fastest law in the west' means legislation is often especially ill-thought through.[9] Taking a wider comparative perspective, the UK 'majoritarian' form of policy making (where one party dominates the executive and legislative branch) leads to deficiencies in deliberating legislation that 'consensus' democracies such as those in Germany or Scandinavia tend to avoid.[10]

The purpose of this article is to explore the proposition that there may be characteristic defects, shortcomings, and infelicities that are common to much UK legislation and that there are features of the way legislation is made in the UK that produce these defects. We have chosen to explore these questions from the perspective of legal professionals and to this end have conducted a survey of 559 barristers, solicitors, academic lawyers, and others. Of course, we recognize that legal professionals' perspectives on the quality of legislation are not the only ones that count. We do believe, however, that they are particularly important, and for two main reasons. First, because they have to deal with the legislation on a frequent, if not daily, basis they have an insight into the difficult and cumbersome features of the legislation as it is framed. Second, the frequent experience of dealing with clients and citizens as they negotiate their way through the process of applying the law, whether as advisers or as representatives in litigation and other legal processes as well as observers of the outcomes of these processes, they have an especially strong perspective on the impact of legislation on those affected by it and what outcomes the legislation produces. This is not to suggest that there are universal 'defects' generalizable and discoverable across all items of legislation, but rather that the range of diverse problems that legal professionals report when working with legislation are likely to reflect real and significant difficulties in the application of the law.

In the absence of a satisfactory abstract definition of quality, we therefore seek to understand what legal professionals understand by the term, how common quality problems are perceived to be and whether they see these as systemic. Such problems may be systemic in the sense that they apply to a broad range of legislation and/or in the sense that there are general features of the way that law is made and developed that generate particular defects that can be described as problems of quality. Here we seek to get beyond simply restating the unavoidable fact that all legislation at some point can operate in part around the 'fringes of vagueness', being too vague for some practitioners and observers and too specific for others, and highlighting a range of specific remediable characteristics that can be related to the character of legislation and its production in the UK. We ask the reader for some forbearance about the title of this article. The cobbler reference is not to the Cockney rhyming slang word for 'nonsense' but a reference to an analogy made by Sir William Dale which is best explained in the conclusion.

THE SURVEY

Invitations to complete the online self-administered questionnaire were sent to 6237 legal professionals (5240 practitioners and 997 academics) between January and March 2024. We sought to keep the survey instrument simple by limiting the survey to England and avoiding the need to develop questions analysing and comparing devolved legislatures. The details of how we compiled our list of invitations are set out below in an appendix. Comprehensive lists containing the email addresses of legal professionals are not available, moreover spam filters prevent bulk emails from reaching their intended target, internet blocks operate in some firms to prevent access to online

[8] Anthony King and Ivor Crewe. *The Blunders of Our Governments* (London: Oneworld Publications).
[9] Patrick Dunleavy. 'Policy Disasters: Explaining the UK's Record', 10(2) *Public Policy Admin* 52 (1995).
[10] Arend Lijphart. 'Democracies: Forms, Performance, and Constitutional Engineering', 25(1) *Eur J Pol Res* 1 (1994).

questionnaires, and generally surveys of lawyers have consistently produced low response rates. As also discussed in the appendix, our response rate of 10 per cent is certainly not an outlier since lawyers appear to be reluctant respondents to self-administered surveys. We might also put forward the plausible hypothesis, impossible to test properly with the data we have, that those with more critical views of the quality of legislation might be more willing to reply to the questionnaire than those with positive views. Of course, pointing out that other surveys have had low response rates does not make our own any better as regards the essential points that the sample cannot be treated as random and consequently the ability to use statistical inference from its results is limited. The justification for believing these findings to be of importance is that the survey has generated sufficient responses to show the kinds of concerns that lawyers might have about the quality of legislation and that there are no obviously superior ways of finding out about such concerns that would be likely to generate a better sample. If we only rely on random samples that can convincingly remove most suspicions of sampling and non-response bias to answer questions like those posed in this article then these questions are almost certain to remain unanswered. Our preference is to have a stab at answering them while setting out and acknowledging the limitations of our evidence.

PERCEPTIONS OF LEGISLATIVE QUALITY

The questionnaire was designed to allow respondents to comment on issues of legislative quality—primarily on the basis of specific items of legislation with which they were familiar rather than of legislation in general. Of the 559 respondents 516 named a piece of legislation and the remaining 43 answered questions on the basis of their general views about legislation. When talking about specific legislation there is some variation in the scope of what respondents had in mind. Most chose a particular named Act of Parliament. A small number chose a range of legislation (e.g. citing 'Pensions Act 1995 (and other pension legislation)') and not always primary legislation (e.g. 'Civil Procedure Rules'). It is likely that for some the legislation on which they were reporting was a central part of their work, for others it was not. One barrister wrote, when asked to name the legislation he was referring to in his responses; 'I'm a criminal lawyer. God forbid I'd need to read legislation. But let's take the Sentencing Act 2020'. Since the number of respondents not naming a law is so small, and because their responses to questions, where comparable, are not substantially different from the much larger number that named specific legislation, we omit from this analysis the 43 that answered questions on the basis of their views on legislation in general alone.

We set out a list of commonly raised problems that we had derived from a range of studies of the quality of legislation (presented in randomized order for each respondent) and asked respondents whether the problem applied to the legislation with which they were familiar (column 1 of Table 1). Over a quarter (26.4 per cent) expressed the view that none of the listed problems, or indeed any other problems, were associated with the quality of legislation; nearly three-quarters (73.6 per cent) pointed to problems of legislative quality. On average those who did find problems listed 2.6 problems each, although the average for all respondents (including those finding no problems) was 2.1. The degree to which the piece of legislation is reported to have problems certainly is likely to reflect the legislation chosen, about which more below. Here it is important simply to point out that, the choice of legislation might well affect the responses to our questions. As one respondent said:

> I wanted to flag that I would have filled the survey in differently if I'd picked another Act, e.g. the Strikes (Minimum Service Levels) Act 2023, which is notorious as a piece of skeleton legislation with details to be worked out in Regs.

Respondents were significantly more likely to find problems in the quality of legislation when asked about legislation in general, not just the legislation they had named (column 3 of Table 1).

Table 1: Perceived problems with the quality of legislation

	My chosen legislation		Legislation in general	
	A problem	Most significant problem	A problem	Most significant problem
	%	%	%	%
The legislation is unnecessarily unwieldy or complex	40.0	30.8	68.8	35.2
The wording of the legislation is ambiguous	37.9	16.2	54.3	15.7
Too much in the Act is left to be interpreted by secondary legislation, codes or other guidance and rules	33.0	17.2	57.1	24.7
The legislation is not updated often enough	19.5	9.3	24.9	7.5
The changes to the legislation are too frequent	14.1	2.7	21.9	3.0
The terms and definitions used in legislation are inconsistent	12.7	2.1	24.5	1.7
The purposes of the legislation are unclear	8.8	2.1	20.9	1.7
Other	23.0	15.1	10.7	4.2
No problems	26.4	NA	5.5	NA
Cannot say which is most significant	NA	4.5	NA	6.2
Total	215.4*	100.0	288.7*	99.9†
N	512	377	506	477

* Percentages add up to over 100 as multiple responses possible.
† Percentages do not add up to 100 due to rounding.

Only 5.5 per cent indicated that legislation was generally free from problems of quality; 94.5 per cent indicated one problem or more and of these the average number of problems indicated was 3.1. The divergence could reflect the question wording which was of necessity different: for the specific chosen legislation we were asking whether the legislative quality problem was found in it; for the general view of legislation we were asking whether the problem was 'commonly found'.

When we come to understand what the most significant problems of legislative quality might be, we have two ways of assessing these; by counting up the number of times that each problem is selected and by a separate question asking for the most significant problem. To some degree, the two different measures overlap. The most important problem found is that the legislation is 'unnecessarily unwieldy or complex'. For instance, one solicitor wrote

> the Act I referred to [Nationality Immigration and Asylum Act 2002] has to be read alongside the Immigration Rules (secondary legislation). Those Rules are not just massive, they are unruly and in some cases actually impossible to navigate/understand. Together it makes access to immigration law impossible to lay people or even non-specialist lawyers.

'Unwieldy and complex' was by far the most important quality of legislation issue whether one is looking at judgments on specific legislation or on evaluations of the quality of legislation in general.

Ambiguity in the wording of legislation and the perception that too much is left to secondary legislation are the next most commonly perceived problems among lawyers. These two problems, ambiguity and overreliance on secondary legislation, are close to level-pegging in being among the most important problems identified in the specific legislation selected by our respondents (16.2 per cent and 17.2 per cent) although as a cited problem ambiguity in legislation wording (37.9 per cent) is marginally above overreliance on secondary legislation (33.0 per cent). When we move to perceptions of legislation in general, the impact of secondary legislation and ambiguous legislative wording are both viewed by over half as problems (57.1 per cent and 54.3 per cent), although overreliance on secondary legislation is more widely seen as the more common single problem of legislation (by 24.7 per cent to 15.7 per cent).

These are not simply 'fringes of vagueness' issues in the sense that any legislation might be expected to contain words that in some circumstances might be ambiguous or that primary legislation generally sets out broad principles which are then of necessity specified in later secondary rules and other guidance. It appears more often to relate to perceptions of unnecessarily unhelpful forms of wording in the main legislation itself and/or inconsistencies or even contradictions between primary and secondary legislation and guidance. In fact the two issues of ambiguity and overreliance on secondary legislation might be closely related. Thus one respondent complained, with reference to the Building Safety Act 2022:

> The Act as drafted contained a number of ambiguities and was unclear—issues which then had to be rectified in hastily drafted secondary legislation. There are definitions in the Act which mean one thing in one part of the Act and something different in another section of the [same] Act. This makes it more difficult to interpret. There are definitions which are incomplete/not carefully drafted which leave too much room for interpretation or require secondary legislation to complete the definition. The legislation created issues because its effects were not properly considered—for example, the original definition given to a qualifying lease for the purposes of schedule 8 excluded leases which were subsequently extended. This caused a real headache in the market.

In the case of the Children Act 1989 one respondent wrote:

> As originally drafted the legislation was good, the product of thorough consultation etc. with one major exception (see below). Since then there have been a substantial number of amendments, this is not necessarily bad but some of the amendments are ill thought through. The legislation has been made more complicated, this is partly the problem of the judiciary. Also a major area, the proof of significant harm was not sufficiently clear—at least it took a number of trips to the HL/SC to clarify it. There is a huge amount of secondary legislation and guidance, some of which hasn't been kept up to date, and other parts are repeatedly amended. The DfE which now has responsibility for most of the secondary legislation and guidance does not have the staffing or skills to handle this.

The lack of updating comes fourth as a problem across all measures in Table 1: one in five (19.5 per cent) respondents feel it is a problem with their chosen legislation, though only one in ten (9.3 per cent) rate it as the most important problem; when looking at general legislation it is mentioned as a problem by under a quarter (24.9 per cent) and as the most important problem by under 1 in 12 (7.5 per cent). The remaining named problems–changes to the legislation being too frequent; the terms and definitions used in legislation being inconsistent and the lack of clarity over the purposes of the legislation–are recognized as problems, each by around 1 in 10 respondents with regard to specific chosen legislation or 1 in 4 with regard to general perceptions of legislation, but in all three cases by only about 2 or 3 per cent each as a main cause in both specific and general legislation.

The 'other' category in Table 1 contained no single strong contender for a separate problem that would come close to eclipsing any of the listed problems. One criticism that came up several times when respondents were asked to describe what they had in mind with 'other' problems of legislative quality was the problems of understanding for the lay person and/or non-specialist. With the Consumer Rights Act 2015 in mind one respondent pointed out that it

> is very poorly drafted in a number of different ways. It is overly long, with often prolix passages which work to impede understanding. The internal organisation of the Act is poor. The Act draws upon various different bodies of law which existed previously in both legislation (and here British and EU) and case law. There is no attempt to harmonise or combine effectively these pre-existing bodies of law. The results of these problems is that the Act is hard to understand. These defects are particularly inexcusable given that the Act is designed to protect consumers—the vast majority of which will not have any legal education or access to professional legal advice.

Some pointed to the general nature of the legislation as their 'other' category of problem of legislative quality. For instance, one argued that the Climate Change Act 2008

> sets out a number of targets in relation to greenhouse gas emission reductions... by placing obligations on the Secretary of State. The accountability mechanism for ensuring the Secretary fulfils these obligations is unclear and relies upon a set of political, rather than legal obligations. This brings into question the purpose and legal nature of the Act itself.

Another, referring to the Offences Against the Person Act 1861, points out that some sections are fine 'but other sections, notably ss58–60 are out of step with contemporary principles of women's rights and bodily autonomy'.

Others used the 'other' category to emphasize or amplify the listed criticisms of the quality of the legislation. For example, with respect to the Building Safety Act 2022, one (not the same respondent already cited above) argued that

> Cladding is not a defined term and there is no clear or universally accepted definition within the construction sector (and OED definitions are not helpful). There are several ways to construe the provision, which means there is uncertainty as to its effect.

Or a respondent wrote of the Pension Rules: 'The final version of the regulations differed significantly from the regulations that were consulted on and the final version simply does not work'. It has resulted in guidance from the Pensions Regulator to the effect that the legislation is not intended to mean what the clear wording actually says.

Are there any characteristics of our respondents that make them more likely to be critical of the quality of legislation? One way of assessing this parsimoniously is to look at the total number of criticisms of legislative quality mentioned by different kinds of respondents. We compared responses from different kinds of lawyers to the question of whether any of the listed problems were found in the respondent's chosen piece of legislation or were believed to be common in legislation in general (see Table 2). Men were not significantly more likely (defined as statistically significant at the $p < 0.05$ level—although the sample is not random we use measures of significance to illustrate the importance of relationships between different variables) to identify quality problems in legislation than women, or older respondents more likely than younger legal professionals. Respondents from the North (including the North East, North West, and Yorkshire and Humberside) were significantly more likely to find problems with the specific legislation that they named than respondents from London and the South East and other parts of

Table 2: Average number of legislative quality problems identified by key respondent groups*

		Problems with specific legislation	Problems with legislation in general	N†
Sex	Men	1.9	2.8	191
	Women	1.8	2.9	296
Age	50 and younger	1.8	2.8	262
	51 and older	2.0	2.9	225
Region	North	2.2	3.1	74
	London and SE	1.9	2.9	340
	Other places	1.5	2.6	87
Type of lawyer	Barrister	2.0	3.1	182
	Academic	2.0	2.9	152
	Solicitor	1.6	2.6	138
Legal specialism	Immigration, asylum and citizenship	3.5	3.3	21
	Criminal law	2.1	3.0	46
	Public and administrative law	1.7	2.8	100
	Commercial, company and corporate law	1.7	2.7	156
	Family and private client law, conveyancing	1.5	2.7	60
	Other	2.1	3.0	127

* Refers to respondents who named a specific piece of legislation only.
† N is minimum N in each category, actual N for columns 1 and 2 may be higher than this, usually by only one or two.

England, though the differences in judgments of quality for legislation in general were smaller between regions. Solicitors were significantly less likely to be critical of the quality of legislation than barristers or academics. Moreover, the area of law seems to have a statistically significant effect on judgments of legislative quality, with immigration lawyers being more critical of legislative quality than most others, with this critical view being shared, albeit to a lesser extent, by criminal law professionals.

One of the reasons for the focus in the design of our questionnaire on respondents' experience of legislation with which they are familiar was related to the possibility that in asking for opinions about legislative quality we might be inviting responses based on whether respondents liked the broad purposes of the law. To explore the relationship between views of the overall merits of the legislation as distinct from the quality of the legislation we asked five questions seeking respondents' opinions on the broad contours of the legislation chosen (see Table 3). Let us look at responses to these questions and make the assumption that respondents view the overall effect of the legislation negatively where it gives too much power to government, fails to protect the rights of citizens and consumers, does not provide an adequate framework for the resolution of differences, fails to provide support for those that need it and offers poor opportunities for redress. Are negative views on the broad contours of the legislation likely to lead to criticisms of legislative quality? To the extent that judgments of legislative quality are reflections of respondents' wider views on the merits of the legislation, we may question whether views on

'legislative quality' are not simply judgments on whether respondents like what the legislation does in general.

From Table 3, it can be seen that between one-fifth and just over a quarter of respondents agree with what we have classed as 'negative' evaluations for each of the five questions. It has to be borne in mind that the questions do not neatly reflect positive or negative attitudes. For instance, it is possible for a respondent to believe that a piece of legislation is broadly defective because it does not give enough powers to government or because it gives too many rights to citizens and consumers. However imperfect as a means of measuring positive or negative views, it is clear that these general views on the contours of legislation are related to perceptions of the quality of legislation. We can display this in a variety of ways.

Perhaps the easiest is to present the average number of quality issues reported in the chosen legislation by answers to the questions in Table 3. In Table 4, we merge the 'neither' and 'na' categories and concentrate mainly on the differences between those who are positive and negative on each question, recategorizing the 'agree/disagree' answers in Table 3 accordingly. Those expressing positive views about the broad contours of the legislation are likely to find fewer quality problems. Those who feel the legislation gives too much power to government are likely to mention 2.9 quality problems on average, while those who disagree with this proposition find only 1.1; similar differences between those who expressed what we have classed as positive and negative attitudes to the broad contours of legislation are found for the other questions we used to assess general views on the

Table 3: General views on respondents' selected legislation

	%	%	%	%		
	Agree	**Disagree**	**Neither**	**NA**	**Total N**	
Gives too much power to government	19.3	34.3	20.9	25.5	100.0	513
Protects the rights of citizens and consumers	43.6	21.9	20.9	13.5	99.9*	511
Provides an adequate framework for resolving differences	43.0	25.4	20.7	10.9	100.0	512
Fails to provide support to those who need it	26.1	25.3	22.0	26.7	100.1*	510
Offers adequate opportunities for redress	40.8	26.9	19.2	13.1	100.0	510

* Percentages do not add up to 100 due to rounding.

Table 4: Mean number of quality problems found in chosen legislation by attitude to broad contours of legislation

	Views on broad contours generally …			
	Negative	**Positive**	**Other**	**N**
Power to government	2.9	1.1	2.1	509
Protecting rights	2.9	1.4	1.9	507
Framework for resolution	2.9	1.1	2.1	508
Support for those in need	2.7	1.1	1.9	506
Redress of grievance	2.8	1.3	1.8	506

merits of their legislation. Another measure of the same thing is to look at the probability of respondents expressing the view that their legislation did not have any significant quality problems (26 per cent see Table 1); of the 264 respondents who expressed a negative view once or more in the contours of legislation questions set out in Table 3, just over 1 in 10 (11 per cent) believed there were no significant quality problems with their chosen legislation, for the 242 respondents who expressed no negative views nearly half (44 per cent) were likely to indicate no significant quality problems. A third measure is the correlation coefficient between the total number of negative views expressed by respondents in Table 4 (a maximum of 5) and the number of separate problems of legislative quality reported of +0.48, statistically highly significant (below the $p < 0.001$ level).

It is important to point out that while broad views of the contours of legislation are related to judgments about legislative quality, they do not determine them. A correlation of +0.48 is both strong and highly significant but still leaves much of the variation in respondents' judgments of legislative quality unexplained—77 per cent if one follows the convention of squaring the correlation coefficient to arrive at such a number. Even those with the positive views of legislation in each category in Table 4 find on average just over one defect related to legislative quality, and those with neither positive nor negative views around two.

It is, of course, to be expected that there should be some relationship between the view of legislative quality and broader views about the merits of legislation. They may even be essentially inseparable. One respondent wrote 'Problems with the quality of legislation are more often due to poor policy than poor drafting'. Moreover, that the broad contours of a particular piece of legislation are considered unsatisfactory may be related to the belief that key provisions are set out in convoluted terms or spread across a variety of different bits of primary legislation, regulations, and guidance. One respondent detailed a range of problems surrounding the Working Time Regulations of 2024—the former EU legislation brought into UK law after Brexit:

> As a result of last-minute promises/concessions made by Kemi Badenoch MP to secure the parliamentary passage of the REULA [Retained EU Law (Revocation and Reform) Act 2023] the government needed to issue amending regulations to convert EU rights into domestic law. Thus, around six weeks before Christmas, with no advanced warning, we were faced with a complex set of amending regulations which radically reformed the WTR's [Working Time Regulations'] provisions regarding annual leave and holiday pay. … As this legislation was introduced under the REULA, it did not go through a full parliamentary process. I watched the parliamentary 'debate' (if you can count 12 people in a backroom of parliament with a time limit of one hour a debate). … DBT [Department for Business and Trade] know their amendments to the WTR have caused utter confusion, have glaring loopholes … and are in parts simply unworkable. … The government's own guidance was amended on 1 April to completely reverse some of the points made in its earlier guidance (specifically around part-year or term time only workers) after it realised the chaos it was causing in the education sector. The amended guidance acknowledges loopholes (see for example what it says about irregular hours workers working less than four hours per week who lose their entitlement to paid holiday due to rounding provisions). The guidance also remains incorrect at various points (so an employer following the guidance will breach the law). … The amended WTR is now in an utter mess, with many employers deciding they will have to honour the spirit of the legislation, rather than its specific terms. Satellite litigation will no doubt keep me in work for many years to come!

And yet another wrote:

> The main difficulties in my view are ones of substantive policy rather than the technical prowess with which the legislation implements it. The 'quality' of legislation in the sense that

> matters is inseparable from the substantive justice or efficiency or wisdom of the scheme it implements; it cannot be assessed as a purely technical enterprise.

From the evidence we have it would be hard to suggest that conventional left-right partisan or ideological standpoints underpin respondents' views on legislation in a way that shaped views both on the quality of legislation and its broad contours. All told there were 598 separate written comments from respondents writing an average of 47 words in each comment. Reading through them all it would be hard to describe any of them as clear reflections of an ideological opposition to what the legislation was trying to do or disagreement with the programmatic aims of the government that introduced it. We will see below that 'political' uses of legislation are seen by many as a cause of legislative policy problems, but the types of general criticism of government as regards law and law-making tend to refer hardly, if at all, to programmatic ideological issues but rather to broad attitudes to law and law-making. For instance, one respondent argued:

> In the Blair years (the earlier part of my career), it [legislation] was generally quite good. There was a lot of consultation (to flush out issues/mistakes/loopholes) and I understood that specialist drafts people were used (familiar with the area of law). That all changed in 2010 when the coalition took power and the quality of employment legislation is now very poor. Honestly, a law student on work experience could probably do a better job. It's appalling!

Another wrote:

> The primary defects with legislation are political rather than technical. The drafters are skilled and legislation has over time become more readable; the Parliamentary Counsel are doing their best. The problems are largely substantive policy ones that derive from a government determined to shield itself from scrutiny in the courts and insisting on legislation to codify this agenda.

Moreover, even where a respondent felt that government should 'do less' the direct ideological tone is far less pronounced, if at all detectable, than the desire to produce 'good law':

> Government needs to consider that less is often more. That means a paradigm shift in thinking from the top down, Government knows best, preachy type approach to higher quality but lower levels of regulation, with the emphasis on enforcement when it is breached to provide quick redress, rather than the current emphasis on huge regulation, huge regulators, huge rule books and inconsistencies which get exploited, dragging out and muddying the redress problem and placing massive compliance burdens on business, which places an unresearched (but huge) cost upon the public (these costs are passed on in prices). Meantime the regulators tie themselves up in their own red tape.

Several comments developed the notion that the general attitude of government to legislation affected the substance and quality of laws. For example, one wrote of 'nakedly political statement[s] dressed up as law. Recent immigration and asylum law has evidence of the latter becoming more prevalent'.

CONSEQUENCES OF POOR LEGISLATIVE QUALITY

We asked respondents what were the specific problems caused by the defects in legislative quality that they had identified earlier. The two most important consequences from the list we offered (see Table 5) were that of creating extra work in trying to work out what the legislation means and compromising the quality of the advice lawyers can give their clients. Over half

the respondents chose these both as main consequences of quality problems (72.1 per cent and 54.4 per cent, respectively) and, when added together, as the most serious consequence of quality problems (28.4 per cent and 25.7 per cent, respectively). The proposition that poor quality creates loopholes in the law (40.3 per cent seeing this as a consequence and 14.9 per cent as the most serious consequence) and generally slowing things down (34.5 per cent and 6.2 per cent) were also selected by respondents as consequences.

There are two main distinctions between our academic sample and our practitioner sample in responses set out in Table 5. Academics were substantially more likely (28.1 per cent of the 121 academic respondents answering this question) than practitioners (8.4 per cent of 249 respondents) to believe that 'creating loopholes' was the most serious problem created by quality issues and proportionately fewer academics (15.7 per cent) than practising lawyers (30.5 per cent) believed that quality problems 'compromised the quality of advice', possibly because academics are far less frequently involved in giving such advice. Other differences were much smaller and well within conventional sampling error estimates which we here use as an indicator of the strength of differences between the groups.

The relatively large proportion (29.2 per cent) of respondents in Table 5 mentioning 'other' consequences allows us some more insight into the consequences since the 110 respondents choosing this option also wrote what these 'other' consequences may be. Many of them offered developments and qualifications of some of the points listed in Table 5. But we classified them into nine different groupings. A grouping (19 respondents) that emphasized the general difficulty of knowing the law ('Schedule A1 (the DOLS regime—Deprivation of Liberty Safeguards) is too complex for social workers, who are the professionals who need to work with it'); a second grouping (19 respondents) pointing to the general uncertainty quality problems create (e.g. 'Increases uncertainty for those wanting to undertake assisted reproduction/surrogacy arrangements'); a third (17 respondents) emphasizes the costs imposed by the uncertainty, many stressing the problem that it caused unnecessary additional litigation (e.g. 'Creates litigation, including up to the Supreme Court. This creates uncertainty for those affected by the law, and potentially the time and expense of further applications or litigation in their own cases as the Act is reinterpreted as it goes up the court system'); a fourth (17 respondents) points to unsatisfactory or unjust outcomes the quality problems generate ('There are a lot of (in my view) unnecessary

Table 5: Consequences of legislative problems

	A problem	**Most serious**
	%	%
Creates extra work trying to determine precisely what the legislation is saying	72.1	28.4
Compromises the quality of advice lawyers can dispense to their clients	54.4	25.7
Creates loopholes that can be exploited	40.3	14.9
Makes things move more slowly than they should	34.5	6.2
Other problems	29.2	20.0
None of these	1.9	NA
Cannot say	NA	4.9
Total	232.4	100.1*
N	377	370

* Percentages do not add up to 100 due to rounding.

complications relating to purely procedural matters (e.g. defining time limits for certain actions and extending those time limits) which have very little impact on third party rights but, due to the complexity of the legislation can be misunderstood which could, in the worst case, lead to the patent applicant losing rights. This seems disproportionate'). Other problems raised covered: the amount of discretion given to the courts or regulators (10 comments) such as 'Courts routinely fail to interpret it in a consistent manner'; the impact on clients (9 comments) including 'There is too much uncertainty in relation to the main thing the client wants answers to'; and problems of enforcement (8 comments) such as 'the offences don't get charged when they should'. Eleven comments fell into a residual uncategorized group including longer explanations such as:

> The main difficulties in my view are ones of substantive policy rather than the technical prowess with which the legislation implements it. The 'quality' of legislation in the sense that matters is inseparable from the substantive justice or efficiency or wisdom of the scheme it implements; it cannot be assessed as a purely technical enterprise. Here the JRCA [Judicial Review and Courts Act 2022] threatens the rule of law by shielding executive decision-makers from proper remedies and largely ousting the High Court's jurisdiction in respect of the Upper Tribunal's permission-to-appeal decisions.

There was also the terse explanation: 'lack of alignment with analogous EU law'.

CAUSES OF POOR LEGISLATIVE QUALITY

We offered respondents a list of commonly argued reasons for problems with legislative quality (Table 6). It can be seen from Table 6 that respondents chose to offer their own responses than rely on the list of options we provided more in this question than on others; this is seen especially in the 24.9 per cent who said that their own 'other' answer was more important than the answers given in our list. We will explore this 'other' category below. However, of the listed

Table 6: Perceived causes of problems with chosen legislation

	One cause	The most important cause
	%	%
It was written by people without sufficient expertise in the area	30.9	11.2
Additional regulations, amendments, other changes have cluttered it up	30.1	17.3
It was designed primarily for political rather than legal purposes	28.5	15.1
It has been left to become out of date	22.9	11.2
It was too hastily prepared	23.1	5.0
Government was unclear on what it wanted to achieve	21.3	6.4
It has suffered from party political changes in direction	18.1	3.4
The consultation on it was poor	14.6	2.8
Other	29.0	24.9
None of these	4.8	NA
Cannot say	NA	2.8
Total	222.3	100.1*
N	376	358

* Percentages do not add up to 100 due to rounding.

causes, four seem to be among the most important. Taking the 'most important single cause' as the main indicator, 17.3 per cent see the main problems as being caused by additional regulations, amendments and other changes. Just behind this (15.1 per cent) came the perception that government was creating the law for 'political purposes' rather than legal purposes, followed by the proposition that the law had been left to become out of date (11.2 per cent) and that it had been written by people without sufficient expertise in the area (also 11.2 per cent). The differences between our academics and practitioners were relatively small in the responses set out in Table 6. The largest difference was in evaluating the importance of the 'law not written by people with expertise' response which was regarded as a more important reason for legislative quality problems (14.3 per cent) among practitioners than academics (5.0 per cent).

As with Table 5, and as already indicated, responses to the question in Table 6 contain a substantial 'other' category, with 24.9 per cent choosing the explanation they provide for shortcomings in legislative quality to those on the list. As also with Table 6, the write-in responses in the 'other' category to some degree develop and qualify some of the ideas set out in the list presented to respondents as set out in the same table. Of the 109 respondents giving 'other' reasons in Table 6, 32 mentioned some form of deficiency in the way the legislation was put together such as 'Ambiguities exist in the wording because of certain imprecisions in drafting' or 'It was drafted by people who knew too much. Their preconceptions are hardwired into the Act and they assumed that so much simply did not need to be made clear, so the drafting is Delphic'. Some form of political intention was behind 19 of the responses here including 'It was prepared as a knee jerk without careful thought as to overlap with existing legislation which in many respects was ample. A feature of the present [then Conservative] Government throughout its term' or 'I think there are inherent limitations to what transformative pieces of legislation can achieve if the government of the day lacks enthusiasm for their robust implementation. Acts that require positive action from government struggle more to retain momentum than Acts that essentially require the government to abstain from certain actions'. Fourteen point to a failure to reform or update the legislation such as with the respondent who believed it 'has

Table 7: Remedies for legislative problems

	Would improve things	Best single measure
	%	%
Government paying more attention to the views of specialist lawyers	64.8	32.3
More consultation over legislative drafting	54.1	19.2
More resources given to tidying up the law through consolidation	45.9	15.1
Impact assessments focussing on quality issues	34.7	8.7
Better arrangements for parliamentary post-legislative scrutiny	34.1	7.3
Instructions given to legislative drafters made public	28.0	3.5
More effective parliamentary scrutiny	22.9	6.1
Government department reviews of legislation	14.4	0.9
None of these	8.3	NA
Cannot say	NA	6.8
Total	307.2*	99.9†
N	375	344

* Percentages add up to over 100 as multiple responses possible.
† Percentages do not add up to 100 due to rounding.

been overtaken by technological changes' or 'The effect of successive consolidation of housing and landlord and tenant law statutes is to bring and run together a myriad of concepts which have fine distinctions between them, rather than replacing them with a single, comprehensive replacement statutory code, as has been done in Wales with the Renting Homes (Wales) Act 2016'. The remaining substantial categories of explanations had fewer than ten responses apiece putting them in the top reason for legislative quality problems. They included that complexity/ambiguity was unavoidable (8 responses), court decisions and case law caused either inconsistency or confusion (7) and Brexit (6). Eight used the space to say they did not know. There were a further 15 responses that did not fall easily into a category such as 'It is not that the quality of consultation might be an issue, but rather whether systemic imbalances and practical issues that might have been raised by social partners or directly affected actors are seriously considered and implemented into law'; 'It was created to (mostly) give effect to the provisions of the European Patent Convention which contains similar flaws' or 'The Act remains fundamentally sound. On the whole, it is a robust piece of legislation. More issues arise with the relevant sentencing guidelines and interpretation of those provisions'.

REMEDIES FOR PROBLEMS OF QUALITY

We gave respondents a choice from a list of possible reforms that might have helped avoid quality problems derived from a range of studies and reports. These are outlined in Table 7. Perhaps unsurprisingly, the most important single remedy was to ensure that the government pays more attention to specialist lawyers—64.8 per cent felt it would have improved the quality of legislation and 32.3 per cent that this was the one measure that would have made the biggest improvement to the quality of legislation with reference to the specific legislation they were referring to in their answers. Greater consultation in the drafting process, as opposed to simply consultation over the policy involved in developing the legislation was the second biggest improvement on our list (54.1 pr cent feeling it would have improved things and 19.2 per cent believing it to be the single most positive measure) followed by the devotion of more resources devoted to tidying up and consolidation (45.9 per cent and 15.1 per cent). Other measures—impact assessments, post-legislative scrutiny, publicizing legislative drafting instructions, greater parliamentary scrutiny, and government departments conducting reviews of their own legislation had pride of place among fewer respondents.

While one might expect the remedies suggested for the problems to be linked to the problems identified with the legislation, this was the case only to a limited extent. Because of the numbers of respondents involved, the linkage between diagnosis and cure can only be adequately explored in the case of the top three cited problems (unwieldy or complex, ambiguous wording, too much left to secondary legislation, see Table 1). Paying attention to specialist lawyers is the most frequently selected single option to remedy those selecting each of the top three cited problems, though it is more popular among those citing ambiguous wording as the main problem (48.1 per cent) than those citing too much being left to secondary legislation (35.6 per cent) or complex and unwieldy legislation (29.0 per cent). Those citing unwieldiness and complexity as the main problem of the legislation they refer to were more likely to recommend devoting greater resources to consolidation (25.8 per cent) than those citing ambiguous wording (5.2 per cent) or the reliance on secondary legislation (10.2 per cent). Such differences, however, in the context of the number of respondents involved, are not large. The differences between our academic and practitioner respondents were also rather slight with the one exception that practicing lawyers were somewhat more likely to consider more involvement by specialist lawyers in law-making (38.3 per cent) than academics (21.2 per cent) as a remedy. Academics were also more likely to think that better consultation over drafting (23.9 per cent)

and more parliamentary scrutiny would be the best way to ensure legislative quality (10.6 per cent) than practitioners (17.2 per cent and 4.0 per cent, respectively).

CONCLUSION

Before returning to the negative aspects of perceptions of legislative quality among our respondents it is important to highlight the range of positive perceptions. It has to be noted that over a quarter of respondents reported there were no significant problems of quality in the legislation (Table 1). If we take into account that solicitors are heavily underrepresented in our sample, and that they are less likely to report problems of quality than the heavily overrepresented barristers and academics, then this figure is likely to overestimate perceptions of problems of quality among legal professionals. In addition, we had several comments along the lines that 'Fortunately, most of the areas in which I work have tolerably well-drafted legislation. Drafting legislation is a difficult exercise and I admire those who undertake it'. Moreover, some of the central figures responsible for the quality of legislation come in for significant praise even among those who are otherwise critical of legislative quality. Parliamentary drafters come in for praise: one respondent simply states 'I generally think the quality of drafting for Acts of Parliament is high, especially compared with other jurisdictions I'm familiar with (Canada, the US). It has also improved dramatically compared with, say, 40 or 50 years ago'. And the Law Commission is also a frequent target for praise, as one respondent suggested that 'legislation which follows Law Commission reports tends to be more clearly drafted and coherent than other legislation'.

Yet however one assesses it, there is clearly a perception that legislation in the UK, at least among significant numbers of English legal professionals, suffers from defects in its quality. While we noted the problems of defining what 'quality' is in an abstract sense, three-quarters of our sample had little difficulty in finding at least one measure against which the quality of legislation might be considered defective. Such criticisms were not simply elaborations of the general 'fringes of vagueness' argument that no laws were ever likely to be written in a way that admits no vagueness or ambiguity and indeed that it would probably be harmful to make such a counsel of perfection the ultimate objective of law-making. The main criticisms of legislative quality were not obviously of the kind that is inevitable given the nature of law and its interpretation.

If we look at the top three criticisms of quality, they appear to be related less to the problems inherent to specifying norms and procedures for a near infinite variety of contexts and circumstances and more to the way in which this is pursued in the development of UK legislation. Sir William Dale pointed out that while it is 'reasonable to expect certain qualities of style' in legislation, including 'neatness, naturalness, directness, persuasiveness, clarity, … breadth and gravity', UK statutes

> do not, as a general run, display these qualities: rather are they excellent examples of the baroque—the florid, the involved, the opaque—unkindly defined by a modern writer (though there is no reason to think he had United Kingdom statutes in mind) as 'that style which deliberately exhausts (or tries to exhaust) all its possibilities and which borders on its own parody'.[11]

Most of the kinds of problems Dale identifies tend to be reflected in the range of answers given by our respondents as well as by the comments they added by way of elaboration: prolixity, complexity, bad arrangement (which includes 'disconnected statements which have no meaning for the reader (whether lawyer or layman) until he has grasped what is in the rest of the Act'), particularity (an uneven over-specification of detail) and pragmatism.

Pragmatism, by which Dale means 'tackling the problems as they arise, rather than thinking out a principle', might be considered a virtue, but it appears to be at the heart of many of the

[11] William Dale. 'Statutory Reform: The Draftsman and the Judge', 30(1). *Int Comp Law Quarter* 141 (1981).

critical views about complexity, ambiguity and the reliance on secondary legislation that form the top three problems of quality among our respondents. It 'leads to piecemeal results; and it ought not to be accepted in any serious consideration of the qualities of good legislation. It is the work of the cobbler rather than the creator'.[12]

We have chosen to emphasize Dale's shoemaker metaphor in the title for this article because it appears at the heart of many of the views expressed in answers to the survey and in the written comments. Indeed, as has already been suggested, there is a relationship between the key sources of perceived lower quality of legislation through the piecemeal way it is put together. One respondent quoted verbatim the words of Lady Justice Rose in R v Bradley 2005 including the observation that 'the provisions of the Criminal Justice Act 2003, which we have had to consider on this appeal, are, as is apparent, conspicuously unclear in circumstance where clarity could easily have been achieved'. The Court could not easily, she added, fulfil its duty 'loyally to glean from the statutory language, if it can, Parliament's intention' although did its best 'in the face of obfuscatory language'. Even the senior judge in this case had to adopt the mentality of the shoemaker, since

> the judiciary and, no doubt, the many criminal justice agencies for which this Court cannot speak, must, in the phrase familiar during the Second World War 'make do and mend'. That is what we have been obliged to do in the present appeal and it has been an unsatisfactory activity, wasteful of scarce resources in public money and judicial time.

Piecemeal pragmatism meant for one respondent that the legislation on compulsory purchase

> is widely scattered, between the Compulsory Purchase Act 1965, the Acquisition of Land Act 1981, the Land Compensation Act 1961, the Housing and Planning Act 2016, specific authorising acts (such as the TCPA 1990 or Highways Act 1980), a swathe of secondary legislation such as the Compulsory Purchase (Prescribed Forms) (Ministers) Regulations 2004 (as amended in 2015) and the Compulsory Purchase (Inquiries Procedure) Rules 2007.

Along with national guidance and specific circulars and case law this scattering creates 'unnecessary complexity, together with the huge amount of outdated and spread out legislation' increasing 'the burden on the public purse. It increases disputes, and the need for exceptional specialism leading to even higher costs'. An immigration lawyer points out how this pragmatism works in her area: the 'endless changes, made possible by "flick of a switch" change to "guidance" on websites' makes

> it impossible to work in this area of law and keep up. … Rules are referred to as 'guidance' which confused the issue as there is also 'guidance' to caseworkers. Which is not law but is treated as such by Home Office caseworkers and is not accessible to the public.

All this 'requires immense amounts of non-chargeable work to be done by lawyers, seeking to second guess from experience the very many reasons that the HO caseworkers can refuse applications'.

The amendments, changes to rules, guidance as well as secondary legislation in many areas of legal work all add to this creation of clutter and inconsistency. One respondent wrote of the 1996 Employment Rights Act:

[12] Dale Statutory Reform 152.

> in the years since its introduction, successive amendments and updates have diminished the initial relative consistency of this Act, and have contributed to rendering it unduly complex. Some of the key definitions in the Act are also not fully aligned with other definitions of similar concept in other labour law statutes (eg the "worker" definition in s. 230(3) is different to the one in 296 TULRCA [the Trade Union and Labour Relations (Consolidation) Act] 1992—without much reason behind it).

The ability to make and change law on a piecemeal and pragmatic basis may also be behind one of the most commonly accepted causes of poor legislative quality: making or changing laws for party political reasons (see Table 6). Few would question the political basis of law-making as thoroughly legitimate and indeed expected in a democratic system. It is rather the absence of attention to the consequences of politically inspired changes on existing bodies of law that appears to be the main problem associated with 'politically inspired' legislation. One respondent wrote of the increasing tendency to develop 'performative legislation … designed more to make political points than to reshape the law in a particular, coherent direction. Examples include the Bill of Rights Bill (withdrawn because of internal party-political disruptions) and the Illegal Migration Act 2023'. Another pointed to substantive problems arising from the over-specification of detail in the Serious Crime Act 2015 which sought to 'deal with a specific item on the political agenda when statute already covers all of the conduct specifically prohibited'. Another variant of the political uses of pragmatism in law-making is suggested by the respondent who argued that the 'Retained EU Law (Revocation and Reform) Act 2023 is a highly political piece of legislation and there is a deep inconsistency between the first part of the statute (retained EU law) and the second, turning off supremacy/general principles/the sweeper clause. This has led deep uncertainty over the fate of the pre-Brexit case law'.

The pragmatism of the cobbler in making, updating, and changing legislation has much to commend it in terms of flexibility and responsiveness to political leadership. Moreover, it would be absurd to end this exploration of perceptions of quality problems in legislation on a note that suggests that the UK should develop the kinds of constitutional, legal, and cultural norms that make the kind of pragmatism found in the UK approach to law-making difficult if not impossible in countries such as Sweden, France, or Germany. A more reasonable interpretation of the findings is that if one is to be able to make pragmatic piecemeal changes to legislation and realize the political and possibly policy benefits from it, one needs to devote more attention to the consequences of these changes for the broader body of law it affects. That is why the top three recommendations for dealing with quality problems (Table 7) are all pointing in the same direction: making sure that attention is paid to specialist law professionals with expertise in the area; either to clear up the problems created by an already unruly body of law through greater consolidation or through greater involvement in the creation of new laws. Cobbling is in itself not the problem, rather it is cobbling without quality control.

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APPENDIX

The survey was administered online with emails sent directly to the business/university email addresses of potential respondents. Several constraints mean that this was not a random sample of legal professionals in England. The sources we used to derive email addresses were essentially convenience-based. We searched the Legal 500 database for names and email addresses of barristers and solicitors. We supplemented this list with names of solicitors gained from large employers—law firms, private companies, public authorities, and non-profit organizations—using

the Law Society's 'Find a Lawyer' index. This index did not contain the email addresses of solicitors and for these entries, we had to guess email addresses using the known conventions for that organization. For our academic sample, we derived our sample from the websites of large law schools which gave email details of their members online (Cambridge, Durham, King's College London, Leeds, Liverpool, London School of Economics and Political Science, Manchester, Newcastle, Oxford, Queen Mary University of London, Reading, Sheffield, University College London, York).

The academic mailings were sent out in March 2024 and we sent out two reminders. Contacting the practising lawyers was less straightforward. An early test emailing of 80 solicitors in January 2024 suggested that a large proportion of our emails were not reaching the intended addressees; non-delivery notices suggested many requests were being treated as spam, and many more may have been treated as such without informing us. We received just one response. Around half of the 80 in the test mailing went to potential respondents in the same law firm. These problems alerted us to the need to develop a strategy for contacting respondents aimed at minimizing the chances of being caught in a spam filter. We adjusted the text of the email to avoid known spam triggers and divided the 7000 names and email addresses in our database into batches that kept the number of respondents in any one firm to a small number and sent out batches most weekdays between February 12th and March 30th. We sent reminders to the early batches but found our reminders were triggering spam filters so abandoned sending reminders in favour of the apparently more productive practice of sending out new invitations. We ran out of time by late March and sent out requests to only 5240 practising lawyers.

The response rate, at 11 per cent, for our survey was low and such low responses must raise the possibility of bias in the results, though they do not make it a foregone conclusion. The response rate was higher for our mailing to academics (17 per cent) than practising lawyers (8 per cent). While it does not at all address the problem of bias arising from low response rates to say it, our response rate is in line with the low rates found among lawyers in general and in England in particular. Even in surveys sponsored by the professional associations of lawyers, the response rates are often below 25 per cent for solicitors and barristers. The Law Society-sponsored survey of Practising Certificate holders, mainly solicitors, in 2019 found that only 8 per cent (751) of their sample of 9508 responded to an online survey[13] not including undelivered invitations. The Bar Council's 2021 survey of barristers received a higher response rate, 20.6 per cent, with the 16,900 members it surveyed in its *Barristers' Working Lives 2021* study, though the 3479 responses included an unspecified number of 'usable partial returns'.[14] Since compliance with ethics requirements for our survey meant that only those who reached the end of the whole survey could count as responses, 'usable partial returns' for our survey constituted over 300 responses and would have pushed our response rate up to 14 per cent. Telephone questionnaires have tended to produce higher response rates, slightly over double (18.4 percent or 751 of 4090) in the 2019 Law Society survey.[15] However, very low response rates are not unusual in email-based surveys of lawyers in England, Scotland, and elsewhere.[16] It might be expected that surveys with professional association sponsorship tend to do better, a 2023 survey

[13] Jonathan Smetherham. 'PC Holders Survey. Technical Report Assessing the Feasibility of an Online Survey', London: Future Thinking (Prepared for Law Society, October 2019), slide 9.

[14] Matthew Williams and Pike, Geoff. *Barristers' Working Lives 2021 A Report for The Bar Council* (Brighton: Institute For Employment Studies Report, 2021) 567: 8.

[15] Smetherham 2019 'PC holders survey', slide 10.

[16] See Law Society of Scotland 'Profile of the Profession 2023 Findings' https://www.lawscot.org.uk/research-and-policy/equality-and-diversity/research/profile-of-the-profession/, accessed 15th April 2024 and D. Smith, K. Borders, K. Katsikas, and T. Maschi 'Holistic Defense: Attorney Perception and Social Work Integration in the Courtroom', 7(2) *J Forensic Social Work* 75 (2021).

of English solicitors sponsored and administered by the Law Society achieved 15 per cent. Yet not all such surveys fare so well—a Bar Standards Board survey on ethnic diversity reached only 5 per cent[17], a 2019 Law Society-sponsored survey of solicitors on AI had responses from 4 per cent of its sample[18] and professional body sponsorship did not help Moorehead, Vaughan, and Godhino get above 2 per cent of solicitors to reply to its survey on ethics.[19]

[17] Steven Vaughan. '"Prefer Not to Say": Diversity and Diversity Reporting at the Bar of England & Wales', 24(3) *Int J Leg Prof* 207 (2017).
[18] J. Armour, R. Parnham and M. Sako, M. 'Unlocking the Potential of AI for English Law', 28(1) *Int J Leg Prof* 65 (2020).
[19] Richard Moorhead, Steven Vaughan and Cristina Godinho *In-House Lawyers' Ethics. Institutional Logics, Legal Risk and the Tournament of Influence*. (Oxford: Hart, 2021).