

Protecting judicial independence

Judicial independence is essential to the rule of law. Judges are independent of the other branches of government, Parliament and the Executive (Government Ministers and government departments), and independent from one another. Judicial independence means that the judiciary can carry out its role of interpreting and applying the law, without being influenced by any person.

The rule of law is strengthened when our judiciary is independent, and free to interpret and apply the law fairly, impartially, and without political interference. This benefits everyone who may need to access the courts when a legal issue arises.

It is not just deliberate interference in the judiciary's work that can undermine judicial independence and the rule of law. Incorrect or unfair public or political criticism of the judiciary can erode public confidence, and risks pressuring the judiciary to depart from previous decisions or to adopt positions that are more acceptable to the Government.

What we found

- Threats to judicial independence were raised by some of those who we spoke to and surveyed. The Law Society has also observed recent comments and criticisms of the judiciary, which go further than criticism or debate about the substance

of court decisions. Some of these comments have been made by Ministers and members of Parliament, and these comments in particular can undermine the separation of powers, public confidence in the judiciary, and the rule of law.

- This is a challenge that has been observed around the world. The International Bar Association's 2024 survey of legal professionals from around the world also identified threats to the independence of the judiciary as one of the main challenges to the rule of law. Internationally, it has also been observed that some of the criticisms directed at judges appear to come from misunderstandings about the role of the courts and judges, particularly in common law jurisdictions such as our own.

What can be done about it

- Judges cannot respond publicly to criticisms, and so it falls on others, including members of the profession and organisations such as the Law Society, to speak in defence of the judiciary where appropriate.
- The report also recommends the development of authoritative and accessible guidance about the role of our courts and judges, to help dispel some of the misconceptions about the role of the judiciary.