

*Atlantic  
Ocean*

*North Sea*

*Bay  
of  
Biscay*

# **NATIONAL INTEGRITY SYSTEM ASSESSMENT UNITED KINGDOM**

## **CORRUPTION IN THE UK: PART THREE**

*Black Sea*

*Mediterranean Sea*

Transparency International (TI) is the global civil society organisation leading the fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, TI raises awareness of the damaging effects of corruption and works with partners in government, business and civil society to develop and implement effective measures to tackle it

Transparency International UK (TI-UK) is the UK chapter of TI. We raise awareness about corruption; advocate legal and regulatory reform at national and international levels; design practical tools for institutions, individuals and companies wishing to combat corruption; and act as a leading centre of anti-corruption expertise in the UK.

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1. Interviewees who asked to remain anonymous have not been named; their current or former positions are: senior officer in Confederation of British Industry (CBI); Charity Commissioner; senior police officer; senior law enforcement official.

# 1. ABOUT THE NIS ASSESSMENT

A series of high profile corruption cases in the private and public sectors has laid bare the urgent need to confront corruption in Europe. Corruption undermines good governance, the rule of law and fundamental human rights. It leads to the misuse of resources, cheats citizens, harms the private sector and distorts financial markets. Seventy-eight per cent of Europeans surveyed for the EU Commission's 2009 Eurobarometer believed that corruption was a major problem for their country.

This report is part of a pan-European anti-corruption initiative, supported by the DG Home Affairs of the European Commission. The initiative looks to assess systematically the National Integrity Systems of 25 European States, and to advocate for sustainable and effective reform, as appropriate, in different countries.

The National Integrity System (NIS) assessment approach used in this report provides a framework to analyse the effectiveness of a country's institutions in preventing and fighting corruption. The assessment has a strong consultative component involving the key anti-corruption actors in government, civil society, the business community and other relevant sectors with a view to building momentum, political will and civic demand for relevant reform initiatives.

The NIS concept has been developed and promoted by Transparency International as part of its holistic approach to countering corruption. A well-functioning NIS provides effective safeguards against corruption as part of the larger struggle against abuse of power, malfeasance, and misappropriation in all its forms. However, when these institutions are characterised by a lack of appropriate regulations and by unaccountable behaviour, corruption is likely to thrive with negative knock-on effects on the goals of equitable growth, sustainable development and social cohesion. Strengthening the NIS promotes better governance across all aspects of society, and, ultimately, contributes to a more just society overall.

The UK NIS country report offers an evaluation of the principal institutions of governance responsible for enhancing integrity and combating corruption in the UK. These governance institutions are generally considered to be comprised of a minimum of 12 "pillars":

Legislature	Executive	Judiciary
Public Sector	Electoral Management Body	Ombudsman
Law Enforcement	Audit Institution	Political Parties
Media	Civil Society	Business

*A well-functioning NIS provides effective safeguards against corruption as part of the larger struggle against abuse of power, malfeasance, misappropriation in all its forms*

A thirteenth potential pillar, Anti-Corruption Agency, has not been chosen for research in this report. The assessment examines both the formal legal framework of each pillar, as well as the actual institutional practice, thereby highlighting discrepancies between the formal provisions and reality on the ground. Each pillar is assessed via a set of indicators which measure the following features:

Capacity	Governance	Role within the governance system
Resources	Transparency	Pillar-specific indicators
Independence	Accountability	
	Integrity Mechanisms	

In order to take account of important contextual factors, the evaluation of the governance institutions is embedded in a concise analysis of the overall political, social, economic and cultural conditions in which these governance institutions operate. In addition, the assessment is based on a holistic approach to preventing corruption, since it looks at the entire range of relevant institutions and also focuses on the relationships among them.

The research methodology uses a two-step approach. In a first step, qualitative information from legal documents, key informant interviews and secondary data sources is collected by a lead researcher in-country and structured along the set of indicators for each pillar. Based on the collected qualitative evidence, the second step consists of scoring these indicators on a five-point scale, in order to provide a quantitative summary assessment of the presented data. The scale applied includes five possible values – 0, 25, 50, 75 and 100. The score for each of the three dimensions (capacity, governance and role) is a simple average of the indicator scores under that dimension. The overall pillar score is attained by calculating a mean average of the three dimension scores<sup>2</sup>. The final scores for each of the pillars and their constituent dimensions are assigned labels which provide a general description of their overall robustness.

<b>Very strong</b>	81–100
<b>Strong</b>	61–80
<b>Moderate</b>	41–60
<b>Weak</b>	21–40
<b>Very weak</b>	0–20

The research team has been responsible for *data collection* and the *drafting of the qualitative work*. The final score and descriptive label for each pillar has been decided by TI-UK.

The NIS presupposes that a lack of integrity in a single institution could lead to serious flaws in the entire integrity system. As a consequence, the NIS assessment does not seek to offer an in-depth evaluation of each pillar, but rather puts an emphasis on covering all relevant pillars and at assessing their inter-linkages. Its results are geared towards providing constructive recommendations for strengthening the overall integrity of the governance system, and can also be used as a

*The NIS presupposes that a lack of integrity in a single institution could lead to serious flaws in the entire integrity system*

2. For further information on the NIS assessment methodology and the indicator framework used in this assessment, please visit [http://www.transparency.org/policy\\_research/nis/methodology](http://www.transparency.org/policy_research/nis/methodology)

benchmarking tool to measure progress over time, to compare performance across institutions, and to identify best as well as bad practices.

The NIS assessment is lead by a local civil society organisation which uses a consultative approach, involving the key anti-corruption agents in government, civil society, the business community and other relevant sectors in the assessment, validation and interpretation process. Thereby, the NIS approach seeks to combine the generation of valid evidence with effective engagement of a wide range of stakeholders with a view to building momentum, political will and civic demand for relevant governance reform initiatives.

The implementation of the NIS assessment in the UK involved a series of steps. In October 2010 Transparency International UK appointed Michael Macaulay and Gary Hickey of the University of Teesside Business School to undertake the research; and set up an Advisory Group which consisted of eight members representing government, academia, NGOs, business and media, tasked to advise on the main aspects of the project's implementation, to review and comment on the draft NIS report and importantly, to validate the indicator scores. The members of the Advisory Group met three times in December 2010 and March 2011. The second and third meetings were entirely dedicated to the discussion of the key findings of the pillar reports and indicator scores.

From November 2010 to February 2011, the authors of the NIS assessment collected data and information for each of the NIS indicators for all pillars. Data collection included desk research and key informant interviews. Where possible, for each pillar a minimum of two key informant interviews were held with (1) a person who has worked in the institution for a significant period and (2) another person who is an external expert on the pillar.

Having been discussed by the Advisory Group in March 2011 the draft NIS report and scores were then updated to incorporate comments of the Advisory Group and presented to the wider anti-corruption community for further debate at a National Integrity Workshop, which took place on April 20th 2011. The workshop brought together experts from civil society, academia, representatives of the law enforcement agencies and other pillars to discuss the findings and recommendations of the NIS assessment, as well as to suggest proposals for further reforms in the fight against corruption.

In May, the updated draft NIS report was submitted to an external reviewer and to the technical support team at TI's International Secretariat for review. The final amendments to the study based on the results of the National Integrity Workshop, TI Secretariat's and the external reviewer's comments were made in May 2011. The present report will be published widely and aims to serve as a useful resource for organisations engaged in the fight against corruption. It is hoped that this will stimulate further research, in-depth analysis and policy action to tackle the challenges facing the UK's National Integrity System.

## 2. EXECUTIVE SUMMARY

*The United Kingdom can be characterised as a country with a strong National Integrity System overall, but with notable areas of weakness*

### 2.1 GENERAL OVERVIEW

The assessment of the UK's National Integrity System offers an evaluation of the legal basis and actual performance of the national governance institutions ("pillars") which are responsible for counteracting corruption. They are assessed in the context of the basic political, economic, societal, and cultural foundations of the country. The assessment does not seek to offer an in-depth evaluation of each pillar, but rather puts an emphasis on covering all relevant pillars and assessing their inter-linkages. The study, based on the methodology provided by Transparency International's international Secretariat, reviews the period from 2004 to 2011. The implementation of the NIS assessment project included a number of steps: desk-based research by the authors, key informant interviews and verification of the assessment's findings by the TI Secretariat, project Advisory Group, and external reviewer. The findings and recommendations derived from the NIS assessment were discussed at a National Integrity System Workshop which also considered key priorities for anti-corruption reform in the country, to be addressed by the government, civil society and other stakeholders.

The United Kingdom comprises England, Scotland, Wales and Northern Ireland, and has three Crown Dependencies and 14 Overseas Territories. The UK has been a member of the European Union since 1973. Scotland, Wales and Northern Ireland each is governed by its own Parliament or Assembly, as well as Westminster. Arguably each of the four countries has its own National Integrity System and it was not possible within this study to look at each country separately. There are many similarities, but also numerous differences within the pillars of each of the four countries that comprise the UK: this report has attempted to incorporate such differences wherever possible. Some strategic decisions were taken by the NIS Advisory Group, however, to look at specific institutions and organisations. As a result the NIS UK study does not include a specific pillar for the Anti-Corruption Agency, as there is no single organisation that represents this activity<sup>3</sup>. In addition this report acknowledges the substantial impact that membership of the European Union has for the UK NIS: many decisions are now being made in Brussels that affect integrity in the UK; for example, issues relating to spending of EU funds; integrity of MEPs; and other areas. Again we do not wish to minimise these decisions but they are beyond the scope of this study.

This NIS study builds upon a previous study of the UK published in January 2004<sup>4</sup>. It suggests that there have been considerable improvements made to the National Integrity System, and also to anti-corruption activity in general. There has been an increase in collaborative work between anti-corruption agencies, in the form of information sharing and joint investigations. Certain pillars, such as law enforcement, have adopted a much more proactive approach to tackling corruption. The UK now has a new Overseas Anti-Corruption Champion, in the form of Secretary of State for Justice, Kenneth Clarke, and perhaps most importantly of all, the new Bribery Act 2010 was given Royal Assent in April 2010 and will replace the UK's current corruption legislation, which was widely regarded as out of date (even in the previous 2004 NIS report) and not fit for purpose<sup>5</sup>. The Bribery Act 2010 is due to come into force on 1 July 2011.

3. See Section 6.0 Anti-Corruption Activities

4 Transparency International UK (2004) NIS Country Study: United Kingdom (London: TI)

5 Transparency International UK (2004) NIS Country Study: United Kingdom (London: TI)



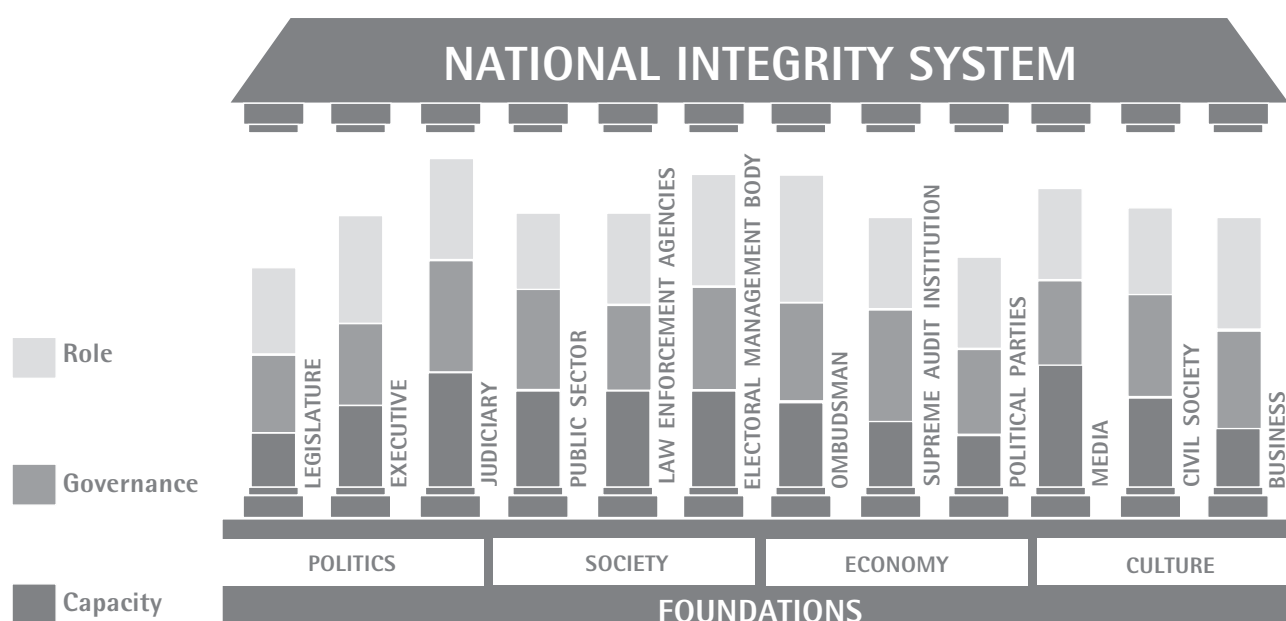
*There are numerous areas for concern... that have emerged from these findings*

There are numerous areas for concern, however, that have emerged from these findings. First, the Bribery Act 2010 has had quite a tortuous path. It has taken almost a year for the Government to issue Guidance on Section 7 of the Act and the Guidance that was finally issued in March 2011 has been argued in some quarters to have been watered down<sup>6</sup>. This all followed from a corruption bill that was placed before Parliament in 2003<sup>7</sup> and failed to be enacted. These difficulties in getting new legislation through are perhaps mirrored by the length of time it took the UK to ratify an international commitment such as the United Nations Convention Against Corruption (signed in 9 December 2003, ratified in 9 February 2006)<sup>8</sup>. This all suggests a concern over the prioritisation of corruption by successive UK governments.

Second, a lack of leadership was identified by interviewees as a problem for the UK: "on-shore corruption, nobody takes the lead"<sup>9</sup>, which is seen as a particular issue in the realm of building an anti-corruption culture<sup>10</sup>. When organisations such as the Serious Fraud Office (SFO) get involved in preventative measures, it is usually as an additional service rather than core business. As well as a lack of leadership, another general issue is that of transparency, particularly over prosecutions and settlements. The BAE settlement, for example, took eleven months to be made public and then only in a limited way, which does not help in restoring public trust<sup>11</sup>. The final major issue is the future of the UK NIS. Major cuts to the public sector will almost inevitably lead to serious resourcing issues for many of the pillars in the NIS with adverse consequences for particular anti-corruption capacity. For example, the SFO's budget is being cut by 26 per cent from £55 million to £39 million, with a further cut of 25 per cent expected<sup>12</sup>.

## 2.2 KEY FINDINGS OF THE NIS ASSESSMENT

The diagram below illustrates the relative strength of the NIS foundations and its attendant pillars. The UK National Integrity System is built on solid political, legal, economic and cultural *foundations*. Generally there is respect for the rule of law as well as human rights and freedoms. These have enabled the development of a strong civil society pillar.



6 Transparency International UK (2011) Bribery Act: myth or reality? P. 2

7 <http://www.archive2.official-documents.co.uk/document/cm57/5777/5777.pdf>

8 <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>

9 Interview - anonymous

10 Interview - anonymous

11 Interview - anonymous

12 <http://www.ft.com/cms/s/0/8221aba2-58b5-11e0-9b8a-00144feab49a.html?ftcamp=rss#axzz1LrUjH00>

*The NIS assessment reveals that overall the UK has a robust integrity system, but with some notable areas of weakness*

*The two weakest NIS pillars are legislature and political parties*

The UK has solid foundations in terms of socio-political and socio-economic features. There is a low level of trust in politicians. Although this may be attributed to recent scandals, notably in relation to MPs' expenses, evidence suggests that levels of trust in politicians are perennially low.

The NIS assessment reveals that overall the UK has a robust integrity system, but with some notable areas of weakness. The strongest overall pillar is the judiciary, which has a long tradition of independence and openness. The strength of this pillar is also reflected in the public perception of it. In a recent TI-UK public opinion survey (published as Part One of this three-part report), the judiciary was regarded as the most trusted of all of the pillars surveyed (only 19 per cent of respondents perceived any corruption in the judiciary)<sup>13</sup>. The only issue associated with the judiciary was one of resources: there has been recent discontent surrounding the funding of the Supreme Court and 40% of local magistrates courts have been closed down in April 2011. The second strongest pillar was the ombudsman, which for the purposes of this study is the local government ombudsman (LGO)<sup>14</sup>, which scored very well in terms of transparency, accountability and integrity.

The two weakest NIS pillars are legislature and political parties, which again interestingly reflects the TI-UK public opinion survey<sup>15</sup>. The legislature pillar scored poorly in terms of its role in combating corruption, and also scored a relatively low score for governance. It was considered that although there is a propensity of integrity and accountability mechanisms in Parliament (e.g. The Parliamentary Commissioner for Standards; Parliamentary Ombudsman; the Committee on Standards and Privileges; and registers of interest in both the House of Commons and House of Lords) these have not worked very well in practice. A number of recent scandals have emerged, perhaps most famously the 2009 MPs' expenses scandal. But there have also been charges of nepotism in Parliament, and continuing worries over lobbying and the access of interest groups to Members of Parliament. These have led to suggestions that the legislature is not particularly proactive in dealing with problems of ethics and corruption, and also that there may be a concern over the ethical culture of Parliament, which integrity and accountability mechanisms alone cannot resolve.

Concerns over political parties correspond to two major issues: first, the transparency of donations and the relationship of donors to politicians; and, second, the accountability of current funding structures. Interestingly these debates are not new, and were addressed in considerable detail by Sir Hayden Phillips, whose 2007 review suggested that donations should be capped<sup>16</sup> and that political parties should receive public funding. These recommendations were not put into practice and the debate thus continues. Indeed party funding is the subject of the latest enquiry by the Committee on Standards in Public Life.

In addition to the strongest and weakest pillars, a number of other pillars have had their overall scores affected by one particular subsection. The media, for example, was found to be a robust pillar, which scored highly in terms of its role and particularly its strength in investigative journalism, which has led to major corruption being identified and investigated. Since the previous NIS UK report the media has uncovered numerous political scandals (including the MPs' expenses scandal; MPs offering their services to lobbyists; and the perceived nepotism behind Parliamentary employment). The media have even uncovered scandals within its own profession (the investigation into *News of the World* phone-hacking owes much to the investigative journalism of *The Guardian*). Despite some faults, there can be little doubting the positive impact of the UK media in reporting and promoting public awareness of corruption.

<sup>13</sup> TI-UK (2010) *Corruption in the UK Part One: national opinion survey* (London: TI-UK) p. 7

<sup>14</sup> There are sixteen different types of ombudsman in the UK and the NIS Advisory Group decided to focus on the LGO (the Parliamentary ombudsman is covered under the legislature pillar).

<sup>15</sup> Political parties were perceived as the most likely institution to be corrupt; Parliament was perceived to be the third most likely. The second – professional sport – is not a pillar on the NIS. See TI-UK (2010) *Corruption in the UK Part One: national opinion survey* (London: TI-UK).

*The reduction in capacity of the Supreme Audit Institution, via the abolition of the Audit Commission, leaves a hole in the UK National Integrity System*

The executive pillar scored very highly in terms of its resources and independence but this was actually perceived by some respondents as a problem. It was argued that Parliament does not exert strong enough scrutiny of the executive or achieve sufficient accountability, which results in an unequal relationship between the two.

### 2.3 KEY WEAKNESSES

There is ongoing debate in a number of pillars (legislature, the media, and business sector) about how successful **self-regulation** can be. As mentioned previously, certain pillars (for example, legislature) contain numerous integrity mechanisms that MPs are meant to abide by, yet still issues such as the expenses scandal have arisen. In other cases, such as the media, there are recent concerns over the effectiveness of self-regulation in respect of ongoing investigations over allegations of phone-hacking. Thus the effectiveness of self-regulation has once again been called into question. Even with mechanisms in place, they do not always appear to work as well as they should.

The **2010 Bribery Act** has been a major step forward that has an impact upon many of the pillars within the UK NIS. The recent guidance issued by the Ministry of Justice, however, has arguably opened loopholes that could be exploited by unscrupulous companies. TI-UK has identified a number of potential loopholes that the Government guidance has created. Non-UK companies listed on the London Stock Exchange (LSE) are not automatically caught by the Bribery Act. In addition a UK company may be able to outsource bribery by building a chain of subcontractors sufficiently long to distance itself from bribe paying<sup>17</sup>.

The wide ranging **cuts to public expenditure** could have a significant impact on a number of pillars (public sector; legislature; law enforcement etc), most obviously in terms of resources, which are a key scoring element of the NIS pillars.

There are question marks, in terms of overall **capacity**, for the future health of the UK National Integrity System. The NIS assessment has demonstrated that public sector cuts have already begun to directly affect some of the UK's many anti-corruption bodies, for example the Serious Fraud Office whose budget has been greatly reduced. Budget cuts could also have a detrimental effect on law enforcement agencies; particularly the police, who will very likely have reduced capacity to tackle internal corruption as well as to investigate corruption in other sectors. Civil society will almost certainly feel pressure from public sector cuts, particularly charitable and voluntary organisations that rely heavily on funding from local authorities and the public sector. Lower capacity will not only reduce the ability of NIS pillars to tackle corruption (either individually or collectively) but could also actively encourage corruption to take place, through lower wages, fewer job opportunities, increased competition to win contracts, etc. The overarching public sector mantra of "do more with less" may well also create perverse incentives to manipulate figures and performance management statistics: a phenomenon that was recorded in the previous UK NIS study, and also found in recent research on the NHS and UK prison service<sup>18</sup>.

The reduction in capacity of the Supreme Audit Institution, via the abolition of the Audit Commission, leaves a hole in the UK National Integrity System, and while this may be filled by a number of options (although most probably private firms) there is now substantial concern over the selection of auditors and conflicts of interest. There are concerns that local authorities

<sup>16</sup> The suggested cap was £50,000 per donor (individual or organisation)

<sup>17</sup> <http://www.transparency.org.uk/all-news-releases/167-government-guidance-deplorable-and-will-weaken-bribery-act>

<sup>18</sup> TI-UK (2011) *Corruption in the UK Part 2* (London: TI)

*Another weakness in the overall NIS assessment, is the disparity between law and practice*

will now face conflicts of interest in being able to choose their auditors, and that private audit firms (particularly the 'Big Four') may not be suitable for the task. In addition, there are issues related to the abolition of the local government integrity framework. Under the terms of the *Decentralisation and Localism Bill* the entire local government integrity framework in England is to be abolished, including the Code of Conduct, which will revert to a voluntary code.

The reduction in capacity has been undertaken with less transparency than might otherwise be hoped: policies that will directly and (almost certainly) negatively impact upon the UK National Integrity System have been delivered with comparatively little open discussion. Abolition of the Audit Commission, for example, has been advanced despite the government's own admission that it cannot explain the cost-savings that the abolition is allegedly going to create. The *Decentralisation and Localism Bill* will dismantle the entire local government integrity framework, including the statutory code of conduct, replacing it with whatever voluntary arrangements local authorities choose, or can afford. Yet this bill has only been subject to eight weeks public consultation, rather than the standard 12 weeks. In the wake of significant public sector cuts, there has been very little open discussion as to how government decisions were arrived at.

The final key finding, and another weakness in the overall NIS assessment, is the disparity between law and practice. As this report demonstrates, there have been important developments in **governance** arrangements with high levels of transparency, accountability and integrity prevalent in most pillars. Even the lowest scoring pillar, the legislature, has been shown to have a surfeit of integrity and accountability mechanisms. Yet still the UK Parliament has been subjected to a range of scandals (MPs' expenses; suggested nepotism; party funding scandals; etc). These scandals, perhaps, reflect a problem with the ethical culture of the legislature, and they perhaps also reveal a key weakness with the relationship between the legislature and executive. The UK executive, whether a single-party majority or a coalition government has strong levels of independence and although the presumption may be that this is beneficial to the overall strength of the pillar, it was regarded by our respondents and also the participants at the validation workshop as a significant weakness. Numerous serious scandals have emerged since the publication of the previous UK NIS study and – in practically every pillar – the legal position is much stronger than the results in practice.

### 3. COUNTRY PROFILE

#### POLITICAL-INSTITUTIONAL FOUNDATIONS

*To what extent are the political institutions in the country supportive to an effective national integrity system?*

**Score 75**

The United Kingdom comprises England, Scotland, Wales and Northern Ireland, and has 15 additional dependencies. The UK has been a member of the European Union since 1973. Scotland, Wales and Northern Ireland are each governed by its own Parliament or Assembly, as well as by Westminster.

The United Kingdom has a well-established electoral democracy, with all 648 Members of Parliament in the House of Commons (the dominant of the two Houses) elected to represent a district (constituency). Each Parliament can last a maximum of 5 years. The electoral system is a first past the post system, in which the candidate with the most votes wins the seat in that constituency. This system does tend to give an advantage to the two main parties (the Conservative Party and the Labour Party) at the expense of the third largest party, the Liberal Democrats<sup>19</sup>. However, a recent referendum on changing the electoral system to the Alternative Voting system resulted in a resounding rejection of change from the electorate.

The executive, arguably, has too much independence as it is made up of the largest party in the House of Commons (the legislature). This means it has a natural majority when proposing legislation. The Government of the day is held to account via debates with opposition parties which are widely reported in the press<sup>20</sup>. Further accountability is achieved via the House of Lords, which can scrutinise and delay legislation. Also, various select committees can scrutinise legislation and the activities of Government departments.

The reputation of politicians in the UK has been tarnished by a series of high-profile scandals. They include MPs' expenses, lobbying, receiving cash to ask questions in Parliament, and allegations of links between party funding and some donors' influence over party policy and their receipt of peerages and titles.

The public continue to rate standards in public life in 'moderately positive terms', although satisfaction with standards in public life has declined. This decline may be a reflection of dissatisfaction with government more generally<sup>21</sup>. People in Scotland, Wales and Northern Ireland are more positive about standards of behaviour in their own countries than they are about standards in the UK as a whole<sup>22</sup>. World Bank figures<sup>23</sup> show that the UK scores

*The reputation of politicians in the UK has been tarnished by a series of high-profile scandals*

19 <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7943>

20 <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7943>

21 Committee on Standards in Public Life (2008) Survey of attitudes towards standards in public life

22 Committee on Standards in Public Life (2008) Survey of attitudes towards standards in public life

23 <http://info.worldbank.org/governance/wgi/pdf/c80.pdf>

very well on the governance indicators of voice and accountability<sup>24</sup>, rule of law<sup>25</sup> and government effectiveness<sup>26</sup>.

The separation of powers was improved by the decision to move the highest court out of the House of Lords with the establishment of a new Supreme Court which began functioning in October 2009<sup>27</sup>.

There is respect for freedom of assembly and association<sup>28</sup>. Civic and non-governmental organisations are allowed to operate freely and workers have the right to organise in unions<sup>29</sup>. That said, there have been concerns that the threat of terrorism prompted the last Labour Government to introduce anti-terrorism laws which have been described as some of the strongest in the world<sup>30</sup> and have attracted criticism for impinging on the right to protest<sup>31</sup>. Indeed, the European Court of Human Rights found that the UK was in breach of the Human Rights Act in detaining a number of foreign nationals without charge<sup>32</sup>. Despite some reform of these laws, they still fall short of international human rights standards<sup>33</sup>. The UK Government has also been accused of 'outsourcing' torture by extraditing terrorist suspects for interrogation to countries with less respect for human rights<sup>34 35 36 37</sup>. In addition, there have been criticisms that excessive force has been used in policing some demonstrations<sup>38 39</sup>.

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## SOCIO-POLITICAL FOUNDATIONS

*To what extent are the relationships among social groups and between social groups and the political system in the country supportive to an effective national integrity system?*

### Score 75

The UK is not characterised by deep social divisions. Britain does have large numbers of immigrants and locally-born descendants of immigrants. They receive equal treatment under the law, although living standards of ethnic minority groups tend to be lower than the national average. There are concerns that anti-terrorism legislation targets certain groups<sup>40</sup>.

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24 Kaufman D, Kraay A, Mastruzzi M (September 2010) Capturing perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the state by elites and private interests. Policy research working paper 5430: The worldwide governance indicators; methodology and analytical issues

25 Kaufman D, Kraay A, Mastruzzi M (September 2010) Capturing perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the state by elites and private interests. Policy research working paper 5430: The worldwide governance indicators; methodology and analytical issues

26 Kaufman D, Kraay A, Mastruzzi M (September 2010) Capturing perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the state by elites and private interests. Policy research working paper 5430: The worldwide governance indicators; methodology and analytical issues

27 <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7943>

28 <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7943>

29 <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7943>

30 <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7943>

31 <http://news.bbc.co.uk/1/hi/uk/3197394.stm>

32 Amnesty International Report (2010) The state of the world's human rights. ISBN: 978-0-86210-455-9

33 <http://www.hrw.org/en/news/2011/02/11/uk-proposed-counterterrorism-reforms-fall-short>

34 <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7943>

35 <http://www.guardian.co.uk/commentisfree/libertycentral/2009/may/27/jamil-rahman-torture>

36 Amnesty International Report (2010) The state of the world's human rights. ISBN: 978-0-86210-455-9

37 Human Rights Watch (2010) No questions asked: Intelligence cooperation with countries that torture. ISBN: 1-56432-650-0

38 <http://www.guardian.co.uk/commentisfree/2009/oct/26/police-powers-extreme>

39 Amnesty International Report (2010) The state of the world's human rights. ISBN: 978-0-86210-455-9

40 <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7943>

The 'war on terror', concerns about levels of immigration and integration<sup>41</sup>, have all contrived to challenge social cohesion in the UK. Much of the debate is often undertaken in a fevered atmosphere whipped up by segments of the press. It was in this context that far right parties have won seats in local elections and European elections<sup>42</sup>. However, fears that these parties would make a breakthrough into the House of Commons were by not realised following the trouncing of the British National Party at the 2010 General Election, and also at recent local elections<sup>43</sup>.

The Government did, however, underestimate immigration levels following the enlargement of the European Union in 2004. New immigration has contributed to the pressures on social cohesion in the UK as "limited opportunities and multiple deprivations of the long-term settled population in parts of UK towns and cities undermine social cohesion<sup>44</sup>." Muslim groups are more likely than other groups to report incidents of harassment and racism, discrimination and assault<sup>45</sup>.

The peace process has reduced the level of violence in Northern Ireland. Divisions remain however, and there are some Republican groups who reject the peace process and have taken up arms in an attempt to destroy the peace settlement. These divisions, combined with the threats that exist from extremist Muslim groups, have, presumably, contributed to the UK's relatively low score on the World Bank's governance indicator of 'political stability and absence of violence/terrorism'<sup>46 47</sup>.

UK civil society is thriving; there are a reported 870,000 formal civil society associations with combined assets of £210 Billion<sup>48</sup>. That said, there is concern about the impact on civil society of the Government's plans to cut the budget deficit by reducing funds to the public sector; civil society in the UK relies, to a large extent, on public sector funding.

UK civil  
society is  
thriving

## SOCIO-ECONOMIC FOUNDATIONS

*To what extent is the socio-economic situation of the country supportive of an effective national integrity system?*

**Score 75**

The UK is regarded by the International Monetary Fund as an 'advanced' economy<sup>49</sup>. The UK's GDP figures for 2008 place it sixth in the top 100 richest countries<sup>50</sup>. The UK ranks 26 in a global comparison of equality of wealth<sup>51</sup> and poverty<sup>52</sup>. The most recent census data from 2011 are not yet available, but a survey combining 1991 and 2001 census data with other data measuring

41 <http://www.guardian.co.uk/politics/2011/apr/14/immigrants-fail-integrate-discomfort-cameron>

42 [http://www.spectator.co.uk/essays/all/3648608/part\\_2/the-rise-of-british-racism-may-be-horribly-close.shtml](http://www.spectator.co.uk/essays/all/3648608/part_2/the-rise-of-british-racism-may-be-horribly-close.shtml)

43 <http://www.guardian.co.uk/politics/2011/may/06/bnp-suffers-election-meltdown>

44 Joseph Rowntree Foundation (July 2008) *Immigration and social cohesion in the UK*. Ref: 2249

45 <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7943>

46 Kaufman D, Kraay A, Mastruzzi M (September 2010) *Capturing perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the state by elites and private interests*. Policy research working paper 5430: *The worldwide governance indicators; methodology and analytical issues*

47 <http://info.worldbank.org/governance/wgi/pdf/c80.pdf>

48 Carnegie Trust UK (2010) *Making good society*

49 <http://www.imf.org/external/pubs/ft/weo/2009/01/weodata/weoselco.aspx?g=110&sg=All+countries+%2f+Advanced+economies>

50 <http://www.worldsrichestcountries.com/>

51 <http://hdrstats.undp.org/en/indicators/67106.html>

52 <http://hdrstats.undp.org/en/indicators/38406.html>



poverty led to a conclusion that more households in Britain were poorer (up from 21 per cent to 24 per cent). Furthermore, the same research found that a quarter of British households are poor, and that there is a divide between the north and south of Britain which is getting wider<sup>53</sup>.

The Joseph Rowntree Foundation found that mid-2010 almost 2.5 million people in the UK were unemployed, slightly more than in 2009. In 2008/9, 13 million people in the UK were in poverty. Of concern is that of these, 5.8 million (44 per cent of the total) were in 'deep poverty', where household income is at least one-third below the poverty line. This is the highest proportion in 'deep poverty' on record. The figures on childhood poverty are mixed. Despite the recession, the number of children in poverty in workless families fell to 1.6 million in 2008/09, the lowest since 1984. However, in working families, the number of children in poverty rose slightly to 2.1 million, which is the highest on record<sup>54</sup>.

In terms of social equality, another study by the Joseph Rowntree Foundation found that social equality generally increased in the 1970s, followed by rising inequality in the 1980s and 1990s. They conclude that "changes since 2000 are less clear."<sup>55</sup>

The UK has a comprehensive welfare state, providing free education and health care, and a range of benefits for people who are unemployed, for those on low incomes, or who are unable to work. Inevitably, the extent of this provision varies according to which political party is in power. The current Government, with its commitment to cutting the budget deficit, is radically reducing the welfare state<sup>56</sup>.

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## CULTURE

*To what extent are the prevailing ethics, norms and values in society supportive to an effective integrity system?*

**Score 75**

Figures from the World Bank<sup>57</sup> show that the UK scores well on the governance indicator of 'control of corruption'<sup>58</sup>. However, 53.4 per cent of members of the UK public believe that corruption has increased either a little or a lot in the last three years; whereas only 2.5 per cent believe that corruption has decreased either a little or a lot<sup>59</sup>. Almost six in ten (58.4 per cent) of the UK public stated that they had never been affected by corruption in the UK, and only 13.7 per cent stated that they had been affected.

*53.4 per cent  
of members of  
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believe that  
corruption has  
increased either  
a little or a lot  
in the last three  
years*

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53 <http://www.socialwatch.org/node/9469>

54 Joseph Rowntree Foundation (December 2010) *Monitoring poverty and social exclusion*. Ref: 2579

55 Joseph Rowntree Foundation (July 2007) *Poverty and wealth across Britain 1968 to 2005*. Ref: 2077

56 <http://www.bbc.co.uk/news/10380692>

57 <http://info.worldbank.org/governance/wgi/pdf/c80.pdf>

58 Kaufman D, Kraay A, Mastruzzi M (September 2010) *Capturing perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the state by elites and private interests*. Policy research working paper 5430: *The worldwide governance indicators; methodology and analytical issues*

59 TI-UK (2010) *Corruption in the UK Part One: national opinion survey* (London: TI-UK) p.3



Trust amongst citizens has stayed relatively constant since 1983. The proportion who said they trusted the ordinary man or woman in the street to tell the truth reached a peak of 64 per cent in 1993. In 2008, that proportion declined to 60 per cent and in 2009 declined further to 54 per cent<sup>60</sup>.

The values that people believe should underpin public life have remained constant since 2004 'Not taking bribes' and 'telling the truth' are the behaviours people are most likely to value<sup>61</sup>. In 1995, the Committee on Standards in Public Life<sup>62</sup> established a common set of values that should prevail in public life, namely: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership<sup>63</sup>.

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<sup>60</sup> Ipsos/MORI TRUST IN PEOPLE /Trust in Doctors 2009. J36865/MCo/JGK

<sup>61</sup> Committee on Standards in Public Life (2008) *Survey of attitudes towards standards in public life*

<sup>62</sup> Committee on Standards in Public Life (1995) *Standards in public life: First report of the Committee on Standards in Public Life*. London, HMSO

<sup>63</sup> [http://www.public-standards.gov.uk/About/The\\_7\\_Principles.html](http://www.public-standards.gov.uk/About/The_7_Principles.html)

## 4.

## CORRUPTION PROFILE

*International indicators suggest that the UK does not have a serious problem with traditional forms of corruption. But in recent years its Corruption Perception Index (CPI) ranking has been steadily declining*

International indicators suggest that the UK does not have a serious problem with traditional forms of corruption. But in recent years its Corruption Perception Index (CPI) ranking has been steadily declining. In 2010 the UK was ranked joint 20th out of 178 countries, with a CPI score of 7.6<sup>64</sup>. Yet as recently as 2006, the UK was joint 11th in the CPI table with a score of 8.6<sup>65</sup>. In the 2008 Bribe Payers Index the UK was ranked fifth (score 8.8) among 22 leading international or regional exporting nations<sup>66</sup>. A recent EU report found that "Corruption in the UK occurs mainly at the level of local government"<sup>67</sup> even though the same report had praised local councillors: "the vast majority of councillors observe high standards of conduct"<sup>68</sup>. Other measures indicate the UK's high standing in controlling corruption. The World Bank's control of corruption index places the UK in the highest percentile with a score of 91.4 per cent<sup>69</sup>. Despite its reduced CPI score the UK still compares well with other countries in terms of corruption indicators.

#### 4.1 PROSECUTING CORRUPTION

The Bribery Act comes into force in July 2011. Until then corruption legislation in the UK has been built around the 1889 *Public Bodies Corrupt Practices Act*; the 1906 *Prevention of Corruption Act*; and the 1916 *Prevention of Corruption Act*. More recently, the 2001 *Anti-Terrorism, Crime and Security Act* has tackled aspects of overseas corruption. There also remains in the statute book some rather obscure pieces of legislation, such as 1925 *Honours (Prevention of Abuses) Act*, set up in the wake of Lloyd George's cash-for-honours scandal (which has only led to one single prosecution).

There are few prosecutions for corruption in the UK. The figures made available to us from the Ministry of Justice show that between 2003 and 2007 a total of 27 cases were proceeded against under the 1906 *Prevention of Corruption Act*, with a total of 33 cases found guilty (these included prosecutions that had begun before 2003)<sup>70</sup>. Even fewer cases had been prosecuted under the 1889 *Public Bodies Corrupt Practices Act*, with only fourteen cases proceeded against between 2003 and 2007, and only four convictions<sup>71</sup>.

These figures, however, are not necessarily an accurate reflection of corruption prosecutions in the UK. Corruption cases are frequently charged and prosecuted under other offences and it is notable that not one of the cases cited in this study was prosecuted as corruption. There are a range of different offences that can include elements of corruption. They include fraud (particularly sections 3 and 4 of the 2006 *Fraud Act*); false accounting; perverting the course of justice; and the common law offence of misconduct in public office, as well as many others. Indeed, misconduct in public office has been described as "one of the offences of choice for, inter alia, prosecutors with conduct of police and public official corruption cases in England and Wales"<sup>72</sup>. The 2006 *Fraud*

*There are few prosecutions for corruption in the UK... Corruption cases are frequently charged and prosecuted under other offences*

64 [http://transparency.org/policy\\_research/surveys\\_indices/cpi/2010](http://transparency.org/policy_research/surveys_indices/cpi/2010)

65 [http://transparency.org/policy\\_research/surveys\\_indices/cpi/2006](http://transparency.org/policy_research/surveys_indices/cpi/2006)

66 [http://transparency.org/policy\\_research/surveys\\_indices/bpi](http://transparency.org/policy_research/surveys_indices/bpi)

67 EU (2007) *Study on corruption in the public sector in the member states of the European Union* p. 418

68 EU (2007) *Study on corruption in the public sector in the member states of the European Union* p. 414

69 [http://info.worldbank.org/governance/wgi/sc\\_chart.asp](http://info.worldbank.org/governance/wgi/sc_chart.asp)

70 Ministry of justice – email exchange

71 Ministry of justice – email exchange

72 Nicholls, C., Daniel, T., Polaine, M., and Hatchard, J. (2006) *Corruption and misuse of public office Misconduct* (Oxford: OUP) p. 65

Act is perhaps the most widely used for prosecuting potential corruption cases. It was described by one interviewee as “the pragmatic solution to the insoluble problem” of corruption <sup>73</sup>. Corruption can also form significant elements of civil cases, such as *Ross River Ltd v Cambridge City Football Club Ltd* [2008] EWCA Civ 772; CA (Civ Div), in which a bribe of £10,000 was cited as evidence of a breach of good faith, and a valid reason to rescind a contract.

The problem, then, is that there are potentially hundreds if not thousands of corruption cases that go unreported because they are prosecuted as different offences. In 2009 alone, for example, there were 10,090 prosecutions under the 2006 *Fraud Act*, with no indication how many may have included some elements of corruption. The extent to which the 2010 *Bribery Act* will alter this situation is as yet unknown.

#### 4.2 PUBLIC PERCEPTIONS

Transparency International UK published an opinion survey in December 2010, evaluating public perceptions of corruption in the UK (Part One of this three-part report). Respondents were concerned that levels of corruption in the UK had increased in the last three years with 53.4 per cent believing that corruption had increased either a little or a lot and only 2.5 per cent believing that corruption had decreased either a little or a lot <sup>74</sup>.

Direct experience of corruption was much lower, however, with 58.4 per cent of respondents stating that they had never been affected by corruption in the UK, and only 13.7 per cent stating that they had been affected <sup>75</sup>. More than a quarter (27.9 per cent) stated that they did not know whether or not they had been affected. Suspicions of corruption in the UK were slightly but not markedly different. The proportion of respondents who did not suspect that corruption had occurred in the UK was 41.8 per cent; 33 per cent did suspect that corruption had taken place, and 25.3 per cent did not know <sup>76</sup>. Of those who stated they had been affected by corruption, only 1.7 per cent reported paying a bribe and it is likely, therefore, that people's experiences of corruption are broader than simple bribery.

Respondents overwhelmingly supported the fight against corruption with 96.2 per cent saying they would support a colleague or friend, and 92.7 per cent willing to report an incident of corruption if they discovered one <sup>77</sup>. Despite their enthusiasm, however, only 30.1 per cent would know where to report an incident of corruption <sup>78</sup>. This is an interesting finding in light of the fact that reporting mechanisms are so divergent and include law enforcement agencies along with organisational whistle-blowing procedures. It will remain to be seen if the new *Bribery Act* focuses people's attention on the reporting of corruption.

Political parties are perceived to have the most potential for corruption in UK institutions, followed by professional sport, Parliament, and local government. The judiciary, education system, military and NHS are perceived as having the least potential for corruption. The full results can be seen in the table below which ranks sectors according to the percentage of respondents who ranked them “likely” or “most likely” to be corrupt <sup>79</sup>.

<sup>73</sup> Interview R5

<sup>74</sup> TI-UK (2010) *Corruption in the UK Part One: national opinion survey* (London: TI-UK) p.3

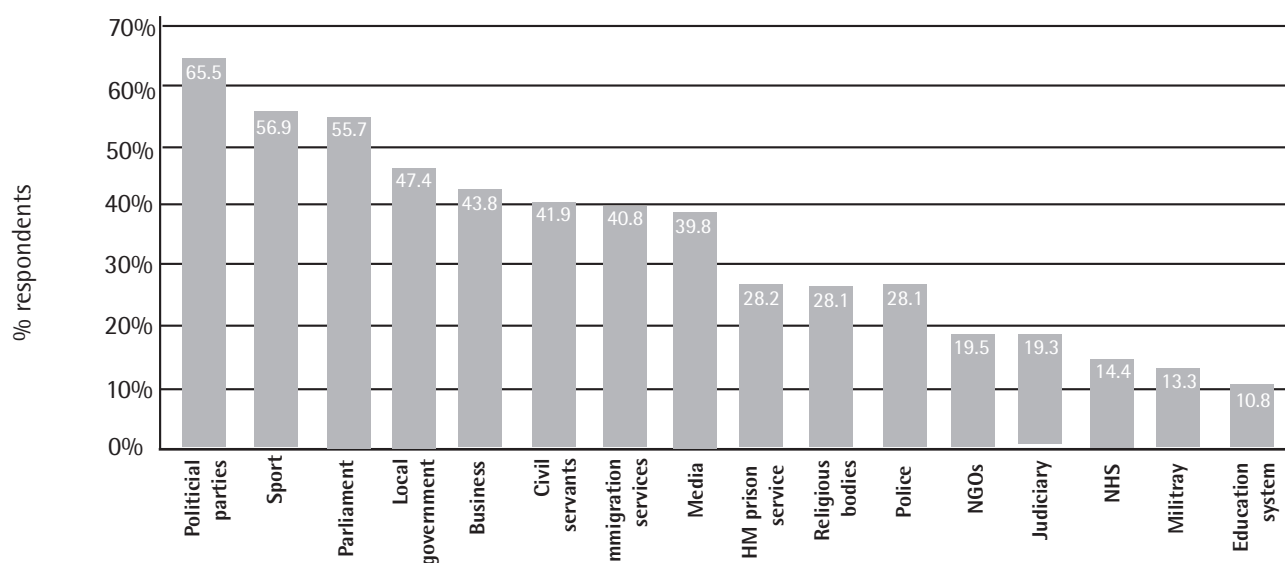
<sup>75</sup> TI-UK (2010) *Corruption in the UK Part One: national opinion survey* (London: TI-UK) p.4

<sup>76</sup> TI-UK (2010) *Corruption in the UK Part One: national opinion survey* (London: TI-UK) p.4

<sup>77</sup> TI-UK (2010) *Corruption in the UK Part One: national opinion survey* (London: TI-UK) p.5

<sup>78</sup> TI-UK (2010) *Corruption in the UK Part One: national opinion survey* (London: TI-UK) p.7

<sup>79</sup> TI-UK (2010) *Corruption in the UK Part One: national opinion survey* (London: TI-UK) p.7



Apart from local government, the top five in this list have all suffered numerous public scandals in recent years: nepotism and the expenses scandal in Parliament; match-fixing in cricket and snooker; general unease over "fat cat" salaries and the banking crisis. It is perhaps therefore not surprising that these areas should be currently perceived as the most corrupt. Interestingly, the public perception survey neatly mirrors the findings of this report which suggests that the legislature and political parties are the lowest scoring pillars (sport and local government are not included in the NIS study). Arguably, then, it is not simply recent bad press that is to blame for poor public trust in these institutions, but a deeper weakness in the pillars themselves. Further research is needed to investigate this apparent correlation.

### 4.3 FREEDOM OF INFORMATION

The NIS methodology suggests that field tests, namely freedom of information requests, should be used to ascertain how transparent institutions are, and how easy it is for the public to gain information from them. TI-UK and the NIS Advisory Group decided not to conduct such tests, as other organisations in the UK are dedicated to such research, including the Campaign for Freedom of Information. The Campaign's 2009 report investigated 493 formal decision notices under the *Freedom of Information Act* from 1 October 2007 to 31 March 2009.

The report found long delays in completing investigations. On average it took 19.7 months from the date a complaint was made to the Information Commissioner's Office to the date of its decision notice:

- 46 per cent of cases took between one and two years from complaint to decision notice;
- 25 per cent of cases took between two and three years to a decision;
- 5 per cent of cases (23 complaints) took more than three years;
- the longest case took three years, and 10.5 months;
- 24 per cent of decision notices were issued within 12 months of the complaint being made<sup>80</sup>.

<sup>80</sup> Campaign for Freedom of Information (2009) *Delays in Investigating Freedom of Information Complaints* p1

<sup>81</sup> Campaign for Freedom of Information (2009) *Delays in Investigating Freedom of Information Complaints* p2

The report identified a number of contributory factors to such delays, including reluctance by the authorities under investigation to cooperate and respond quickly to requests for further information.

Following up these factors, the report subsequently examined how long it took the Information Commissioner's Office to begin an investigation into a complaint. Again the report found significant delays:

- On average it took more than eight months before an investigation began;
- In 28 per cent of all cases it was more than a year before an investigation began;
- 19 cases took more than 18 months before an investigation began;
- One complaint waited 22 months before an investigation began;
- 18 per cent of cases were investigated within 60 days of receiving the complaint.

The report suggests, therefore, that Freedom of Information requests are not necessarily easy to obtain and that in over a quarter of cases, more than a year passed before the ICO's investigation even started <sup>81</sup>.

## 5. ANTI-CORRUPTION ACTIVITIES

*The 2010 Bribery Act has had quite a tortuous path, however*

The 2010 *Bribery Act* comes into force in July 2011. Up until that time, corruption legislation in the UK has been built around the 1889 *Public Bodies Corrupt Practices Act*; the 1906 *Prevention of Corruption Act*; and the 1916 *Prevention of Corruption Act*. More recently the 2001 *Anti-Terrorism, Crime and Security Act* has tackled aspects of overseas corruption and there remains on the statute book some rather obscure pieces of legislation, such as the 1925 *Honours (Prevention of Abuses) Act*, set up in the wake of Lloyd George's cash-for-honours scandal (which has only led to one single prosecution). As detailed in section 4.1, corruption is likely to be prosecuted through other legislation, such as the 2006 *Fraud Act* or the common law offence of *Misconduct in a Public Office*.

The 2010 Bribery Act has had quite a tortuous path, however. It has taken almost a year for the Government to issue guidance on the Act and when it was given, in March 2001, it was seen by many to have watered down the Act<sup>82</sup>. The Bribery Act followed from anti-corruption Bills that were placed before Parliament in both 2003<sup>83</sup> and 2006<sup>84</sup> and failed to be enacted. These difficulties in getting new legislation through are perhaps mirrored by the length of time it took the UK to ratify its international commitment to the United Nations Anti-Corruption Convention (signed in 9 December 2003 and ratified on 9 February 2006)<sup>85</sup>.

In 2010, the Minister for Justice, Kenneth Clarke, was named by the Prime Minister as the United Kingdom's new international anti-corruption champion. Upon taking the post Clarke stated: *"I will be working closely with colleagues across departments, devolved administrations, law enforcement, prosecution authorities and regulatory agencies to ensure a coherent and joined-up approach to combat international corruption. The champion role sends out a clear message that the UK coalition government will not tolerate bribery or corruption and that we will work together to stamp out these practices across the board"*<sup>86</sup>.

On another occasion, Clarke fleshed out his role and spoke of his commitment to the 2010 Bribery Act, which gained Royal Assent in April 2010 after receiving all-party support. Clarke stated: *"The UK's Bribery Act, which was passed this year, is an important contribution to this agenda. We are currently drawing up guidance for business on preventing bribery, which we will be publishing early in the New Year ... I will continue to ensure the effective implementation of the Bribery Act 2010 - legislation which will help to achieve the highest in international standards and demonstrates cross-party commitment to the fight against bribery"*<sup>87</sup>.

Subsequent delays to the implementation of the act have called this commitment into question. In January 2011 the overseas anti-corruption champion called for a review of the draft guidance. As is discussed in other chapters, the review was the result of several different forces: for example, the business lobby and the Minister for Business, Vince Cable, both supported the

<sup>82</sup> Transparency International UK (2011) *Bribery Act: myth or reality?* p.2

<sup>83</sup> <http://www.archive2.official-documents.co.uk/document/cm57/5777/5777.pdf>

<sup>84</sup> <http://www.publications.parliament.uk/pa/cm200506/cmBills/185/2006185.pdf>

<sup>85</sup> <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>

<sup>86</sup> <http://www.justice.gov.uk/news/newsrelease150610a.htm>

<sup>87</sup> <http://www.justice.gov.uk/news/announcement091210b.htm>

review<sup>88</sup>. The subsequent final guidance has been heavily criticised by TI-UK for 'watering down' the Act, and creating the following loopholes<sup>89</sup>:

- A non-UK company listed on the London Stock Exchange (LSE) is not automatically caught by the Bribery Act. This means that a) it could use capital raised in the UK to pay bribes overseas, and b) a UK-based company that loses a contract to a non-UK company listed on the LSE which paid a bribe to win the contract, may have no recourse in the UK courts. [Guidance para 36].  
A non-UK parent company A with a large UK subsidiary B could pay bribes through subsidiary C based in a third country. If UK subsidiary B did not directly benefit from the bribes, the non-UK parent company A would not be caught by the Bribery Act – even if its other subsidiary C was competing unfairly with honest UK companies. [Guidance paras 36 & 42].
- A UK company would be able to outsource bribery by building a chain of subcontractors sufficiently long to distance itself from bribe paying [Guidance para 39]<sup>90</sup>.

The previous UK NIS study (2004) argues that anti-corruption activities in the UK produced a "patchwork quilt" of anti-corruption and fraud bodies. Whereas there was evidence of joint working there were still too many UK agencies with too many jurisdictions<sup>91</sup>. To an extent this continues to be identified as a problem for the UK: "I have lost count of the number of agencies dealing with fraud"<sup>92</sup>, although there is increasing evidence of joint investigations. The number of convictions for corruption remains low, however, as very often other legislation will be used to secure a conviction with more ease<sup>93</sup>. Corruption prosecutions also require explicit consent of the Director of Public Prosecution (DPP).

There remains a number of agencies with the investigative capacity to deal with corruption. There are law enforcement agencies (regional police forces; Serious Organised Crime Agency (SOCA); MoD Police; HM Revenue and Customs; UK Border Agency); government departments with internal investigative capacity (DWP; NHS; HM Prison Service; MoD; DEFRA); and other non-departmental public bodies (the Charity Commission; Standards for England). Organisations such as the Audit Commission have also conducted major corruption investigations into local authorities (for example, Westminster Council, Doncaster council).

Perhaps the closest the UK comes to a dedicated Anti-Corruption Agency (ACA) is the Serious Fraud Office (SFO) and also the Overseas Anti-Corruption Unit (OACU), housed in the City of London Police Economic Crime Directorate. The SFO was established by the 1987 *Criminal Justice Act*. Its role is to investigate and prosecute cases of serious or complex fraud in England, Wales and Northern Ireland and contribute to deterring such fraud<sup>94</sup>. The OACU comprises a Detective Superintendent, a Detective Inspector, two Detective Sergeants and six Detective Constables – all experienced officers from the City of London Police Economic Crime Department. The SFO and OACU have a joint working relationship, with responsibility for maintaining the register of all allegations of bribery or corruption of overseas officials by British persons and companies<sup>95</sup>. This includes the assessment of allegations and the allocation of cases to the investigative agency best suited and resourced to deal with it.

<sup>88</sup> See pillar – Business Sector

<sup>89</sup> Transparency International UK Press release. 30 March 2011. Government guidance 'deplorable' and will weaken Bribery Act

<sup>90</sup> <http://www.transparency.org.uk/all-news-releases/167-government-guidance-deplorable-and-will-weaken-bribery-act>

<sup>91</sup> Transparency International (2004), United Kingdom NIS country study (TI London)

<sup>92</sup> Interview – anonymous

<sup>93</sup> See Law Enforcement pillar

<sup>94</sup> <http://www.sfo.gov.uk/media/27432/lods%20departmental%20report%202008.pdf>

<sup>95</sup> <http://www.cityoflondon.police.uk/CityPolice/Departments/ECD/About/structure.htm#overseas>

*"I have lost count of the number of agencies dealing with fraud"*

The SFO is headed by the Director, Richard Alderman, who was appointed on 21 April 2008, succeeding Robert Wardle. The Director acts under the superintendence of the Attorney General. In exercising his statutory responsibilities under the 1987 Criminal Justice Act, the Director is supported by the Strategic Board and the Operational Board. The Strategic Board comprises the Director, three Non-Executive Directors (NEDs), the Deputy Director, the Head of Resources and Planning, the Head of Policy and the Head of Accountancy. The Operational Board comprises members of the Strategic Board, the seven Assistant Directors in charge of operational divisions, the Head of Mutual Legal Assistance and Restraint (MLA) and the Head of HR and Finance<sup>96</sup>.

It should be noted that these agencies have achieved some high-profile successes. In their first joint investigation of its kind, businessman Julian Messent was found guilty on two counts of making corrupt payments between February 1999 and June 2002, contrary to s1(1) of the 1906 Prevention of Corruption Act. With a further 39 similar offences being taken into consideration, Messent was jailed for 21 months, ordered to pay £100,000 in compensation to the Costa Rican government and disqualified from acting as a company director for five years<sup>97</sup>.

It is not accurate, however, to describe either the SFO or OACU as the UK's anti-corruption agency. To begin with, anti-corruption is only one element of the SFO's workload, and accounts for approximately one-third of its budget<sup>98</sup>. The OACU is part of a broader body, which also includes a dedicated fraud squad; anti-money laundering unit; and a cheque and credit card unit. It is also debatable just how well known either organisation is among the UK public. But leaving this aside, there is one crucial element missing from the mandates of both the SFO and UACU: a focus on tackling corruption within the UK. As one respondent suggested: "I have no idea who fights corruption in the UK ... I don't see anybody taking a lead internally"<sup>99</sup>. This position is echoed by Betts, who has suggested there is a much stronger will to tackle overseas corruption, because there are clearer lines of accountability and more robust mechanisms for detection<sup>100</sup>.

Evidence suggests that the existence of an anti-corruption agency is not enough to combat corruption successfully. Indeed many anti-corruption agencies "fail to reduce public sector venality in all but a few special circumstances"<sup>101</sup>. Others have been able to identify few successful ACAs<sup>102</sup>, and in some cases found ACAs that are "actively harmful"<sup>103</sup>. ACAs are only likely to be successful when their work is driven by firm political will, and when the ACA is underpinned by full independence. Perhaps most interestingly for the UK, evidence suggests that ACAs are most successful when they legislate the work they work with is robust enough to deal with the problem<sup>104</sup>.

*"I have no idea who fights corruption in the UK ... I don't see anybody taking a lead internally"*

<sup>96</sup> *ibid*

<sup>97</sup> [http://www.cityoflondon.police.uk/CityPolice/Media/News/261010-businessmanjailed\\_oacu.htm](http://www.cityoflondon.police.uk/CityPolice/Media/News/261010-businessmanjailed_oacu.htm)

<sup>98</sup> Interview - anonymous

<sup>99</sup> Interview - anonymous

<sup>100</sup> Betts, M. (2010) 'Procurement Corruption in the UK', presentation to the North East Fraud Forum, 9 December, 2010.

<sup>101</sup> John R. Heilbrunn (2005) *Anti-Corruption Commissions: Panacea or Real Medicine to Fight Corruption? The International Bank for Reconstruction and Development /The World Bank*

<sup>102</sup> UNDP. (2005). *Institutional Arrangements to Combat Corruption: A Comparative Study. Thailand: UNDP RCB.*

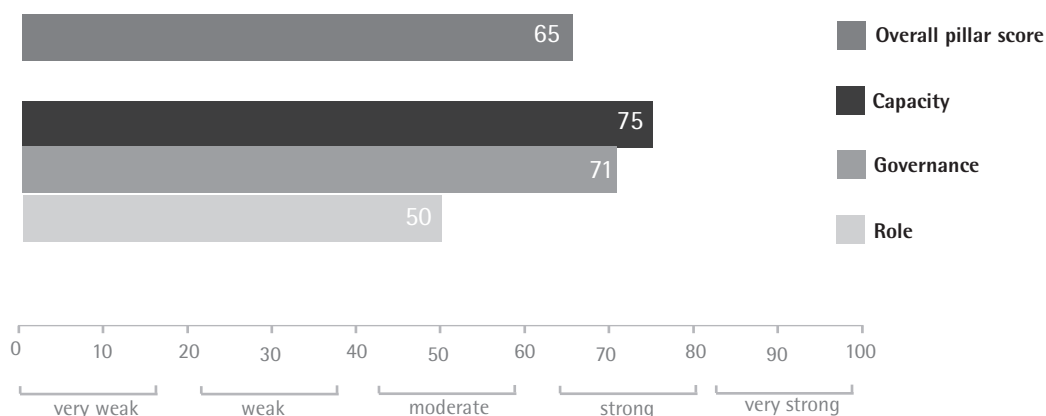
<sup>103</sup> Meagher, P. (2005). 'Anticorruption Agencies: Rhetoric Versus Reality'. *Journal of Policy Reform*, 8, 1. P. 69

<sup>104</sup> Meagher, P. (2005). 'Anticorruption Agencies: Rhetoric Versus Reality'. *Journal of Policy Reform*, 8, 1. P. 69



## 6. NIS PILLARS

### 6.1 LEGISLATURE *Status: moderate*



#### SUMMARY

The UK is a parliamentary democracy, consisting of a House of Commons and House of Lords. The UK Parliament is 'sovereign' in that it is the legislative body. Some powers have been devolved to Scotland, Wales and Northern Ireland.

The fact that the executive is made up of the largest party in the legislature means that the legislature is largely dominated by the executive. This in-built tension limits the ability of the legislature to hold the executive to account. All-party select committees are often cited as a key means of scrutinising the activities of Government and, although they undoubtedly can be effective, in-built tensions limit their impact and independence. For example, their make-up reflects the size of parties in the legislature, career advancement is, to a large extent, dependent on party loyalty, and the Government largely determines Parliamentary business.

Although a variety of welcome measures have been introduced to help safeguard the integrity of the legislature – for example a code of conduct for ensuring the integrity of MPs – the legislature has been reactive in addressing corrupt and unethical practices. The issues of MPs' expenses, lobbying and employment of family members have had a significant negative impact on public confidence in the integrity of the UK legislature. On a more positive note, it is relatively easy to get access to the business and decisions of the legislature.

Annex 1 presents the detailed scores assigned to the legislature in terms of capacity, governance and role in the national integrity system. Below is a qualitative assessment of the relevant indicators.

#### STRUCTURE

The United Kingdom is a parliamentary democracy, comprising two chambers: the House of Commons and the House of Lords. The UK Parliament is 'sovereign' in that it is the legislative body, supreme to all other government institutions.

Some powers have been devolved to Scotland, Wales and Northern Ireland. The Scottish Parliament and the National Assembly for Wales took responsibility for their devolved powers on 1 July 1999, while the Northern Ireland Assembly followed on 2 December 1999. The Northern

*The issues of MPs' expenses, lobbying and employment of family members have had a significant negative impact on public confidence in the integrity of the UK legislature*

Ireland Assembly was suspended at midnight on 14 October 2002 and power was restored on 8 May 2007.

The Scottish Parliament has devolved powers over matters such as education, health and prisons. The Northern Ireland Assembly is responsible for making laws on transferred matters in Northern Ireland and for scrutinising the work of Ministers and Government departments. Following a referendum, the National Assembly for Wales will, in the future, be able to make laws for Wales in particular subject areas, which are listed in Schedule 7 to the Government of Wales Act.

The UK House of Commons has 648 elected Members of Parliament who scrutinise government policies and debate legislation. The executive is formed by the largest party in the House of Commons or, as now, a coalition of parties. The House of Lords is the second chamber and is not an elected body. The Lords currently has around 829 Members<sup>105</sup> made up of three different types: life Peers, bishops and elected hereditary Peers. The majority are appointed by the Queen on the recommendation of the Prime Minister or of the House of Lords Appointments Commission.

The House of Commons Commission was established by the House of Commons (Administration) Act 1978. It is responsible for the administration and services of the House. It prepares and presents annually to the House of Commons the Estimates for the House of Commons Service. The House of Commons Commission has six members: the Speaker as Chairman; the Leader of the House; a Member of the House nominated by the Leader of the Opposition (normally the Shadow Leader of the House); and three other Members appointed by the House, none of whom may be a Minister. One Member of the Commission acts as its spokesperson in the House (for example in answering Parliamentary Questions).

The six Departments of the House – the Clerk's Office of the Chief Executive, Facilities, Information Services, Resources, the Refreshment Department and the Parliamentary ICT Service – are answerable to the House of Commons Commission. The UK is also a member of the European Union and subject to European Union legislation.

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## RESOURCES (LAW)

*To what extent are there provisions in place that provide the legislature with adequate financial, human and infrastructure resources to effectively carry out its duties?*

**Score 75**

In terms of human resources, the chief officer of the House of Commons is the Speaker, who is elected by MPs to preside over the House. The Speaker chairs the House of Commons Commission which is responsible for the administration of the House. The Commission's responsibilities include the appointment of staff of the House, preparing for the House the estimates for the House of Commons Service, the allocation of functions to House departments, determining pay, pensions and other conditions of service, and ensuring staff pay and conditions broadly in line with those of the Civil Service.

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<sup>105</sup> [www.parliament.uk](http://www.parliament.uk)

<sup>106</sup> *The Clerk of the House. House of Commons Information Office. Factsheet G16*

<sup>107</sup> *Factsheet M5 Members Series. Revised May 2010. Members' pay, pensions and allowances. House of Commons Information Office*

<sup>108</sup> *Committee on Standards in Public Life (November 2009) MPs' expenses and allowances: Supporting Parliament, safeguarding the taxpayer, Cm7724*

Other officers include the Chairman of Ways and Means and two deputy chairmen, all of whom may act as Deputy Speakers. They are elected by the House as nominees of the government, and may come from the Opposition or the government party. The Clerk of the House of Commons is not an MP and is the principal adviser to the Speaker on the House's privileges and procedures. The Clerk's other responsibilities relate to the conduct of the business of the House and its committees and being the accounting officer for the House. Assisting the Clerk in these activities is a staff of about 270<sup>106</sup>. The Sergeant at Arms, who waits upon the Speaker, carries out certain orders of the House, is the official housekeeper of the Commons' part of the Palace of Westminster and is responsible for security.

The Members Estimate Committee (MEC) has the same membership as the Commission. It considers matters relating to MPs' pay and allowances on behalf of the House of Commons. MPs receive help with the costs of running an office and employing staff, having somewhere to live in London and in their constituency, and travelling between Parliament and their constituency<sup>107</sup>.

The 2009 Parliamentary Standards Act established the Independent Parliamentary Standards Authority, following revelations of the expenses being claimed by MPs, public outcry and subsequent inquiry by the Committee on Standards in Public Life<sup>108</sup>. It provides independent regulation of MPs' expenses, and regularly publishes details of MPs' expenses claims.

The devolved Parliaments and Assemblies have their own arrangements. The Scottish Parliamentary Corporate Body is made up of Members of the Scottish Parliament (MSPs) and makes decisions on a wide range of issues to do with the running of the Parliament, including the financing of the Parliament and allocation of the budget, the staffing of the Parliament, accommodation and the use and security of Parliamentary facilities. The Northern Ireland Assembly has the Assembly Commission – the corporate body of the Northern Ireland Assembly. As well as the Speaker of the House it consists of a Member of the Legislative Assembly (MLA) from each of the five main parties. Its role is to oversee the organisation and to provide services, structures and property in order for the Assembly to function. The Northern Ireland Assembly employs staff (the Secretariat) to support its work.

The Review Body on Senior Salaries (SSRB) has responsibility for determining the annual percentage increase in Members' pay<sup>109</sup>. The SSRB provides independent advice to the Prime Minister, the Lord Chancellor and the Secretary of State for Defence on the pay of various senior employees<sup>110</sup>.

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<sup>109</sup> *Annual Report, Resource Accounts & Audit Committee Annual Report (2009–10)* London: The Stationery Office Limited HC 685

<sup>110</sup> [http://www.ome.uk.com/Senior\\_Salaries\\_Review\\_Body.aspx](http://www.ome.uk.com/Senior_Salaries_Review_Body.aspx)

## RESOURCES (PRACTICE)

*To what extent does the legislature have adequate resources to carry out its duties in practice?*

### Score 75

Net operating costs for UK MPs in discharging their parliamentary duties and responsibilities were £168.9 million in 2008/09. These figures include salaries and allowances. Net operating costs for administrative services and works were £278.9 million in 2009/10<sup>111</sup>. Budgetary constraints mean that the House of Commons Commission has agreed an administrative budget of £219 million for 2010/11<sup>112</sup>.

MPs receive help with a variety of costs: the costs of running an office and employing staff, accommodation in London and in their constituency, and travelling between Parliament and their constituency<sup>113</sup>.

The House of Commons Commission provides a variety of services, including catering, food and retail services, accommodation, cleaning, maintenance, a mail delivery service, information and research services, Hansard and security<sup>114</sup>. A survey of MPs and officers found a relatively high level of satisfaction with services provided by the House of Commons, with 86 per cent of Members and 91 per cent of their staff indicating that they were satisfied with the services provided<sup>115</sup>.

There are various departments and offices providing support to MPs and Members of the House of Lords so that they can carry out their duties. Bicameral offices work both for the House of Lords and House of Commons. They include the Parliamentary archives, the Education Service and the Parliamentary Office of Science and Technology. Offices working specifically for the House of Commons, include the House of Commons Information Office (HCIO), the Freedom of Information Office and the Scrutiny Unit Offices. Offices providing support for the House of Lords and its Members include the Lords Committees, Human Resources and the Lords Freedom of Information Office.

There are various committees which examine issues in detail and propose new laws. These committees are made up of select committees, joint committees, general committees (unique to the Commons) and grand committees.

<sup>111</sup> *The Clerk of the House. House of Commons Information Office. Factsheet G16*

<sup>112</sup> *House of Commons Commission. Thirty-second report of the Commission, and annual report of the Administration Estimate Audit Committee Financial Year 2009/10. HC381*

<sup>113</sup> *Factsheet M5 Members Series. Revised May 2010. Members' pay, pensions and allowances. House of Commons Information Office*

<sup>114</sup> *FDS International (February 2011) Survey of services. 7849/sc/ds*

<sup>115</sup> *FDS International (February 2011) Survey of services. 7849/sc/ds*

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## INDEPENDENCE (LAW)

*To what extent is the legislature independent and free from subordination to external actors by law?*

**Score 75**

Parliament is run by a combination of standing orders (written rules) and custom and practice. The standing orders help regulate how Members behave, how Bills are processed and debates organised. Custom and practice stems from Speaker's rulings and procedure that have been developed over the centuries.

The Speaker of the House of Commons is elected by other Members of Parliament. The Speaker is the chief officer of the Commons, chairs debates in the Commons chamber, keeping order and calling on MPs to speak. As the chief officer, the Speaker also represents the Commons to the monarch, the Lords and other authorities, and chairs the House of Commons Commission.

It is the Speaker who ensures that MPs follow the rules of the House during debates. As such, the Speaker can direct an MP to withdraw remarks, suspend the sitting of the House, suspend MPs who are disobedient and ask MPs to be quiet so Members can be heard.

The House of Commons Commission appoints staff to the House and allocates functions to House departments.

Whips are also largely responsible (together with the Leader of the House in the Commons) for arranging the business, and therefore the agenda, of Parliament.

Both Houses have cross-party select committees to conduct inquiries and to produce reports on a range of issues. The House adopted recommendations from the Reform of the House of Commons Committee so that the majority of Select Committee Chairs are now elected by their fellow MPs. Committees decide upon their own subjects for inquiry within the broad scope of their remit. The names of Members to serve on each committee is proposed by another committee – the Committee of Selection – at the start of each Parliament and agreed by the House. Changes in membership can only occur with the approval of the House<sup>116</sup>.

Also a Backbench Business Committee has been established which can schedule business in the Commons Chamber and in Westminster Hall on days, or parts of days, set aside for non-government business.

The notion of Parliamentary privilege gives legal immunities for Members of both Houses and enables them to perform their duties without interference from outside the House. The privileges are: freedom of speech, freedom from arrest (on civil matters), freedom of access to the sovereign. "Members are immune from legal action in terms of slander but must adhere to the principles of parliamentary language<sup>117</sup>."

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<sup>116</sup> Departmental Select Committees. Factsheet P2. Revised August 2010. House of Commons Information Office

<sup>117</sup> <http://www.parliament.uk/site-information/glossary/parliamentary-privilege/>

The government needs to retain the confidence of a majority in the House of Commons. If the House votes to indicate that it has no confidence in the government, either by defeating the government on a confidence motion or by defeating a policy that the government has indicated is a 'matter of confidence', then the government would call a General Election and the Prime Minister ask the Sovereign to dissolve Parliament. Each Parliament expires five years after a general election. The Prime Minister can ask the Sovereign to dissolve Parliament at any time during this five-year period.

The House of Lords is not an elected chamber and is made up of life peers, bishops and elected hereditary peers. The 1999 House of Lords Act brought an end to hereditary peers' right to pass membership through the family, and also introduced the House of Lords Appointments Commission. This Commission is a public body which recommends non-party political appointments as well as vetting nominations. It is worth noting, though, that membership of the House of Lords is not based on a public election. The majority of members of the House of Lords depend on the patronage of their parties as they are appointed on the recommendation of their particular parties<sup>118</sup>.

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## INDEPENDENCE (PRACTICE)

*To what extent is the legislature free from subordination to external actors in practice?*

**Score 50**

The actions of the legislature can result in end of a Parliament and the calling of a General Election. The government needs to retain the confidence of a majority in the House of Commons. If the House votes to indicate that it has no confidence in the government, either by defeating the government on a confidence motion or by defeating a policy that the government has indicated is a 'matter of confidence', then the government would call a General Election.

The majority of primary legislation passed by Parliament originates from Bills introduced by the government. For example in the 2008–09 session of Parliament, 27 public Bills received Royal Assent. Of these 23 were Bills introduced by the government and 4 were the result of Private Members' Bills<sup>119</sup>.

The independence of MPs is compromised by the fact that members from the largest party in the legislature also makes up the executive, and by the 'whips' system. Whips are MPs or Members of the Lords appointed by each party to maintain party discipline. Part of their role is to encourage members of their party to vote in the way their party would like in important divisions. Defying a three-line whip is very serious, and has occasionally resulted in the whip being withdrawn from an MP or Lord. This means that the Member is effectively expelled from their party (but keeps their parliamentary seat) and must sit as an independent until the whip is restored.

Also, although select committees are, in theory, impartial, the composition of departmental select committees reflects the composition of the House. Furthermore, MPs on select committees are still members of their respective parties, bringing an inbuilt tension to the role of select committee members who must provide independent oversight while still adhering to a party line. This tension is exacerbated by the fact that career advancement is likely to be largely dependent on loyalty to the party. It has been suggested that there is little incentive for MPs to join select committees, since even the committee chair earns considerably less than a junior minister<sup>120</sup>.

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## TRANSPARENCY (LAW)

*To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the legislature?*

**Score 75**

Parliament does its business according to a set of written rules (called Standing Orders) and according to custom established over the centuries. There are standing orders which regulate the way Members behave, how Bills are processed and debates organised<sup>121</sup>. Draft Bills are published, along with consultations and evidence for committee enquiries. Meetings of committee minutes are also published as are their membership<sup>122</sup>. Business papers and the debates and publications of select committees are also available. There are registers of financial interests for both the Commons and Lords. There is also a timetable of the week's upcoming business and debates, as well as a digest of House of Commons business for a parliamentary session, including statistics on legislation and the work of committees.

There is a press gallery for those journalists who have been approved by the Sergeant-at Arms<sup>123</sup>. Proceedings at the House of Commons were first televised in 1989 and made permanent in 1990<sup>124</sup>.

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## TRANSPARENCY (PRACTICE)

*To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the legislature in practice?*

**Score 50**

Generally speaking, access to information is not an issue in the UK legislature. Since 1997, Hansard (which publishes verbatim debates, questions and proceedings for both the House of Commons and Lords) has been available online<sup>125</sup>. It is relatively straightforward to gain access to the legislature and obtain relevant information. The Parliament website has live and archived footage of debates. All Bills are published. Parliament publishes a set of fact sheets providing information on how Parliament works.

Members of the public can attend debates and committee meetings. There is a register of members' financial interests available to the public and a searchable database of members' allowances<sup>126</sup>.

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<sup>118</sup> House of Lords (2009) *House of Lords briefing: Membership. Types of member. Routes to membership. Parties and groups.*

<sup>119</sup> Factsheet L2 Legislation Series. Updated June 2010. *Private members' Bills procedure.* House of Commons Information Office

<sup>120</sup> Interview – member of Better Government Initiative

<sup>121</sup> <http://www.parliament.uk/about/how/role/customs/>

<sup>122</sup> <http://www.parliament.uk/business/committees/>

<sup>123</sup> <http://www.parliament.uk/site-information/glossary/press-gallery/>

<sup>124</sup> <http://www.parliament.gov.uk>

<sup>125</sup> <http://www.parliament.uk/business/publications/hansard/commons/>

<sup>126</sup> <http://www.publications.parliament.uk/pa/cm/cmregmem/contents.htm>

The Parliament website carries live and archived coverage of all UK Parliament proceedings taking place in public, including debates and committee meetings of both Houses. TV companies broadcast legislative sessions both over the internet and on cable television<sup>127</sup>. The BBC also dedicates a substantial amount of broadcasting time to Parliamentary business. There is a gallery for members of the press. As well as interacting with the legislative process via e-consultations on Parliament's website, it is also possible to follow Parliament on a variety of social networking media e.g. Twitter, Youtube and Flickr. Most MPs also have their own constituency website.

A concern, however, is that some of these mechanisms occurred only in response to a substantial public outcry over revelations about individual MPs – the Derek Conway affair, for example. Derek Conway was a Conservative MP who employed his son Freddie as a Parliamentary researcher at an annual salary of £25,970 to be paid from public funds (Conway also employed his other son, Henry). At the time, however, Freddie was a full-time undergraduate student studying at the University of Newcastle and apparently did little, if any, research to justify his salary. After an investigation by the Parliamentary Standards and Privileges Committee, Conway was suspended from the House of Commons for ten days, agreed to pay back approximately £13,000 and also announced that he would resign his seat at the next available election. The Conway case, however, had a broader effect on the public who were far more interested in the extent to which family members were being employed by politicians. In March 2008 the Standards and Privileges Committee published a report (HC 436) suggesting that this information be made publicly available on the Register of Members Interests and this was enshrined in a Commons resolution passed on March 27th 2008. After August 2008 this declaration was compulsory for all MPs. The truth emerged that a significant number of MPs employ their spouses, siblings and children using taxpayers' money – approximately 200 in total. In fact, three out of the then ten members of the Standards and Privileges Committee employed family members. They included its Chair at the time, Sir George Young, who employed his daughter Camilla as his Office Manager<sup>128</sup>.

In the Conway case, it should be noted that changes to declaring such an interest were only made after the story became a public scandal<sup>129</sup>. The reactive nature of transparency is one issue. Another is that even after public scandals, some processes and information remained private and hidden from public view. For example, the *rectification* procedure for dealing with many of the MPs' expenses cases. Rectification allowed the Parliamentary Commissioner for Standards to deal with expenses investigations that he did not consider serious and when MPs have accepted responsibility for breaking Parliamentary rules. This process only became publicly recognised in 2010, after it was disclosed that 16 cases were rectified in 2008/9, 14 in 2009/10 and 10 so far in 2010/11. These included cases such as David Tredinnick, who accepted responsibility for spending of £755.33 on astrological computer software<sup>130</sup>.

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127 <http://www.parliamentlive.tv/Main/Home.aspx>

128 This was as of May 2009 – the membership of the Standards and Privileges Committee has now changed and is chaired by Kevin Barron.

129 Interview – member of Better Government Initiative

130 The Guardian 'Secretly' resolved MPs' expenses cases made public' 9 December 2010



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## ACCOUNTABILITY (LAW)

*To what extent are there provisions in place to ensure that the legislature has to report on and be answerable for its actions?*

**Score 75**

Parliamentary sovereignty means that Parliament is the supreme legal authority in the UK. It can create or end any law and, generally, the courts cannot overrule its legislation. However, no Parliament can pass laws that future Parliaments cannot change. The legislature is accountable to the citizenry via the ballot box. There is no requirement for public consultation.

Over the years, however, Parliament has passed laws that limit parliamentary sovereignty. Of particular significance are: the UK's entry to the European Union in 1972; The Human Rights Act 1998; the devolution of power to the Scottish Parliament, Welsh Assembly and Northern Ireland Assembly; the establishment of a UK Supreme Court in 2009, so the House of Lords is no longer the UK's final court of appeal.

Further accountability is provided by Public or Private Bill Committees, which are appointed for each Bill that goes through Parliament. The committees reflect the political make-up of the House, so the government always has a majority. Public Bill Committees examine each Bill clause by clause. The Committee reports its conclusions and any amendments made to the Commons, where the Bill is again debated. The Bill is printed again with the amendments made by the Public Bill Committee; this is publicly available in printed and online formats.

The Parliamentary and Health Services Ombudsman can investigate complaints from the public about the service provided by government departments (as well as a range of other public bodies in the UK, and the NHS in England).

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## ACCOUNTABILITY (PRACTICE)

*To what extent do the legislature and its members report on and answer for their actions in practice?*

**Score 50**

It was suggested that there is "a poverty of accountability in Parliament". Much of the scrutiny of Government is done via the system of committees which examine issues in detail and propose new laws. These committees are made up of select committees, joint committees, general committees (unique to the Commons) and grand committees. The Scrutiny Unit supports the scrutiny function of the House. Part of the House of Commons Commission, it provides specialist expertise to select committees, especially on financial matters and on draft Bills. It has approximately 14 members including lawyers, accountants, an economist and a statistician, as well as House of Commons Clerks and a small team of administrative staff. However, the effectiveness of these select committees can be variable (see section on 'role')<sup>131</sup>.

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<sup>131</sup> Second Report: Improving the effectiveness of parliamentary scrutiny: (a) Select committee amendments, (b) Explanatory statements on amendments. 9 March 2011.

There is a wealth of information about Parliament available on the Parliament website, including Bills, updates on progress, live feeds from Parliament and Hansard. Select Committees exist for each Ministerial department and their role is to scrutinise departments and the policies that they pursue. Select committees also scrutinise draft legislation and can make recommendations to amend draft Bills. Draft Bills are usually open to public consultation for a period of twelve weeks although Ministers have changed these timeframes at will, for the recent Localism Bill which despite its enormous potential impact was put out for only 8 weeks of public consultation.

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## INTEGRITY (LAW)

*To what extent are there mechanisms in place to ensure the integrity of members of the legislature?*

**Score 75**

There are several different integrity mechanisms within the UK legislature, including:

- The Parliamentary Commissioner for Standards;
- Committee on Standards and Privileges;
- Code of Conduct for MPs and Lords;
- Independent Parliamentary Standards Authority;
- Registers of Interest in both the Commons and Lords.

The Parliamentary Commissioner for Standards will consider complaints of breaches of the Code of Conduct against MPs<sup>132</sup> from members of the public or from MPs themselves. The House of Lords Commissioner for Standards provides a similar function in the Lords<sup>133</sup>. The Committee on Standards and Privileges considers reports from the Parliamentary Commissioner for Standards, which include specific complaints in relation to alleged breaches in the Code of Conduct which have been drawn to the Committee's attention by the Commissioner. The Committee also oversees the Commissioner's work and recommends any changes to the Code of Conduct or to the rules relating to the conduct of MPs. The Lords Conduct (Sub Committee) oversees the work of the Lords Standards Commissioner and was formed in 2010<sup>135</sup>. The Welsh Assembly has a Commissioner for Standards<sup>136</sup>, the Northern Ireland Assembly is currently introducing a Bill to create an independent Assembly Commissioner for Standards<sup>137</sup>, and the Scottish Parliament has a Parliamentary Standards Commissioner<sup>138</sup>. All receive complaints on breaches of a Code of Conduct and rules.

The Codes include rules on gifts and hospitality, banning lobbying for reward. In terms of conflicts of interest "Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest<sup>139</sup>." There is a register of members' financial interests available to the public and a searchable database of members' allowances.

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<sup>132</sup> <http://www.parliament.uk/pcs>

<sup>133</sup> <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/the-commissioner-for-standards/>

<sup>134</sup> <http://www.parliament.uk/business/committees/committees-a-z/commons-select/standards-and-privileges-committee/>

<sup>135</sup> <http://www.parliament.uk/business/committees/committees-a-z/lords-select/sub-committee-on-lords-conduct/>

<sup>136</sup> <http://www.assemblywales.org/memhome/mem-commissioner-standards.htm>

<sup>137</sup> NIA Bill 3/10 Assembly Members (Independent Financial Review and Standards) Bill

<sup>138</sup> <http://www.spsc.co.uk/>

<sup>139</sup> The Code of conduct and guide to rules. HC735. 23 June 2009, House of Commons Publication

While it is possible to expel MPs<sup>140</sup>, the maximum for breach of the House of Lords Code of Conduct is a suspension for a period not longer than the remainder of that particular Parliament<sup>141</sup>.

The Independent Parliamentary Standards Authority took over responsibility for the payment of MPs' expenses on 7 May 2010<sup>142</sup>. Most Members of the House of Lords do not receive a salary for their parliamentary duties, but may be entitled to financial support arising out of these duties. A new system of financial support for Members came into effect from 1 October 2010.

There is a voluntary register of lobbyists published by the UK Public Affairs Council (UKPAC). But critics<sup>143</sup> claim that the vast majority of lobbyists ignore the register and the Public Administration Select Committee has called for a statutory register, which the Government is committed to introducing.

## INTEGRITY (PRACTICE)

*To what extent is the integrity of legislators ensured in practice?*

**Score 25**

An analysis of trends in complaints between 2004 and 2010 shows that in 2009/10 there were more formal complaints than in all previous years combined (317). The increase was attributable to the disclosures about MPs' use of their parliamentary allowances. In 2009/10 just 80 of these complaints were inquired into, and 51 were resolved, including of 34 complaints which were upheld<sup>144</sup>.

As with issues of Parliamentary transparency (discussed above) there are concerns that many of the integrity mechanisms are reactive. This demonstrates that the legislature will wait until a problem is discovered before acting upon it, rather than taking a proactive approach to standards and conduct. This has already been touched upon in relation of the Derek Conway affair, but finds its most eloquent expression in the MPs' expenses scandal.

The details of the scandal are too complex to be discussed here in any detail. But the use of public money to pay for all manner of private goods ranged from the relatively trivial to the fraudulent. More trivial examples include, the Attorney General, Vera Baird<sup>145</sup>, who made a claim for her Christmas decorations, Home Secretary Jacqui Smith's husband's attempt to put his pornography on her expenses<sup>146</sup>, Conservative Douglas Hogg's claim for £2,000 to allegedly have his moat dredged<sup>147</sup>. Fraudulent examples include former Labour Minister, Elliot Morley's claim for £16,000 mortgage relief despite the fact that he had no mortgage<sup>148</sup>. The expenses scandal

<sup>140</sup> House of Commons Information Office. Factsheet G6, Revised September 2010. Disciplinary and penal powers of the House

<sup>141</sup> Code of Conduct for Members of the House of Lords and Guide to the Code of Conduct (2010). London: The Stationary Office Limited

<sup>142</sup> <http://www.ipsa-home.org.uk/>

<sup>143</sup> For example, <http://www.independent.co.uk/news/uk/politics/lobbyists-register-to-be-published-2229008.html>

<sup>144</sup> Parliamentary Commissioner for Standards. Annual Report 2009-10. HC 418 Published on 29 July 2010 by authority of the House of Commons. London: The Stationery Office Limited

<sup>145</sup> <http://www.gazettelive.co.uk/news/teesside-news/2011/04/13/the-payment-for-our-defeated-mps-revealed-84229-28512686/>

<sup>146</sup> <http://www.timesonline.co.uk/tol/news/politics/article6001447.ece>

<sup>147</sup> <http://www.telegraph.co.uk/news/newstopics/mps-expenses/5310069/MPs-expenses-Clearing-the-moat-at-Douglas-Hoggs-manor.html>

engulfed the most senior of politicians: former Deputy Prime Minister, John Prescott, claimed expenses on two separate occasions to fix his lavatory seat (£210 in 2004 and £112 in 2006); former Prime Minister, Gordon Brown, claimed approximately £5,000 per year to pay for cleaning bills<sup>149</sup>; and current Prime Minister, David Cameron, claimed over £21, 000 per year on mortgage relief<sup>150</sup>.

The scandal resulted in numerous investigations and several arrests. For example, former MPs David Chaytor and Eric Illsley have both been imprisoned (for 18 months and 12 months respectively) after being found guilty of false accounting<sup>151 152</sup>. Nor was the scandal restricted to the House of Commons: in January 2011 Lord Taylor was also found guilty of false accounting<sup>153</sup>.

One of the key concerns over the scandal was the extent to which the legislature tried to minimise the information made available to the public. A February 2008 Freedom of Information Act request for the release of details of MPs' expenses claims was allowed by an Information Tribunal. The House of Commons authorities challenged the decision on the grounds that it was "unlawfully intrusive". In May 2008, the English High Court ruled in favour of releasing the details of MPs' expenses claims. In April 2009 the House of Commons authorities announced that publication of expenses, with certain information deemed "sensitive" removed,] would be made in July 2009<sup>154</sup>.

Even now the ramifications from the scandal continue. In the wake of the scandal, the 2009 *Parliamentary Standards Act* was passed, which established the Independent Parliamentary Standards Authority (IPSA). IPSA took over responsibility for the payment of MPs' expenses on 7 May 2010<sup>155</sup>. Although it is less than a year old, it has already attracted strong criticism from both the legislature and executive. In December 2010, David Cameron said he "recognised that [IPSA] has caused a lot of pain and difficulty ... It is anti-family and it is not acceptable<sup>156</sup>," More recently IPSA has been criticised for its own expenses. The expenses body carried out a full refurbishment of the central London offices which became its headquarters, at a total cost to the taxpayer of £293,000. This included 71 visitor seats at £242 each, six stools for £265 each and £837 for a table<sup>157</sup>. The extent to which office furniture is in the same league as false accounting by members of the House of Commons and the House of Lords is open to debate.

A further ongoing concern is lobbying. As mentioned, there are specific instructions to regulate the activities of lobbyists. Indeed, lobbying was one of the original areas of "sleaze" that precipitated many of the reforms and integrity measures that are now in place<sup>158</sup>. Problems of lobbying continue to exist, however. In 2010 three Labour ex-Ministers (Geoff Hoon, Stephen Byers and Richard Caborn) were all reprimanded for lobbying by the Parliamentary Commissioner for Standards. The MPs had all been caught discussing lobbying activities by a documentary team for the television programme *Dispatches*, in which Byers described himself as "a cab for hire"<sup>159</sup>.

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148 <http://www.bbc.co.uk/news/uk-politics-12909944>

149 <http://www.guardian.co.uk/politics/2009/may/08/mps-expenses-gordon-brown-cleaner1>

150 <http://www.dailymail.co.uk/news/article-556290/MPs-expenses-list-reveals-David-Cameron-used-claim-21-000-year-pay-mortgage.html>

151 <http://www.guardian.co.uk/politics/2011/jan/07/david-chaytor-jailed-mps-expenses>

152 <http://www.independent.co.uk/news/uk/crime/lord-taylor-of-warwick-guilty-of-fiddling-expenses-2194189.html>

153 *The Guardian* "MPs fight to block expenses revelations" (7 May 2008).

154 *The Guardian* "MPs fight to block expenses revelations" (7 May 2008).

155 *The Guardian* "MPs fight to block expenses revelations" (7 May 2008).

156 *The Telegraph* 'MPs' expenses: New expenses body could be scrapped (16 Dec 2010)

157 *The Telegraph* 'Ipsa accused of squandering taxpayers' money on luxury chairs' (7 March 2011)

158 *Sleaze and the lobbying of Neil Hamilton and others are all documented in the previous UK NIS report (2003)*

159 *The Guardian* Labour ex-ministers Hoon, Byers and Caborn reprimanded over fake lobbying scandal (9/12/10)

Lobbying has returned to the headlines again in 2011 in relation to the role of All-Party Groups. These are semi-official entities around particular subjects or countries, of which there are currently approximately 450 in Parliament. A recent report found that businesses and interest groups had donated almost £1.6 million to these groups. That total included £60,000 for the parliamentary choir from British Telecom; £52,000 from drink and pub companies for the all-party beer group; and a variety of corporate hospitality gifts to all-party sporting groups, such as the athletics and rugby league groups which included free tickets to matches and events. As a result, it has been suggested that all-party groups are in danger of becoming "mere front groups for lobbyists to buy influence"<sup>160</sup>.

The concern about the UK legislature is, therefore, threefold. First, that integrity mechanisms lack much power or, indeed, authority. Second, that the legislature is extremely reactive to public concerns and does not appear to proactively address issues of standards or conduct that are frequently perceived by the public as corrupt. See, for example, the recent Transparency International UK public opinion survey in which political parties and parliament itself were identified as the first and third most likely UK institutions to suffer from corruption. The final problem is one of culture. It is not unreasonable to surmise that many of the issues raised above are entrenched in the culture of the legislature. In the Conway case, for example, declaring an interest has not prevented nepotism from occurring. Indeed, the arguments surrounding the scandal were almost wholly focussed on whether or not family members could perform their research roles correctly, rather than whether it is acceptable in the 21st century for around one-third of MPs to employ their own family members out of the public purse. Similarly, many MPs defended their expenses on the grounds that it was simply the accepted means of ensuring a high salary<sup>161</sup>. Together, these three related issues do not paint a very positive picture of the integrity of the UK legislature.

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## EXECUTIVE OVERSIGHT

*To what extent does the legislature provide effective oversight of the executive?*

**Score 50**

Parliament is able to examine what the Government is doing, make new laws, hold the power to set taxes, debate the issues of the day and challenge what the Government is doing. Ultimately, it can express no confidence in the Government. Since 1945 there have been 23 votes of no confidence, of which just one was successful in 1979<sup>162</sup>. The key means of scrutinising Government are questioning Government ministers, debating and the investigative work of committees.

Government ministers can answer questions orally or in writing. Oral questions are answered by Ministers from each government department in the Commons on a rota basis, and the Prime Minister answers questions every Wednesday. Furthermore, Government ministers are questioned in the Lords at the start of each day's business. There are also debates in the House of Commons on national and international issues and on any subject. Votes are often taken to see whether a majority of Members either support or reject any discussed proposals.

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<sup>160</sup> *The Guardian* 'Coalition urged to act over lobbyists who use party groups 'to buy influence' 24 February, 2011

<sup>161</sup> Committee

<sup>162</sup> [http://en.wikipedia.org/wiki/Motion\\_of\\_no\\_confidence\\_votes\\_in\\_the\\_United\\_Kingdom](http://en.wikipedia.org/wiki/Motion_of_no_confidence_votes_in_the_United_Kingdom)

There are a variety of committees in the House of Commons and the House of Lords, made up of around ten to 50 MPs or Lords, who also scrutinise the work of Government. Select committees work in both Houses. They check and report on areas ranging from the work of government departments to economic affairs. Joint committees are committees consisting of MPs and Lords. General Committees (including Public Bill Committees) exist only in the Commons and scrutinise proposed legislation in detail. The Commons has three Grand Committees which look at questions on Scotland, Wales and Northern Ireland. Grand Committees in the Lords debate Bills outside the Lords Chamber. The Treasury Committee is appointed by the House of Commons to examine the expenditure, administration and policy of HM Treasury, HM Revenue & Customs, and associated public bodies, including the Bank of England and the Financial Services Authority. The Committee of Public Accounts is appointed by the House of Commons to examine "the accounts showing the appropriation of the sums granted to Parliament to meet the public expenditure, and of such other accounts laid before Parliament as the Committee may think fit"<sup>163</sup>.

There are mixed views on the impact of select committees. Indeed, the Procedure Committee report, looking at the effectiveness of select committees, concluded that:

*"A higher profile for select committees in proposing amendments in the House, more information for Members and the public on suggested amendments to Bills and a shift of emphasis to encourage quality over quantity in tabling and answering parliamentary questions are three steps which can be taken towards improving the effectiveness of parliamentary scrutiny"<sup>164</sup>.*

A much more sweeping criticism of the inability of the legislature to exercise oversight of the executive comes from Lord Hailsham. In 1976 he argued that the UK is an "elective dictatorship" due to its almost complete dominance by the government of the day. This is partly down to the "first past the post" voting system that the UK employs in general elections, which gives substantial majorities to parties that have been voted by a minority of the electorate. In the 2005 election, for example, Labour won 55 per cent of the seats in the House of Commons with only 35.2 per cent of the vote; the Conservatives won 32.4 per cent of the vote, but only 30.7 per cent of seats. These figures only refer to votes cast, of course, and the high abstention rate means that the actual percentage of votes won by either party was much lower.

The 2010 election resulted in a coalition government, and there is an ongoing campaign to discuss new voting systems, including a May 2011 referendum on whether to change the system to the Alternative Vote system. However, Hailsham's criticism is still valid: the executive dominates the legislature to the extent that there is very little effective oversight. These points are discussed in more detail in the following chapter, which highlights a number of current concerns over the lack of substantive scrutiny and oversight in the political system.

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## LEGAL REFORMS

*To what extent does the legislature prioritise anti-corruption and governance as a concern in the country?*

### Score 25

In April 2010 the UK Parliament passed the Bribery Act which had all-party support and replaces common law and the Prevention of Corruption Acts 1889-1916. It creates a discrete offence of

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<sup>163</sup> Standing Order No 148

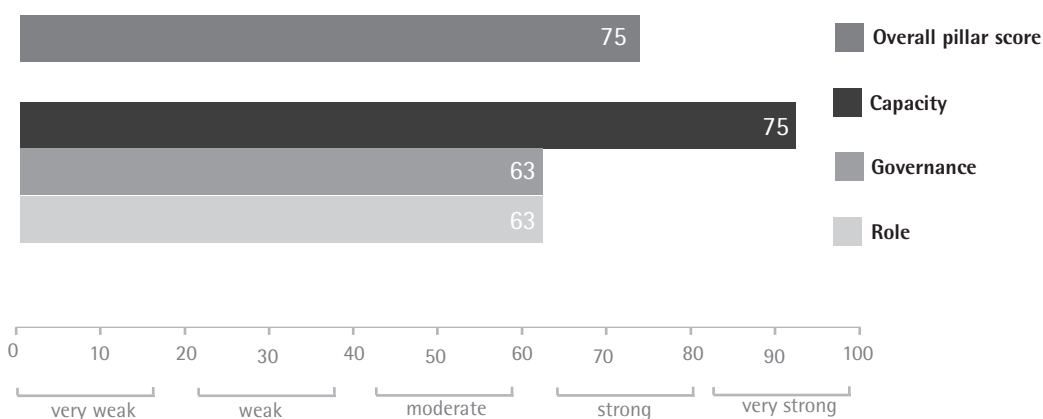
<sup>164</sup> Second Report: Improving the effectiveness of parliamentary scrutiny: (a) Select committee amendments, (b) Explanatory statements on amendments. 9 March 2011. <http://www.parliament.uk/business/committees/committees-a-z/commons-select/procedure-committee/news/second-report-summary/>

bribery of a foreign public official, and a new offence of failure by a commercial organisation to prevent a bribe being paid for or on its behalf.

One element that is sometimes lost in the success of the 2010 *Bribery Act* is the tortuous passage corruption reform has had in Parliament. The initial impetus for reform emerged in 1997 when the Law Commission reviewed existing corruption legislation. This review formed the basis for the White Paper, *Raising Standards and Upholding Integrity: the Prevention of Corruption*, which in turn led to the development of the Draft Corruption Bill 2003. This Bill failed and another Draft Corruption Bill was again presented in 2007, which was again unsuccessful. After subsequent reviews the *Bribery Act* was developed and given Royal Assent in 2010. The draft guidance was then subject to review and when finally published in 2011 was criticised by Transparency International UK: '*Parts of it read like a guide on how to evade the Act ... this final Guidance ... undermines the Act and diminishes its effectiveness*<sup>165</sup>.' The difficulties that corruption reform has faced in the UK suggests that it is not regarded as a priority, and although the new act is extremely far-reaching and constitutes a significant break from previous legislation, its delay and subsequent guidance does not suggest that it has been prioritised.

## 6.2

### EXECUTIVE *Status: strong*



#### SUMMARY

The executive in the UK is made up of the largest party, or coalition of parties, in the legislature. Currently it is made up of a coalition of the Conservative and Liberal Democrat parties. This link between the executive and legislature, and the subsequent dominance of the executive, means that the executive is independent and can be difficult to hold adequately to account under the current constitutional arrangements. It is the executive that, in the main, controls Parliamentary time and business and determines the extent to which it will act on recommendations from the legislature or from public consultations.

The Freedom of Information Act has been a useful tool in helping ensure greater transparency of the executive. The increased transparency introduced by the coalition Government, for example the Public Sector Transparency Board, is also to be welcomed.

<sup>165</sup> Transparency International UK. Press release. 20 March 2011. Government guidance 'deplorable' and will weaken Bribery Act



*Transparency is not the same as, and does not necessarily lead to, increased accountability*

There are some concerns about the extent to which the executive perhaps regard greater transparency, alone, as a panacea for addressing corruption and ethical issues. No doubt transparency, through fear of exposure, can act as a deterrent to wrong doing. However, transparency is not the same as, and does not necessarily lead to, increased accountability. Firstly, the information made available needs to be sufficient if it is to be useful, and there are question marks over what information is not made available. Secondly, there need to be mechanisms in place for ensuring that information can actually be used to hold people to account.

There are a plethora of mechanisms for ensuring the integrity of members of the executive – for example, codes of conduct, rules on conflicts of interest and post- ministerial appointments.

The introduction of the Bribery Act is to be welcomed. However, the slow progress of the Act, and criticisms of the guidance that accompany the Act, does not suggest that the UK executive prioritises the fight against corruption.

Annex 1 presents the detailed scores assigned to the executive in terms of capacity, governance and role in the national integrity system. Below is a qualitative assessment of the relevant indicators.

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## RESOURCES (PRACTICE)

*To what extent does the executive have adequate resources to effectively carry out its duties?*

**Score 100**

There is little to suggest that the executive does not have adequate human, technical and financial resources. The Cabinet Office provides support to the Prime Minister and the Cabinet, as well as ensuring the Civil Service works effectively and efficiently in supporting Government. Cabinet Office operating costs in 2009/10 were £455 million<sup>166</sup>. In 2010 the Chancellor, George Osborne, announced that spending by government departments was to be cut by £6 billion (approximately 34 per cent) as part of a programme to reduce the UK's budget deficit<sup>167</sup>. These cuts apply to the whole of the public sector, however, and are unlikely to lead to any significant gaps in the executive's resources.

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## INDEPENDENCE (LAW)

*To what extent is the executive independent by law?*

**Score N/A**

There is no legal independence for the executive in the UK. All Ministers must act within the law, but the roles of Prime Minister and Cabinet are defined by convention rather than law<sup>168</sup>. The question of whether this constitutes a problem for the UK constitution, and the NIS specifically, is difficult to resolve. The Monarch is the UK's Head of State, although by convention she does

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<sup>166</sup> Cabinet Office Resource Accounts 1009-10. The Stationary Office Limited

<sup>167</sup> The Guardian "Spending review: civil service cuts worse than feared", 20/10/2010

<sup>168</sup> The Cabinet Manual (2010) p. 12

<sup>169</sup> The Cabinet Manual (2010) p. 14



not become involved in party politics. The Monarch appoints the Prime Minister and, upon his advice, other Ministers<sup>169</sup>. By constitutional convention the Monarch has powers of prerogative but these are exercised by the relevant Minister. The Prime Minister himself has few statutory functions, but is responsible for the overall organisation of the executive and the allocation of functions between Ministers in charge of ministerial departments. Cabinet is "the ultimate arbiter of all government policy", comprising the most senior Ministers (including the Chancellor of the Exchequer; the Lord Chancellor; and Secretaries of State) and is bound by collective responsibility for all policies, although they are individually responsible for the conduct and performance of their own departments<sup>170</sup>.

In general, the ministerial head of a department (usually a Secretary of State) has responsibility for a set of policy issues and associated legislation. These responsibilities are delivered through their department and its delivery partners. In addition to ministerial departments there are non-ministerial departments and executive agencies. Agencies carry out some of the executive functions of government and are part of a government department, but have their own management and budget<sup>171</sup>. The Prime Minister's position within Cabinet is one of "first among equals". According to the criteria laid down in the TI methodology it is not possible to award the UK executive any score in this sub-section even though (as the next question will demonstrate) there is no problem with executive independence in the UK.

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## INDEPENDENCE (PRACTICE)

*To what extent is the executive independent in practice?*

**Score 100**

Few have argued that the executive lacks independence in practice. On the contrary, it has been argued that Parliament does not exert strong enough scrutiny of the executive or achieve sufficient accountability<sup>172</sup>. One of the key questions surrounding independence is the extent to which Cabinet itself independently makes decisions. Although Cabinet ratifies policy decisions it does not usually make them, indeed "it has not operated as the chief decision taking body of any Government since the 1960s or 1970s"<sup>173</sup>. This situation is not necessarily regarded as a problem. Cabinet still takes decisions on major economic and foreign policy (with the exception of tax policy, which is formally the decision of the Chancellor of the Exchequer). Cabinet exists for several legitimate reasons: the sheer complexity of government policy means that it would be almost impossible to take every decision at Cabinet; the size and number of Cabinet members would equally make decision-making laborious.

Nonetheless this does mean that the majority of policy decisions made in the UK are taken by a very concentrated number of people. It has been noted that this can also result in supposed Cabinet decisions being rushed through (or "bounced") by the Prime Minister by presenting policies (or changes to agreed policy) without enough time for full Cabinet discussion<sup>174</sup>. To reiterate, most criticism, therefore, relates to the executive having *too much* independence, despite its lack of legal foundations.

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<sup>170</sup> *The Cabinet Manual* (2010) p. 12

<sup>171</sup> <http://www.cabinetoffice.gov.uk/content/government-structure/>

<sup>172</sup> See for example, *Better Government Initiative* (2010) *Good government: reforming Parliament and the Executive* (BGI: London); or Omand, D., Starkey, K. And Adebawale V (2009) *Engagement and aspiration: reconnecting policy making with front line professionals* (London: Cabinet Office)

<sup>173</sup> *Better Government Initiative* (2011) *Cabinet Government* (BGI: London) p. 3

<sup>174</sup> *Better Government Initiative* (2011) *Cabinet Government* (BGI: London) p. 3

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## TRANSPARENCY (LAW)

*To what extent are there regulations in place to ensure transparency in relevant activities of the executive?*

**Score 100**

There are strong legal provisions ensuring transparency of the activities carried out by the executive. Cabinet meeting minutes normally remain secret for 30 years. That said, use of the Freedom of Information Act means that this can be overruled. The Information Commissioner, supported by the Information Tribunal (which deals with appeals against the decisions of the Information Commissioner), ruled that minutes relating to the Iraq war should be released<sup>175</sup>. Similarly, the Information Commissioner has ruled that, under the Freedom of Information Act, minutes of the Cabinet meeting which resulted in the then Secretary of State for Defence resigning over the 'Westland affair', must also be released<sup>176</sup>. The Information Commissioner's Office is an independent information authority that was established to uphold information rights in the public interest, promote openness by public bodies and data privacy for individuals.

The Freedom of Information Act requires public authorities to adopt a publication scheme, outlining what will be published. The Cabinet Office scheme covers the following: roles; spending; priorities; decision-making; policies and procedures; lists and registers<sup>177</sup>.

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## TRANSPARENCY (PRACTICE)

*To what extent is there transparency in relevant activities of the executive in practice?*

**Score 75**

In 2009 the Reform of the House of Commons Select Committee report concluded that "The system for scheduling business is not transparent to many inside the House, let alone those outside"<sup>178</sup>. It is entirely reasonable to suggest that the new Government has enhanced levels of transparency surrounding the executive. The Prime Minister has established a Public Sector Transparency Board, chaired by the Minister for the Cabinet Office, which seeks to improve transparency across Government. More recently, the Cabinet Office has established dedicated information websites to promote transparency<sup>179</sup>, and has introduced an online transparency tool that allows public access to information on all central government spending (over £25,000); details of Ministerial meetings; all government contracts; salaries of civil servants; and business plans in each government department<sup>180</sup>. In addition, Ministers are subject to the register of interests which is publicly available as well as details on gifts, hospitality and travel<sup>181</sup>.

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<sup>175</sup> For example, Milmo C 28 January 2009 Minutes of Cabinet meeting that took us to war must be released. *The Independent*

<sup>176</sup> <http://www.guardian.co.uk/politics/2009/dec/31/heseltine-thatcher-westland-cabinet-meeting>

<sup>177</sup> <http://www.cabinetoffice.gov.uk/content/publication-scheme>

<sup>178</sup> Reform of the House of Commons Select Committee (2009) *Rebuilding the House* (London: TSO) s. 162 xi

<sup>179</sup> <http://www.cabinetoffice.gov.uk/transparency>

<sup>180</sup> <http://transparency.number10.gov.uk/>

<sup>181</sup> <http://www.cabinetoffice.gov.uk/resource-library/ministerial-gifts-hospitality-travel-and-meetings-external-organisations>

Questions remain, however, over what information is omitted from the government's new transparency regime, and also the extent to which information can be used to hold institutions and individuals to account. It may be useful to know, for example, that in September 2010 the Minister for the Cabinet Office was taken to lunch by Sky News, the BBC, and the Daily Mail<sup>182</sup>. But how is this information to be used? Furthermore, the information may raise further questions as to what was discussed and decided, or indeed why the meetings took place at all. Other pillars in this study (e.g. the Supreme Audit Institution) have also highlighted that many significant decisions, for example the decision to abolish the Audit Commission, have not been taken in a very transparent way.

Last of all, the government has received criticism for delays in complying with freedom of information requests<sup>183</sup>.

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## ACCOUNTABILITY (LAW)

*To what extent are there provisions in place to ensure that members of the executive have to report and be answerable for their actions?*

### Score 75

Accountability of the executive is, in principle, guaranteed by the ministerial code of conduct, which states: *"Ministers have a duty to Parliament to account, and to be held to account, for the policies decisions and actions of their departments and agencies"*<sup>184</sup>.

There are numerous accountability mechanisms that make the executive accountable to the legislature and to the public more generally. Members of Parliament can ask written or oral questions of Ministers (and the Prime Minister at weekly Prime Minister's Questions). Select Committees exist for each Ministerial department and their role is to scrutinise departments and the policies that they pursue. Select committees also scrutinise draft legislation and can make recommendations to amend draft Bills. Draft Bills are usually open to public consultation for a period of 12 weeks.

That said, Parliamentary arrangements could weaken the effectiveness of much of these accountability mechanisms: the executive is made up of members of the largest party in the House of Commons, whose members are a subject to the 'whipping' system; the largest party will have a great proportion of places on select committees; and the careers of these politicians are dependent, to a degree, on their loyalty to government.

The accounts of Ministerial departments are audited by the National Audit Office (NAO – see pillar 8), which is, in turn, scrutinised by the Public Accounts Commission and has its budget established by Parliament. The ministerial code also establishes the importance of honesty and accuracy for the accountability of the executive: *"It is of paramount importance that Ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity."*

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<sup>182</sup> <http://www.cabinetoffice.gov.uk/sites/default/files/resources/co-data-aug-sept-2010.pdf>

<sup>183</sup> <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7943>

<sup>184</sup> Ministerial code of conduct 2010 1.2

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## ACCOUNTABILITY (PRACTICE)

*To what extent is there effective oversight of executive activities in practice?*

**Score 25**

It has been suggested that there is "a poverty of accountability in Parliament" and that the UK executive is less accountable than the board of a private company<sup>185</sup>. It was further argued that the executive controls Parliamentary time so that it can bring "ill prepared and incomplete Bills that can be changed rapidly"<sup>186</sup>. The control of time was flagged up as a particular problem by the House of Commons Reform Committee (otherwise known as the Wright Committee), which stated that "It is wrong in principle that, in addition to controlling its own legislative timetable, the Government rather than the House decides what is discussed, when, and for how long"<sup>187</sup>.

The broader issue is that with a majority the executive can overlook any recommendations and, indeed, make its own decisions on public consultations. The current *Localism Bill*, for example, has been put forward by the Department for Communities and Local Government and potentially makes huge changes to the way in which local government operates. The Bill will abolish the local government integrity framework for England, including the code of conduct. Yet the *Localism Bill* has been sent out for only eight weeks of public consultation, rather than the accepted 12 weeks<sup>188</sup>. It was suggested that executive accountability needs to be significantly improved, particularly in respect to passing legislation<sup>189</sup>. Recent suggestions have included establishing a certification of due process, without which legislation cannot continue its passage through Parliament<sup>190</sup>.

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## INTEGRITY (LAW)

*To what extent are there mechanisms in place to ensure the integrity of members of the executive?*

**Score 100**

In the foreword to the new ministerial code of conduct, which was updated in May 2010, the Prime Minister states: *"Our new government has a particular and historic responsibility: to rebuild confidence in our political system. After the scandals of recent years, people have lost faith in politics and politicians. It is our duty to restore their trust. It is not enough simply to make a difference. We must be different"*<sup>191</sup>. The code does provide comprehensive guidance on a whole range of different activities.

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<sup>185</sup> Interview – member of Better Government Initiative

<sup>186</sup> Interview – member of Better Government Initiative

<sup>187</sup> Reform of the House of Commons Select Committee (2009) *Rebuilding the House* (London: TSO) s. 161 ix

<sup>188</sup> <http://www.localgov.co.uk/index.cfm?method=news.detail&id=93847>

<sup>189</sup> Interview – member of Better Government Initiative

<sup>190</sup> Better Government Initiative (2010) *Good government: reforming Parliament and the Executive* (BGI: London);

<sup>191</sup> Cabinet Office (2010) *Ministerial Code* <http://www.cabinetoffice.gov.uk/sites/default/files/resources/ministerial-code-may-2010.pdf>

### *Acceptance of gifts and hospitality*

Ministers should not accept gifts, hospitality or services from anyone which would, or might appear to, place him or her under an obligation<sup>192</sup>, nor should a Minister's family members accept gifts<sup>193</sup>. The decision to declare is left with individual Ministers although, if needed, they can seek the advice of their Permanent Secretary and the independent adviser on Ministers' interests. Gifts given to Ministers in their Ministerial capacity become the property of the Government and do not need to be declared in the Register of Members' or Peers' Interests<sup>194</sup>. Gifts of £140 or less may be retained by the recipient. Gifts of a higher value should be handed over to the department for disposal unless the recipient wishes to purchase the gift abated by £140. Departments publish details of gifts received and given by Ministers valued at more than £140. Gifts given to Ministers as constituency MPs or members of a political Party fall within the rules relating to the Registers of Members' and Lords' Interests<sup>195</sup>. Similarly if a Minister accepts hospitality in his or her Ministerial capacity, the relevant Permanent Secretary must be notified and details of Ministerial hospitality are published quarterly. Hospitality accepted as an MP or Peer should be declared in the Register of Members' or Lords' Interests respectively. Registration of hospitality would normally be required for hospitality valued at around £6,501 for the Commons and £5,001 for the Lords<sup>196</sup>.

### *Post-Ministerial appointments*

Post-Ministerial appointments are overseen by the Independent Advisory Committee on Business Appointments, which was established in 1975 originally to oversee appointments of senior Crown servants. For two years after leaving their respective service, Crown servants must apply for permission to take up any outside appointment which meets the criteria set out in the business appointment rules. This was extended to former Ministers in 1995, and the committee can advise directly to the Minister. On leaving office, Ministers are prohibited from lobbying Government for two years. They must also seek advice from the independent Advisory Committee on Business Appointments about any appointments or employment they wish to take up within two years of leaving office. Former Ministers must abide by the advice of the Committee<sup>197</sup>.

### *Conflicts of Interest*

The Ministerial Code advises that *"Ministers must ensure that no conflict arises, or could reasonably be perceived to arise, between their public duties and their private interests, financial or otherwise"*<sup>198</sup>. Responsibility for avoiding conflict is regarded as the Minister's personal responsibility (although they can take advice from their Permanent Secretary<sup>199</sup>). Ministers must, on appointment, provide a list in writing of all interests which might be thought to give rise to a conflict. This extends to the interests of the Minister's spouse or partner and close family<sup>200</sup>. The personal information which Ministers disclose to those who advise them is treated in confidence. However, a statement covering relevant Ministers' interests will be published twice yearly<sup>201</sup>. Where it is proper for a Minister to retain a private interest, he or she should declare that interest to Ministerial colleagues if they have to discuss public business which in any way affects

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<sup>192</sup> Ministerial Code 7.20

<sup>193</sup> Ministerial Code 7.21

<sup>194</sup> Ministerial Code 7.22

<sup>195</sup> Ministerial Code 7.23

<sup>196</sup> Ministerial Code 7.24

<sup>197</sup> Ministerial Code 7.25

<sup>198</sup> Ministerial Code 7.1

<sup>199</sup> Ministerial Code 7.2

<sup>200</sup> Ministerial Code 7.3

<sup>201</sup> Ministerial Code 7.5

it, and the Minister should remain entirely detached from the consideration of that business. Similar steps may be necessary in relation to a Minister's previous interests. There are also rules pertaining to the Minister's financial interests (7.7–7.9 Ministerial Code); Official Residences (7.10); public appointments (7.11) and Non-Public Bodies (7.12–7.13).

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## INTEGRITY (PRACTICE)

*To what extent is the integrity of members of the executive ensured in practice?*

**Score 25**

There can be little doubt that a plethora of integrity mechanisms exist to regulate the behaviour of the executive. One concern is that these do not necessarily modify the behaviour of Ministers. Perhaps the most high-profile example of this is in relation to post-Ministerial appointments. Despite the existence of the Independent Advisory Committee on Business Appointments, there is sufficient concern about "revolving door" appointments and lobbying for the Public Administration Select Committee to investigate<sup>202</sup>. In December 2010, for example, Baroness Taylor of Bolton took up a position on the Advisory Board of the French defence contractors, Thales, on the condition of *"a waiting period of 6 months from her last day in Ministerial office and the condition that, for 2 years after leaving office, she should not become personally involved in lobbying UK Ministers or Crown servants, including Special Advisers, on behalf of her new employer"*<sup>203</sup>. Despite these stipulations, however, it may still be difficult to reconcile that Baroness Taylor's previous position in the executive was as Minister for Defence Procurement, and that Thales has contracts with the Ministry of Defence for aircraft carriers which, at the time of her appointment, were already over budget by approximately £1.5 billion. It would not be correct to suggest that taking on such a job would be improper under existing policy, but it is reasonable to suggest that in so doing the former Minister risks creating a very negative public perception.

Similarly, there have been several ex-ministers who have acquired posts linked to their ministerial brief. For example, Patricia Hewitt, the former health secretary took a consultancy with Alliance Boots and a role with Cinvin which bought 25 private hospitals from Bupa<sup>204</sup>. Lord Davies, a trade minister in the last Labour Government, has taken up eight appointments<sup>205</sup>.

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## PUBLIC SECTOR MANAGEMENT (LAW AND PRACTICE)

*To what extent is the executive committed to and engaged in developing a well-governed public sector?*

**Score 75**

According to the Ministerial Code *"Ministers must uphold the political impartiality of the civil service, and not ask civil servants to act in any way which would conflict with the Civil Service Code and the*

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<sup>202</sup> [http://www.publicaffairsnews.com/no\\_cache/home/uk-news/news-detail/newsarticle/breaking-news-pasc-to-hold-session-next-tuesday-on-revolving-door-rules/2?tx\\_ttnews%5Bpointer%5D=6&cHash=0d67be2e92](http://www.publicaffairsnews.com/no_cache/home/uk-news/news-detail/newsarticle/breaking-news-pasc-to-hold-session-next-tuesday-on-revolving-door-rules/2?tx_ttnews%5Bpointer%5D=6&cHash=0d67be2e92)

<sup>203</sup> [http://acoba.independent.gov.uk/former\\_ministers\\_appointments.aspx](http://acoba.independent.gov.uk/former_ministers_appointments.aspx)

<sup>204</sup> Transparency International (May 2011) *Cabs for Hire? Fixing the revolving door between government and business?*, <http://www.guardian.co.uk/politics/2011/may/17/labour-ministers-consultancy-private-sector>

<sup>205</sup> Transparency International (May 2011) *Cabs for Hire? Fixing the revolving door between government and business?*, <http://www.guardian.co.uk/politics/2011/may/17/labour-ministers-consultancy-private-sector>

*requirements of the Constitutional Reform and Governance Act 2010<sup>206</sup>.* Ministers have a duty to give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice in reaching policy decisions. As the public sector pillar demonstrates, there is considerable transparency regarding the roles and governance of the public sector. Developments such as including the civil service management code (which includes the civil service code of conduct) as part 1 of the *Constitutional Reform and Governance Act 2010<sup>207</sup>* have helped to make the relationship between the executive and the civil service more accountable.

Reference has already been made to the transparency initiatives, and in particular to the Public Sector Transparency Board, introduced by the Prime Minister. That said, questions remain over the usefulness of some of this information and the mechanisms in place to ensure that the information can be used to hold people to account.

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## LEGAL SYSTEM

*To what extent does the executive prioritise public accountability and the fight against corruption as a concern in the country?*

**Score 50**

In 2010 the Minister for Justice, Kenneth Clarke, was named by the Prime Minister as the United Kingdom's new international anti-corruption champion. Upon taking the post Clarke stated: *"I will be working closely with colleagues across departments, devolved administrations, law enforcement, prosecution authorities and regulatory agencies to ensure a coherent and joined-up approach to combat international corruption. The champion role sends out a clear message that the UK coalition government will not tolerate bribery or corruption and that we will work together to stamp out these practices across the board<sup>208</sup>."*

On another occasion Clarke fleshed out his role and spoke of his commitment to the Bribery Act which gained Royal Assent in April 2010 after receiving all-party support. Clarke stated: *"The UK's Bribery Act, which was passed this year, is an important contribution to this agenda. We are currently drawing up guidance for business on preventing bribery, which we will be publishing early in the New Year... I will continue to ensure the effective implementation of the Bribery Act 2010 - legislation which will help to achieve the highest in international standards and demonstrates cross-party commitment to the fight against bribery<sup>209</sup>."*

Subsequent delays to the implementation of the act have called this commitment into question. In January 2011 the overseas anti-corruption champion called for a review of guidance. As is discussed in other chapters, the review was the result of several different forces: the business lobby and the Minister for Business, Vince Cable, both supported the review, for example<sup>210</sup>. The subsequent guidance has been heavily criticised by Transparency International UK for 'watering down' the Act<sup>211</sup>. As discussed in other pillars (legislature and business sector), concerns over the commitment to anti-corruption cannot be ignored.

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206 The Ministerial Code (2010) s.5.1

207 <http://www.civilservice.gov.uk/about/resources/csmc/index.aspx>

208 <http://www.justice.gov.uk/news/newsrelease150610a.htm>

209 <http://www.justice.gov.uk/news/announcement091210b.htm>

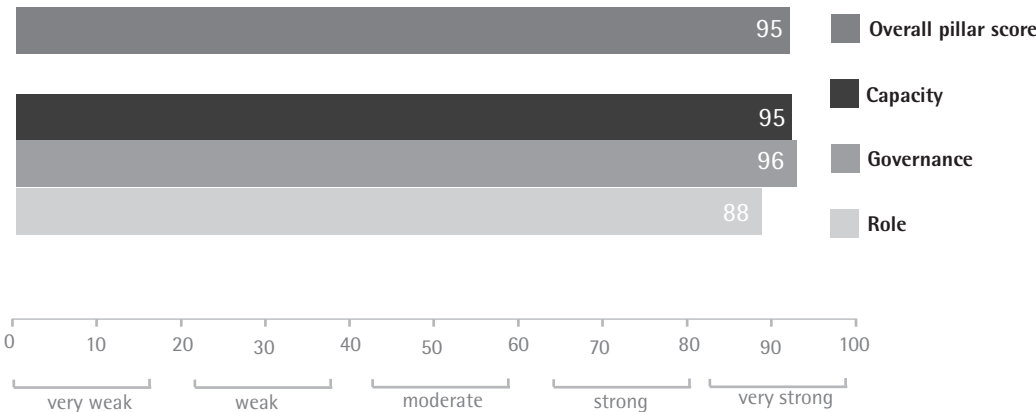
210 See pillar – Business Sector

211 Transparency International UK Press release. 30 March 2011. Government guidance 'deplorable' and will weaken Bribery Act



6.3

JUDICIARY *Status: very strong*



SUMMARY

This pillar will look principally at the judiciary in England and Wales. The research team was offered help in Scotland and Northern Ireland, but the legal systems are so diverse that they require a separate pillar each, which was beyond the scope of the current assessment. The judiciary pillar in England and Wales is extremely robust: there is a long tradition of independence, accountability and transparency. Indeed there is very little information on the judiciary that is not publicly available. There are some future concerns that have been identified as potentially weakening the judiciary: particularly the reduction in public spending that has seen a number of courts close down in 2011. Yet these are not perceived as enough of a threat to affect the judiciary's high standing overall. Annex 1 presents the detailed scores assigned to the judiciary in terms of capacity, governance and role in the national integrity system. Below is a qualitative assessment of the relevant indicators.

STRUCTURE AND ORGANISATION

The United Kingdom has three separate legal systems; one each for England and Wales, Scotland and Northern Ireland. This reflects its historical origins and the fact that both Scotland and Ireland, and later Northern Ireland, retained their own legal systems and traditions under the Acts of Union 1707 and 1800. The judicial systems of England and Wales, and Scotland are illustrated in Annex 2. This pillar will focus primarily on the judiciary of England and Wales. Despite the differences within these jurisdictions, several institutions cut across the UK. The Supreme Court, for example, is the final court of appeal in all civil cases across the UK, and hears appeals for criminal cases in England, Wales and Northern Ireland<sup>212</sup>. The Office for Judicial Complaints also operates across all judicial systems.

RESOURCES (LAW)

*To what extent are there laws seeking to ensure appropriate tenure policies, judicial salaries and working conditions?*

Score 100

Judicial salaries are determined with reference to the Senior Salaries Review Body, an independent body, created in 1971 under the auspices of Office for Manpower Economics. Judicial salaries are a

212 <http://www.supremecourt.gov.uk/>

*The judiciary pillar in England and Wales is extremely robust: there is a long tradition of independence, accountability and transparency*



matter of public record and available for inspection from the Ministry of Justice website<sup>213</sup>.

The working conditions of the judiciary are laid down in Part 3 of the 2005 *Constitutional Reform Act (CRA)*. The legislation governing the tenure for judges varies according to the court or tribunal of the judge in question. According to s. 33 of the CRA 2005, Justices of the Supreme Court hold office '*during good behaviour*', which means that judges are effectively tenured for life unless required to leave by Parliament for misconduct. Such impeachment proceedings are not a feature of modern political/constitutional government and any attempt to remove a judge requires the consent of both houses of parliament<sup>214</sup>. Judicial appointments in Northern Ireland are regulated by the Northern Ireland Judicial Appointments Commission, which was established on 15 June 2005 as an independent public body under the *Justice (NI) Acts 2002 & 2004*. Its statutory duties were extended by the *Northern Ireland Act 2009*<sup>215</sup>. The Judicial Appointments Board for Scotland was established in 2002 to oversee the Scottish judicial appointments process<sup>216</sup>.

## RESOURCES (PRACTICE)

*To what extent does the judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?*

### Score 75

In England and Wales there have been recent concerns over resourcing and funding at both the highest and lowest levels of the judiciary. In February 2011 Lord Phillips, President of the Supreme Court, argued that the Supreme Court was not being properly funded and had effectively become dependent on the Ministry of Justice in England and Wales, a stark contrast with the secure line of funding originally envisaged by Parliament for the new Court. Lord Phillips argued that this potentially had an impact on the resources of the Court: "[there is a] tendency on the part of the Ministry of Justice to try to gain the Supreme Court as an outlying part of its empire<sup>217</sup>."

These comments were the first made by the President of the Court, and they echo discontent within the judiciary about court funding, particularly over substantial cuts made to local courts (i.e. Magistrates Courts and County Courts). Magistrates courts deal with approximately 95 per cent of all criminal cases in England and Wales, and also a significant amount of civil cases<sup>218</sup>. One of the core principles of the local court system has been that of "local justice", so that courts can be accessible to defendants and that local justices have knowledge of the area in which they sit. In December 2010 it was announced that 93 magistrates courts and 49 county courts would close in April 2011<sup>219</sup>. The Ministry of Justice's announcement that legal aid is to be reduced, and in civil cases be removed altogether, is another potential blow for the principle of local justice. The cuts have been described as "crude and brutal", which will have a "devastating effect"<sup>220</sup>.

One further potential concern is the upcoming amalgamation of the courts and the tribunals

213 <http://www.justice.gov.uk/publications/docs/judicial-salaries-2009.pdf>

214 s.33 Constitutional Reform Act 2005

215 <http://www.nijac.org/>

216 <http://www.judicialappointmentsscotland.org.uk/Home>

217 <http://www.ucl.ac.uk/constitution-unit/events/judicial-independence-events/launch>

218 <http://www.hmcourts-service.gov.uk/infoabout/magistrates/index.htm>

219 <http://www.bbc.co.uk/news/uk-politics-11993436>

220 *The Independent* Legal aid cuts cruel and brutal 14 February 2011

service<sup>221</sup>. A unified system of tribunals was established under the *Tribunals, Courts and Enforcement Act 2007*, and from April 2011 the two organisations merge into a single HM Courts and Tribunals service. The Law Society has suggested that “the purpose of the merger is primarily cost-saving”<sup>222</sup> and it was suggested that the merger could create some resource problems: “the size of the new judiciary may create new tensions”<sup>223</sup>. In addition it was suggested that there may be a difficulty in adjusting to the new demands of the role, and that many tribunal adjudicators are part-time with little litigation experience<sup>224</sup>.

## INDEPENDENCE (LAW)

*To what extent is the judiciary independent by law?*

**Score 100**

The independence of the judiciary is one of the core elements of the separation of powers, a central tenet of the British constitution. This doctrine states that the three principle organs of government (executive, legislature and judiciary) should operate independently of each other and, where this is not possible, there should be the appropriate checks and balances in place.

Section 3 of the *CRA 2005* creates a statutory guarantee of Judicial Independence with the ministerial office of Lord Chancellor given a guardianship role in respect of this independence. The Judicial Appointments Commission (JAC) regulates the appointment of the Judiciary. The JAC is a Non-Departmental Public Body (NDPB) funded by the Ministry of Justice<sup>225</sup>. The JAC derives its authority by virtue of Part IV of the *Constitutional Reform Act (CRA) 2005*.

## INDEPENDENCE (PRACTICE)

*To what extent does the judiciary operate without interference from the government or other actors?*

**Score 100**

In England and Wales, the doctrine of parliamentary supremacy prevents judges from reviewing Acts of Parliament to determine whether or not they conform to constitutional principles. However, the courts have long exercised a supervisory role whereby they review the acts of public authorities in order to establish whether or not such a body has abused its powers. The obverse of this relationship is the constitutional convention that a minister will not comment on judicial decisions or pending cases. In addition, government Ministers may be prosecuted, as in the case of *M v Home Office* [1994] where a Minister was ruled to have acted in contempt of court in respect of ordering deportation, having previously been subject to an injunction preventing the deportation.

The various governmental responses to the threat of terrorism have also been subject to significant judicial activism. Significant parts of the *Anti-terrorism Crime and Security Act 2001*

<sup>221</sup> Interview – senior member of the judiciary

<sup>222</sup> <http://www.lawmanagementsection.org.uk/pages/news/item/368>

<sup>223</sup> Interview – senior member of the judiciary

<sup>224</sup> Interview – senior member of the judiciary

<sup>225</sup> <http://www.judicialappointments.gov.uk/>

were ruled incompatible with the United Kingdom's obligation under the European Convention on Human Rights in the case of *A v Others* [2004] UKHL 56. This has been seen as evidence of robust judicial independence from the executive. Further inroads to the government's counter terrorism strategy include challenges made to control orders<sup>226</sup>. All these cases have been cited as examples of the judiciary pursuing a vigorously independent approach. In Lord Phillips' recent public address he also cited how independence remains critical<sup>227</sup>. It has also been suggested that independence must be maintained on an individual level "it helps to avoid impropriety if judges aren't politically committed, don't pontificate publicly and don't broadcast politics"<sup>228</sup>.

## TRANSPARENCY (LAW)

*To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the judiciary?*

**Score 100**

There are many different types of information on the activities and decision-making processes of the judiciary that are publicly available. Court proceedings are almost always open to the public and case statistics are available to the public<sup>229</sup>. The judiciary publishes an annual report outlining the number (and types) of cases dealt with in each of the different types of court in England and Wales<sup>230</sup>. The number of magistrates is publicly available, broken down into age, gender and ethnicity<sup>231</sup>. Judges' salaries are also available to the public<sup>232</sup>. Judges must give reasons for their decisions in court, and judgements made in senior courts are usually published within 48 hours by the British and Irish Legal Information Institute (BAILII)<sup>233</sup>. Under sections 88(3) and 94(3) of the Constitutional Reform Act 2005, the Judicial Appointment Commission must, as part of its selection process, consult the Lord Chief Justice and another person who has held the post before writing a report on candidates. The report must provide reasons for appointment decisions<sup>234</sup>.

## TRANSPARENCY (PRACTICE)

*To what extent does the public have access to judicial information and activities in practice?*

**Score 100**

There is substantial public access to judicial information in practice, including judicial decisions. It was suggested that the only area for concern was in local crime reporting: which was regarded

<sup>226</sup> *Re JJ* [2007] UKHL 45 and *SSHD v AF* [2009] UKHL 28

<sup>227</sup> <http://www.ucl.ac.uk/constitution-unit/events/judicial-independence-events/launch>

<sup>228</sup> Interview – senior member of the judiciary

<sup>229</sup> <http://www.justice.gov.uk/publications/judicialandcourtstatistics.htm>

<sup>230</sup> <http://webarchive.nationalarchives.gov.uk/+http://www.justice.gov.uk/publications/judicialandcourtstatistics.htm>

<sup>231</sup> <http://www.judiciary.gov.uk/publications-and-reports/statistics/magistrates-statistics>

<sup>232</sup> <http://www.judiciary.gov.uk/about-the-judiciary/judges-magistrates-and-tribunal-judges/terms-of-service/salary>

<sup>233</sup> <http://www.bailii.org/>

<sup>234</sup> [http://jac.judiciary.gov.uk/about-jac/352.htm#Panel\\_decision](http://jac.judiciary.gov.uk/about-jac/352.htm#Panel_decision)

as possibly in decline due to financial constraints on local media. This was not considered to be so serious as to significantly hamper public access to information<sup>235</sup>. Websites such as <http://www.judiciary.gov.uk/> provide a broad range of information on the judiciary in England and Wales including the names of all judges and their appointment details; guidance and protocols; and information about the various court structures. There are equivalent sources of information for Scotland (<http://www.scotland-judiciary.org.uk/1/0/Home>) and Northern Ireland (<http://www.courtsni.gov.uk/en-GB/>). As previously mentioned, there are three judicial appointments organisations and their information is also publicly available.

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## ACCOUNTABILITY (LAW)

*To what extent are there provisions in place to ensure that the judiciary has to report and be answerable for its actions?*

**Score 100**

There are a variety of accountability channels for the judiciary. Internal accountability is promoted by the system of appeals against judicial decisions, and by procedures for dealing with complaints about the conduct of judges. Formal complaints about personal conduct and other complaints against judges are considered by the Office for Judicial Complaints (which also considers complaints against some judiciary members in Scotland and Northern Ireland)<sup>236</sup>, and by the Judicial Appointments and Conduct Ombudsman<sup>237</sup>. Both publish annual reports. We have stated that judges who commit a criminal offence may be subject to an investigation by the Office for Judicial Complaints and may be subject to a disciplinary sanction in accordance with the relevant statutory provisions. Following the *Constitutional Reform Act 2005*, the OJC became the sole regulatory body responsible for the investigation of matters of personal conduct and behaviour relating to judicial office holders. Prior to the OJC, members of the public would write to the Lord Chancellor or to the Judicial Correspondence Unit, but there was no established process for dealing with misconduct complaints<sup>238</sup>. Complaints can now be made directly to the OJC.

There is also external accountability to the public through media scrutiny, but more widely by civil society. These forms of accountability overlap. For instance, the appeal and complaints processes provide both internal accountability and accountability to the public, and the giving of evidence to legislative committees. Judges and magistrates are required to give reasons for their decisions.

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## ACCOUNTABILITY (PRACTICE)

*To what extent do members of the judiciary have to report and be answerable for its actions in practice?*

**Score 100**

Individual court reports are provided annually, reporting on performance throughout the year. These usually include a commentary from the local Resident Judge, Designated Civil or

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<sup>235</sup> Interview – senior member of the judiciary

<sup>236</sup> <http://www.judicialcomplaints.gov.uk/>

<sup>237</sup> <http://www.judicialombudsman.gov.uk/>

<sup>238</sup> [http://www.judicialcomplaints.gov.uk/docs/OJC\\_Annual\\_Report\\_2009\\_-\\_2010.pdf](http://www.judicialcomplaints.gov.uk/docs/OJC_Annual_Report_2009_-_2010.pdf)

<sup>239</sup> <http://www.judiciary.gov.uk/about-the-judiciary/the-judiciary-in-detail/jud-acc-ind/jud-acc-ind-2>

Designated Family Judge<sup>239</sup>. In 2008 the Lord Chief Justice's Review of the Administration of Justice in the Courts was published, which looked at the activities of the judiciary over the course of the previous 18 months (e.g. appearances by judges before Parliamentary Committees, the work of judges in the community). Members of the judiciary are also subject to explanatory accountability. Put simply this form of accountability means that individuals can be asked to give an account as to why they have behaved in a particular way<sup>240</sup>. The judiciary is subject to this form of accountability in a multitude of ways. Furthermore, the media often report on the progress and outcome of court cases, as well as upon their views on a judge's performance in particular cases or in general. This form of accountability allows scrutiny through the media of individual judges. The media also regularly comments on the institution of the judiciary as a whole. Taken together, these ensure a considerable degree of accountability.

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## INTEGRITY MECHANISMS (LAW)

*To what extent are there mechanisms in place to ensure the integrity of members of the judiciary?*

**Score 100**

The integrity standards for members of the judiciary are outlined in the *Guide to Judicial Conduct*<sup>241</sup>. The guide enshrines the principles of independence, impartiality, integrity, propriety, competence and diligence<sup>242</sup>. The guide offers advice on gifts and hospitality, activities outside the judiciary, and on conflicts of interest. A judge should not sit on a case in which the judge has a close family relationship with a party or is the spouse or domestic partner of a party, nor when there is a close personal friendship (or personal animosity). Close business associates also serve as a conflict of interest and judges will not sit on such cases<sup>243</sup>. Judges holding full-time appointments are barred from legal practice<sup>244</sup>. A full-time, fee-paid judge should not receive any remuneration except for fees and royalties earned as an author or editor<sup>245</sup>. It is necessary as a matter of law that a judge who is involved, whether personally or as a director of a company closely aligned to an organisation which was a party to the case, be automatically disqualified from sitting in judgment on that case<sup>246</sup>. Citizens can challenge judicial involvement in a case through judicial review<sup>247</sup>.

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## INTEGRITY (PRACTICE)

*To what extent is the integrity of members of the judiciary ensured in practice?*

**Score 100**

The OJC can investigate a number of different types of complaints, including:

- Discrimination;

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240 <http://www.judiciary.gov.uk/about-the-judiciary/the-judiciary-in-detail/jud-acc-ind/principles-jud-acc>

241 [http://new.judiciary.gov.uk/NR/rdonlyres/F8F48439-2E5C-4DAD-A241-DE5E9675FBDA/0/guidance\\_guide\\_to\\_judicial\\_conduct\\_update\\_2008.pdf](http://new.judiciary.gov.uk/NR/rdonlyres/F8F48439-2E5C-4DAD-A241-DE5E9675FBDA/0/guidance_guide_to_judicial_conduct_update_2008.pdf)

242 [http://new.judiciary.gov.uk/NR/rdonlyres/F8F48439-2E5C-4DAD-A241-DE5E9675FBDA/0/guidance\\_guide\\_to\\_judicial\\_conduct\\_update\\_2008.pdf](http://new.judiciary.gov.uk/NR/rdonlyres/F8F48439-2E5C-4DAD-A241-DE5E9675FBDA/0/guidance_guide_to_judicial_conduct_update_2008.pdf)

243 *Guide to Judicial Conduct* sections 7.2.1, 7.2.3 and 7.2.4

244 Under section 75 and Schedule 11 of the Courts and Legal Services Act 1990

245 *Guide to Judicial Conduct* sections section 8.6.1

246 *R v Bow Street Metropolitan Stipendiary Magistrate Ex. parte Pinochet Ugarte (No. 2)* [2000] 1 A.C. 119 [1999] 2 W.L.R. 272

247 *Re: Medicaments* 2001

- Inappropriate behaviour and comments;
- Misuse of judicial status (e.g. using judicial title for personal gain);
- Not fulfilling judicial duties (e.g. failing to meet sitting requirements);
- Criminal convictions;
- Professional misconduct (e.g. findings by a professional body, such as the Bar Standards Board)<sup>248</sup>.

There are a variety of sanctions available to the OJC including: issuing guidance; formal warnings; reprimand; removal from office; suspension; and resignation. The most recent OJC report shows that the highest number of complaints was in regard to inappropriate behaviour or comments. There were 422 complaints in this category, of which 29 led to sanctions including the removal of office of six judges and the resignation of a further four<sup>249</sup>. There were nine complaints regarding the misuse of public office, which led to three reprimands and two resignations<sup>250</sup>. The OJC annual report also shows that in 2009/10 a total of 87 sanctions were imposed on the judiciary: including a total of 11 reprimands and the removal from office of 28 judges<sup>251</sup>. This suggests that the UK is robust in upholding the integrity of the judiciary in both principle and practice.

## EXECUTIVE OVERSIGHT

*To what extent does the judiciary provide effective oversight over the executive?*

**Score 100**

In England and Wales, the courts frequently determine the limits on the exercise of discretionary decision-making, which choices are legitimate and which are illegitimate. This is achieved by means of Judicial Review under Part 54 of the Civil Procedure Rules (CPR, r.54). This is the most usual method for challenging the public law actions of public bodies. As the modern state has increased both its provision of services and its regulatory role through a vast system of public administration, so the law to check the way in which such powers are used has also increased. The courts cannot, however, review the merits of a decision (unless it is completely unreasonable) – they can only review the way in which it was made.

## CORRUPTION PROSECUTION

*To what extent does the judiciary penalise corruption cases?*

**Score 75**

The legal landscape of the UK is changing. The new 2010 *Bribery Act* will come into force in July 2011: until then, however, corruption legislation in the UK is still built around several pieces of legislation, principally the: *Public Bodies Corrupt Practices Act*, 1889; *Prevention of Corruption Act*, 1906; *Prevention of Corruption Act*, 1916. More recently the 2001 *Anti-Terrorism, Crime and Security Act* has developed powers to tackle aspects of overseas corruption and there remain on the statute book some rather obscure pieces of legislation, such as the *Honours (Prevention of*

<sup>248</sup> [http://www.judicialcomplaints.gov.uk/complaints/complaints\\_mag.htm](http://www.judicialcomplaints.gov.uk/complaints/complaints_mag.htm)

<sup>249</sup> OJC Annual Report 2009-2010 p. 14

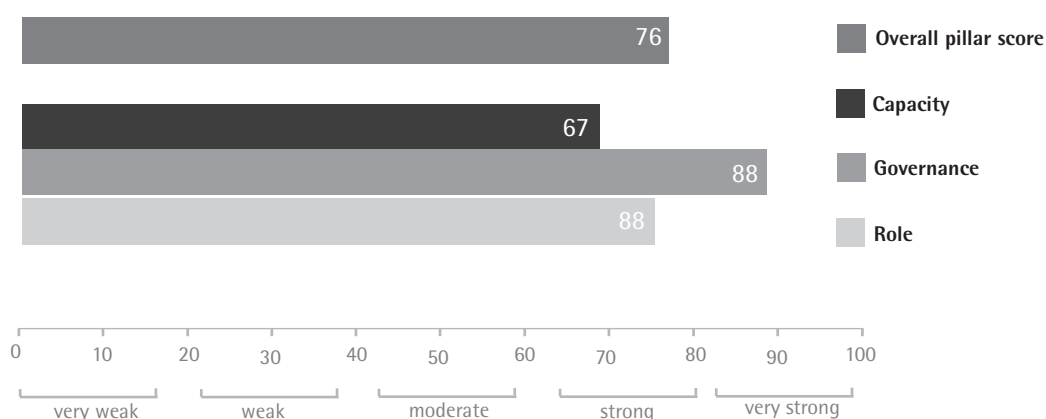
<sup>250</sup> OJC Annual Report 2009-2010 p. 14

<sup>251</sup> OJC Annual Report 2009-2010 p. 20

*Abuses*) Act, 1925, set up in the wake of Lloyd-George's cash-for-honours scandal, which has been invoked only once in its history. Between 2003 and 2007, only 27 cases were proceeded against under the *Prevention of Corruption Act*, 1906, and a further 14 cases were proceeded against under the *Public Bodies Corrupt Practices Act*, 1889. More recently, the common law offence of *Misconduct in a Public Office* has been increasingly used in corruption prosecutions<sup>252</sup>. One of the primary motivations in creating the new *Bribery Act* is, of course, to modernise the rather old and arguably outdated corruption legislation in the UK. The comparatively few cases of corruption should not, therefore, be considered as a direct reflection on the UK judiciary.

## 6.4

### PUBLIC SECTOR *Status: strong*



#### SUMMARY

The public sector in the UK includes a huge array of different organisations and institutions in both central and local government, as well as non-departmental public bodies (NDPBs). The main focus of this chapter is the Civil Service, although reference is made, where appropriate, to other aspects of the public sector.

Overall the UK has a relatively well resourced public sector. There is growing concern that the cuts to the public sector could have a negative impact on this pillar as a whole, and we suggest that these cuts could serve as an important red flag issue for the future.

The Civil Service Commission helps ensure the impartiality of the Civil Service and the independence of the Civil Service is now enshrined in law. There have been welcome moves towards greater transparency with the introduction of a Freedom of Information Act and various coalition Government initiatives. Although there are various mechanisms in place to ensure accountability (eg whistle-blowing procedures and bodies overseeing audit and value for money) there appears to be a lack of clarity in the Civil Service about how whistle-blowing procedures work. Standards of conduct of the Civil Service are now enshrined in law. Although the 'revolving door' syndrome does sometimes occur (where high-level Crown servants obtain appointments in organisations in which their recent 'insider' knowledge and contacts are used to their and their new employers' advantage), there are rules and mechanisms in place to guard against this. Annex 1 presents the detailed scores assigned to the public sector in terms of capacity, governance and role in the national integrity system. Below is a qualitative assessment of the relevant indicators.

#### STRUCTURE AND ORGANISATION

The public sector is an amorphous term that covers central and local government, and also Non-Departmental Public Bodies (NDPBs). There are two types of NDPB: executive and advisory.

Overall the UK has a relatively well resourced public sector

<sup>252</sup> Nicholls, C., Daniel, T., Polaine, M., and Hatchard, J. (2006) *Corruption and misuse of public office: Misconduct* (Oxford: OUP)



The number of people in public sector employment in September 2010 was 6.01 million, down 33,000 since June 2010. This compares with 23.11 million in private sector employment, unchanged from June 2010<sup>253</sup>. This section will mainly focus on civil service issues, although it will touch on other areas where necessary.

In the civil service alone there are currently 498,000 civil servants on a full-time equivalent (FTE) basis and 532,000 on a headcount basis<sup>254</sup>. Recruitment into the Civil Service is regulated by the 2010 Constitutional Reform and Governance Act which established the Civil Service Commission responsible for regulating recruitment. The Senior Civil Service comprises the most senior staff in departments and agencies. The most senior civil servant in a department is a Permanent Secretary. The Prime Minister appoints Permanent Secretaries (on the recommendation of the Head of the Home Civil Service). Other appointments to the Top 200 group (made up of Permanent Secretaries, senior Civil Service leaders and Director Generals) must be approved by the Prime Minister on the recommendation of the Head of the Home Civil Service.

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## RESOURCES (PRACTICE)

*To what extent does the public sector have adequate resources to effectively carry out its duties?*

**Score 75**

The public sector has been, generally, well resourced. The current government's efforts to reduce the budget deficit has led to a substantial reduction in public sector funding which is leading to concerns about the ability of some parts of the public sector to produce effective services<sup>255 256</sup>. The coalition government is abolishing 192 out of 481 NDBPs, whose functions will be brought back into central government, devolved to local government or abolished altogether<sup>257</sup>. An interviewee from the Committee on Standards in Public Life felt, however, that reduced resources would not necessarily drive corruption in the public sector<sup>258</sup>.

Generally speaking, public sector salaries are adequate to sustain an appropriate standard of living in the UK. Average private sector total pay (including bonuses) in December 2010 was £447 per week – £419 a week, excluding bonuses. In the public sector, average total pay was £467 per week<sup>259</sup>. Notwithstanding this, the Head of the Civil Service, Sir Gus O'Donnell was prompted to defend civil servants in an article refuting suggestions of 'fat cat civil servants'. He noted that *"the median salary of a civil servant is £22,850 a year – lower than the wider public sector, and lower than the private sector. Indeed, 60% of civil servants earn less than the private sector median of £25,000. The average pension is £7,000"*<sup>260</sup>.

There are differences across the public sector in the way that pay and terms and conditions are determined. Civil service organisations have responsibility for their own staff pay, grading and performance management arrangements (except the senior civil service). In addition, in the civil

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<sup>253</sup> Office for National Statistics. *Statistical bulletin: Labour market statistics*. 16 February 2011

<sup>254</sup> Civil service website

<sup>255</sup> <http://www.guardian.co.uk/politics/2010/oct/19/spending-review-document-job-cuts>

<sup>256</sup> [http://www.pcs.org.uk/en/news\\_and\\_events/news\\_centre/recent-news.cfm/id/64C118D0-FC44-4897-872641BAC455E4FD](http://www.pcs.org.uk/en/news_and_events/news_centre/recent-news.cfm/id/64C118D0-FC44-4897-872641BAC455E4FD)

<sup>257</sup> A full list of NDPB reforms can be found on the Cabinet Office website <http://www.cabinetoffice.gov.uk/sites/default/files/resources/2010-10-14-Public-bodies-list-FINAL.pdf>



service there is an almost universal system of individual performance pay. The wider public sector generally works in a different way. For example, pay for National Health Service workers, local authorities, teachers, police and fire services are subject to national pay bargaining arrangements.

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## INDEPENDENCE (LAW)

*To what extent is the independence of the public sector safeguarded by law?*

**Score 75**

The institution of the civil service has long been based on the principle of independence: civil servants advise and Ministers make decisions. Since November 2010 the independence of the civil service has been enshrined in law under provisions to the 2010 *Constitutional Reform and Governance Act*. Thus, the Civil Service Code and Principles of Recruitment, both of which are overseen by a Civil Service Commission, are now statutory requirements<sup>261</sup>. The Code states that most civil servants are 'politically restricted' and must not take part in any political activity either when on duty, in uniform or on official premises.

The Civil Service Commission is responsible for upholding the principle that selection to appointments in the civil service must be on the basis of merit and of fair and open competition. Commissioners are appointed directly by the Crown under Royal Prerogative<sup>262</sup>. Commissioners audit compliance with the recruitment Code, deal with complaints, chair and oversee the process of selection of senior civil servants.

NDPBs are regulated by the Office of the Commissioner for Public Appointments (OCPA), which monitors and regulates ministerial appointments to public office, in accordance with the 2001 Code of Practice. The OCPA was established in 1995, following the recommendations of the first report of the Committee on Standards in Public Life. It covers a wide range of non-departmental public bodies (NDPBs): from BBC governors to members of local NHS trusts<sup>263</sup>.

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## INDEPENDENCE (PRACTICE)

*To what extent is the public sector free from external interference in its activities?*

**Score 75**

The Civil Service Commission helps protect the impartiality of the civil service by promoting the Civil Service Code<sup>264</sup>. The code ensures that most civil servants are 'politically restricted' and must not take part in any political activity when on duty, in uniform or on official premises. An incoming government inherits the existing civil service. Special advisers add a political dimension to the civil service. They are temporary civil servants accountable to the Minister who appointed

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258 Interview – member of Committee on Standards in Public Life

259 Office of National Statistics. *Statistical bulletin: Labour market statistics*. 16 February 2011

260 *The Guardian* 'The civil service is not full of fat cats.' Wed 10 November 2010.

261 *Constitutional Reform and Governance Act 2010*

262 *Civil Service Commission Recruitment Principles* November 2010.

263 *Making and managing public appointments: a guide for departments*. 4th edition, Cabinet Office, Feb 2006

264 *Civil Service Code*. Presented to Parliament pursuant to section 5 (5) of the *Constitutional Reform and Governance Act 2010*

them and their appointment requires the written approval of the Prime Minister. However, a Public Administration Select Committee Report, investigating the politicisation of the civil service (and prompted by concerns about the relative roles and responsibilities of ministers and civil servants), concluded that *"despite the regular accusations of politicisation, Britain clearly remains singularly unpoliticised. External appointments to the senior civil service are regulated by the Civil Service Commissioners, and no witnesses suggested ministers were able to exercise significant powers of patronage. Although ministers are able to make political appointments to special adviser posts, there was broad agreement that the scale of political appointments was so small, in relation to the size of the civil service, that it did not undermine principles set out by the 1854 Northcote Trevelyan Report<sup>265</sup> and, in significant respects, protected them. Moreover, in relation to appointments to public bodies, the role of ministers has actually been reduced by recent changes<sup>266</sup>."*

Cabinet Office advice<sup>267</sup> is that it is best practice for all public appointment procedures, whether the body in question falls within the Commissioner's remit or not, to adhere to the provisions of the Commissioner for Public Appointments' *Code of Practice*. Key principles are appointment on merit and openness and transparency. The Commissioner also requires that no appointment can take place without independent scrutiny in the form of an Independent Assessor. These assessors:

- "assist the Commissioner for Public Appointments, Ministers, other appointing authorities and departments in the task of making effective public appointments which command public confidence;
- provide an assurance that the appointments process has conformed to the Principles and practices set out in the Code of Practice; and in particular,
- ensure that appointments have been made on merit after a fair, open and transparent process<sup>268</sup>."

While it is too early to properly judge the effects of the 2010 *Constitutional Reform and Governance Act*, it was suggested that civil servants had always offered unbiased advice, and therefore it may not have been entirely necessary to enshrine the code in legislation<sup>269</sup>.

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## TRANSPARENCY (LAW)

*To what extent are there provisions in place to ensure transparency in financial, human resource and information management of the public sector?*

**Score 100**

The *Data Protection Act* and *Freedom of Information Act* delineate approaches to data management and rights to information. The former states that anyone processing personal information must comply with eight principles. These are:

- Personal information must be fairly and lawfully processed;
- Information must be processed for limited purposes;
- Personal data should be adequate, relevant and not excessive in relation to the purpose for which it was processed;

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<sup>265</sup> The Northcote Trevelyan Report was the catalyst for the development of an apolitical UK civil service, where recruitment and promotion was based on merit.

<sup>266</sup> *Politics and administration: ministers and civil servants. Third report of session 2006-7. Pg8*

<sup>267</sup> *Making and managing public appointments: a guide for departments. 4th edition, Cabinet Office, Feb 2006*

<sup>268</sup> [http://www.publicappointmentscommissioner.org/independent-assessors/independent\\_assessor,95e38e97a6e.html](http://www.publicappointmentscommissioner.org/independent-assessors/independent_assessor,95e38e97a6e.html)

<sup>269</sup> Interview – member of Committee on Standards in Public Life

- Information must be accurate and up-to-date;
- Information should not be kept for longer than is necessary;
- Information should be processed in line with the individual's rights;
- Information processing should be secure;
- Information should not be transferred to other countries without adequate protection<sup>270</sup>.

The Freedom of Information Act gives citizens the right to request official information held by public authorities, unless there are good reasons not to do so. The Information Commissioner's Office is an independent information authority that was established to uphold information rights in the public interest, promote openness by public bodies and data privacy for individuals. Guidance from the Information Commissioner's Office provides the following two broad exemptions:

*"Absolute exemptions. These are cases where the right to know is wholly disappplied. In some cases there is no legal right of access at all, for instance information supplied by or relating to bodies dealing with security matters or information covered by parliamentary privilege. In other cases, for instance information available to the applicant by other means or personal information relating to the applicant, it may be possible to obtain the information by alternative means although not under FOIA. Qualified exemptions are cases where a public authority, having identified a possible exemption, must consider whether the public interest in maintaining the exemption is greater than that in confirming or denying the existence of the information requested and providing the information to the applicant<sup>271</sup>".*

Scotland has its own *Freedom of Information (Scotland) Act 2002*<sup>272</sup>, not dissimilar to the FOI Act referred to above, and a Scottish Information Commissioner.

Senior civil servants do not have to declare their assets. The Freedom of Information Act has enshrined a right of public access to whole categories of information, with a public interest test to resolve disputes about disclosure; and the Public Interest Disclosure Act has given employment protection to those who make certain disclosures. All vacancies regulated and monitored by the Office of the Commissioner of Public Appointments must be advertised on the Public Appointments Vacancy website<sup>273</sup>.

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## TRANSPARENCY (PRACTICE)

*To what extent are the provisions on transparency in financial, human resource and information management in the public sector effectively implemented?*

### Score 100

Generally, it is relatively easy to access information on the activities of the public sector. It has been suggested that transparency is one of the key features in the UK public sector at all levels: "there is a considerable amount of transparency in public life"<sup>274</sup>. Indeed it has been suggested that not only is FOI "far reaching" but that the coalition government were genuinely moving towards even further transparency, for example publishing the names, grades, job titles and annual pay rates for most civil servants with salaries over £150,000. FOI reports are being "proactively published" and some agencies that are not subject to the FOI Act often behave as if

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<sup>270</sup> Data Protection Act

<sup>271</sup> Information Commissioner's Office Freedom of Information awareness guidance No. 3, 1st March 2007

<sup>272</sup> Freedom of Information (Scotland) Act 2002.

<sup>273</sup> Making and managing public appointments: a guide for departments. 4th edition, Cabinet Office, Feb 2006

they are, for example the Financial Ombudsman Service.

Transparency has been seen as an essential tool in promoting good standards of conduct; not only because people behave differently in the public gaze but also because the media, in using this information, can be more effective than a regulatory agency<sup>275</sup>. The Cabinet Office has dedicated information websites to promote transparency<sup>276</sup>, and has introduced an online transparency tool, that allows public access to all central government spending over £25,000; details of Ministerial meetings; all government contracts; salaries of civil servants; and business plans in each government department<sup>277</sup>. The Government is attempting to bring all of this information together on one website – [www.data.gov.uk](http://www.data.gov.uk).

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## ACCOUNTABILITY (LAW)

*To what extent are there provisions in place to ensure that public sector employees have to report and be answerable for their actions?*

**Score 75**

Accountability and control are the tasks of the Westminster Parliament's Public Accounts Committee and the National Audit Office. The role of the National Audit Office (NAO) is to audit the financial statements and value for money of all government departments and agencies, and many other public bodies. Under the law it reports these findings to Parliament<sup>278</sup>. In terms of accountability for spending, internal auditors provide independent and objective assurance and advisory services within government departments, agencies and NDPBs (non-departmental public bodies) across the UK. They are supported in this work by the Assurance and Financial Reporting Policy Team (AFRP) working in HM Treasury.

The Parliamentary and Health Service Ombudsman is the body which the public can contact if they have a complaint about poor service, unfair treatment and administrative failures in UK government services or the NHS in England. There are also Local Government Ombudsmen for England, and Public Service Ombudsmen for Wales, Scotland and Northern Ireland (see other pillar) who investigate complaints against local authorities<sup>279</sup>.

There is a whistle-blowing policy in the Civil Service which is covered in the Civil Service Code. Public Concern at Work (a charity and independent authority on public interest whistle-blowing) recently reviewed how well Government departments' policies comply with good practice in whistle-blowing (as set out by the Committee on Standards in Public Life). It found that while the majority of government departments offer their staff some helpful guidance on whistle-blowing, few policies fully comply with accepted good practice and some fall far short of it. They conclude "*a major flaw in many of the policies stems from what appears to be a concerted desire to insist that whistle-blowing concerns should be kept internal in all circumstances*"<sup>280</sup>.

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274 Interview – member of Committee on Standards in Public Life

275 Interview. – member of Committee on Standards in Public Life

276 <http://www.cabinetoffice.gov.uk/transparency>

277 <http://transparency.number10.gov.uk/>

278 See Supreme Audit Institution Pillar

279 See Ombudsman Pillar

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## ACCOUNTABILITY (PRACTICE)

*To what extent do public employees have to report and be answerable for their actions in practice?*

**Score 75**

Concerns have been raised in Parliament recently over whistle-blowing and the responsibilities of civil servants. A recent Parliamentary report found that *"there is a lack of clarity in the Civil Service Code regarding the circumstances in which an individual civil servant is allowed or encouraged to approach law enforcement or regulatory bodies with concerns they may have"*<sup>281</sup>.

The report argued that there may be gaps in the practicalities of whistle-blowing and that further protection was required: *"...more needs to be done to ensure that all grades know how to access them and have the confidence to do so. In particular, much more should be done to ensure that whistleblowers who raise concerns in good faith are protected and feel that their concerns are taken seriously"*<sup>282</sup>.

The Parliamentary and Health Services Ombudsman undertakes investigations into complaints that government departments, and other public bodies, have not acted properly or fairly or have provided a poor service. In 2009-10 they resolved 24,240 enquiries; 6,533 enquiries were resolved following detailed further assessment; 321 were resolved following intervention and 322 investigations were concluded. In terms of satisfaction<sup>283</sup>, 70 per cent of enquirers and 81 per cent of complainants were satisfied or very satisfied with the customer service provided by the Ombudsman. Less positive was the feedback from those customers who asked for a review of the decision made about their case, or who complained about the Ombudsman – only 34 per cent said that they were satisfied or very satisfied with the service<sup>284</sup>.

It has also been suggested that the public sector is becoming increasingly more accountable and that it was the accountability of politicians, and particularly Ministers, that needed to improve<sup>285</sup>. One other area of possible concern was the restructuring of many NDPBs, which had clear lines of accountability. The reclaiming of these within government departments *may* lead to some issues of unclear accountability and in such cases there is a need to find the correct levels of accountability<sup>286</sup>. It was suggested that the best mechanism to deal with this issue would be to increase transparency<sup>287</sup>.

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280 Public Concern at Work (2009) *WHISTLE-BLOWING AND WHITEHALL: A review of how the policies of Government Departments comply with accepted good practice on whistle-blowing*, London

281 Public Administration Select Committee (2009) *Leaks and whistle-blowing in Whitehall: Tenth report of session 2008-9*, London: The Stationary Office p. 23

282 *Ibid*, p. 3

283 Parliamentary and Health Services Ombudsman (2010) *Making an impact. Annual report 2009-10*

284 Parliamentary and Health Services Ombudsman (2010) *Customer satisfaction survey. Summary of results November 2009 to April 2010*

285 Interview – member of Committee on Standards in Public Life

286 Interview – member of Committee on Standards in Public Life

287 Interview – member of Committee on Standards in Public Life

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## INTEGRITY (LAW)

*To what extent is the integrity of public sector employees guaranteed by law?*

**Score 100**

The civil service code enshrines standards in law with the provisions of the *Constitutional Reform and Governance Act 2010*. The Civil Service Code sets out the core Civil Service values and the standards of behaviour expected of all civil servants in upholding these values. Civil servants working for the Scottish Executive and the Welsh Assembly Government, and their Agencies, have their own versions of the Code. Similar Codes apply to the Northern Ireland Civil Service and the Diplomatic Service. Key principles are:

- Integrity – putting the obligations of public service above personal interests;
- Honesty – being truthful and open;
- Objectivity – basing advice and decisions on rigorous analysis of the evidence;
- Impartiality – acting solely according to the merits of the case and serving governments of different political parties equally well<sup>288</sup>.

Allegations of breaches of the code or pressures to breach the code can be reported to the Commission. There is guidance on gifts and hospitality and the use of official information<sup>289</sup>. Civil servants cannot misuse their position or information for private interests or that of others<sup>290</sup>.

The chapter on the judiciary provides an outline of the legislation on corruption. Suffice it to say here that until the Bribery Act comes into force, corruption legislation in the UK is still built around several pieces of legislation. Of particular note is the common law offence of *Misconduct in Public Office* which has been increasingly used in corruption prosecutions (64 cases were proceeded against between 2003 and 2007).

According to guidance, all NDPBs should adopt a code of conduct based upon the model code<sup>291</sup>. This includes the provision “*should not misuse their official position or information acquired in their official duties to further their private interests or those of others*”. It should cover private interests and possible conflicts with public duty, gifts and hospitality, relevant share holdings, the disclosure of official information, political activity, and procedures for staff to raise concerns about improper conduct. Once they have left the employment of a public body, staff should continue to observe their duty of confidentiality and abide by any rules on the acceptance of business appointments. Although this is guidance rather than a fixed rule, NDPBs are accountable to their sponsoring departments and a failure to make arrangements to the sponsoring body's satisfaction will inevitably be addressed.

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## INTEGRITY (PRACTICE)

*To what extent is the integrity of public sector employees ensured in practice?*

**Score 75**

Examples of systematic bribery and corruption in the UK public sector are few and far between. In 2008/09 civil service commissioners dealt with 14 alleged breaches of the code of conduct;

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<sup>288</sup> Civil Service Code. Presented to Parliament pursuant to section 5 (5) of the Constitutional Reform and Governance Act 2010

<sup>289</sup> Civil Service Code. Presented to Parliament pursuant to section 5 (5) of the Constitutional Reform and Governance Act 2010

<sup>290</sup> Civil Service Code. Presented to Parliament pursuant to section 5 (5) of the Constitutional Reform and Governance Act 2010

<sup>291</sup> Cabinet Office (January 2007) *Public bodies: A guide for departments*. Chapter 5 Public body staff

and in 2009/10 they dealt with 24 cases<sup>292</sup>. A 2009 Public Administration Select Committee report concluded that although awareness of the Civil Service Code has improved, there were still few appeals considering the size of the service: *"We are concerned that awareness of the Civil Service Code, the authoritative statement of Civil Service values, does not appear to be universal"*<sup>293</sup>. In particular, there was concern over a lack of awareness outside the higher grades. A 2009 survey showed that 75 per cent of Civil Servants were aware of the Code, 58 per cent expressed confidence in the outcome of a Code investigation, and 44 per cent said they were aware of how to raise a complaint under the Code<sup>294</sup>. It is, of course, arguably quite serious that one quarter of civil servants are unaware of the code of conduct, especially with its recent elevation into statute.

An Advisory Committee on Business Appointments (AcoBA), an independent body, provides advice, on request, to the Prime Minister, the Foreign Secretary and other Ministers, on applications from the most senior Crown servants who want to take up employment within two years of leaving Crown service. AcoBA produces 'Rules on the Acceptance of Outside Appointments' which are part of the Civil Service Management Code, as well as guidelines for other Crown servants. However, there has been some concern about 'revolving door syndrome' in the higher echelons of the UK civil service, with the leader of the House of Commons calling for an investigation between Whitehall and defence organisations<sup>295</sup>. There has also been concern about jobs secured by special advisers; in an attempt to address the issue all government special advisers who move on from Whitehall into new employment must now notify the Advisory Committee on Business Appointments<sup>296</sup>.

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## ROLE

### **Cooperation with other public institutions, CSOs and private agencies in preventing/ addressing corruption (law and practice)**

*To what extent does the public sector work with public watchdog agencies, business and civil society on anti-corruption initiatives?*

#### **Score 75**

The UK public sector has cooperated principally with the enquiries by the Committee on Standards in Public Life (CSPL), particularly its first four reports: The CSPL was established in 1995, as an independent advisory agency to Government, to monitor, report and make recommendations on ethical standards in public life. The CSPL has helped ensure that ethical standards in public life have a high profile and has established the seven principles of public life which all public bodies are meant to uphold (selflessness, integrity, honesty, accountability, objectivity, openness, leadership)<sup>297</sup>. In addition the CSPL has produced many reports, which have had full cooperation from many public sector bodies. Its first report (1995) looked at MPs, Ministers and Civil Servant; its second report (1996) looked at local public spending bodies; its third report (1997) was on standards of conduct in Local Government in England, Scotland and

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292 Civil Service Commissioners Annual Report 2009/10

293 Public Administration Select Committee (2009) *Leaks and whistle-blowing in Whitehall: Tenth report of session 2008-9*, London: The Stationary Office p. 27

294 Civil Service Commissioners Annual Report 2009/10

295 <http://www.guardian.co.uk/politics/2010/dec/26/g4s-hires-ex-mandarins>

296 [http://www.publicaffairsnews.com/no\\_cache/home/uk-news/news-detail/newsarticle/spads-moving-on-from-whitehall-all-face-revolving-doors-committee/2?tx\\_ttnews%5Bpointer%5D=4&cHash=a2c1c3c6ee](http://www.publicaffairsnews.com/no_cache/home/uk-news/news-detail/newsarticle/spads-moving-on-from-whitehall-all-face-revolving-doors-committee/2?tx_ttnews%5Bpointer%5D=4&cHash=a2c1c3c6ee)

297 [http://www.public-standards.gov.uk/About/The\\_7\\_Principles.html](http://www.public-standards.gov.uk/About/The_7_Principles.html)



Wales. Furthermore these reports have regularly been revisited and development in each area has been assessed and evaluated.

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## REDUCE CORRUPTION RISKS BY SAFEGUARDING INTEGRITY IN PUBLIC PROCUREMENT

*To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?*

### Score 75

In 2009/10, the UK public sector spent £236 billion on procurement of goods and services<sup>298</sup>. The NHS procurement budget stands at approximately £12 billion, of which a recent study found that £1 billion per year was being wasted through poor practices. The Ministry of Defence has a budget of approximately £14 billion per year<sup>299</sup>. Scotland currently spends an annual £9 billion on public procurement<sup>300</sup>.

*The Public Contracts Regulations 2006* consolidated the rules affecting procurement of contracts for works, services and supplies for England, Wales and Northern Ireland. Scotland is covered by the *Public Contracts (Scotland) Regulations 2006*. These regulations implement the European Commission's Consolidated Directive.

- The public procurement rules include the following key principles:
- Openness and transparency;
- Objectivity and equal treatment of tenderers;
- Consistency<sup>301</sup>.

A recent review has identified a cross-collaborative procurement strategy for the UK public sector<sup>302</sup>. The Office of Government Commerce (OGC) is part of the *Efficiency and Reform Group* within the Cabinet Office, and was formerly an independent agency within HM Treasury<sup>303</sup>. The OGC works with central government departments and other public sector organisations, including local government, and has six key goals:

- Delivery of value for money from third party spend;
- Delivery of projects to time, quality and cost, realising benefits;
- Getting the best from the Government's £30bn estate;
- Improving the sustainability of the Government estate and operations, including reducing carbon emissions by 12.5% by 2010/11, through stronger performance management and guidance;
- Helping achieve delivery of further Government policy goals, including innovation, equality, and support for small and medium enterprises (SMEs);
- Driving forward the improvement of central Government capability in procurement, project

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298 Report by the Comptroller General (25 March 2011) *The efficiency and reform group's role in improving public sector value for money*. The Stationary Office, Norwich

299 [http://www.nao.org.uk/publications/0910/collaborative\\_procurement.aspx](http://www.nao.org.uk/publications/0910/collaborative_procurement.aspx)

300 <http://www.scotland.gov.uk/Topics/Government/Procurement>

301 Oulaw.com website. IT and e-commerce legal help from international law firm Pinsent Masons

302 National Audit Office and the Audit Commission (2010) *A review of collaborative procurement across the public sector*. London. NAO.

303 [http://www.ogc.gov.uk/about\\_ogc\\_who\\_we\\_are.asp](http://www.ogc.gov.uk/about_ogc_who_we_are.asp)



and programme management, and estates management through the development of people skills, processes and tools<sup>304</sup>.

OGC provides policy standards and guidance on best practice in procurement. Since 2007, it has run procurement capability reviews within government departments to assess capacity and efficiency, and these reviews are publicly available<sup>305</sup>. It is responsible for the Collaborative Procurement Programme worth £18 billion per year. An additional development has been the new website, *contracts finder*, which details all central government contracts over £10,000<sup>306</sup>.

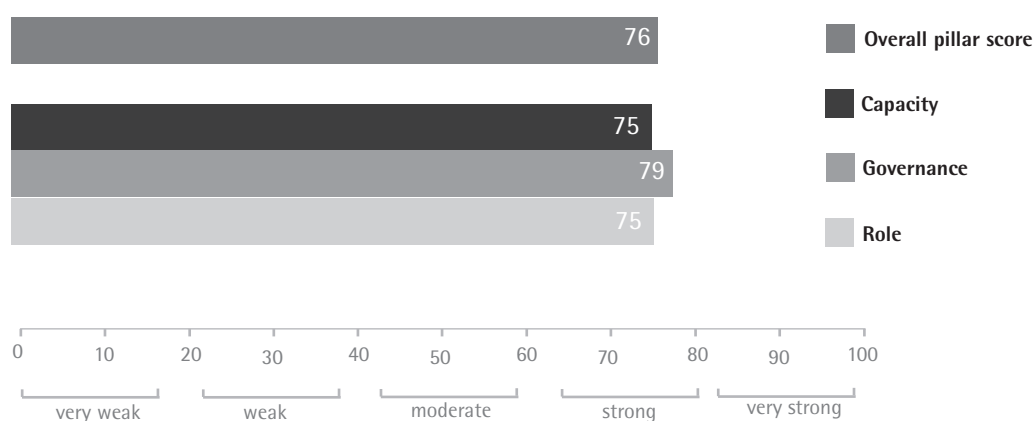
The Scottish Procurement Directorate (SPD) is responsible for developing and advising on procurement policy for the public sector in Scotland<sup>307</sup>. Northern Ireland's public procurement is overseen by the Central Procurement Directorate, which operates within the Department of Finance and Personnel<sup>308</sup>. The Welsh Assembly has its own procurement policy<sup>309</sup> and operates two public sector procurement web portals – Buy4Wales and Sell2Wales<sup>310</sup>.

Some concerns regarding procurement have been raised, not least of which is the very large sums of money involved. A key area of concern was local government, which has an annual procurement spend of £80 billion. In 2009/10, 165 procurement frauds were detected at the local level, worth £2.7 million (not all of which necessarily involved corruption)<sup>311</sup>. There was also concern that, lower down the supply chain, procurement is difficult to regulate: *“with small contracts there are less obvious control mechanisms, even if a local authority runs everything ok the situation is very disparate in the UK. When there is a massive supply chain, the further down the scale the more dangerous it is”*<sup>312</sup>. While issues remain, there is little doubt that there is a rather solid framework for public procurement in the UK.

## 6.5

### LAW ENFORCEMENT

*Status: strong*



#### SUMMARY

The key strengths of the Law Enforcement pillar are its independence and the improvements in its own anti-corruption and integrity mechanisms. There is also strength in terms of

<sup>304</sup> <http://www.ogc.gov.uk/index.asp>

<sup>305</sup> [http://www.ogc.gov.uk/documents/OGC\\_Procurement\\_Capability\\_Review\\_Programme\\_Tranche\\_One\\_Report.pdf](http://www.ogc.gov.uk/documents/OGC_Procurement_Capability_Review_Programme_Tranche_One_Report.pdf)

<sup>306</sup> <http://www.businesslink.gov.uk/bdottg/action/layer?site=1000&r.s=tl&r.l1=1073861169&r.lc=en&r.l2=1086346490&topicId=1086319968>

<sup>307</sup> <http://www.scotland.gov.uk/Topics/Government/Procurement/about>

<sup>308</sup> <http://www.dfpni.gov.uk/index/procurement-2.htm>

<sup>309</sup> <http://wales.gov.uk/topics/improvingservices/bettervfm/smartpurchasing/wob/wagpolicy/?lang=en>

<sup>310</sup> <http://wales.gov.uk/topics/improvingservices/bettervfm/smartpurchasing/wob/wagpolicy/?lang=en>

<sup>311</sup> Audit Commission (2010) *Protecting the Public Purse*. London: AC. p. 13

<sup>312</sup> Interview – member of Committee on Standards in Public Life

*The key strengths of the Law Enforcement pillar are its independence and the improvements in its own anti-corruption and integrity mechanisms*

accountability and transparency. Weaknesses include resources and future police accountability. In 2010 the *Police Reform and Social Responsibility Bill* was introduced, which aims to substantially change the way in which law enforcement agencies are managed, particularly in relation to the regional police forces. In addition the coalition government announced large spending cuts for the police in December 2010, and while there is strong debate about exactly how this will affect law enforcement, there will inevitably be some cutbacks made to services. As with several other areas in the UK NIS, then, there is an overarching theme of change and uncertainty surrounding the future of law enforcement agencies, against which it is difficult to make judgements with any great certainty. Annex 1 presents the detailed scores assigned to law enforcement agencies in terms of capacity, governance and role in the national integrity system. Below is a qualitative assessment of the relevant indicators.

#### STRUCTURE AND ORGANISATIONS

Law Enforcement agencies in the UK include regional police forces (43 in England and Wales; 8 in Scotland; and the Police Service of Northern Ireland), along with a number of national agencies (including the Serious Organised Crime Agency; UK Border Agency, HM Revenue and Customs; the British Transport Police (BTP); the Ministry of Defence Police (MDP)) The Jersey, Guernsey and Isle of Man Police are separate organisations that carry out policing in those islands. There is no national police force in the UK.

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#### RESOURCES (PRACTICE)

*To what extent do law enforcement agencies have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?*

#### Score 50

Regional police forces are currently funded by a central government grant, and a local "precept", which is taken from local taxes. The regional police forces in the UK currently face serious reductions in their central budgets. In December 2010 the Policing Minister, Nick Herbert, announced cuts in English and Welsh forces of 4 per cent and 5 per cent in the next two years (£9.3bn in 2011/12, then £8.8bn in 2012/13). In real terms, taking into account changes in purchasing power over time, this equals 6 per cent in 2011/12 and 8 per cent in 2012/13<sup>313</sup>. By 2014, police forces face a 20 per cent reduction in their budgets. The spending review allowed for a separate budget of £567 million for counter-terrorist police activities in 2012/13; neighbourhood policing allocations of £340m (2011/12) and £338m (2012/2013); and a separate budget of £600 million for safety and security during the 2012 London Olympics.

There are sharp divisions of opinion as to how these budget restraints will translate into operative areas. Nick Herbert himself has suggested that the majority of the cuts can be met through efficiency savings, whereas the Labour Party has argued that it will lead to the loss of 10,000 front-line police officers. The Association of Police Authorities has agreed with the latter,

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313 BBC Police budget cut details revealed <http://www.bbc.co.uk/news/uk-11984841>

314 <http://www.bbc.co.uk/news/uk-11984841>

315 <http://www.civitas.org.uk/press/prEuropolice.htmv>

suggesting that *"It is difficult to envisage how some loss of service can be avoided"*<sup>314</sup>. The Police Federation has argued that budget cuts could lead to 40,000 officers losing their jobs, including 1,000 officers from the Metropolitan police alone. A recent report from think-tank Civitas was entitled: *"2011: the start of a great decade for criminals?"* and argues that the reduction in budgets will inevitably lead to fewer front-line officers and therefore greater opportunities for criminal activity<sup>315</sup>.

Although the Association of Chief Police Officers has refused to offer comment over what it terms 'a political matter', individual chief constables have offered comment to the Home Office. Senior police chief constables have criticised government suggestions that 20 per cent budget cuts could be achieved mainly through efficiency savings.

The Chief Constable of West Midlands Police, Chris Sims, has argued that cuts of more than 12 per cent must necessitate radical change. Mr Sims, head of the UK's second largest force, said there was a "growing inconsistency" in political rhetoric about what the police should do to make savings. Greater Manchester Police Chief Constable, Peter Fahy, agreed that fundamental reform was needed. Chief Constable Sims stressed, however, that the public would not see any change in the current service despite the fact the force was making at least 2,200 job cuts<sup>316</sup>.

This view was shared by our practitioner interviewee, who emphasised that there was no reduction in the number of law enforcement agencies, nor to the oversight agencies that they are accountable to: *"the police are not being asset-stripped, they are still putting cars out on patrol"*<sup>317</sup>. One major question that remains, however, is the extent to which anti-corruption work will be prioritised. Each police force commits resources to this field and reports annually on its findings, but with substantial pressure on resources this may no longer be possible at such a consistent level across forces<sup>318</sup>.

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## INDEPENDENCE (LAW)

*To what extent are the law enforcement agencies independent by law?*

**Score 100**

Police forces in England and Wales are run under a tripartite structure of police accountability, established under the 1964 *Police Act*, which yields a separation of powers and promotes operational independence for chief constables. The tripartite system distributes responsibilities between the Home Office, the police authority, and the chief constable of each police force. Police authorities are made up of: local authority members (selected by their relevant local authority); magistrate members, who are chosen by the relevant Magistrates Court Committee; and independent members. The latter are appointed by the councillor and magistrate members of the Police Authority, following a selection process involving an Independent Selection Panel and the Home Secretary. The tripartite system has been endorsed by subsequent legislation including the 1994 *Police and Magistrates Courts Act (PMCA)*, the 1996 *Police Act*, and the 2002 *Police Reform Act*<sup>319</sup>.

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<sup>316</sup> <http://www.bbc.co.uk/news/uk-politics-11813671>

<sup>317</sup> Interview - anonymous

<sup>318</sup> Interview - anonymous

<sup>319</sup> Mawby, R and Wright A (2005), *Police accountability in the UK* (Commonwealth Human Rights Initiative)

In Scotland, under the 1967 *Police (Scotland) Act*, Scottish Ministers retain overall responsibility for policing policy. Police Authorities and Joint Police Boards are responsible for setting police budgets and ensuring that best value is attained for the public purse. Chief constables are responsible for the operational aspects of policing within their force areas. In Northern Ireland, the role of the police authority is taken by the Policing Board, which not only has a responsibility for delivering an efficient police force but is also responsible for helping the Police Service of Northern Ireland (PSNI) fulfil its statutory obligation to meet the standards of the *Human Rights Act 1998*<sup>320</sup>.

## INDEPENDENCE (PRACTICE)

*To what extent are the law enforcement agencies independent in practice?*

**Score 75**

As previously mentioned, the *Police Reform and Social Responsibility Bill* proposes to abolish police authorities and instead establish elected police commissioners, and police and crime panels<sup>321</sup>. There have been previous concerns that the police authority could hold a political role that impinged upon the role of the chief constable<sup>322</sup>. But there has been little evidence for this and previous discussions had sought to give more power to the role of the police authority. It would appear that the new proposals have a more political slant. Under the terms of the new Bill, elected commissioners will hold the chief constable to account directly. Essentially, they will be able to hire and fire chief constables. The chief constable will, however, maintain operational independence including the appointment of other officers and overall responsibility for the control of the police force<sup>323</sup>.

One concern was raised over the possibility that an elected commissioner might not pass the national vetting procedures that would allow him or her to become an officer in the police, although this will probably be ironed out at the earliest stages<sup>324</sup>. In addition there was a question over local elections for commissioners when all forces engage in regional and national priorities, which could lead to potential problem of accountability<sup>325</sup>.

There are some limited examples of political influence but this is usually restricted to performance management, such as the targets that may drive the direction of a police force. It was noted that such targets are usually transparent, however, which ensures that changes in police direction are both publicly known and also not party to any vested interests<sup>326</sup>.

## TRANSPARENCY (LAW)

*To what extent are there provisions in place to ensure that the public can access the relevant information on law enforcement agency activities?*

**Score 75**

There is a great deal of publicly available information on law enforcement agency activities via websites. Each police force publishes annual reports, strategic plans and makes information

<sup>320</sup> Mawby, R and Wright A (2005), *Police accountability in the UK* (Commonwealth Human Rights Initiative)

<sup>321</sup> BBC Police reform proposals outlined <http://www.bbc.co.uk/news/uk-10757014>

<sup>322</sup> Interview - anonymous

<sup>323</sup> Elected commissioners will not be used in London as the Metropolitan Police Commissioner also has national duties including co-ordinating counter-terrorism. The Metropolitan Police Commissioner is appointed directly by the Home Secretary who has to take the view of the Mayor of London into account.

<sup>324</sup> Interview - anonymous

about complaints procedures readily available. Regional police forces are subject to Freedom of Information requests, although some information regarding tactics necessitate exemptions<sup>327</sup>. SOCA has exemption from FOI. In accordance with the *Crime and Disorder Act*, 1998, there is a Community Safety Partnership (CSP) for each local authority in the UK. The police, local authority, police authority and fire authority are statutory members of the CSP and must be involved. But CSPs also typically include: the Crown Prosecution Service; the health authority; other local authority departments, e.g. housing, social services, education; and other voluntary organisations<sup>328</sup>. CSPs are encouraged to engage with as many local agencies and voluntary groups as possible in order to achieve a truly community-based multi-agency approach to crime reduction<sup>329</sup>.

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## TRANSPARENCY (PRACTICE)

*To what extent is there transparency in the activities and decision-making processes of law enforcement agencies in practice?*

**Score 75**

Transparency is promoted within regional police forces through local consultative committees, and in particular Community Safety Partnerships (CSPs), formerly Crime and Disorder Reduction Partnerships (CDRPs).

CSPs are working to reduce crime and disorder in their area. They are primarily funded by, and accountable to, the Home Office. The performance of CSPs is managed through analysis of their delivery. They use the following process:

- Establishing the type and levels of crime and disorder in their borough through an audit.
- Consulting widely with the borough population to make sure that the partnership's perception of crime and disorder matches that of local people. Minority groups are particularly encouraged to input their views.
- Devising a strategy containing measures to tackle those priority problems, including an action plan, targets and responsible individual/organisation.
- The strategy lasts for three years, but must be kept under review by the partnership.

The work of the CSPs is parallel to national government strategies and targets, and also considers national policing plans. Crime and disorder audits vary by authority; information is collected from various sources to support the analysis. A crime and disorder audit generally includes: a list of partners; information about local crime reduction initiatives; crime statistics for all crime, broken down by crime types; victim and offender profiles, e.g. by age, gender and ethnicity; a measure of fear of crime; a cost-of-crime calculation<sup>330</sup>. Once the audit is complete, a consultation stage takes place where local opinion (in relation to the audit findings) is gained from other agencies, businesses and the general public. Local concerns are noted and fed into the three-year crime and disorder strategy. The crime and disorder strategy identifies key concerns based on the audit and consultation feedback. Actions are specified to address the issues raised.

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<sup>325</sup> Interview - anonymous

<sup>326</sup> Interview - anonymous

<sup>327</sup> Interview - anonymous

<sup>328</sup> <http://www.idea.gov.uk/idk/core/page.do?pagelD=7170098>

<sup>329</sup> <http://www.idea.gov.uk/idk/core/page.do?pagelD=7170098>

<sup>330</sup> <http://www.csas.org.uk/upload/documents/webpage/Factsheets/CDRPs%20factsheet.pdf>

An action plan allocates responsibilities, targets and timeframes. Ongoing monitoring and evaluation takes place to review the strategy and actions coming out of the strategy.

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## ACCOUNTABILITY (LAW)

*To what extent are there provisions in place to ensure that the EMB has to report and be answerable for its actions?*

### Score 75

There are a number of provisions in place to ensure that law enforcement agencies have to report and be accountable for their actions.

Law enforcement agencies are subject to the *Human Rights Act 1998*, and the *Regulation of Investigatory Powers Act 2000*, which regulates surveillance and covert operations. In addition, the police are subject to the *Police and Criminal Evidence Act 1984* (PACE)<sup>331</sup>. The criminal justice system ensures that suspects apprehended by the police have the right to trial by a jury and are given an opportunity to have legal representation. The court system also ensures that the police have followed the correct procedures, for example, those established by PACE<sup>332</sup>. Failure to follow these rules can, and does, result in failures to secure convictions because the courts increasingly use exclusionary rules to render inadmissible any evidence which has not been fairly obtained. Entire cases can fall when the rules have not been followed, with important repercussions for police effectiveness. The statutory powers of police on matters of stop and search; entry, search and seizure; arrest, detention and the questioning of suspects are provided by PACE 1984. Codes of practice created under the Act govern cautioning procedures, identification parades and a range of other responsibilities. Strictly speaking, the codes are not statutory but any breach of their requirements amounts to a disciplinary offence<sup>333</sup>.

In terms of organisational accountability, Her Majesty's Inspectorate of Constabulary (HMIC) is responsible for inspecting the police forces of England and Wales. The first inspectors were appointed under the *County and Borough Police Act 1856*; its current statutory duties are defined in the *Police Act 1996*. The current Chief Inspector is former Surrey Police Chief Constable, Sir Dennis O'Connor. The Inspectorate reports on the activities of the territorial forces of England and Wales and other bodies involved in law enforcement, such as the British Transport Police, the Civil Nuclear Constabulary, HM Revenue and Customs and the Serious Organised Crime Agency. The *Police (Northern Ireland) Act 1998* allows HMIC to perform inspection and assessment of services or projects by direction of the Secretary of State. Her Majesty's Inspectorate of Constabulary for Scotland (HMICS) was established by the *Police (Scotland) Act 1857* and is responsible for inspections of the eight Scottish territorial police forces, the Scottish Crime and Drug Enforcement Agency, the Scottish Criminal Record Office, the Scottish Police College and the Scottish Police Information Strategy. Both Inspectorates publish police-force specific inspections as well as thematic reviews<sup>334</sup>.

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<sup>331</sup> <http://www.homeoffice.gov.uk/police/powers/pace-codes/>

<sup>332</sup> <http://www.homeoffice.gov.uk/police/powers/pace-codes/>

<sup>333</sup> Interview - anonymous

<sup>334</sup> <http://www.hmic.gov.uk/Pages/home.aspx>

<sup>335</sup> <http://www.ipcc.gov.uk/Pages/default.aspx>

In addition to PSDs there is also the Independent Police Complaints Commission (IPCC), which was established by the *Police Reform Act 2002* and became operational in April 2004. The IPCC investigates the most serious complaints and allegations of misconduct against the police in England and Wales, as well as handling appeals from people who are not satisfied with the way the police have dealt with their complaint. The IPCC investigates complaints relating to staff at SOCA, HMRC, and UKBA. Under the terms of the *Police Reform Act*, the IPCC is independent, making its decisions entirely independently of the police, government and complainants<sup>335</sup>.

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## ACCOUNTABILITY (PRACTICE)

*To what extent do law enforcement agencies have to report and be answerable for their actions in practice?*

**Score 75**

At the organisational level, accountability mechanisms for law enforcement seem to work well. Concerns remain however, over operational issues and that some officers are not answerable for their actions<sup>336</sup>, particularly in regard to high-profile cases. Recent examples include the shooting of Jean Charles de Menezes in 2005 (which was subject to two IPCC investigations, as well as an inquest) and the death of Ian Tomlinson, who died after being involved in an altercation with police officers during G20 protests in 2009. Other recent concerns have emerged through investigations into the national newspaper, the *News of the World*, which employed Jonathan Rees for supplying illegally obtained information. Rees had connections with corrupt police officers who passed on the information to him<sup>337</sup>. Such practices have been identified in a recent evaluation of police corruption by the Serious Organised Crime Agency and although rare, the high profile nature of such cases clearly raises public concern<sup>338</sup>.

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## INTEGRITY (LAW)

*To what extent is the integrity of law enforcement agencies ensured by law?*

**Score 75**

Each police force has a Police Standards Department (PSD) which examines and investigates complaints into standards of conduct within the police. The standards of professional behaviour within the police include: honesty and integrity; authority, respect and courtesy; equality and diversity; confidentiality; fitness for duty; challenging and reporting improper conduct. These are included in the *Police (Conduct) Regulations 2006*<sup>339</sup>.

The Independent Police Complaints Commission defines corruption as “the abuse of a role or position held, for personal gain or gain for others. This ranges from serious corruption (e.g. any attempt to pervert the course of justice; theft; criminal damage) to the less serious (e.g. misuse of warrant card)”<sup>340</sup>.

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336 <http://uk.reuters.com/article/2010/07/22/uk-britain-tomlinson-idUKTRE66L03020100722>

337 <http://www.guardian.co.uk/media/2011/mar/11/news-of-the-world-police-corruption>

338 See report *Corruption in the UK*, published by Transparency International alongside the NIS research.

339 <http://www.legislation.gov.uk/uksi/2004/645/schedule/1/made>

340 IPCC (2010) *Police complaints statistics for England and Wales 2009/10* pp. 9-11



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## INTEGRITY (PRACTICE)

*To what extent is the integrity of members of law enforcement agencies ensured in practice?*

**Score 75**

It is very difficult to assess the number of cases of police corruption as the data from SOCA's 2010 evaluation is not publicly available. It has recently been reported that 12 officers have served, or are currently serving, prison sentences for corruption<sup>341</sup>. In 2008/09 the IPCC investigated 53,534 complaints, of which 368 fell under the heading of corruption. After investigation, 11 of these allegations were substantiated.

In 2010, the Home Affairs Select Committee looked into the work of the IPCC, and concluded that it actually dealt with a minority of police complaints: *"It is true to say that 99 times out of 100 and despite the existence of the IPCC, the complaints procedure remains "police investigating the police"342*. Internal monitoring of corruption cases in the UK police force, however, perhaps makes the IPCC data more credible on corruption than in other allegations and complaints. All corruption allegations are first investigated by the relevant police force, and once these have been substantiated to a certain degree they are automatically passed up to the IPCC for further investigation. It is not the case, therefore that the allegations arriving at the IPCC are solely from members of the public: the majority of complaints are actually generated from internal police investigations already, although there are no definitive figures available to show what this percentage may be<sup>343</sup>.

Although the IPCC figures on corruption appear to be far more accurate than the Home Office's estimation of less than one per cent of actual complaints, they are naturally still subject to caveats. Principally, we were informed that police corruption is often "collateral to other investigations"<sup>344</sup>. In other words it either emerges from an investigation into another allegation, or generates another allegation that is then used as the official heading for the investigation. A certain degree of caution, therefore, is advised when making inferences from the IPCC data; however they are unlikely to be as inaccurate as the recent Home Affairs Select Committee report may suggest.

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## CORRUPTION PROSECUTION (LAW AND PRACTICE)

*To what extent do law enforcement agencies detect and investigate corruption cases in the country?*

**Score 75**

Law enforcement agencies detect and investigate corruption throughout the UK, although the number of cases remains relatively low (see below for the latest Home Office figures). The primary reason for such low conviction rates is that alleged corruption cases are often investigated using other legislation. For example the recent convictions of the MPs Jim Devine,

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<sup>341</sup> *The Guardian*, 14 February, 2010.

<sup>342</sup> *Home Affairs Select Committee*, 2010

<sup>343</sup> *Interview - anonymous*

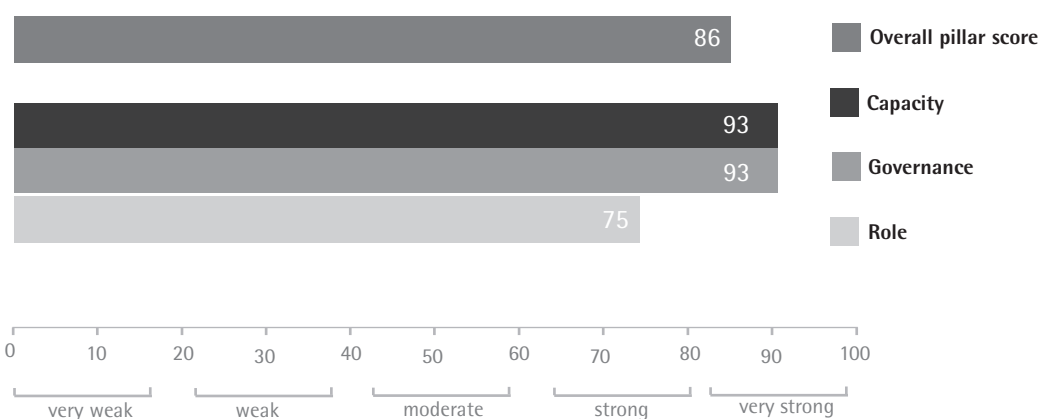
<sup>344</sup> *Interview - anonymous*



David Chaytor and Eric Illsley, along with Lord Taylor of Warwick, were secured for fraud and false accounting rather than corruption. In 2007 only five cases were taken under the *Prevention of Corruption Act*, 1906, and a further five cases were proceeded under the *Public Bodies Corrupt Practices Act*, 1889. As was pointed out to us, however, detecting corruption is about far more than securing prosecutions. Law enforcement agencies are involved in a number of joint-working activities, including joint investigations and a range of networks. SOCA, for example, represents the UK on the European Anti-Corruption network, which is an EU-funded organisation<sup>345</sup>.

## 6.6

### ELECTORAL MANAGEMENT BODY *Status: very strong*



#### SUMMARY

The UK has a well-resourced and robust independent body for ensuring the integrity of its elections and regulating parties and candidates. The Electoral Commission is transparent and can be held to account by Parliament. There are suggestions from the Committee on Standards in Public Life on how this accountability could be improved further. They are: more Parliamentary debate on the work of the Electoral Commission; and making the Constitutional Affairs Select Committee the main mechanism through which the Electoral Commission reports on its performance.

Although there are no major areas of concern, improvements could be made by the Electoral Commission particularly in being more proactive in its regulatory approach. There are also concerns about the integrity of the electoral process and the potential for fraud. Annex 1 presents the detailed scores assigned to the electoral commission in terms of capacity, governance and role in the national integrity system. Below is a qualitative assessment of the relevant indicators.

#### RESOURCES (PRACTICE)

*To what extent does the EMB have adequate resources to achieve its goals in practice?*

**Score 75**

Its 2009/10 annual report<sup>346</sup> showed that the Electoral Commission has 166 full-time equivalent staff in post with a cost of around £8.8 million. The majority of staff are based in London with

<sup>345</sup> Interview - anonymous

<sup>346</sup> Electoral Commission (2010) Annual Report 2009-10

The UK has a well-resourced and robust independent body for ensuring the integrity of its elections and regulating parties and candidates. The Electoral Commission is transparent and can be held to account by Parliament

the remainder in the Commission's offices in Scotland, Wales, Northern Ireland and the English regions outside London. The Commission is accountable to Parliament and specifically to the Speaker's Committee of the House of Commons<sup>347</sup>. The 2010/11 financial year is the final year of a four-year financial settlement agreed by the Speaker's Committee<sup>348</sup> and there is no evidence to suggest that the budget is insufficient for it to carry out its duties. The Commission is a public body and therefore bound by equality legislation to comply with the three duties to promote equality in the areas of disability, gender and race. It has an equality scheme and is recognised as an employer that is positive about disabled people<sup>349</sup>.

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## INDEPENDENCE (LAW)

*To what extent is the electoral management body independent by law?*

**Score 100**

The Electoral Commission is an independent statutory body, which was established by the provisions of the *Political Parties, Elections and Referendums Act 2000*, amended by subsequent legislation: *Electoral Administration Act 2006*, *Local Democracy, Economic Development and Construction Act 2009*, *Political Parties and Elections Act 2009* and *Constitutional Reform and Governance Act 2010*.

The Commission is accountable to Parliament, and specifically to the Speaker's Committee of the House of Commons<sup>350</sup>. The Speaker's Committee oversees the procedure for the selection of individuals and appointment or reappointment of Electoral Commissioners, and examines the estimates and five-year plans of the Electoral Commission.

There are ten Commissioners who lead on strategy and set priorities. The daily operations and implementation of strategy are then managed by a team of executives led by a Chief Executive Officer. Commissioners are appointed by Her Majesty the Queen on the recommendation of the House of Commons. A panel, appointed by the Speaker and chaired by an independent figure, consider nominations put forward by the House of Commons. Commissioners are appointed for a minimum of five years and a maximum of nine years with the possibility of reappointment for a further period. A Commissioner may cease or be removed in accordance with the grounds set out in Schedule 1, paragraphs 3–5 of the Act<sup>351</sup>.

The *Political Parties and Elections Act 2009* led to the introduction of four new commissioners being nominated by the political parties, but these have yet to be appointed. This expansion of commissioners was in response to criticisms that the Commission lacked people with recent political experience<sup>352</sup>. Aside from the commissioners appointed under the *Political Parties and Elections Act 2009*, all other commissioners must provide details of any activities they have engaged in which might suggest they have not maintained political impartiality.

The Commission must give due consideration to a Parliamentary Parties Panel. This panel consists of representatives of qualifying political parties represented in the House of Commons. The panel submits representations or information to the Commission about such matters affecting political parties. The Commission then decides whether, and how to act on this information<sup>353</sup>. There are similar non-statutory panels in the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly.

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<sup>347</sup> Electoral Commission Corporate Governance framework: Updated December 2010

<sup>348</sup> Electoral Commission (2010) Corporate Plan 2010/11–2014/15

<sup>349</sup> Electoral Commission (2010) Annual Report 2009–10

<sup>350</sup> Electoral Commission Corporate Governance framework: Updated December 2010

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## INDEPENDENCE (PRACTICE)

*To what extent does the electoral body management function independently in practice?*

**Score 100**

The overall aim of the Electoral Commission is to preserve integrity and public confidence in the democratic process. There is no suggestion of any impropriety or bias in the dealings of the Electoral Commission. Indeed, a GRECO report "notes that the Commission's level of independence at present is indisputable and in full compliance with Recommendation Rec(2003)4<sup>354</sup>."

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## TRANSPARENCY (LAW)

*To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the EMB?*

**Score 100**

The Electoral Commission has a statutory obligation under the *Political Parties, Elections and Referendums Act (PPERA) 2000* to maintain registers of: political parties, third parties and permitted participants (and donations and borrowings); unincorporated associations that donate more than £25,000 in a calendar year (and any gifts over £7,500). Although the Electoral Commission is not statutorily bound to publish them, these registers are available on the Commission's website. As a public authority, the Commission must also comply with the *Freedom of Information Act 2000*, complying with requests for information (unless a defined exemption applies) and publishing a Publication Scheme. The Act also allows the Electoral Commission to observe proceedings relating to an election or referendum, including the working practices of an electoral reform officer, returning officer, counting officer or anyone working under the direction of these officers.

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## TRANSPARENCY (PRACTICE)

*To what extent are reports and decisions of the electoral management body made public in practice?*

**Score 100**

The public can readily obtain information about the activities of the Electoral Commission. It produces annual reports, corporate plans and annual accounts, all of which are available on its website. It also produces news releases, statements, responses and speeches, and minutes from board meetings. The Electoral Commission has a switchboard and contact address, and publishes reports and research, policy papers, and general guidance. The Commission publishes salary details for all those who earn over £58,200 – the Government's guideline – and also details of monthly payments to suppliers over £25,000.

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351 Electoral Commission Corporate Governance framework: Updated December 2010

352 Speaker's Committee Third report 2009: Work of the Committee in 2009. Speaker's Committee Publications 2010

353 Electoral Commission Corporate Governance framework: Updated December 2010

354 GRECO (2008) Third evaluation round: Evaluation Report on the United Kingdom on Transparency of Party Funding, p26

Despite the high level of public satisfaction, around 10 per cent of candidates and agents, said they were very or fairly dissatisfied with how the 2010 election was run. Some of the concern, particularly among candidates, related to the transparency of the election counts. Sixty per cent of candidates agreed that 'elections staff made it clear what was happening at all stages of the count,' but over a quarter (26 per cent) disagreed. Other reported problems were disorganised and slow election counts<sup>355</sup>. The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) also observed the elections and concluded that the "general election was administered in a transparent and professional manner"<sup>356</sup>.

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## ACCOUNTABILITY (LAW)

*To what extent are there provisions in place to ensure that the law enforcement agencies have to report and be answerable for their actions?*

### Score 75

The Electoral Commission is accountable to Parliament. It has to submit to the Speaker's Committee a five-year plan including estimated requirements for resources during that five-year period. It also has to present an annual report and accounts to Parliament. The National Audit Office audits its accounts and the efficiency and effectiveness with which it uses resources.

Complaints about the Electoral Commission can be made in writing or via e-mail. The Commission attempts to answer all complaints within 20 working days. In the first instance, complaints are investigated by the head of the relevant section. Those not satisfied with the response can ask for the issue to be referred to the Chief Executive. If satisfaction is still not achieved then the complaint can be sent to the Chair of the Electoral Commission. Its complaints process is assessed by the Parliamentary Ombudsman. The Commission also consults and takes advice from a Parliamentary Parties Panel made up of representatives of the parties in the House of Commons. Similar non-statutory panels have been created in the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly.

The *Political Parties, Elections and Referendums Act (PPERA) 2000* states that after an election, the Electoral Commission must prepare and publish (in a manner determined by the Electoral Commission) a report on the administration of that election. The Electoral Commission must also, from time to time, submit reports to the Secretary of State (indeed they can be requested by the Secretary of State) on the various issues which fall within the Electoral Commission's remit.

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## ACCOUNTABILITY (PRACTICE)

*To what extent does the EMB have to report and be answerable for its actions in practice?*

### Score 75

The Electoral Commission's annual reports, other reports and accounts are made available on their website. The Electoral Commission is accountable to Parliament via the Speaker's Committee. A CSPL report (2007) recommended improvements in accountability arrangements of the Electoral

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<sup>355</sup> The Electoral Commission (July 2010). *Report on the administration of the 2010 General Election*.

<sup>356</sup> OSCE/ODIHR (2010) *United Kingdom of Great Britain and Northern Ireland General Election*

6 May 2010 OSCE/ODIHR Election Assessment Mission Report, p1

Commission. They note that *"the Speaker's Committee does, in principle, strike the right balance between holding The Electoral Commission accountable for the use of public money in fulfilling its statutory functions and protecting its independence and impartiality from possible undue influence for partisan political electoral advantage<sup>357</sup>."* The CSPL report suggests that the Speaker's Committee would be more effective *"if its deliberations were made more transparent and if more resources were made available to support it<sup>358</sup>."* Also they suggest that the Electoral Commission should give "a wider account of its activities to Parliament" and therefore be better held to account<sup>359</sup>. The Committee makes two suggestions: the Constitutional Affairs Select Committee (CASC) to become the main mechanism through which the Commission can account for its performance to Parliament; holding regular parliamentary debates about the Commission's work.

During 2009/10 the Electoral Commission dealt with 115 Freedom of Information requests and 21 complaints about the conduct of the Commission. There is no information on satisfaction with the complaints procedure.

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## INTEGRITY ([AW])

*To what extent are there mechanisms in place to ensure the integrity of the electoral management body?*

**Score 100**

All commissioners are required to comply with the organisation's corporate governance framework and comply with a code of conduct. The code is currently subject to revision and is not currently available. The corporate governance framework also notes that commissioners must declare any potential interests or connections they may have to the Secretary to the Commission; the Board will then determine whether the commissioner should withdraw from the meeting and/or the decision process. Commissioners are also required to uphold the values of the organisation (fair, impartial and transparent) and the principles of the organisation, including: *"Observe the highest standards of propriety involving impartiality, integrity and objectivity in relation to the stewardship of public funds, the management of Commission business and the conduct of its business and maintaining at all times the Commission's independence<sup>360</sup>."* Commissioners must report all offers of gifts or hospitality to the Secretary to the Commission Board, regardless of whether they accept them. The Secretary maintains a register of gifts and hospitality<sup>361</sup>. The 2009 *Political Parties and Elections Act* reduced the restriction on political activity for most staff from ten years to one year.

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## INTEGRITY (PRACTICE)

*To what extent is the integrity of the electoral management body ensured in practice?*

**Score 100**

FOI requests are on the Commission's website. There are investigative processes to deal with complaints. There is no information on outcomes of investigative processes or of corrupt

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<sup>357</sup> Committee on Standards in Public Life (2007) Review of the electoral commission, p76

<sup>358</sup> Committee on Standards in Public Life (2007) Review of the electoral commission, p6

<sup>359</sup> Committee on Standards in Public Life (2007) Review of the electoral commission,

<sup>360</sup> Electoral Commission Corporate Governance Framework: Updated December 2010, p5

<sup>361</sup> Electoral Commission Corporate Governance Framework: Updated December 2010

practices that have been uncovered. The Commission's annual report publishes KPI information and how many conduct complaints have been made against the Commission. The 2009/10 performance figures for the integrity of its Electoral Registration Officers exceed the 2008/9 figures – up from 63 per cent to 85 per cent. For Returning Officers (ROs) 92 per cent of electors had ROs who met or exceeded the integrity performance standards<sup>362</sup>.

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## CAMPAIGN REGULATION

*Does the electoral management body effectively regulate candidate and political party finance?*

**Score 75**

The Electoral Commission regulates the financing of political parties, organisations and individuals engaged in campaigning. The Commission maintains and makes available several public registers of political parties and details of their donations, borrowings, campaign expenditures and annual accounts. The Commission monitors compliance with the controls and requirements set out in the *Political Parties, Elections and Referendums Act 2000 (PPERA)* and also has a role monitoring candidate expenses incurred under the *Representation of the People Act 1983*. The Commission has the power to give civil penalties and investigate breaches of the law. The *Political Parties and Elections Act 2009* introduced a greater degree of flexibility in the powers and sanctions available to the Electoral Commission which may, in time, address GRECO's recommendation that "*more flexible sanctions be introduced in respect of less serious violations of the political financing rules and that the Electoral Commission be provided with the necessary powers to investigate such cases and to apply the appropriate sanctions*<sup>363</sup>." A GRECO Report (2008) concluded that the Electoral Commission could do more to ensure that political parties "*present their accounts in a coherent and more meaningful way*<sup>364</sup>" and "*that the Electoral Commission adopt a pro-active approach to the investigation of financing irregularities*<sup>365</sup>."

The Electoral Commission does not regulate the allocation of media time given to the various political parties.

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## ELECTION ADMINISTRATION

*Does the EMB ensure the integrity of the electoral process?*

**Score 75**

The Electoral Commission website provides a facility to register to vote and individuals can also check if they are already registered. The website also provides guidance on how to vote. In terms of the observation of elections (proceedings at the poll, proceedings at the issue and receipt of postal ballot papers, proceedings at the count), the Commission administers an accreditation

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<sup>362</sup> Electoral Commission (2010) *Annual Report 2009–10*

<sup>363</sup> GRECO (2008) *Third evaluation round: Evaluation Report on the United Kingdom on Transparency of Party Funding*, p27

<sup>364</sup> GRECO (2008) *Third evaluation round: Evaluation Report on the United Kingdom on Transparency of Party Funding*, p24

<sup>365</sup> GRECO (2008) *Third evaluation round: Evaluation Report on the United Kingdom on Transparency of Party Funding*, p26

scheme for all observers at UK elections (except for Scottish local government elections, which are a devolved matter) and all accredited observers are listed on a register. All observers must follow a code of practice. Guidance is provided for Returning, Counting and Presiding Officers. The code includes: respect for United Kingdom law, international human rights and the authority of the Electoral Commission; maintaining political impartiality; maintaining the secrecy of the ballot; not obstructing the electoral process; providing appropriate identification; maintaining accuracy of observation and professionalism in drawing conclusions; maintaining proper personal behaviour<sup>366</sup>.

Returning Officers are responsible for the administration of elections in accordance with the rules set out in legislation. The Electoral Commission provides advice and assistance on electoral matters to all those involved in elections, including Returning Officers. But its guidance is advisory with no legal requirement for it to be followed. It also maintains a register of accredited observers. The Commission can, and does, set and monitor performance standards for Returning Officers. The *Constitutional Reform and Governance Act 2010* requires all Returning Officers to take steps to begin counting votes for the UK general election within four hours of the close of poll.

There is a high level of satisfaction with the procedure for voting. An Electoral Commission survey<sup>367</sup> of the public (including those who said they did not vote) found 75 per cent were very or fairly satisfied with the procedure for voting, while 13 per cent indicated they were dissatisfied. The Commission concluded that *"Confidence in the voting process in the UK is generally high, with more than three-quarters of people (77%) saying that voting in general is very or fairly safe from fraud and abuse. Just over one in 10 (11%) people responding to our survey said that they thought voting is fairly or very unsafe"*<sup>368</sup>. That said, they note that when asked specifically about the 2010 elections, 34 per cent of people indicated that they were very or fairly concerned that electoral fraud and abuse took place. The Electoral Commission contrasts this with the 2009 figure of 29 per cent following the European Parliamentary and English local elections. There were some problems at some electoral stations in May 2010. More specifically, a review by the Electoral Commission found that 27 polling stations in 16 constituencies had problems with queues. They found problems in some areas due to poor planning assumptions; the use of unsuitable buildings and inadequate staffing arrangements at some polling stations; contingency arrangements that were not properly triggered; or inability to cope with demand at the close of poll; and restrictive legislation which meant that those present in queues at polling stations at the close of poll were not able to be issued with a ballot paper<sup>369</sup>.

A Committee on Standards in Public Life Report (2007) suggested that there had been a reduction in confidence *"in the integrity of both the electoral process, and in political party funding and campaign expenditure"*<sup>370</sup>. Reasons proffered were not all related to the Electoral Commission. The Committee pointed to the introduction of postal voting on demand (and subsequent incidents of fraud); large undeclared loans by political parties; a lack of accuracy and comprehensiveness of the electoral register and variations in electoral administration across the country; a lack of clarity over the role of the Electoral Commission and lack of pro-activity in its regulatory approach.

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366 Electoral Commission (February 2010) *Electoral observation at United Kingdom elections*

367 Electoral Commission (2010) *Report on the administration of the 2010 UK general election*

368 Electoral Commission (2010) *Report on the administration of the 2010 UK general election*, p54

369 Electoral Commission (20 May 2010) *UK Parliamentary general election Interim report: review of problems at polling stations at close of poll on 6 May 2010*, p1

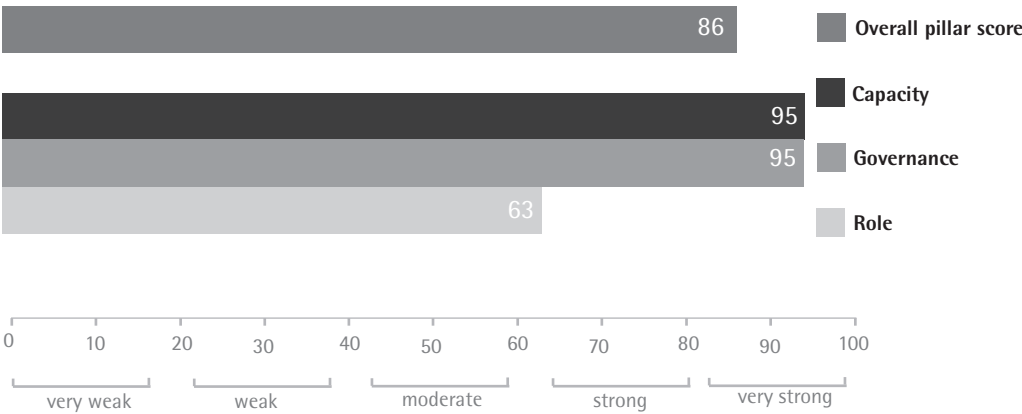
370 Committee on Standards in Public Life (2007) *Review of the electoral commission*, p15



Furthermore, the OSCE/ODIHR assessment of the last general election, while recognising that the electoral process, by and large, worked, noted that “concerns are regularly expressed with regard to the lack of safeguards against possible fraud resultant from a weak system of voter registration and postal voting, compounded by the absence of a requirement to produce identification at any stage of the process<sup>371</sup>.”

6.7

OMBUDSMAN      Status: very strong



SUMMARY

There are many different ombudsmen in the UK covering a wide range of public and private agencies. In addition, each devolved administration has ombudsmen with a different set of powers, which leads to further replication of ombudsmen. It is neither feasible nor desirable to assess them all in this pillar. The research group decided that the focus of this pillar should be the Local Government Ombudsman (LGO), for two reasons. First, because this study covers the Parliamentary Ombudsman's role in the legislature pillar (Westminster has a Parliamentary Ombudsman, who deals with complaints against MPs and Ministers, and also with investigations into maladministration in the NHS)<sup>372</sup>. Second, because issues pertaining to local government occur in a number of other pillars (public sector, supreme audit institution, civil society) and it was considered beneficial therefore to focus on the LGO's role here. Although most information will relate to the LGO in England, information is also given (where suitable) for the public service ombudsmen in Scotland, Wales and Northern Ireland. The Local Government Ombudsman in England deals with complaints regarding housing; planning; education; social care; housing benefit; transport and highways; antisocial behaviour; and council tax.

The NIS assessment found that the LGO is one of the UK's strongest pillars; that it is well resourced with high levels of transparency and accountability. The institution suffers occasionally from poor public perception but the evidence suggests that this is negatively skewed by people who have not been pleased with decisions taken against them. Such criticisms do not seem fair in light of the evidence available on the individual scoring questions for the LGO. Annex 1 presents the detailed scores assigned to the ombudsman in terms of capacity, governance and role in the national integrity system. Below is a qualitative assessment of the relevant indicators.

The NIS assessment found that the LGO is one of the UK's strongest pillars; that it is well resourced with high levels of transparency and accountability

371 OSCE/ODIHR (2010) United Kingdom of Great Britain and Northern Ireland General Election 6 May 2010 OSCE/ODIHR Election Assessment Mission Report, p1

372 The parliamentary ombudsman is dealt with in the Legislature pillar

373 <http://www.lgo.org.uk/about-us/governance/>

374 <http://www.ombudsman-wales.org.uk/en/bodies-in-the-ombudsmans-jurisdiction/>

375 <http://www.spsa.org.uk/about-us/faqs/what-sort-complaints-do-you-look>



### STRUCTURE AND ORGANISATION

The Local Government Ombudsman in England (LGO) deals with maladministration, and looks at complaints regarding housing; planning; education; social care; housing benefit; transport and highways; antisocial behaviour; and council tax. The LGO and Parliamentary Ombudsman together make up the Commission for Local Administration<sup>373</sup>. As its title implies, The Public Services Ombudsman of Wales has a broader jurisdiction and can look at central government (i.e. Welsh Assembly Government and the National Assembly for Wales Commission), local government, fire and police authorities; environmental authorities; health and social care; housing; education and training; and arts and leisure<sup>374</sup>. The Scottish Public Services Ombudsman looks at councils, the National Health Service (NHS), housing associations, the Scottish Government, colleges and universities and many other Scottish public organisations<sup>375</sup>. Similarly, the Northern Ireland (NI) Ombudsman has a wide remit, and can investigate central government departments; local authorities; education, health and social care; housing and planning<sup>376</sup>. The NI Ombudsman comprises two offices: the Assembly Ombudsman for Northern Ireland; and The Northern Ireland Commissioner for Complaints

The ombudsman in each administration operates under similar principles and embodies the same values: *to provide independent, impartial and prompt investigation and resolution of complaints of injustice caused through maladministration by local authorities and other bodies within jurisdiction; and to offer guidance intended to promote fair and effective administration in local government*<sup>377</sup>.

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### RESOURCES (PRACTICE)

*To what extent does an ombudsman or its equivalent have adequate resources to achieve its goals in practice?*

**Score 100**

The total income of the English LGO in 2009/10 was £16.9 million of which £16.1 million was derived from central government funding. The organisation employs 102 members of staff, costing approximately £8.7 million per year<sup>378</sup>. At the time of writing (March 2011), there is no issue with resources but, in the light of public spending reviews across the UK, the office of the LGO is also currently "making its case to government"<sup>379</sup>. There was concern that excessive budget cuts could make the office unviable because there is far more to the role of the LGO than processing complaints, including education, outreach and leadership<sup>380</sup>.

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### INDEPENDENCE (LAW)

*To what extent is the ombudsman independent by law?*

**Score 100**

Each ombudsman is independent under UK law. The Local Government Ombudsman (England) is appointed by the Queen, on the advice from the Secretary of State, holding office for a fixed

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376 <http://www.ni-ombudsman.org.uk/Can-I-Complain.aspx>

377 <http://www.lgo.org.uk/about-us/what-we-do/>

378 <http://www.lgo.org.uk/publications/annual-report-2009-10-financial-accounts/>

379 Interview – member of Local Government Ombudsman office

380 Interview – member of Local Government Ombudsman office

term of seven years and is not eligible for reappointment<sup>381</sup>. The ombudsman can be removed from office due to "incapacity or misbehaviour"<sup>382</sup>. Because of the way the ombudsmen are appointed, they are wholly independent of the bodies within their jurisdiction, as established by the *Local Government Act 1974*. Its powers have subsequently been altered by the *Regulatory Reform (Collaboration etc between Ombudsmen) Order 2007* and *The Local Government and Public Involvement in Health Act 2007*. The *Regulatory Reform (Collaboration etc between Ombudsmen) Order 2007* enabled the Local Government Ombudsmen for England, the Parliamentary Ombudsman and the Health Service Ombudsman for England to work together collaboratively on cases and issues that are relevant to more than one of their individual jurisdictions. Examples of complaints that may fall within this category include the provision of health and social care; complaints about the administration of housing and welfare benefits; and complaints about some planning and environmental issues.

Under schedule 4 of the *Local Government Act 1974*, the Commission for Local Administration may appoint a secretary, and such other officers as they may consider to be required for the discharge of their functions. The Commission shall make arrangements to enable Local Commissioners to investigate matters, and in particular arrangements for (a) allocating members of their staff to assist Local Commissioners, and (b) providing offices and other accommodation<sup>383</sup>. Schedule 4 also outlines restrictions on political activity: the Local Commissioner shall not at any time conduct a case arising in an area if it is wholly or partly within an area for which one of those authorities is responsible and, within the five years ending at that time ("the disqualification period"), the Local Commissioner: (a) has been a member of that authority; (b) has taken action on behalf of that authority in the exercise of any of their functions; or (c) has taken action which, by virtue of an enactment, is treated as having been taken by that authority in the exercise of any of their functions<sup>384</sup>.

The *Local Government and Public Involvement in Health Act 2007*, introduced more changes to the ombudsmen's jurisdiction and operation, including:

- Looking at service failure in addition to maladministration;
- Limited power to investigate where an apparent case of maladministration comes to light even though they have received no complaint about the matter;
- Complaints about the procurement of goods and services are now within jurisdiction;
- Issuing a 'statement of reasons' instead of a report if they are satisfied with the council's proposals to remedy its failures;
- Ability to publish other decisions<sup>385</sup>.

The Public Services Ombudsman (Wales) is an independent body whose powers are enshrined in the *Public Services Ombudsman (Wales) Act 2005*<sup>386</sup>. The Scottish Public Services Ombudsman is appointed by Her Majesty and his powers and independence are outlined in the *Scottish Public Services Ombudsman's Act, 2002*<sup>387</sup>. The NI Ombudsman was originally created in 1969 by Royal

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381 *Local Government Act 1974*, s. 23(5)

382 *Local Government Act 1974*, s. 23(6)

383 *Local Government Act 1974*, schedule 4 (4)

384 *Local Government Act 1974*, schedule 4 (2)

385 <http://www.lgo.org.uk/about-us/background/>

386 <http://www.ombudsman-wales.org.uk/>

387 <http://www.spsso.org.uk/about-us/spso-act-2002>

388 <http://www.ni-ombudsman.org.uk/About-Us.aspx>

Warrant from which his authority is derived<sup>388</sup>. Its modern powers and independence were established under *The Ombudsman (Northern Ireland) Order 1996* and revised by the *Commissioner for Complaints (Northern Ireland) Order 1996* and the *Commissioner for Complaints (Amendment) (Northern Ireland) Order 1997*. The NI Ombudsman is completely independent of the Northern Ireland Assembly, the Northern Ireland Executive, and of the government departments and public bodies that he can investigate.

## INDEPENDENCE (PRACTICE)

*To what extent is the ombudsman independent in practice?*

**Score 100**

There is no significant evidence to suggest that any of the ombudsman's offices suffer from issues regarding their independence in terms of decision-making and investigations<sup>389</sup>. There are, however, areas where there can be some external political influence, particularly around jurisdictions. For example, debate is currently ongoing in the *Localism Bill* over the jurisdiction of the LGO in terms of social housing. Complaints regarding local authority landlords are currently dealt with by the LGO, but there is discussion on whether to move this area to the Housing Ombudsman. This was not considered to be *undue* interference, however, but it was raised as a means of influencing the jurisdiction of the LGO<sup>390</sup>. The Ombudsman is appointed independently by the Queen whilst the governance arrangements are driven by the Commission for Local Administration, which comprises the three English LGOs and the Parliamentary Ombudsman<sup>391</sup>. This governance structure facilitates independence as it allows the LGOs to set performance targets and allows for more independent self-governing. It was suggested that, in England at least, the LGO enjoys a different relationship with central government, than the Parliamentary Ombudsman does, and that this has proven very positive in terms of independence<sup>392</sup>.

## TRANSPARENCY (LAW)

*To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the ombudsman?*

**Score 100**

Under section 19 of the *Freedom of Information Act*, each ombudsman's office has a duty to maintain a publication scheme. Under section 30 of the *Local Government Act 1974*, the LGO must provide a report of any investigation or, if that is not deemed appropriate, a statement of reasons to explain decisions (including when the decision has been taken not to investigate)<sup>393</sup>. Under section 23 of the *Local Government Act 1974* the LGO must submit its annual report to Parliament<sup>394</sup>.

<sup>389</sup> Interview – member of Local Government Ombudsman office

<sup>390</sup> Interview – member of Local Government Ombudsman office

<sup>391</sup> <http://www.lgo.org.uk/about-us/governance/>

<sup>392</sup> Interview – member of Local Government Ombudsman office

<sup>393</sup> *Local Government Act 1974*, s. 30(1)

<sup>394</sup> *Local Government Act 1974*, s. 23A(3A)

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## TRANSPARENCY (PRACTICE)

*To what extent is there transparency in the activities and decision-making processes of the ombudsman in practice?*

**Score 100**

There is considerable transparency in the activities and decision-making of the ombudsmen. The English LGO publishes all investigation reports from 1 April 2005 under its *complaints outcomes* section of its website, which categorises investigations into the following areas: housing; benefits; planning; social care; education; environment and waste; transport and highways; local taxation; anti- social behaviour and other categories (which includes cemeteries and crematoria; land disputes; contract disputes)<sup>395</sup>. Until 2009, it also published an annual digest of cases, which covered the same information<sup>396</sup>. A recent innovation is that the LGO also now produces a statement of reasons for every decision<sup>397</sup>. In addition the LGO publishes an annual report, annual accounts<sup>398</sup>, and a wide range of other information. The Scottish Public Services Ombudsman publishes its investigation reports along with an Ombudsman's commentary, which draws together themes and lessons learned from investigations<sup>399</sup>. The Public Services Ombudsman for Wales publishes its investigation reports (including public interest reports) on its website<sup>400</sup> along with other general information (annual reports; accounts; guidance; etc.)<sup>401</sup>. The Northern Ireland's web-based publication scheme is under development<sup>402</sup>. In addition, each of the UK ombudsmen makes details of meetings etc open to the public. For example, minutes of meetings of the Commission for Local Administration (which governs the English LGO) are available on the LGO website<sup>403</sup>. It was suggested that transparency could still be increased, in that meetings of the Commission could be made open to the public and it was also suggested that these would almost certainly be well attended<sup>404</sup>.

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## ACCOUNTABILITY (LAW)

*To what extent are there provisions in place to ensure that the ombudsman has to report and be answerable for its actions?*

**Score 100**

The English LGO is required to submit its annual report to Parliament<sup>405</sup> and is financially accountable to the Department of Communities and Local Government, under the terms of the

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<sup>395</sup> <http://www.lgo.org.uk/complaint-outcomes/>

<sup>396</sup> <http://www.lgo.org.uk/publications/digest-of-cases/>

<sup>397</sup> Interview – member of Local Government Ombudsman office

<sup>398</sup> <http://www.lgo.org.uk/publications/annual-report/>

<sup>399</sup> <http://www.spsso.org.uk/reports>

<sup>400</sup> <http://www.ombudsman-wales.org.uk/en/investigation-reports/>

<sup>401</sup> <http://www.ombudsman-wales.org.uk/en/publications/>

<sup>402</sup> <http://www.ni-ombudsman.org.uk/Publications.aspx>

<sup>403</sup> <http://www.lgo.org.uk/about-us/governance/>

<sup>404</sup> Interview – member of Local Government Ombudsman office

<sup>405</sup> Local Government Act 1974, s. 30(1)

Grant Memorandum, which came into effect in September 1999<sup>406</sup>. The Scottish Public Services Ombudsman must also submit an annual report to Parliament<sup>407</sup> and also submits investigation reports<sup>408</sup>. The Public Services Ombudsman for Wales presents his report to the National Assembly for Wales<sup>409</sup>, and the Northern Ireland Ombudsman presents his annual report to the Northern Ireland Assembly<sup>410</sup>.

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## ACCOUNTABILITY (PRACTICE)

*To what extent does the ombudsman have to report and be answerable for its actions in practice?*

**Score 75**

No significant concerns have been raised as regards the accountability of the ombudsmen. It has been suggested that the English LGO might benefit from a closer relationship with the Select Committee for Communities and Local Government and that accountability could take into account a more public face<sup>411</sup>. The LGO annual report is comprehensive and covers all complaints statistics, which are also publicly available on the LGO website<sup>412</sup>. In addition, the Local Commission for Administration publishes its strategic plan; business plan; and a triennial review<sup>413</sup>.

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## INTEGRITY (LAW)

*To what extent are there provisions in place to ensure the integrity of the ombudsman?*

**Score 100**

There are a number of integrity mechanisms that underpin the UK ombudsmen. The English LGO publishes the code of conduct for Local Administration Commission Members and its register of interests for Commission Members<sup>414</sup>. There is also an employee code of conduct<sup>415</sup>. There is a clear complaints procedure, and the public can make a complaint based on:

- Inaccurate advice or information;
- The handling of investigations;
- Decisions regarding individual cases;
- Treatment by LGO staff;
- Treatment by LGO Corporate Services (such as Human Resources or Communications)<sup>416</sup>.

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406 <http://www.lgo.org.uk/GetAsset.aspx?id=fAAxADAA0AB8AHwARgBhAGwAcwBIAHwAfAAwAHwAO>

407 <http://www.legislation.gov.uk/asp/2002/11/section/17>

408 <http://www.spsso.org.uk/reports>

409 <http://www.ombudsman-wales.org.uk/en/publications/?pID=257>

410 <http://www.ni-ombudsman.org.uk/About-Us.aspx>

411 Interview – member of Local Government Ombudsman office

412 <http://www.lgo.org.uk/publications/annual-report/>

413 <http://www.lgo.org.uk/publications/annual-report/>

414 <http://www.lgo.org.uk/about-us/governance/>

415 <http://www.lgo.org.uk/working-for-us/hr-policies/code-employees/>

Similar integrity mechanisms can be found in the Scottish Public Services Ombudsman<sup>417</sup>; the Public Services Ombudsman for Wales<sup>418</sup>, and the Northern Ireland Ombudsman<sup>419</sup>.

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## INTEGRITY (PRACTICE)

*To what extent is the integrity of the ombudsman ensured in practice?*

**Score 100**

It has been suggested that integrity mechanisms work well, and that they are reinforced by the transparency of the ombudsman, which is being increased through personal visits to local authorities in addition to the elements mentioned previously<sup>420</sup>. One area causing most public concern about integrity was in planning decisions, principally because they tend to be controversial: "planning are the most highly contentious cases we get"<sup>421</sup>. It was suggested that planning is the area in which most people tend to suspect local government corruption but that there needs to be a workable system, which is properly enforced<sup>422</sup>. The LGO only comments on a planning decision when it has been "wholly unreasonable" and cannot disagree with the actual decisions made. The LGO can only investigate the decision-making process that led up to the decision, which can demonstrate that no matter how strongly a complainant might feel about a decision, a council will not have acted negligently<sup>423</sup>.

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## INVESTIGATION

*To what extent is the ombudsman active and effective in dealing with complaints from the public?*

**Score 75**

Half of the complaints submitted to the English LGO are dealt with within three months<sup>424</sup>. On the occasions that it does find against a local authority, it has no legal powers to force that authority to respond to the finding, although it was suggested that overwhelmingly local authorities do take subsequent action. It was also suggested that the ombudsman likes to read all the complaints that are put to the LGO, even though she does not have the capacity to deal personally with each one: "it is important to be exposed to public concerns"<sup>425</sup>. Complaints are very easy to make and can be submitted online. In 2009/10 there were a total of 18,020

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416 <http://www.lgo.org.uk/making-a-complaint/complaints-about-us/>

417 <http://www.spsso.org.uk/how-complain/complaining-about-spsso>

418 <http://www.ombudsman-wales.org.uk/en/how-to-complain-about-us/>

419 <http://www.ni-ombudsman.org.uk/Can-I-Complain.aspx>

420 Interview – member of Local Government Ombudsman office

421 Interview – member of Local Government Ombudsman office

422 Interview – member of Local Government Ombudsman office

423 Interview – member of Local Government Ombudsman office

424 <http://www.lgo.org.uk/making-a-complaint/how-we-will-deal-with-your-complaint/>

425 Interview – member of Local Government Ombudsman office

426 <http://www.lgo.org.uk/publications/annual-report/>

complaints: 3,007 on planning; 3,694 on housing; 1,767 on highways and transport; 2,136 on education and 1,289 on public finance<sup>426</sup>.

Public opinion of the LGO is mixed, and there are some particularly hostile websites run by members of the public<sup>427</sup>. A recent survey undertaken by IPSOS MORI, concluded that public perception is intrinsically linked to the decision that they have received. The report argues that: *"those who received a positive decision are more likely to say the investigation was fair and thorough, while those who are disappointed with their outcome are more likely to say it was not"*<sup>428</sup>. Public opinion alone, then, is not an entirely accurate barometer.

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## PROMOTING GOOD PRACTICE

*To what extent is the ombudsman active and effective in raising awareness within government and the public about standards of ethical behaviour?*

### Score 50

Two successive reports by the Committee on Standards in Public Life found that local government was the most tightly regulated area of UK public life and that standards of ethical conduct in local government are very high<sup>429</sup>. Nevertheless recent developments in England (rather than Scotland, Wales and Northern Ireland) could potentially create problems in years to come. Under section 3 the *Local Government Act 2000*, oversight of standards in local government was granted to the Standards Board for England (subsequently renamed as Standards for England or SfE). SfE is recognised by the LGO as a key partner organisation<sup>430</sup>. The *Local Government Act 2000* also established a statutory code of conduct for local councillors and a requirement for a local standards committee to be established in each local authority. The standards committee comprised elected members and independent members of the public. Under the terms of the *Local Government and Public Involvement in Health Act 2007*, local standards committees were required to be chaired by an independent member of the public. According to the terms of the 2009 memorandum of understanding between SfE and LGO, complaints about maladministration in standards committees falls under the jurisdiction of the ombudsman<sup>431</sup>.

The coalition government has recently published the *Localism Bill*, which seeks to significantly change the governance arrangements in English local government. One of its key policies is to dismantle the standards framework under section 3 of the *Local Government Act*. SfE is to be abolished; the local government code of conduct will be made a voluntary one; and local standards committees will also be voluntary and stripped of their statutory duties<sup>432</sup>. The *Localism Bill* proposes increased powers for the ombudsman to deal with complaints from members of the public who feel that they have been disadvantaged by a councillor. The Bill also proposes a new law for serious misconduct by councillors<sup>433</sup>.

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426 <http://www.lgo.org.uk/publications/annual-report/>

427 For example see <http://www.rottenCouncil.co.uk> <http://councilmaladministration.com> and <http://ombudsmanwatchers.org.uk>

428 IPSOS MORI (2010) *Understanding expectations: customer satisfaction research for the LGO 2010* p.12

429 Macaulay, M. and Lawton, A. (2006) 'Assessing the impact of the Committee on Standards in Public Life on local government', *Parliamentary Affairs*, 59, (3) pp. 474-490

430 <http://www.lgo.org.uk/about-us/links-with-other-bodies/>

431 The Memorandum is publicly available through the LGO website: <http://www.lgo.org.uk/about-us/links-with-other-bodies/>

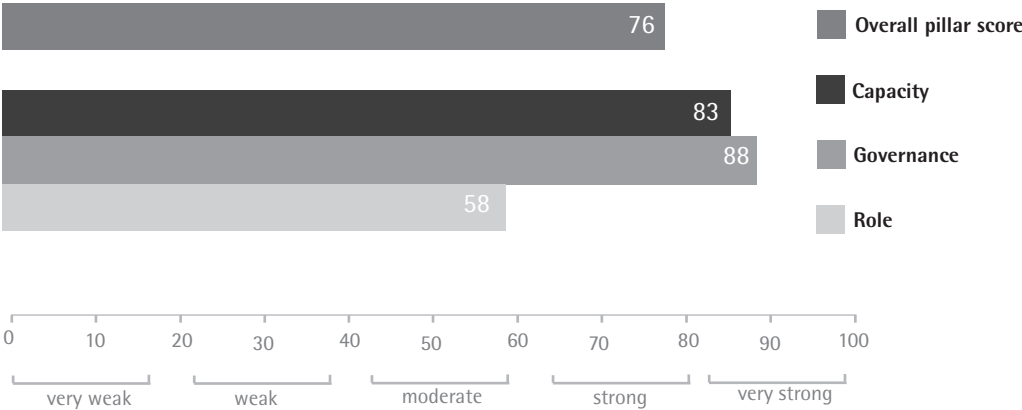
432 <http://services.parliament.uk/Bills/2010-11/localism.html>

433 <http://services.parliament.uk/Bills/2010-11/localism.html>

The development of a voluntary code has attracted strong criticisms from the Committee on Standards in Public Life, which has suggested that “it is unrealistic to believe that in the absence of a code people will always be clear about the proper boundaries of conduct in public life”<sup>434</sup>. The *Localism Bill* creates inconsistencies between England and the rest of the UK and will also lead to increased pressures on the Local Government Ombudsman. As reported in the Supreme Audit Institution pillar, as the Bill also proposes the abolition of the Audit Commission, there are currently serious questions to be asked about future standards of ethical conduct in local government.

6.8

SUPREME AUDIT INSTITUTION *Status: Strong*



SUMMARY

The supreme audit institutions in Scotland, Wales and Northern Ireland appear to be valuable actors in the auditing of central and local government spending. There are concerns over the situation in England, however, which is the subject of the majority of the investigation in this chapter. The National Audit Office (NAO) is considered to be a successful and useful actor, which has responded to criticism regarding its own transparency with new governance arrangements and new policies on gifts and hospitality. The NAO, however, is only responsible for central government spending. Local government and NHS spending is audited and inspected by the Audit Commission, which is to be wound up by the coalition government by 31 December 2012 – although this date could slip. A number of staff has already left the organisation and as yet there is little indication as to what will replace it. It is current government policy to encourage private audit firms to audit local authorities. However, given the dominance of the ‘Big Four’ accounting and audit firms in the private sector and recent criticisms from the House of Lords Economic Affairs Committee, there is a risk of increasing market domination, rising audit prices in the long-term, and of accounting firms being “disconcertingly complacent”<sup>435</sup>. We can only score each NIS pillar as it currently stands, but clearly the enormous change in district audit arrangements is a red flag for future research. What will emerge from the Audit Commission’s abolition awaits to be seen.

Annex 1 presents the detailed scores assigned to the SAI in terms of capacity, governance and role in the national integrity system. Below is a qualitative assessment of the relevant indicators.

STRUCTURE AND ORGANISATION

Each devolved administration within the UK (England, Scotland, Wales and Northern Ireland) has its own supreme audit institution: Scotland, Wales and Northern Ireland have unitary audit regimes.

The enormous change in district audit arrangements is a red flag for future research. What will emerge from the Audit Commission’s abolition awaits to be seen

434 [http://www.public-standards.gov.uk/Library/31012011\\_\\_\\_Localism\\_Bill\\_Submission\\_to\\_Public\\_Bill\\_Committee.pdf](http://www.public-standards.gov.uk/Library/31012011___Localism_Bill_Submission_to_Public_Bill_Committee.pdf)

435 The Guardian, ‘House of Lords criticises UK auditors over role in financial crisis’, March 30, 2011. Indeed the report recommended that the ‘Big 4’ accounting firms (PWC; Deloitte; KPMG; Ernst and Young) are subject of an Office of Fair Trading review.



In Scotland the supreme audit institution is Audit Scotland, although local government audit is headed by the Accounts Commission for Scotland. The Auditor General is responsible for spending by all public bodies: the Scottish Government, Scottish local government and Scottish NHS<sup>436</sup>. The Wales Audit Office (WAO) is headed by the Auditor General for Wales. He directly audits the Welsh Assembly Government and the NHS in Wales or, in the case of local government, appoints auditors to undertake financial audit and examine local value for money matters. He reports to the Welsh Assembly<sup>437</sup>. The position of Comptroller and Auditor General in Northern Ireland has existed since the state was founded in 1921. The Auditor General heads the Northern Ireland Audit Office (NIAO) which audits both central and local government functions and reports to the Northern Ireland Assembly<sup>438</sup>.

Wales Audit Office is independent and has its powers and independence enshrined in the *Public Audit (Wales) Act, 2004*. The office of Auditor General for Wales is a statutory appointment made by Her Majesty the Queen, in accordance with the provisions of Schedule 8 of the *Government of Wales Act 2006*. WAO is held accountable by the Public Accounts Committee of the National Assembly for the Wales Audit Office's work and financial management<sup>439</sup>.

The Northern Ireland Audit Office is completely independent of government. Its powers and independence are enshrined in a number of acts: the *Audit (Northern Ireland) Order 1987*, the *Northern Ireland Act 1998*, the *Government Resources and Accounts Act (Northern Ireland) 2001* and the *Audit and Accountability (Northern Ireland) Order 2003*. The principal legislative authority for the responsibilities of local government auditors is contained in the *Local Government (Northern Ireland) Order 2005* and the *Local Government (Accounts and Audit) Regulations (Northern Ireland) 2006*<sup>440</sup>.

England has a dual regime for central and local government (and the NHS). The National Audit Office (NAO) scrutinises public spending on behalf of Parliament. The Comptroller and Auditor General is an Officer of the House of Commons. He is the head of the National Audit Office which employs some 900 staff. He and the National Audit Office are totally independent of Government. He certifies the accounts of all government departments and a wide range of other public sector bodies. He also has statutory authority to report to Parliament on the economy, and on the efficiency and effectiveness with which departments and other bodies have used their resources. NAO reports to Parliament through the Public Accounts Commission (PAC). The Audit Commission works across local government, health, housing, community safety, and fire and rescue services. It promotes value for money for taxpayers, auditing the £200 billion spent by 11,000 local public bodies<sup>442</sup>.

## RESOURCES (PRACTICE)

*To what extent does the audit institution have adequate resources to achieve its goals in practice?*

**Score 75**

The NAO and Audit Commission currently have adequate resources to deal with their roles and responsibilities. But there are increasing concerns over the short and long-term future of local

<sup>436</sup> <http://www.audit-scotland.gov.uk/>

<sup>437</sup> <http://www.wao.gov.uk/howeare/howeare.asp>

<sup>438</sup> <http://www.niauditoffice.gov.uk/about/role.asp>

<sup>439</sup> <http://www.wao.gov.uk>

<sup>440</sup> <http://www.niauditoffice.gov.uk/about/role.asp>

<sup>441</sup> [http://www.nao.org.uk/about\\_us.aspx](http://www.nao.org.uk/about_us.aspx)

<sup>442</sup> <http://www.audit-commission.gov.uk/aboutus/Pages/default.aspx>

and health audit. NAO spent £94.6 million in providing audit and other assurance services in 2009. Generating £19.9 million income from fee-paying work, the net cost of the NAO for the financial year was £74.7 million<sup>443</sup>. The Audit Commission employs approximately 1,000 auditors, plus researchers and support staff, and currently generates around £180 million per year in audit fees<sup>444</sup>. Abolition is calculated to save £50 million per year, but the closure itself has been estimated to cost at least £90 million<sup>445</sup>. The £50 million savings were also recently revealed to be a "ballpark figure" by Local Government Minister Grant Shapps. Indeed, in his response to the local government select committee, Shapps admitted that the government could not produce a breakdown of these savings<sup>446</sup>.

Furthermore, one respondent expressed concern that the alternatives have numerous resource implications. *"The NAO will need to acquire additional resources and capacity if it is to take on some of the functions of the Audit Commission"*<sup>447</sup>. Alternative possibilities include the mutualisation of the Audit Commission's audit function in non-profit organisations. More realistically, the work will pass to the private sector (which is the government's favoured option<sup>448</sup>). But this has ramifications for notions of independence and transparency (see below).

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## INDEPENDENCE (LAW)

*To what extent is there formal operational independence of the audit institution?*

### Score 100

There is clear independence for each of the audit regimes under the law. The Audit Commission was established by the *Local Government Finance Act 1982* and began operating in April 1983. Its principal powers were enshrined in the *Audit Commission Act 1998*<sup>449</sup>. NAO is independent of government and has its powers and independence enshrined in the *National Audit Act, 1983* and the *Government Resources and Accounts Act, 2000*. The *National Audit Act 1983* laid out the means of appointing the Comptroller and Auditor General (C&AG); set up the Parliamentary Public Accounts Commission; established the NAO and set out how it would operate; allowed for the carrying out of value-for-money examinations; and provided for the NAO to be audited. The *Government Resources and Accounts Act 2000* placed many of the C&AG's existing audits on a more statutory footing, increased the numbers of government bodies for which the C&AG was the auditor, and widened the NAO's rights of access to information for audit purposes to groups such as government consultants<sup>450</sup>.

The Office of Comptroller and Auditor General is a Crown appointment made in response to an address presented by the House of Commons. Under the *National Audit Act 1983*, the motion for such an address must be made by the Prime Minister with the agreement of the Chair of the Committee of Public Accounts. The Comptroller and Auditor General is a corporation sole and retains office unless removed by a resolution of both Houses of Parliament. The current

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<sup>443</sup> NAO Annual report, 2010

<sup>444</sup> "Into the audit void", *Accounting and Business UK*, Nov/Dec 2010 p. 55

<sup>445</sup> *Ibid* p. 55

<sup>446</sup> <http://www.insidehousing.co.uk/news/housing-management/audit-commission-savings-ballpark/6514375.article>

<sup>447</sup> Interview with author, Nov 10, 2010

<sup>448</sup> Interview with author, Nov 10, 2010

<sup>449</sup> <http://www.audit-commission.gov.uk/aboutus/history/pages/default.aspx>

<sup>450</sup> [http://www.nao.org.uk/about\\_us/history\\_of\\_the\\_nao.aspx](http://www.nao.org.uk/about_us/history_of_the_nao.aspx)

Comptroller and Auditor General, Amyas Morse, was appointed on 1 June 2009<sup>451</sup>. The C&AG's budget is set directly by Parliament, through the Public Accounts Commission.

The Comptroller and Auditor General appoints such staff as he considers necessary for assisting him in the discharge of his functions. NAO staff are not civil servants and are independent of government. Staff are appointed at such remuneration and on other terms and conditions as the Comptroller and Auditor General may determine, subject to him having regard to the desirability of keeping the remuneration and terms and conditions broadly in line with those applicable in the Civil Service<sup>452</sup>.

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## INDEPENDENCE (PRACTICE)

*To what extent is the audit institution free from external interference in the performance of its work in practice?*

**Score 75**

Although there is little evidence of interference in the decision-making of the supreme audit institution, there was significant concern over the swiftness of the Government's decision on the abolition of the Audit Commission. There was very little public discussion prior to the decision being taken. One respondent expressed concern that the initial decision was taken without full consultation or debate on the alternatives for a public audit framework<sup>453</sup>. This view appears to be reinforced by the fact that, despite the final closure of the Audit Commission being due by 31 December 2012, the current audit regime in the NHS is timetabled to continue into 2013<sup>454</sup>. The mechanisms by which this will occur have not yet been explained.

Although the discussion regarding the future of local government and NHS audit must, necessarily, be speculative, significant concerns have been raised regarding the possible alternatives. As previously mentioned, the coalition government's favoured option is reported to be the transfer of audit to the private sector. Such an arrangement, however, could remove the division between consultancy services and audit. This has raised concerns that the introduction of a local appointment process for auditors, without appropriate the checks and balances, may result in conflicts of interests<sup>455</sup>. Recent government documents suggest that local audit committees will make recommendations on auditor appointments, which will be ratified by the full council. Even if such a decision were taken by the full council, there are still issues over the extent to which the ruling political party may be perceived to have influenced the decision. If the independence of local government audit is to truly follow the private sector route, in which auditors are appointed by shareholders, then possibly auditors would be selected (or elected) by local council tax payers. This may seem an unlikely scenario, but one which illustrates the complexity of English public audit at present. The uncertainty surrounding the future of district audit reduces the NIS score for this section of the pillar.

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<sup>451</sup> NAO Annual Report 2010

<sup>452</sup> *ibid*

<sup>453</sup> Interview with author, Nov 10, 2010

<sup>454</sup> "Into the audit void", *Accounting and Business UK*, Nov/Dec 2010 p. 55

<sup>455</sup> "Picking up the pieces", *Accounting and Business UK*, Nov/Dec 2010 p. 56

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## TRANSPARENCY (LAW)

*To what extent are there provisions in place to ensure that the public can obtain relevant information on the relevant activities and decisions by the SAI?*

**Score 100**

The NAO must publish its accounts annually under section 4 of the National Audit Act 1983. It accepts the need for complete transparency and has a dedicated part of its website providing information on remuneration, payments to suppliers (over £500), and so on<sup>456</sup>. The Audit Commission must publish its accounts under the Audit Commission Act 1998, Schedule 1 clause 14 (2).

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## TRANSPARENCY (PRACTICE)

*To what extent is there transparency in the activities and decisions of the audit institution in practice?*

**Score 75**

There is a plethora of information readily available to demonstrate the transparency of the activities and decisions of the audit institutions. All annual reports are freely available on the NAO website<sup>457</sup>, as are strategy documents, reports for each government department and a full list of all senior management remuneration; gifts and hospitality; and travel and subsistence expenses<sup>458</sup>. NAO reports on each government department are freely available on its website<sup>459</sup>. Similarly the Audit Commission publishes all major reports and research projects. There have been only a few exceptions to this level of transparency, most notably in the NAO's decision (under the leadership of the then C&AG, Sir John Bourn) not to release its report into the BAE Systems/Al Yamamah arms contract. The contract was the subject of a major investigation by the Serious Fraud Office and became infamous as one of the biggest corruption scandals in recent times<sup>460</sup>.

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## ACCOUNTABILITY (LAW)

*To what extent are there provisions in place to ensure that the SAI has to report and be answerable for its actions?*

**Score 100**

The NAO is answerable to a parliamentary committee, the Public Accounts Commission, which appoints external auditors and scrutinises the NAO's performance. In addition, the Public Accounts Committee considers NAO reports and findings. It takes evidence from the

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<sup>456</sup> [http://www.nao.org.uk/about\\_us/structure\\_\\_governance/transparency.aspx](http://www.nao.org.uk/about_us/structure__governance/transparency.aspx)

<sup>457</sup> [http://www.nao.org.uk/publications/1011/nao\\_annual\\_report\\_2010.aspx](http://www.nao.org.uk/publications/1011/nao_annual_report_2010.aspx)

<sup>458</sup> [http://www.nao.org.uk/publications/1011/nao\\_annual\\_report\\_2010.aspx](http://www.nao.org.uk/publications/1011/nao_annual_report_2010.aspx)

<sup>459</sup> [http://www.nao.org.uk/publications/short\\_guides\\_to\\_departments.aspx](http://www.nao.org.uk/publications/short_guides_to_departments.aspx)

<sup>460</sup> [http://business.timesonline.co.uk/tol/business/industry\\_sectors/engineering/article3799039.ece](http://business.timesonline.co.uk/tol/business/industry_sectors/engineering/article3799039.ece)

relevant accounting officer of the government department or other public body before issuing its own report. (The relevant accounting officer is the person designated by the Treasury as having responsibility for the management of public funds in their organisation, and other senior governmental officials.) By convention, the Government must reply to the Committee's recommendations within two months.

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## ACCOUNTABILITY (PRACTICE)

*To what extent does the SAI have to report and be answerable for its actions in practice?*

**Score 100**

The NAO is itself independently audited by RSM Tenon Audit Limited (formerly Tenon Audit Limited), who were appointed by the Public Accounts Commission for a three-year term in April 2006. The Public Accounts Commission has utilised optional extensions to the contract and has extended the appointment to May 2011. All relevant audit information has been made available to the external auditors. The Comptroller and Auditor General has taken steps to make himself aware of any relevant audit information and has ensured that the external auditors were aware of that information<sup>461</sup>. The Audit Commission is audited by the National Audit Office.

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## INTEGRITY (LAW)

*To what extent are there mechanisms in place to ensure the integrity of the audit institution?*

**Score 100**

The National Audit Office has rules regarding remuneration, gifts and hospitality, and travel and subsistence expenses, all of which are publicly available on its website<sup>462</sup>. The corporate governance arrangements of the NAO were reviewed recently in light of issues surrounding its leadership and the concern over the BAE systems report. The review was considered by the Public Accounts Commission<sup>463</sup> and has subsequently led to the development of a new board structure. This comprises an independent non-executive Chairman, four other non-executive board members drawn from outside the NAO, the Comptroller and Auditor General, the Chief Operating Officer and two Assistant Auditors General<sup>464</sup>. The Board advises on strategy and governance issues. The Audit Commission currently publishes its full code of practice for both local government<sup>465</sup> and the health service<sup>466</sup>. It is not known what will replace these arrangements under the new regime that follows the abolition of the Audit Commission.

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<sup>461</sup> NAO Annual Report, 2010

<sup>462</sup> [http://www.nao.org.uk/publications/1011/nao\\_annual\\_report\\_2010.aspx](http://www.nao.org.uk/publications/1011/nao_annual_report_2010.aspx)

<sup>463</sup> <http://www.publications.parliament.uk/pa/cm/cmacccom.htm>

<sup>464</sup> [http://www.nao.org.uk/about\\_us/structure\\_\\_governance/nao\\_board.aspx](http://www.nao.org.uk/about_us/structure__governance/nao_board.aspx)

<sup>465</sup> <http://www.audit-commission.gov.uk/localgov/audit/auditmethodology/Pages/codelocalgov.aspx>

<sup>466</sup> <http://www.audit-commission.gov.uk/localgov/audit/auditmethodology/Pages/codenhs.aspx>

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## INTEGRITY (PRACTICE)

*To what extent is the integrity of the audit institution ensured in practice?*

**Score 50**

One respondent welcomed the changes to the NAO governance structure and suggested that it would improve the integrity of the organisation<sup>467</sup>. In recent years the NAO has come under some heavy criticism regarding the effectiveness of its integrity mechanisms, which had been challenged with the behaviour of the previous Comptroller and Auditor General, Sir John Bourn. He retired in January 2008. Between 2004 and 2007, Bourn ran up travel expenses of £365,000 (which included travel for his secretary and his wife) and over £27,000 on meals. More controversially, he accepted hospitality from companies including BAE – which paid for him to go to the British Grand Prix in 2007 – and EDS and GSL, which have received substantial government contracts<sup>468</sup>.

Since the office of the C&AG is an appointment of the Crown, the holder can only be removed by the assent of both the House of Commons and House of Lords. In light of the criticism he received, Sir John chose to resign his position, but was adamant that he had not breached any rules or codes of conduct. In an interview at the time of his resignation Sir John stated: *"All the travel and corporate engagements have been to further the role and influence of the NAO ... When they looked at my travel expenses they said there had been no impropriety and they had been incurred in accordance with the existing rules. And the external auditor never raised any of these points"*<sup>469</sup>.

As discussed above there is concern for the integrity mechanisms within local government and the NHS in light of the abolition of the Audit Commission, and the abolition of the local government integrity framework under the *Decentralisation and Localism Bill*. Until the Government gives a clear indication as to what future arrangements may be, it is very difficult to assess the rigour and robustness of mechanisms in these areas.

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## EFFECTIVE FINANCIAL AUDITS (LAW AND PRACTICE)

*To what extent does the audit institution provide effective audits of public expenditure?*

**Score 75**

The NAO produces financial audits and value-for-money reports on the spending of each government department. In recent years the NAO has refused to sign off on a variety of government accounts. In 2009, for example, the NAO refused to sign off HM Treasury's accounts for only the second time in 350 years, after it had overspent by £24 billion without authorisation from Parliament<sup>470</sup>. In December 2010 the NAO did not sign off the accounts for the House of Commons as a result of the MPs' expenses scandal. The accounts were left with £2.6 million in

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<sup>467</sup> Interview with author, Nov 10, 2010

<sup>468</sup> <http://www.guardian.co.uk/politics/2007/oct/11/uk.Whitehall>

<sup>469</sup> <http://www.telegraph.co.uk/finance/markets/2783812/Sir-John-Bourn-leaves-NAO-after-20-years.html>

<sup>470</sup> [http://www.thisismoney.co.uk/news/article.html?in\\_article\\_id=488711&in\\_page\\_id=2](http://www.thisismoney.co.uk/news/article.html?in_article_id=488711&in_page_id=2)

<sup>471</sup> [http://www.politics.co.uk/news/-unsupported-expenses-lead-auditors-to-refuse-signing-off-commons-books-\\$21386295.htm](http://www.politics.co.uk/news/-unsupported-expenses-lead-auditors-to-refuse-signing-off-commons-books-$21386295.htm)

unsupported claims, with a further £11.3 million of expenses claims with insufficient evidence to be signed<sup>471</sup>. The ability to provide effective audit of public expenditure at the local level will depend on the arrangements that will be put into place following the abolition of the Audit Commission.

## DETECTING AND SANCTIONING MISBEHAVIOUR (LAW AND PRACTICE)

*Does the audit institution detect and investigate misbehaviour of public officeholders?*

**Score 50**

The case of the previous C&AG shows that although audit institutions are able to detect and investigate misbehaviour of public officeholders, their capacity to do so is coloured by what is or is not perceived as misbehaviour. In a situation not unlike the recent Parliamentary expenses scandal (see Executive pillar) it was the public perception of misbehaviour that fuelled the C&AG's resignation rather than any findings by the audit institution itself.

Of perhaps much deeper significance is the abolition of the Audit Commission, which undertakes significant work into the investigation of fraud and corruption in local government and the NHS, presenting its findings in the annual Protecting the Public Purse report<sup>472</sup>. The report presents findings on corruption and fraud in housing benefit; council tax; local government procurement; and on a broad range of other misbehaviour. There has been discussion that this area of the Audit Commission's work is to be moved to the National Fraud Authority (NFA), but this leads again to concern about capacity and the ability to take on such substantial work. There is little doubt that this body of work needs to be taken forward, but it must be done so in a way that is supported effectively, with expertise and financial resources. In the past the Audit Commission has also produced public interest reports into a number of authorities where misbehaviour has been reported or alleged, or has come to light during an audit<sup>473</sup>. The high-profile Doncaster case, in the late 1990s<sup>474</sup>, is one example.

## IMPROVING FINANCIAL MANAGEMENT (LAW AND PRACTICE)

*To what extent is the SAI effective in improving the financial management of government?*

**Score 50**

In addition to its primary audit function, the NAO produces a large number of reports on a broad range of public finance issues, not least of which are its reports on the Government's value-for-money (VFM) programme. This programme was established by HM Treasury in 2008, and produced a targeted VFM saving of £30 billion<sup>475</sup>. There are approximately 70 VFM reports currently under consideration by the Public Accounts Committee<sup>476</sup>.

472 For the 2010 edition see <http://www.audit-commission.gov.uk/SiteCollectionDocuments/AuditCommissionReports/NationalStudies/271010protectingthepublicpurse.pdf>

473 Section 8 of the Audit Commission Act 1998

474 The Doncaster scandal is discussed in depth in the 2004 National Integrity System assessment. For list of recent public interest reports see <http://www.audit-commission.gov.uk/localgov/audit/pir/Pages/Default.aspx>

475 NAO (2010) *Progress with VFM savings and lessons for cost reduction programmes* (HC 291)

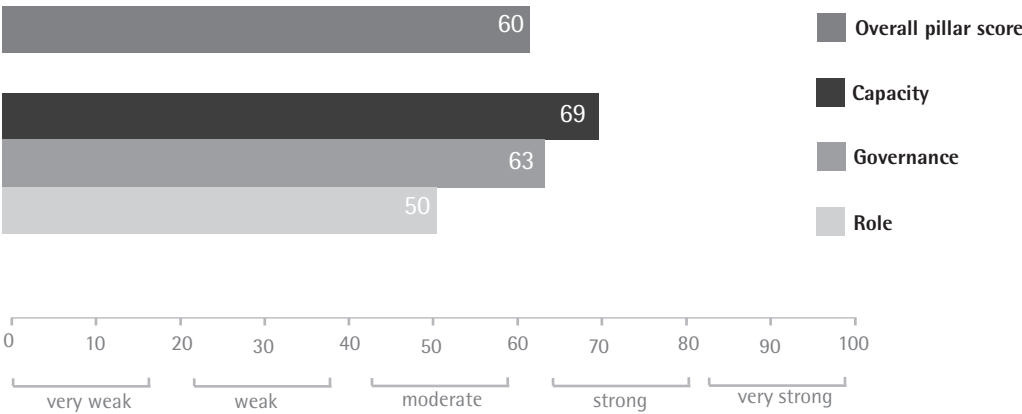
476 Interview with author, Nov 10, 2010

One of the biggest concerns surrounding UK audit and the abolition of the Audit Commission is the extent to which its value for money (VFM) reports will be affected. These reports highlighted a crucial difference between the NAO and Audit Commission: the Comptroller and Auditor General does not have the authority to comment on government policy, whereas the Audit Commission, through its VFM reports, could comment on both policy and its implementation by local authorities<sup>477</sup>. The Audit Commission VFM reports developed benchmarking and good practice throughout local government, allowing for financial management to be improved. In addition, the Audit Commission produces annual reports on the NHS based on the Auditors' Local Evaluation (ALE) for NHS trusts and Use of Resources (UoR) for primary care trusts

The question that has occurred throughout this pillar is what is to be done once the Audit Commission is disbanded. One respondent raised concerns about the capacity of the NAO to undertake any more VFM work and, more importantly, the capacity for the Public Accounts Committee to follow them up and review them effectively<sup>478</sup>. Furthermore there is a concern about the reduction in experience and expertise that will follow from the abolition of the Audit Commission.

6.9

POLITICAL PARTIES*Status: moderate*



SUMMARY

According to the Electoral Commission there are currently 378 political parties registered in the UK, and 43 in Northern Ireland<sup>479</sup>. The legislation and organisation surrounding political parties, and in particular political party funding, are seen as relatively successful. But some gaps still need to be addressed. First, there is a question of whether donations should be capped; and second, whether there should be a degree of public funding for political parties. Neither of these points is particularly novel and have both been under discussion since at least the 1970s<sup>480</sup>. The view from international stakeholders also suggests that the UK has a robust system. A GRECO report from 2008 states that: *"The existing legal system and organisational framework regarding the transparency of political financing, its supervision and the available sanctions for infringements of financing rules is generally of a high standard in the United Kingdom"*<sup>481</sup>. There are, however, problems of perception surrounding party funding in the UK<sup>482</sup>. A recent report has shown that it

There are...  
problems of  
perception  
surrounding  
party funding  
in the UK

477 ACCA (2010) 'A new audit framework for local public services in England: 10 issues in need of urgent attention' [www.accaglobal.com](http://www.accaglobal.com)

478 Interview with author, Nov 10, 2010

479 <http://registers.electoralcommission.org.uk/regulatory-issues/regpoliticalparties.cfm>

480 Electoral

481 GRECO (2008) *Evaluation Report on the United Kingdom on Transparency of Party Funding (Theme II)* p. 28

482 TI-UK (2010) *Corruption in the UK Part One: National Opinion Survey* (London: TI-UK)



was ranked highest among potentially corrupt practices in the UK. Annex 1 presents the detailed scores assigned to the Political Parties pillar in terms of capacity, governance and role in the national integrity system. Below is a qualitative assessment of the relevant indicators.

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## RESOURCES (LAW)

*To what extent does the legal framework provide an environment conducive to the formation and operations of political parties?*

**Score 100**

The UK legal framework provides an environment conducive to the formation and operation of political parties. The *Political Parties Elections and Referendums Act 2000 (PPERA)* establishes the regulatory framework governing the registration and finances of political parties. The *Electoral Administration Act 2006 (EAA)* extended the controls to loans and other borrowings. The *Political Parties and Elections Act 2009 (PPEA)* made further changes and increased the threshold for permissible and reportable donations.

The requirement to register is a strong protection that the finances of all political parties are properly regulated. Parties are left to determine their own legal structure and the PPERA does not provide a legal or other definition of political parties. However it does place legal obligations on parties and recognises them in law<sup>483</sup>.

The Electoral Commission maintains two registers of political parties in accordance with PPERA, one for Great Britain (GB) and one for Northern Ireland. Registration requires the following:

- An application form;
- £150 registration fee (non refundable);
- A party constitution;
- A financial scheme which complies with the statutory obligations imposed on a party under the PPERA.

Registered political parties must comply with statutory controls, including the submission of returns on their finances, controls on donations and loans, statement of accounts and campaign spending.

Political parties in Northern Ireland are subject to the donation and loan controls with two important differences:

- Northern Ireland parties may receive donations from certain sources in the Republic of Ireland;
- Donations reported by parties in Northern Ireland are kept confidentially and do not appear on a public register.

The amounts of public funding available to political parties in the United Kingdom are small. Moreover they are provided for very specific purposes. These specific purposes are funding for policy development and "Short Money" ("Craborn Money" in Northern Ireland) for opposition parties in the House of Commons to help them discharge their parliamentary duties. Public money is also provided indirectly: political parties do not have to pay for the airtime they obtain for party political broadcasts; candidates are entitled to free postage for one election mailing to each elector in the constituency (this applies to elections to devolved bodies and the European Parliament

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483 GRECO (2008) *Evaluation Report on the United Kingdom on Transparency of Party Funding (Theme II)*

as well as to general elections). Candidates are also entitled to free use of public meeting rooms, e.g. schools, town halls, for all elections in Great Britain. There is no such provision in Northern Ireland<sup>484</sup>. Rules and regulations governing public funding are set out on the Electoral Commission's website<sup>485</sup>.

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## RESOURCES (PRACTICE)

*To what extent do the financial resources available to political parties allow for effective political competition?*

**Score 75**

In practice, political parties finance themselves from various sources, including party subscriptions and donations. In 2009/10 £59.2m of party funding came from donations, compared with just £8.1m from state funding. Even in a non-election year the balance is heavily weighted toward donations. For example, in 2009, £49.8m came from donations compared to £9.2m from state funding. Company donations have also increased over the past nine years, though not at the same rate as individual donations. Trade union donations have remained relatively stable over the past ten years, but because of the overall growth in donation levels, the proportion of donations they provide has fallen from just over 31 per cent in 2001, to 17 per cent in 2009<sup>486</sup>. In response to concerns about party political funding following the party loans scandal, the Committee on Standards in Public Life has launched an inquiry due to report later in 2011.

The Labour Party has traditionally received the majority of its funds from the Trade unions. The Conservative Party has tended to rely on local constituency associations, individual and corporate donations for much of its income. The Liberal Democrats have been financed by trusts, companies and other private entities. The 2008 GRECO report notes that *"there appears to be an increasing concern that a significant proportion of donations are large scale donations originating from few sources"*<sup>487</sup>. There is very modest state funding of political parties in the UK, and unlike most European countries, UK party funding is dependent on the money that they raise, and therefore dependent on large donations<sup>488</sup>. Yet public perception can be suspicious of large donations. Recently, details surrounding some of the donor clubs available to Conservative Party supporters were revealed. The Guardian reported that *"for an annual donation of £10,000, activists can join the Renaissance Forum, which holds regular dinners where senior Conservatives give talks and there is the chance to discuss policy. One step up, the Treasurer's Group offers access to senior ministers and costs £25,000. At the top level – for donations of at least £50,000 – loyalists can gain exclusive membership to the Leader's Group"*<sup>489</sup>. Although one cannot conclude that this led to any undue influence being offered to donors there is a sense that "a small group of people having discussions with future Prime Ministers creates potential for the perception of corruption"<sup>490</sup>.

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484 GRECO (2008) *Evaluation Report on the United Kingdom on Transparency of Party Funding (Theme II)*

485 [http://www.electoralcommission.org.uk/party-finance/public\\_funding](http://www.electoralcommission.org.uk/party-finance/public_funding)

486 Electoral Commission 2010. *Party funding: the Electoral Commission's response to the Committee on Standards in Public Life*

487 GRECO (2008) *Evaluation Report on the United Kingdom on Transparency of Party Funding (Theme II)* p. 22

488 Interview – member of Electoral Reform Society

489 *The Guardian* Dinner with David Cameron? How parties are bridging the funding gap 28 August 2010

490 Interview – member of Electoral Reform Society

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## INDEPENDENCE (LAW)

*To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?*

**Score 75**

The Human Rights Act (1998) ensures the right to freedom of association and assembly. The Act does, though, include some restrictions which apply only where the authority can show that its action has a proper basis in law, and is necessary and 'proportionate' in order to:

- Protect national security or public safety;
- Prevent disorder or crime;
- Protect health or morals;
- Protect the rights and freedoms of other people.

The PPERA (2000) sets out the role of the Electoral Commission in overseeing all registered political parties, and parties must be registered in order to field candidates at elections.

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## INDEPENDENCE (PRACTICE)

*To what extent are political parties free from unwarranted external interference in their activities in practice?*

**Score 50**

There is no evidence of the state dissolving or prohibiting political parties in the UK, nor of harassment or attacks on opposition parties. There has been some concern about the influence of donors on both party and government policy, and the conduct of elected officials. For example, recent reports expressed concern over possible links between private health care donations to the Conservative Party and whether or not they may then benefit from healthcare contracts<sup>491</sup>. In Scotland, questions have been asked about the links between Scottish National Party (SNP) donor, Brian Souter, and subsequent party policy. In 2007 the SNP dropped bus deregulation from its party manifesto after receiving a donation from Souter, who owns Stagecoach, Scotland's biggest bus company<sup>492</sup>. Indeed, PPERA was introduced following an enquiry precipitated by New Labour's £1 million donation from Bernie Ecclestone, and its subsequent relaxation of tobacco advertising in Formula 1<sup>493</sup>. And, more generally, there is concern over the lobbying of elected officials and parties and the influence that such activities may exert<sup>494</sup>.

None of these examples demonstrates illegal activity, and as it was suggested "nobody can put their hand on their heart and say they can prove a link between donations and influence"<sup>495</sup>. But there is a remaining concern over the way in which donations can provide the donor with exposure to politicians and members of the Government.

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491 'NHS shakeup will hit poor and help rich, says BMA committee chairman', *The Guardian* 25 Jan 2011

492 <http://www.scottishgreens.org.uk/news/show/6478/souter-donation-shames-snp>

493 This case is discussed in detail in the previous UK NIS report

494 'MPs' £1.6m backing raises fears over lobbyists' influence', *The Guardian*, 25 February 2011, p1

495 Interview – member of Electoral Reform Society

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## TRANSPARENCY (LAW)

*To what extent are there regulations in place that require parties to make their financial information publicly available?*

**Score 50**

There are currently no limits in United Kingdom legislation to the amount that a registered political party can receive from a donor. However, where donations exceed a certain threshold, these must be submitted in a donation report to the Electoral Commission. These, along with other reports (see *Accountability* indicators) are required to be submitted to the Electoral Commission.

As well as registering the donation with the Electoral Commission, all donations must be made by parties that are trading in the UK. However, there is no real definition of what "trading in the UK" means, and therefore there is concern about the level of transparency in relation to election candidates and third parties<sup>496</sup>.

Registered parties also have to make three other types of return. Since 2006, parties have to submit a quarterly return of loans to the Electoral Commission. Secondly, parties must submit an annual report of the party's Statement of Accounts (SOAs)<sup>497</sup>. These are required from all political parties, regardless of size, and – if their income or expenditure in the year in question exceeds £25,000 – from parties' accounting units (AUs). Also political parties contesting elections to the Westminster Parliament, European Parliament, Scottish Parliament, Welsh Assembly and Northern Ireland Assembly must submit a return detailing their spending on the campaign.

For parties and their accounting units (AUs), the registered treasurer is required to keep accurate records of their income and expenditure. Records must be sufficient to allow the party to comply with its responsibilities on campaign expenditure returns, donation returns and annual statements of accounts (SOAs). In terms of disclosure, the accounting records must be such that they can be disclosed at any time, with reasonable accuracy. There is no public access to financial information of political parties under any other legislation (e.g. freedom of information does not extend to political parties).

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## TRANSPARENCY (PRACTICE)

*To what extent can the public obtain relevant information from political parties?*

**Score 50**

PPERA has substantially increased transparency in party funding in the UK<sup>498</sup>. However, there is a continuing issue with the absence of transparency within the reporting requirements for loans, a significant loophole that came to public attention in early 2006. The rules on the transparency of party funding only covered donations to political parties, not commercial loans. It subsequently emerged that before the 2005 general election, the Labour Party had been loaned almost £14

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<sup>496</sup> Interview – member of Electoral Reform Society

<sup>497</sup> PPERA, Sections 41 and 42

<sup>498</sup> GRECO (2008) Evaluation Report on the United Kingdom on Transparency of Party Funding (Theme II)

million from unnamed sources. The Conservatives had also been loaned £16 million from private backers. Even the UK's third party, the Liberal Democrats, had been loaned £850,000 by three sources. All three parties maintained their innocence as such loans were not covered by PPERA 2000. An investigation was subsequently conducted by the Metropolitan Police but no arrests were made.

Questions have also arisen over the transparency of individuals such as Peter Hain, who claimed to have been so busy that he forgot to declare over £100,000 in donations. Hain resigned from his Cabinet post and his case was referred to the Crown Prosecution Service, which did not press charges against him<sup>499</sup>. Such scandals have not increased public trust and the supposed increase in transparency has not necessarily been effective. As one respondent suggested "We used to think that sunlight was the best disinfectant, but now we can see that all the sunlight does is cast more shadows<sup>500</sup>."

Political parties are under no obligation themselves to make their accounts public. The Electoral Commission updates a public register of donations on a quarterly basis and on a weekly basis during a general election period. The information in the party's return (subject to exceptions, see below) is published on the Election Commission's website. It is also possible to request a paper copy of the information or to inspect the returns in person at the premises of the Election Commission. A separate public register of loans gives all the reportable details of loans entered into by parties, and is again available on the Electoral Commission's website.

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## ACCOUNTABILITY (LAW)

*To what extent are there provisions governing financial oversight of political parties by a designated state body?*

**Score 75**

The Electoral Commission is the UK regulator of party and election finances and requires a number of returns from political parties. First, it requires an annual statement of accounts. Parties with gross income and total expenditure below £250,000 are required to submit their statement of accounts within four months of the end of their financial year. Accounting units with income or expenditure above £25,000 are also required to send the accounts to the Commission. The sanction for failing to submit on time is a civil penalty of at least £500. The penalty for accounting units is at least £100. Secondly, the parties have to submit quarterly reports on loans within 30 days of the end of each calendar quarter. Thirdly, the parties have to report quarterly donations within 30 days of the end of each calendar quarter. There is also a requirement to report weekly during a UK general election. Last of all, political parties contesting elections to the Westminster Parliament, European Parliament, Scottish Parliament, Welsh Assembly and Northern Ireland Assembly must submit a return detailing their spending on the campaign. Parties that fail to submit their campaign expenditure return, or do so after the statutory deadline, incur a civil penalty of at least £500.

As well as criminal liability regulations, the PPERA provides for a detailed list of "tailor made" criminal offences and penalties (including fines and imprisonment) and civil sanctions (fines) for submitting returns too late. Offences and penalties (fines and imprisonment) in respect of

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<sup>499</sup> Hain donations file handed to CPS". BBC. 2 July 2008. [http://news.bbc.co.uk/1/hi/uk\\_politics/7486035.stm](http://news.bbc.co.uk/1/hi/uk_politics/7486035.stm).

<sup>500</sup> Interview – member of Electoral Reform Society

election candidates are provided for in the *Representation of People Act 1983*. The *Political Parties and Elections Act 2009* (PPE Act) introduced new powers and civil sanctions, including monetary penalties, discretionary requirements, stop notices and enforcement undertakings<sup>501</sup>.

It appears that the required level of transparency in political funding at the local level (including election candidates) is not as well developed as it is at the national level through the PPERA. GRECO (2008) concluded that the transparency of party accounts could be improved if more standardised formats for financial reporting were applied, that third parties be subject to transparency requirements comparable to those of the main parties, and further consideration be given to transparency requirements at constituency level and to election candidates.

## ACCOUNTABILITY (PRACTICE)

*To what extent is there effective financial oversight of political parties in practice?*

**Score 50**

There is no standardised format for financial reporting<sup>502</sup>. The Electoral Commission has also been criticised for lack of proactive investigations, with few cases being investigated under the *Representation of the People Act*<sup>503</sup>. The GRECO (2008) report also found that there was reluctance by the police to initiate investigations into political financing, and that enforcement of the legislation was more of a problem than the legislation itself. Two key problems were the lack of flexibility and proportionate sanctions, and the fact that the Electoral Commission usually needs to refer cases to law enforcement agencies for investigation. The *Political Parties and Elections Act 2009* (PPE Act) introduced new powers and civil sanctions, including financial penalties, discretionary requirements, stop notices and enforcement undertakings, which may address some of these criticisms. The GRECO report (2008) raised concerns over the lateness of publications of party accounts and the lack of consistency in how accounts are reported.

## INTEGRITY (LAW)

*To what extent are there organisational regulations regarding the internal democratic governance of the main political parties?*

**Score 75**

All of the major political parties have regulations on the election of the party leadership and selection of candidates. In the Labour Party, the leader and deputy leader of the party are elected from among House of Commons members of the Parliamentary Labour Party (PLP). There is also a National Executive Committee (NEC) which sets the party's objectives and oversees the running of the party nationally. The NEC is made up of representatives from each section of the party – Government, MPs, MEPs, councillors, trade unions and Constituency Labour Parties (CLPs). Members vote for their CLP representatives in a ballot each year. There is a party treasurer elected by the party conference at its annual meeting. The NEC sets the rules and guidance for the selection of candidates which CLPs are required to follow.

<sup>501</sup> [http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0006/106737/Table-of-offences-and-sanctions.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0006/106737/Table-of-offences-and-sanctions.pdf)

<sup>502</sup> GRECO (2008) *Evaluation Report on the United Kingdom on Transparency of Party Funding (Theme II)*

<sup>503</sup> GRECO (2008) *Evaluation Report on the United Kingdom on Transparency of Party Funding (Theme II)*v

Although the Conservative Party has a constitution it does not appear to be accessible to the public (there is no link, for example, on its website). The party chairman and treasurer are appointed by the leader. There is a Board which develops the rules for the selection of candidates which local parties have to implement. Recent reports have complained that the Conservative Party is “an oligarchy” in which party members have extremely limited power in comparison with the Parliamentary Party<sup>504</sup>.

The Liberal Democrat Party elects its leader via a vote of party members. Nominees must be a member of the Parliamentary Party in the House of Commons, and must be proposed by at least ten percent of other members of the Parliamentary Party in the House of Commons, and supported by 200 members in not less than 20 local parties. Rules and guidelines on candidates for election are set by the national party and implemented by local parties.

The Lib Dems have a federal structure (made up of the parties in England, Scotland and Wales). The Federal Policy Committee is responsible for the development of policy which it sends to the Federal Conference for approval. There is a Federal Executive, which is responsible for directing, coordinating and implementing the work of the party. The Federal Policy Committee also elects a treasurer. There is a President of the party, elected by party members, who also chairs the Federal Executive.

Furthermore, political parties are required to submit reports of donations to the Electoral Commission on a quarterly basis (regardless of whether there have been any)<sup>505</sup>. The registered treasurer is responsible for ensuring these reports are submitted accurately and on time. Included in the report are donations of money and goods or services provided to the party free of charge, or at a discount of more than 10 per cent from normal market rates. The report also includes direct state funding but not indirect state funding, for example, the airtime of party political broadcasts. The names and addresses of donors must be included in the return.

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## ROLE

*To what extent do political parties aggregate and represent relevant social interests in the political spheres?*

### Score 50

There is significant concern about disengagement of the public from politics across most advanced democracies. In the UK there has been a steady decline in party membership, trust in political parties and in voter turnout. In the 1950s nearly 4 million people belonged to a political party while today the figure is less than half a million. The figures for 2005 showed that just 0.7 per cent of the population were Conservative Party members; 0.4 per cent were Labour Party members and 0.2 per cent were Liberal Democrat members<sup>506</sup>.

Distrust of politicians is arguably long-standing – pre-expenses scandal research in 2004 showed 27 per cent of the public trusted politicians ‘a great deal’ or ‘a fair amount’. The same question asked post-expenses scandal, in 2009, showed a marginal decline in trust to 26 per cent<sup>507</sup>. Voter

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504 John Strafford “The Conservative party has become an oligarchy, controlled by a handful of people” *The Observer*, Sunday 14 February 2010

505 Electoral Commission. *Managing donations to political parties*

506 J. Marshall (2009), *Membership of UK Political Parties*, Standard Note SG/5125, London: House of Commons Library

507 Dr Ruth Fox (2010) *What's trust got to do with it? Public trust in and expectations of politicians*, Hansard

turnout at the 2010 general election was 65.1 per cent, a rise from the previous two general elections. It should be noted, however, that the last three general elections have had the lowest voter turnout since 1945<sup>508</sup>.

ROLE (ANTI-CORRUPTION COMMITMENT)

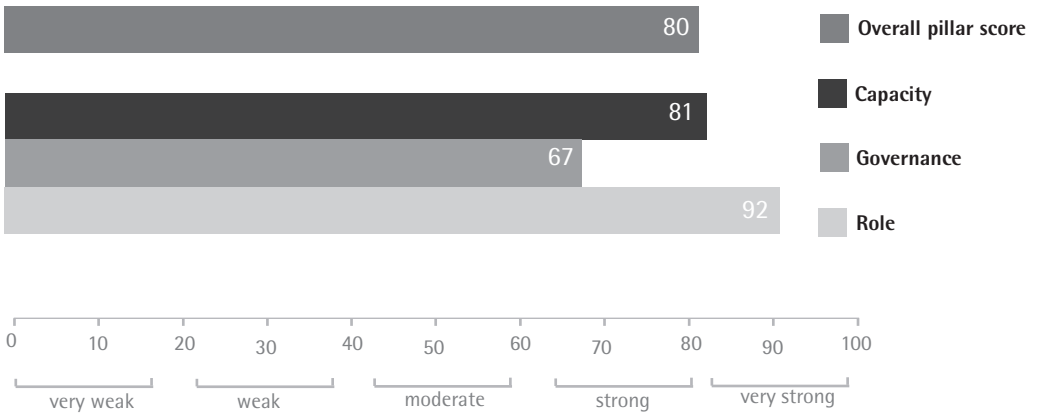
*To what extent do political parties give due attention to public accountability and the fight against corruption?*

Score 50

All three of the major parties in the UK went into the last general election with plans to rebuild trust in UK politics. It is probable that this was largely in response to the MPs' expenses scandal and the subsequent impact on levels of trust in politicians and parties.

One concern raised was how questions over party funding reoccur on a regular basis, and how this pattern has not altered despite the substantial moves forward on accountability and transparency under the PPERA legislation. Major reforms in the shape of public funding and capped donations are still being discussed. The argument has not moved substantially on since Hayden Phillips' recommendations for a cap of £50,000 on donations and publicly match-funded political parties were rejected in 2007<sup>509</sup>. It has been suggested that this is largely due to a lack of political will, in which short term interests have been placed over long-term advantage<sup>510</sup>.

6.10 MEDIA Status: strong



SUMMARY

The UK has a diverse media, which is generally free from outside political interference. There are a plethora of media forums which inform the public about the activities of government and governance actors. Furthermore, the media in the UK play a key role in uncovering corrupt practices. Indeed, the UK media have been proactive in uncovering various corrupt practices in politics and business which have resulted in policy changes.

508 <http://www.ukpolitical.info/Turnout45.htm>  
509 [http://www.partyfundingreview.gov.uk/files/IPT\\_Draft\\_Agreement.pdf](http://www.partyfundingreview.gov.uk/files/IPT_Draft_Agreement.pdf)  
510 Interview – member of Electoral Reform Society



*At the workshop to discuss this research, there were concerns expressed by many attendees about the 'power' of the media and a view that the media do not always have a positive impact on the integrity system in the UK*

There are, however, some perennial concerns which it is important to raise as red flags. A key concern is the integrity of certain parts of the print media, their intrusion into privacy and how they are held to account in practice. The press is subject to a form of voluntary self-regulation. Although this does ensure freedom from outside interference, possible consequences are difficulties in ensuring integrity when pursuing and reporting stories; the correction of errors and redressing the damage done as a result; and in holding the press to account for their behaviour. It is possible that current financial constraints may be contributing to a lowering of standards.

At the time of writing, there is an ongoing debate in the UK about regulation of the press. It also worth noting that, at the workshop to discuss this research, there were concerns expressed by many attendees about the 'power' of the media and a view that the media do not always have a positive impact on the integrity system in the UK. Furthermore, there was a general view that our overall score for the media pillar was too high. However, while we understood the concerns expressed at the workshop, and have addressed many of them, we felt that many issues raised, such as concentration of ownership, were outside the questions outlined in the NIS methodology. Our focus was on the questions to be addressed in the methodology and, on this basis, we believe our scores are fair.

The emergence in the public consciousness of 'super-injunctions' has also raised concerns in the UK, suppressing as they do the reporting of events and people. There are also concerns about both the bias of the press, in terms of support for political parties, and the concentration of media ownership in relatively few hands. There are then, various tensions which need to be resolved in the UK. It is not the purpose of this report to proffer solutions, but rather to raise the issues which need to be addressed. A balance needs to be found in the UK between the protection of privacy for individuals and the enforcement of high journalist standards on the one hand, with freedom of the press and the right to investigate issues in the public interest, on the other. Indeed, at the time of writing, the Master of the Rolls is due to publish a report on the use of super-injunctions. Annex 1 presents the detailed scores assigned to the media in terms of capacity, governance and role in the national integrity system. Below is a qualitative assessment of the relevant indicators.

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## RESOURCES (LAW)

*To what extent does the legal framework provide an environment conducive to a diverse independent media?*

### Score 75

There are no restrictions on who can launch a newspaper and no state licensing of the press or journalists. Cross-media ownership restrictions are prescribed by law. The *Communications Act 2003*<sup>511</sup> changed newspaper and cross-media ownership controls. The government does have the discretion to intervene in media mergers on public interest grounds, in addition to general competition and merger examination. The public interest considerations were inserted into the Enterprise Act 2002 by the Communications Act 2003. The latter Act also established Ofcom which regulates the TV and radio sectors, fixed-line and mobile telecoms, plus the airwaves over which wireless devices operate. Part of Ofcom's role is to ensure that television and radio services are provided by a range of different organisations. To pave the way for mergers required to create a new generation of multimedia content providers, the Government intends to complete the relaxation of cross-media ownership laws. The Draft Media Ownership (Radio and Cross Media) Order 2011 would remove all local cross-media ownership rules and was laid in Parliament on 14 February 2011<sup>512</sup>.

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<sup>511</sup> *Communications Act 2003*, HMSO

<sup>512</sup> [http://www.culture.gov.uk/what\\_we\\_do/broadcasting/7235.aspx](http://www.culture.gov.uk/what_we_do/broadcasting/7235.aspx)

## RESOURCES (PRACTICE)

*To what extent is there a diverse independent media providing a variety of perspectives?*

**Score 75**

There is a wide choice of newspapers in the UK reflecting a broad spectrum of social interests and groups. In terms of ownership, Rupert Murdoch owns the *News of the World*, *The Sun*, *The Times* and *Sunday Times*, and 39 per cent of the satellite broadcasting network BSkyB. BSkyB in turn owns a significant part of ITV plc. Daily Mail and General Trust (DMGT) owns *The Daily Mail* and *The Mail on Sunday*, *Ireland on Sunday*, and the free London daily *Metro*. DMGT also controls a large proportion of regional media – including through subsidiary Northcliffe Media – in addition to large shares in ITN and GCap Media. Richard Desmond owns Channel 5, the *Daily Express* and the *Daily Star*. The *Evening Standard*, *Independent* and *Independent on Sunday* are owned by Russian businessman and ex-KGB agent Alexander Lebedev. *The Guardian* and *Observer* are owned by Guardian Media Group. The *Daily Telegraph* and *Sunday Telegraph* are owned by David and Frederik Barclay<sup>513</sup>. At present 95 per cent of national newspapers are owned and controlled by the leading five firms<sup>514</sup>. There is some support for all of the major parties but, on balance, there are significantly more newspapers supportive of politics which can be considered to the right of centre.

The recent decision to approve the merger of Rupert Murdoch's News International to takeover of BSkyB has pushed into sharp focus the issue of the concentration of media ownership in the UK, as well as their influence. The Secretary of State for Culture, Olympics, Media and Sport, Jeremy Hunt MP, decided to approve the merger despite a recommendation from Ofcom to refer the issue to the Competition Commission. It has been suggested that the support of Murdoch's newspapers for the Conservative Party in Government and the approval for the takeover may not be entirely coincidental<sup>515</sup>. There is concern that private media outlets are owned by a few large companies<sup>516</sup>.

The *British Broadcasting Corporation* (BBC) is the UK's national broadcaster and is the largest broadcasting organisation in the world. It is a public service broadcaster, established by a Royal Charter and is funded by a licence fee that is paid by UK households, which currently stands at £145.50 a year<sup>517</sup>. The BBC broadcasts over eight national TV channels plus regional programming, ten national radio stations, and 40 local radio stations<sup>518</sup>. There are a variety of additional broadcast media, including TV, radio and internet services. The current Government is of the view that while television in the UK does provide international, national and regional news, it has struggled to provide truly local content. It aims to address this via its Local Media Action Plan<sup>519</sup>.

There are few commercial radio stations and those that do exist are struggling financially<sup>520</sup>.

<sup>513</sup> [http://en.wikipedia.org/wiki/Concentration\\_of\\_media\\_ownership#United\\_Kingdom](http://en.wikipedia.org/wiki/Concentration_of_media_ownership#United_Kingdom)

<sup>514</sup> <http://www.newi.ac.uk/RDOVER/MED-STUD/ownershi.htm>

<sup>515</sup> <http://www.independent.co.uk/opinion/leading-articles/leading-article-rupert-murdoch-gets-his-political-payback-2231621.html>

<sup>516</sup> Freedom House, *Freedom of the press 2010: Broad setbacks to global media freedoms*

<sup>517</sup> <http://www.bbc.co.uk/aboutthebbc/licencefee/>

<sup>518</sup> <http://www.bbc.co.uk/aboutthebbc/purpose/what.shtml>

<sup>519</sup> Department of Culture, Media and Sport (19 January 2011) *Local Media Action Plan*

<sup>520</sup> Freedom House, *Freedom of the press 2010: Broad setbacks to global media freedoms*

## INDEPENDENCE (LAW)

*To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the media?*

**Score 100**

Legal safeguards are in place to ensure the independence of the media. Freedom of expression, including in published articles, books, leaflets, television and radio broadcasting and communication on the internet, is enshrined in the Human Rights Act (1998)<sup>521</sup>. Ofcom is the regulator for all communicators, including TV and radio, fixed-line and mobile telecoms, and the airwaves over which wireless devices operate. It is accountable to the Department of Media Culture and Sport (DCMS). Ofcom helps ensure that people are protected from being treated unfairly on television and radio and from having their privacy invaded. Ofcom also helps ensure that people are protected from harmful or offensive material<sup>522</sup> and has a statutory duty to ensure plurality in the provision of broadcasting<sup>523</sup>.

The UK does not have a comprehensive statute for the press. UK governments have generally been reluctant to impose regulatory controls over the press. Instead, the press has established its own voluntary regulatory system, the Press Complaints Commission (PCC)<sup>524</sup>. The Press Complaints Commission states that journalists have a 'moral obligation' to protect confidential sources of information. It also publishes a code of practice<sup>525</sup> written by a committee of senior newspaper editors. In terms of the law, editors and journalists are regarded as private citizens, so it has been possible to deal with the rights of the press under laws that apply to ordinary UK citizens. Restrictions on what is printed exist via the Press Council, libel laws, and the Official Secrets Act. The National Union of Journalists' Code of Conduct<sup>526</sup> includes a provision protecting the identity of sources who supply information in confidence and material gathered in the course of a journalist's work. Libel laws are to be reviewed by the Government as it seeks to provide a balance between freedom of expression and protection of reputation. To this effect the draft Defamation Bill was published in March 2011<sup>527</sup>.

The Data Protection Act 1998 gives individuals the right to find out what information is held about them on computer and in some manual records. Under the Act individuals have the right to ask the Information Commissioner's Office (ICO) to intervene if they believe the Act has been breached, and the "right to apply to a court to order a data controller to correct, block, remove or destroy personal details if they are inaccurate or express an opinion based on inaccurate information<sup>528</sup>." (The ICO is an independent authority that upholds information rights in the public interest, promotes openness by public bodies and data privacy for individuals.) However, there are journalistic exemptions to parts of the Act. In particular, newspapers and magazines do not have to comply in relation to some aspects of the processing of personal data if it is undertaken with a view to publication where this would prejudice journalism. The Act states that consideration must be given to the extent to which the data controller's belief was reasonable that publication would be

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<sup>521</sup> Human Rights Act 1998

<sup>522</sup> Communications Act 2003, s. 3.1 (5)

<sup>523</sup> Communications Act 2003, s. 3.1 (4)

<sup>524</sup> <http://www.pcc.org.uk/>

<sup>525</sup> [http://www.pcc.org.uk/assets/111/Code\\_of\\_Practice\\_2011\\_A4.pdf](http://www.pcc.org.uk/assets/111/Code_of_Practice_2011_A4.pdf)

<sup>526</sup> <http://www.nuj.org.uk/innerPagenuj.html?docid=174>

<sup>527</sup> <http://www.justice.gov.uk/consultations/draft-defamation-Bill.htm>

<sup>528</sup> Information Commissioner's Office (December 2010) *A guide to the legislation the ICO regulates: Upholding information rights for all*. ICO, Wilshire

in the public interest and also that consideration should be given to codes of practice. The code of practice for journalists says that *"the public interest includes detecting or exposing crime or serious misdemeanour, protecting public health and safety, and preventing the public from being misled by some statement or action of an individual or organisation"*. It also states that *"there is a public interest in freedom of expression itself, and that the Commission will have regard to the extent to which material has, or is about to, become available to the public"*<sup>529</sup>.

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## INDEPENDENCE (PRACTICE)

*To what extent is the media free from unwarranted external interference in its role in practice?*

**Score 75**

A Freedom House report of 2010<sup>530</sup> rates the press in the UK as 'free' and ranked it 17 in Western European countries. 'Reporters without borders'<sup>531</sup> conclude that the press freedoms in the UK, are 'good' and rank the UK 20 (out of 175) in their world index of press freedoms. The Global Press Freedom 2010 barometer<sup>532</sup> notes that there have been no journalists imprisoned or killed, no media assistants imprisoned or killed, and no "netizens" imprisoned.

Nevertheless there are some concerns regarding the freedom of the media, particularly the print media, which are currently being addressed by the draft *Defamation Bill*. Perhaps the most notorious of these concerns is the practice of "libel tourism", in which the UK is used as the jurisdiction in which to sue for libel when the libel has originated elsewhere. Perhaps the most infamous case is that of Rachel Ehrenfeld, who was sued by Khalid bin Mahfouz over allegations published in her 2003 book *Finding Evil*. The book was published in the US and had never been on sale in the UK. Yet, because 23 copies of the book had been purchased in the UK via the online retailer amazon.com, jurisdiction was accepted in the UK. Justice Eady ordered Ehrenfeld to pay £30,000 to Mahfouz and his two sons, and to publish a correction and apology<sup>533</sup>.

The *Defamation Bill* seeks to tighten the law to restrict such practices. The common law defences of "justification" and "fair comment" will be replaced with new statutory defences of "truth" and "honest opinion". The draft Bill notes that libel cases can currently be brought "without proof of actual damage" as long as the statement would tend to "lower the reputation of the claimant in the estimation of right-thinking members of society". There will be a new requirement in the Bill that a statement must have caused, or be likely to cause, substantial harm to someone's reputation, if it is to be considered defamatory<sup>534</sup>.

Another potential concern over freedom of the media to report is the rise of 'super-injunctions' – *"An injunction obtained in a secret convening of the court where in the result, the court file, the names of the parties and even the terms of the injunction order are secret except as between the parties, counsel, the judge and the court staff"*<sup>535</sup>. Court injunctions have always been granted to protect privacy, and an interviewee suggested this is both fair and reasonable when there

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529 <http://www.pcc.org.uk/news/index.html?article=ODg=>

530 Freedom House, *Freedom of the press 2010: Broad setbacks to global press freedom*

531 <http://en.rsf.org/report-united-kingdom,130.html>

532 <http://en.rsf.org/press-freedom-index-2010,1034.html>

533 [http://entertainment.timesonline.co.uk/tol/arts\\_and\\_entertainment/books/article2781336.ece](http://entertainment.timesonline.co.uk/tol/arts_and_entertainment/books/article2781336.ece)

534 <http://www.justice.gov.uk/consultations/draft-defamation-Bill.htm>

535 <http://www.duhaime.org/LegalDictionary/S/SuperInjunction.aspx>

are genuine grounds. However, *"they are a matter of some concern if they're being granted in cases where justification is limited"*<sup>536</sup>. Super-injunctions differ inasmuch as their very existence cannot be made public, allowing total secrecy for those to whom it has been awarded. A super-injunction was obtained by an international oil trading company, Trifigura, which prevented *The Guardian* newspaper reporting an MP's question in Parliament about the alleged dumping of toxic waste in Ivory Coast. Eventually, the report Trifigura was seeking to suppress was widely available on the internet<sup>537</sup>. Jonathan Hemming MP, a prominent campaigner against super-injunctions, has noted that *"we are creating privacy laws by the back door without statutory underpinning or public support ... We also need to ask whether we have any accountability on super injunctions – after all, currently there is no super injunction register, we don't know how many there are and we don't know who is asking for them"*<sup>538</sup>.

There are, then, some potential areas for concern over legal interference with the freedom of the press. That said, it was suggested to us that these interferences and issues are relatively minor when placed in the context of the problems that face the media in other parts of the world<sup>539</sup>. Furthermore, some of these issues are being directly addressed now by the coalition government.

## TRANSPARENCY (LAW)

*To what extent are there provisions to ensure transparency in the activities of the media?*

**Score 75**

Section 391 of the *Communications Act 2003* requires Ofcom to review the media ownership rules at least every three years and, as a result of that review, make recommendations to the Secretary of State if in Ofcom's view changes to the media ownership rules are needed<sup>540</sup>. The *Communications Act 2003* provides for licensing and oversight by Ofcom which provides de facto notice of ownership. Although there are no specific pieces of legislation for the print media, there is transparency of ownership and editorial policies.

## TRANSPARENCY (PRACTICE)

*To what extent is there transparency in the media in practice?*

**Score 75**

There is considerable transparency of the UK media in practice, both in the print and broadcast media. Ownership is widely disclosed<sup>541</sup>, as are editorial policies and information on internal staff. It is not possible to argue the extent to which ownership may influence editorial decisions. It was also argued that there is little transparency in the way the media (particularly the print media) selects which stories to pursue, or indeed, when to stop reporting on a particular issue.

<sup>536</sup> Interview – member of Press Complaints Commission

<sup>537</sup> House of Commons, Culture, media and sport select committee (24 February 2010) *Press standards, privacy and libel. Second report of session 2009-10. HC362-1*

<sup>538</sup> Independent 10 March 2011 'MP lifts veil on Fred Goodwin super-injunction'

<sup>539</sup> Interview – member of Press Complaints Commission

<sup>540</sup> <http://stakeholders.ofcom.org.uk/market-data-research/media-ownership-research/rulesreview/>

<sup>541</sup> For example, [http://www.nmauk.co.uk/nma/do/live/aboutTheNma.jsessionid=8CD159F08E2DCB50DB0D306CF239B466#our\\_mission](http://www.nmauk.co.uk/nma/do/live/aboutTheNma.jsessionid=8CD159F08E2DCB50DB0D306CF239B466#our_mission), and <http://www.mediauk.com/owners>

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## ACCOUNTABILITY (LAW)

*To what extent are there legal provisions to ensure that media outlets are answerable for their activities?*

**Score 75**

The printed press in the UK has a voluntary self-regulatory system, which is regulated by the Press Complaints Commission and deals with complaints from members of the public about editorial content of newspapers, magazines and their websites. The editors' code of practice stipulates that significant inaccuracies must be corrected with due prominence<sup>542</sup>. The extent to which this happens, and how effective it is in correcting any damage, is unknown.

Ofcom is the regulator for the TV and radio sectors, fixed-line and mobile telecoms, and for the airwaves over which wireless devices operate. Part of its role is to protect people from harmful or offensive material on television and radio and also to protect them from being treated unfairly, and from having their privacy invaded. Ofcom is required under the Communications Act 2003 and the Broadcasting Act 1996<sup>543</sup> to draw up a code for television and radio, covering standards in programmes, sponsorship, fairness and privacy. The Broadcasting Code emphasises the importance of the accuracy of information and giving an individual the right to respond. It also stipulates that significant mistakes in news should be "corrected on air quickly"<sup>544</sup>.

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## ACCOUNTABILITY (PRACTICE)

*To what extent can the media be held accountable in practice?*

**Score 50**

It has been suggested that the "print media on the whole is subject to proper account in the UK"<sup>545</sup> and there are recent examples of legal action against newspapers. In March 2011 two national newspapers, the *Daily Mail* and *The Sun* were both found guilty of contempt of court for publishing photographs of a murder trial defendant on their websites<sup>546</sup>. There is also a plethora of blogs<sup>547</sup>, Twitter<sup>548</sup> accounts and journalists' forums<sup>549</sup> which enable journalists to interact with people.

There are, however, contrary views and evidence. The Media Standards Trust, in consultation with a group made up of 12 leading figures from journalism and civil society, published a major review of press self-regulation in 2009. 'A More Accountable Press'<sup>550</sup> concluded that the existing system of press self-regulation was inadequate in dealing with growing concerns about invasion of privacy and an increase in inaccurate reporting. The Director of the PCC has acknowledged this latter point and suggests this is a consequence of more media outlets and platforms, and

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<sup>542</sup> <http://www.pcc.org.uk/cop/practice.html>

<sup>543</sup> *Broadcasting Act 1996, HMSO*

<sup>544</sup> *The Ofcom broadcasting code (February 2011) Section five: Due impartiality and due accuracy and undue prominence of views and opinions*

<sup>545</sup> *Interview – member of Press Complaints Commission*

<sup>546</sup> <http://www.guardian.co.uk/media/greenslade/2011/mar/03/medialaw-dailymail>

<sup>547</sup> For example <http://www.bbc.co.uk/blogs/>, <http://www.guardian.co.uk/politics/blog>

<sup>548</sup> <http://www.mediauk.com/newspapers/people/twitter>

<sup>549</sup> For example <http://www.journalism.co.uk/journalists/>

<sup>550</sup> *The Media Standards Trust (2009) A more accountable trust. The Media Standards Trust*

information getting 'out there' more quickly than hitherto<sup>551</sup>.

Research commissioned for the report, conducted by YouGov, found that only seven per cent of the public said they trust national newspapers to behave responsibly, 75 per cent of people thought that 'newspapers frequently publish stories they know are inaccurate' and 70 per cent believed there are 'far too many instances of people's privacy being invaded by newspaper journalists'. Six in ten people thought the government should do more to prevent national newspaper journalists from intruding on people's private lives, while almost three quarters of the public (73 per cent) wanted the government to do more to ensure that newspapers correct inaccurate stories<sup>552</sup>.

More recently, the News of the World 'phone-hacking scandal' has left many questioning the accountability of some parts of the press. In 2007, a royal editor on the newspaper and a private investigator were jailed for hacking onto the mobile phones of royal aides. Since then, there have been suggestions that hacking may be more widespread – the *Guardian* alleges up to 3,000 public figures may have had their phones hacked into<sup>553</sup>. The Metropolitan Police have been heavily criticised for their part in the scandal, not least because they did not notify alleged victims of hacking<sup>554</sup>. The Metropolitan Police have now reopened the case and are also conducting an inquiry into their handling of the case<sup>555</sup>.

## INTEGRITY (LAW)

*To what extent are there provisions in place to ensure integrity of media employees?*

**Score 75**

The UK press has a voluntary self-regulatory system. The Press Complaints Commission has an editors' code of conduct which covers a range of topics including the use of clandestine devices and subterfuge, not benefiting financially from financial information they receive, not paying witnesses in criminal trials and protecting confidential sources.

Ofcom is required under the Communications Act 2003 and the Broadcasting Act 1996 to draw up a code for television and radio, covering standards in programmes, sponsorship, fairness and privacy. The Broadcasters' Code of Practice<sup>556</sup> covers a range of issues including: not encouraging illegality; not paying criminals for a programme related to their crime; privacy; fairness; and guidance on programmes and language which may cause harm and offence.

## INTEGRITY (PRACTICE)

*To what extent is the integrity of media employees ensured in practice?*

**Score 50**

The Press Complaints Commission is the body which deals with complaints about editorial content of the press and the behaviour of journalists. "Press standards are a matter of perennial

<sup>551</sup> The Media Standards Trust (2009) *A more accountable trust*. The Media Standards Trust

<sup>552</sup> Cited in The Media Standards Trust (2009) *A more accountable trust*. The Media Standards Trust

<sup>553</sup> <http://www.bbc.co.uk/news/uk-11195407>

<sup>554</sup> <http://www.bbc.co.uk/news/uk-11195407>

<sup>555</sup> <http://www.bbc.co.uk/news/uk-11195407>

<sup>556</sup> <http://stakeholders.ofcom.org.uk/broadcasting/guidance/programme-guidance/bguidance/>



public debate"<sup>557</sup> and recent events, in particular the recent phone-hacking scandal, as well as press reporting of the Madeleine McCann case (where a young girl went missing while on holiday with her parents in Portugal), has led MPs to question whether it has sufficient powers to ensure effective regulation of journalists<sup>558 559</sup>.

A report by the Media, Culture and Sport Select Committee raised concerns about the possible impact of financial pressures on media standards, concluding that:

*"There is still a great deal of good, responsible journalism in the British press. However, the picture painted for us of corners being cut and of fewer journalists struggling to do more work is cause for concern. If the press is to command the trust and respect of the public, the public needs to know that the press is committed to high standards even in difficult times"<sup>560</sup>.*

The Select Committee praised the PCC's work in preventing breaches of the Code and addressing complaints, and supported self-regulation in the press. It did, though, comment on the 'toothlessness' of the PCC and the need for it to be more proactive in how it regulates<sup>561</sup>.

An independent review<sup>562</sup> of the PCC also recommended that a self-regulatory system should be maintained, but recognized that accusations of self-interest do impact on public confidence. It suggested that the PCC should provide greater clarity on its role, particularly on how it considers standards issues, and the extent to which, and how, it will be proactive in initiating investigations. It was suggested, however, that although it is self regulating, the PCC is viewed internationally as extremely independent of the print media.

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## INVESTIGATE AND EXPOSE CASES OF CORRUPTION PRACTICE

*To what extent is the media active and successful in investigating and exposing cases of corruption?*

### Score 100

Investigative journalism has been a key aspect of the media's work in the UK. Indeed, such work has contributed to such major exposés as the cash-for-honours and MPs' expenses scandals. According to an interviewee "the media is genuinely free to conduct investigations and allow others to say that 'we're not going to stand for corruption'"<sup>563</sup>.

Media coverage often contributes to direct policy and organisational changes. In the wake of investigations into MP Derek Conway and the employment of his two sons and wife as political researchers, a new register of interests was established in the House of Commons. Perhaps even

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<sup>557</sup> House of Commons, Culture, media and sport select committee (24 February 2010) Press standards, privacy and libel. Second report of session 2009-10. HC362-1

<sup>558</sup> <http://www.guardian.co.uk/media/2011/apr/13/news-of-the-world-phone-hacking>

<sup>559</sup> House of Commons, Culture, media and sport select committee (24 February 2010) Press standards, privacy and libel. Second report of session 2009-10. HC362-1

<sup>560</sup> House of Commons, Culture, media and sport select committee (24 February 2010) Press standards, privacy and libel. Second report of session 2009-10. HC362-1

<sup>561</sup> House of Commons, Culture, media and sport select committee (24 February 2010) Press standards, privacy and libel. Second report of session 2009-10. HC362-1

<sup>562</sup> The governance of the press complaints commission: an independent review (July 2010)

<sup>563</sup> Interview – member of Press Complaints Commission



more significantly, the exposure of the MPs' expenses scandal, on which the *Daily Telegraph* took a particular lead, resulted in the creation of new legislation, The *Parliamentary Standards Act 2009*, and a new regulatory agency, the Independent Parliamentary Standards Authority (IPSA).

The role of an investigative media in exposing corruption was regarded as an extremely powerful tool, and allowed other investigative agencies to pick up on leads that they can then pursue<sup>564</sup>. Indeed it is regarded in some quarters, and certainly by the public, as the UK's most reliable source of information for corruption. A large majority of the public – 80 per cent – are confident that the media will uncover wrongdoing, compared with 39 per cent for the authorities<sup>565</sup>.

## INFORM PUBLIC ON CORRUPTION AND ITS IMPACT

*To what extent is the media active and successful in informing the public on corruption and its impact on the country?*

**Score 75**

There are few programmes run by the media to educate the public on corruption or how to curb it. Rather the media is regarded largely as an investigator of corruption, holding government, politicians, public officials generally and business to account. In some publications there are sections dedicated to dealing with corruption. For example, the *Guardian's* website <http://www.guardian.co.uk/law/bribery-act> is dedicated to issues surrounding the *Bribery Act*. It was also suggested that organisations such as the PCC have developed a more substantive educational and awareness-raising role in recent years. Occasionally, however, some areas of the media have been perceived as stalling anti-corruption work, for example, the *Evening Standard's* campaign to delay the introduction of the 2010 Bribery Act.

## INFORM PUBLIC ON GOVERNANCE ISSUES

*To what extent is the media active and successful in informing the public on the activities of the government and other governance actors?*

**Score 100**

The media report daily on the activities of Government and government actors. There are impartial and unbiased radio and television programmes dedicated to current affairs. Newspapers also include coverage and analysis of government and governance actors. For example, BBC Radio 4 has daily 'Today' and 'PM' programmes, covering political events and current affairs which include the interrogation of politicians and members of the Government. There are various television programmes dedicated to the analysis of current affairs, including daily news programmes and also programmes such as 'Daily Politics', 'The Politics Show', 'Newsnight' and 'Question Time' where politicians (and in the latter case, members of the public) are quizzed. There are also programmes which seek to uncover, probe and analyse government policy, corruption and/or political developments both in the UK and overseas – for example, 'Panorama', 'Dispatches' and 'Unreported'. Indeed the UK has television stations dedicated to the analysis and reporting of news and current affairs (for example BBC News and Sky News). For their

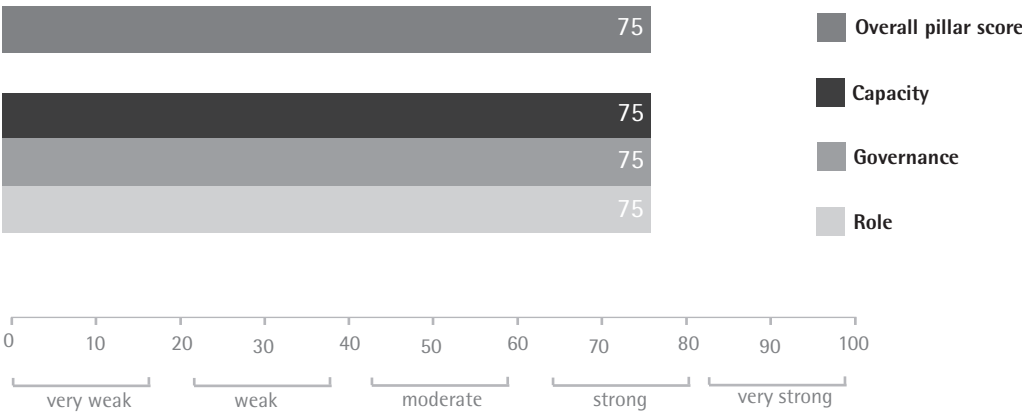
<sup>564</sup> Interview – Professor of Fraud Management

<sup>565</sup> Committee on Standards in public Life (2008) *Survey of public attitudes toward conduct in public life*

part, UK newspapers have regular columnists providing a critique of government policy, political parties and current affairs – for example, Andrew Rawnsley in the *Observer*, Polly Toynbee in the *Guardian*, and Simon Heffer in the *Daily Telegraph*.

6.11

CIVIL SOCIETY      *Status: strong*



SUMMARY

The UK has a strong, well-resourced and thriving civil society, which enjoys strong legal protection and is relatively free from undue external influence. A caveat is that civil society organisations are often reliant on state funding and this could, potentially, impact on how dependent they are from state influence. The Government has placed a great emphasis on civil society with their ideas for the 'Big Society', where there will be an expectation on civil society groups to provide services. However, cutbacks to the public sector, and particularly local government, on which civil society often relies for funding, do threaten to undermine the resource base of civil society. This, in turn, could impact on the extent to which civil society is equipped to meet some of the needs of the 'Big Society'. There are a range of organisations which monitor and lobby government.

Annex 1 presents the detailed scores assigned to the civil society pillar in terms of capacity, governance and role in the national integrity system. Below is a qualitative assessment of the relevant indicators.

STRUCTURE AND ORGANISATION

Civil society includes a broad spectrum of sectors and organisations throughout the UK. The *Civil Society Almanac 2010* identifies a number of these organisations (including universities, housing associations, charities, sports clubs, political parties, and employee-owned businesses)<sup>566</sup>. There is currently much debate about the future of civil society in the UK, particularly in relation to the coalition government's notion of the 'Big Society' and the role that this gives to third sector (voluntary and charity) organisations. In England there are plans to develop a Big Society Bank and a Community First Fund, which will help neighbourhoods implement their own improvement plans<sup>567</sup>. A National Citizen Service is to be created with the aim of connecting more young people with their communities and empower them to make a contribution<sup>568</sup>. The coalition government has recently created a post of Minister for Civil Society.

Some reports suggest that UK civil society is currently thriving. There are a reported 870,000 formal civil society associations with combined assets of £210 billion. They include cooperatives,

The UK has a strong, well-resourced and thriving civil society, which enjoys strong legal protection and is relatively free from undue external influence

566 <http://www.ncvo-vol.org.uk/policy-research-analysis/research/civil-society-economy/almanac-previous-editions>  
567 Office for Civil Society, Cabinet Office (2010) *Building a stronger civil society: A strategy for voluntary and community groups, charities and social enterprises*  
568 <http://www.cabinetoffice.gov.uk/news/national-citizen-service-pilots-announced>

trade unions, voluntary and community organisations, faith-based organisations and housing associations<sup>569</sup>. However, others have suggested that public sector cuts could have a negative impact. Trends show that membership of trade unions has been declining in the UK since 1979 and that, following budget cuts in the public sector, membership will decline further<sup>570</sup>.

Indeed, there are substantial criticisms of the coalition government's plans, particularly in relation to resources and the ability of civil society to take on board some of the roles that are being suggested. These criticisms rarely touch upon the notion of corruption specifically, but relate to the general health of UK civil society.

## RESOURCES (LAW)

*To what extent can civil society exist and function independently of the state?*

**Score 75**

The *Human Rights Act 1998* ensures the right to freedom of association and assembly in the UK.

UK charities account for 77 per cent of all civil society income in the UK<sup>571</sup>. Charities can benefit from tax relief in a range of ways including donations (through a Gift Aid scheme). There is some concern in Northern Ireland that tax relief opportunities are not utilised as much as they could be, and that some taxes (e.g. VAT) are applied inappropriately to the activities of Civil Society Organisations (CSOs)<sup>572</sup>.

Charity organisations are regulated in England and Wales by the Charity Commission for England and Wales<sup>573</sup>. Charity law and regulation is devolved in Scotland (Office of the Scottish Charity Regulator)<sup>574</sup> and Northern Ireland (Charity Commission for Northern Ireland)<sup>575</sup>. In England and Wales organisations with an income of less than £5,000 do not have to register. In Scotland and Northern Ireland all organisations need to register. In England it is possible to register online. In Northern Ireland, a problem with the legislation means that charities are not currently registered. Across the UK registration of a charity is free.

## RESOURCES (PRACTICE)

*To what extent do CSOs have adequate funds to function and operate effectively?*

**Score 50**

Overall, the UK has a strong volunteer base, high levels of participation and high levels of charitable donations<sup>575</sup>. Financial and human resources levels are adequate to function effectively, though there are some concerns over long-term funding and the effectiveness of human resources in Scotland<sup>576</sup>.

<sup>569</sup> Carnegie Trust UK (2010) *Making good society*

<sup>570</sup> Department for Business Innovation and Skills (2010) *Trade Union Membership 2010. National Statistics*

<sup>571</sup> <http://www.ncvo-vol.org.uk/policy-research-analysis/research/civil-society-economy/almanac-previous-editions>

<sup>572</sup> Civicus (2006) *Civil Society Report for Northern Ireland*

<sup>573</sup> <http://www.charity-commission.gov.uk/>

<sup>574</sup> <http://www.oscr.org.uk/>

<sup>575</sup> <http://www.charitycommissionni.org.uk/index.aspx>

<sup>576</sup> Collis, B (2005) *An Assessment of Welsh Civil Society Civicus Civil Society Index Report for Wales*; McCarron, J. J. (2006) *Civil Society in Northern Ireland: a new beginning? Civicus Civil Society Index Report for Northern Ireland*; Shah, R (2006) *An Assessment of Scottish Civil Society Civicus Civil Society Index Report for Scotland*

The voluntary sector accounts for £38.5 billion of expenditure out of a total civil society expenditure of £157 billion<sup>578</sup>, and there is significant concern that the future of this sector is being undermined by cuts to services in the public sector<sup>579</sup>. The National Council for Voluntary Organisations has reported that one third of all UK charities have no reserve funds to cope with resource cuts<sup>580</sup>. Government is the biggest single donor to CSOs in the UK<sup>581</sup> which may be a weakness during a period of economic downturn. Government accounts for 40 per cent of the voluntary sector's £38.5 billion annual revenue, and public money accounts for 70 per cent of increased voluntary sector funds granted in the last the 10 years<sup>582</sup>.

Despite the relative general health of associational life, in terms of growth, size and income, there are other areas of weakness. Civil society groups have lost ground in many areas. It is argued that they now have less voice in the workplace than a generation ago, and less influence over important areas like financial markets and the media. Relative to business and the state, civil society's voice in childhood has become much weaker. There are also increasing concerns about the degree to which regulation or bureaucracy hinders people's willingness to engage in civil society activity. For example, the delays in Criminal Record Bureau checks can slow down participation, and the bureaucracy and regulation can deter people, particularly men, from working with children. Similarly, health and safety regulations can stifle innovation and prevent people coming together through, for example, community festivals or street parties<sup>583</sup>.

There are further concerns over the disparity of funding between organisations. It has been suggested that there is an approximate 80/20 split between large organisations and small, which means that the majority of funds is taken up by the fewest organisations<sup>584</sup>. This is borne out by the *Civil Society Almanac 2010*, which shows that £26.9 billion goes to 4,566 major organisations; £8.4 billion goes to 75,000 small/medium organisations; and £284 million goes to 91,000 micro organisations<sup>585</sup>. It was suggested to us that "the voluntary sector will be affected first"<sup>586</sup>. With the current economic climate adding increased pressure to civil society there are clearly concerns that need to be addressed, particularly that the "big society is a big fat lie"<sup>587</sup>.

By historical and international standards, UK civil society has enjoyed a strong degree of legal protection<sup>588</sup>. It is suggested that, as a rule of thumb, it is quite difficult to establish a voluntary organisation in the UK, but that it is a very conducive environment in which to run one<sup>589</sup>. Codes of practice have evolved over time but these exist as precedent rather than law. It was also suggested that this is a positive situation: "the responsibility for protecting civil society should be with civil society, otherwise it is a tautology"<sup>590</sup>. Restrictions can only be imposed under certain conditions, for example where the authority can show that the action has "a proper basis in law, and is necessary and 'proportionate' in order to:

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577 Collis, B *An Assessment of Welsh Civil Society* Civicus Civil Society Index Report for Wales

578 <http://www.ncvo-vol.org.uk/policy-research-analysis/research/civil-society-economy/almanac-previous-editions>

579 *The Guardian*, 'Cuts undermining 'big society' says charity chief', 7 February 2010;

580 <http://www.publicfinance.co.uk/news/2010/09/charities-increasingly-concerned-over-spending-cuts/>

581 McCarron, J. J. (2006) *Civil Society in Northern Ireland: a new beginning?* Civicus Civil Society Index Report for Northern Ireland;

582 <http://www.ncvo-vol.org.uk/policy-research-analysis/research/civil-society-economy/almanac-previous-editions>

583 Carnegie Trust UK (2010) *Making good society*

584 Interview - anonymous

585 <http://www.ncvo-vol.org.uk/policy-research-analysis/research/civil-society-economy/almanac-previous-editions>

586 Interview - anonymous

587 *The Guardian* 'The big society is a big fat lie - just follow the money', 6 August 2010

- protect national security or public safety
- prevent disorder or crime
- protect health or morals
- protect the rights and freedoms of other people.<sup>591"</sup>

All employees can choose to join a trade union, or not. Most trade unions in the UK have a voluntary agreement with an employer. However, where an employer refuses to make a voluntary arrangement, the trade union can follow a statutory procedure for recognition. The statutory procedure applies to employers of 21 or more workers<sup>592</sup>.

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## INDEPENDENCE (LAW)

*To what extent are there legal safeguards to prevent unwarranted external interference in the activities of CSOs?*

**Score 100**

There are also restrictions on the political activities of charities. Charities are entitled to engage in political activity that directly supports its own charitable purposes, but it *cannot* have a political purpose<sup>593</sup>. Thus, an environmental group cannot register as a charity to lobby for a single issue (e.g. new roads, a new airport) but would be able to register if it promoted a more general set of policies that may include reference to specific issues<sup>594</sup>.

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## INDEPENDENCE (PRACTICE)

*To what extent can civil society exist and function without undue external influence?*

**Score 75**

Following the collapse of a trial into an environmental activist group – due to the role played by an undercover PC – concerns have been raised about the extent to which the police infiltrate and monitor some groups which might be viewed as having 'political' agendas, challenging current norms or engaging in more direct protest. For example, Her Majesty's Inspectorate of Constabulary is to review the proportionality of undercover operations<sup>595</sup>.

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588 Collis, B (2005) *An Assessment of Welsh Civil Society Civicus Civil Society Index Report for Wales*; McCarron, J. J. (2006) *Civil Society in Northern Ireland: a new beginning? Civicus Civil Society Index Report for Northern Ireland*; Shah, R (2006) *An Assessment of Scottish Civil Society Civicus Civil Society Index Report for Scotland*

589 interview– anonymous

590 Interview– anonymous

591 <http://www.equalityhumanrights.com/human-rights/>

592 [http://www.direct.gov.uk/en/Employment/TradeUnions/Tradeunionsintheworkplace/DG\\_179204](http://www.direct.gov.uk/en/Employment/TradeUnions/Tradeunionsintheworkplace/DG_179204)

593 <http://www.charity-commission.gov.uk/Publications/cc9.aspx>

594 <http://www.charity-commission.gov.uk/Publications/cc9.aspx>

595 'Police inspectors review undercover operations, 11 January 2011 <http://www.bbc.co.uk/news/uk-12219223>

External influence is usually more subtle than a direct attack on civil society and can be linked to the general reliance on state funding, which could result in CSOs delivering state priorities<sup>596</sup>. Indeed, the National Council for Voluntary Organisations (NCVO) recently described the relationships between the voluntary sector and government as 'increasingly institutionalised'<sup>597</sup>. It was also suggested that there were many below-the-radar organisations that get on with their work without any interference and with great success. These micro organisations operate in a "rich dense network" of voluntary activity, in which growth would only bring problems of banging up against major sectors of government or private industry<sup>598</sup>.

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## TRANSPARENCY (PRACTICE)

*To what extent is there transparency in CSOs?*

### Score 75

In England and Wales, civil society organizations must provide an annual report and accounts if they have particular legal forms: registered charities; companies limited by guarantee; housing associations; friendly societies; cooperatives and credit unions. In addition, professional associations and trade unions have to make annual reports and accounts available if requested. Many community associations and sports clubs produce an annual statement for their members.

Focussing on charities, there is also a Standard of Operating Practice (SORP) used in England and Wales, which requires trustees to be named in annual reports. The content of the annual report depends on the size of the charity although the *Charity Commission for England and Wales* encourages full disclosure of all registered charities. Excepted charities, unless they choose to register, are not required by law to prepare an annual report, but it is considered good practice to do so and the Commission has the right to direct the trustees to prepare and submit a report in exceptional circumstances. Accounts must be provided to members of the public on request. The *Charity Commission for England and Wales* found that just over 80 per cent of charities registered their accounts in the ten-month timescale in 2009/10, which accounts for 96 per cent of the sector's income<sup>599</sup>. It has been suggested, however, that the reporting of finances is not consistent between organisations, and that some choose procedures that keep expenditure on 'non-charitable activities' (fundraising and administration) within "acceptable limits"<sup>600</sup>. Furthermore, whilst most organisations produce accounts, there was a view that not enough were publicly available (e.g. available online)<sup>601</sup>.

Charitable organisations in Scotland had noted a "widespread inconsistency and lack of transparency in charity account reporting"<sup>602</sup>. Since then, however, the Office of the Scottish Charity Regulator has been established following the *Charities and Trustees Investment (Scotland) Act 2005*. Now, all registered charities are obliged to provide annual accounts, but not an annual report or a list of trustees. Overall, the percentage of charities submitting accounts which were compliant improved markedly. Non-compliant accounts decreased significantly from 47 per cent

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596 Shah, R (2006) *An Assessment of Scottish Civil Society Civicus Civil Society Index Report for Scotland*

597 <http://www.ncvo-vol.org.uk/policy-research-analysis/research/civil-society-economy/almanac-previous-editions>

598 Interview– anonymous

599 *Charity Commission for England and Wales (2010) Annual Report 2009/10*

600 Collis, B (2005) *An Assessment of Welsh Civil Society Civicus Civil Society Index Report for Wales*

601 Collis, B (2005) *An Assessment of Welsh Civil Society Civicus Civil Society Index Report for Wales*

602 Shah, R (2006) *An Assessment of Scottish Civil Society Civicus Civil Society Index Report for Scotland* p. 46

to 35 per cent for the 66 per cent of charities with an income under £25,000 and from 29 per cent to 24 per cent for those with an income of over £25,000<sup>603</sup>. It has been suggested that in Northern Ireland, "financial transparency is clearly not an issue in the civil society arena"<sup>604</sup>. That said, at the time of writing, there was no regulation and it is not anticipated that the establishment of a Northern Ireland Charity Commission would increase transparency. They are still consulting on the content of annual reports and accounts.

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## ACCOUNTABILITY (PRACTICE)

*To what extent are CSOs answerable to their constituencies?*

### Score 75

There is mixed evidence regarding the accountability of UK civil society. Analysis of the UK voluntary sector indicates that there are some concerns over the accountability of CSOs<sup>605</sup>. In Northern Ireland the absence of a monitoring body for CSOs makes it difficult to establish the exact figures for democratic practices. More than half (53.9 per cent) of all voluntary management committees are formally elected by the membership with a further 30.5 per cent co-opted or nominated. The prevalence of a formal election process decreases with the size of the organisation. Conversely, cooption increases with the size of the organisation<sup>606</sup>.

In Wales, the template documents for many forms of CSOs (registered charities, community cooperatives, credit unions, companies limited by guarantee, friendly societies, trade unions, community associations, professional associations) require: definitions of membership, details of management committee or trustees, the forms of election of officers, rules regarding the calling of meetings and the quorum, and the proportion of voters required for different types of decisions. In a similar way most community associations and sports clubs require the annual election of the management committee. These CSOs make up the significant majority of CSOs in Wales. In addition, where organisations are providing services, there is a range of service user input into decision-making. These range from situations where the service user is a member (self-help groups), to organisations where there is no service-user or carer input<sup>607</sup>.

Regarding the selection of trustees, the *Charity Commission for England and Wales* estimates that 31 per cent of charities recruit trustees annually<sup>608</sup>. NCVO estimates that 80 per cent of charities recruit trustees informally<sup>609</sup>. This suggests that whilst a form of democracy exists, in many cases it has fallen into disrepair. This is often due to the lack of candidates for trusteeship.

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603 OCSR (2010) *Annual report 2009/10*

604 McCarron, J. J. (2006) *Civil Society in Northern Ireland: a new beginning? Civic Civil Society Index Report for Northern Ireland*, p. 8

605 Shah, R (2006) *An Assessment of Scottish Civil Society Civic Civil Society Index Report for Scotland*

606 Volunteer Development Agency (2003), cited in McCarron, J. J. (2006) *Civil Society in Northern Ireland: a new beginning? Civic Civil Society Index Report for Northern Ireland*, p. 8

607 Collis, B (2005) *An Assessment of Welsh Civil Society Civic Civil Society Index Report for Wales*

608 Charity Commission for England and Wales (2010) *Annual Report 2009/10*

609 <http://www.ncvo-vol.org.uk>



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## INTEGRITY (PRACTICE)

*To what extent is the integrity of CSOs ensured in practice?*

**Score 75**

A code of conduct does exist for trustees in charities but there is little evidence on how frequently it is used. The code has been developed by the community and voluntary sector<sup>610</sup>. The absence of a regulatory system in Northern Ireland meant that there was little pressure or incentive for voluntary organisations to self-regulate, beyond the legal requirements laid down by the Inland Revenue and individual funding agencies. Over 39 per cent of these organisations believed that, "the voluntary and community sector, as a whole, is well regulated" (23.6 per cent disagreed with this statement). This indicates that there is some uneasiness about the level of regulation within the sector<sup>611</sup>. On this evidence, there appears to be a need for improvement in the self-regulation of CSOs.

In Scotland there is evidence that voluntary sector organisations are more likely than the private sector, and as likely as the public sector, to sign up to wider voluntary employment codes, such as Investors in People (IiP) and equal opportunities plans. However, voluntary sector survey evidence (SCVO 2003) also shows that despite the availability of civil society sector-specific quality systems, such as Big Picture, PQASSO and SQMS (Scottish Quality Management System), fewer than 16 per cent work towards these or other lesser-known quality systems. In Wales it was argued that "CSOs exercise a high degree of self-regulation"<sup>612</sup>.

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## HOLD GOVERNMENT ACCOUNTABLE (LAW AND PRACTICE)

*To what extent is civil society active and successful in holding government accountable for its action?*

**Score 75**

Collis<sup>613</sup> concludes that there is a large amount of monitoring and lobbying activity by a range of CSOs in England and Wales, and that many groups conduct their own research to give an independent view of the effects of government policies. For example: the Joseph Rowntree Foundation works on social policy, especially tracking changes in poverty; Shelter and the Big Issue produce accurate statistics on homelessness which are not affected by changes in the definitions used by public bodies; learning disability advocacy groups monitor the changes in working practices brought about by direct payments.

Umbrella groups often consult on new legislation, and present a case for changing clauses, or altering an approach – for example in the consultation on the Charities Bill, many suggestions were incorporated; and on the New National Lotteries Bill.

There is little evidence from Scotland on holding the government to account, although Shah (2006) concluded *"that Scottish civil society is relatively weak on monitoring technical aspects of state performance, such as financial, economic and legal aspects and more effective in a limited*

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610 NCVO (2010) *Good governance: A code for the voluntary and community sector*. 2nd edition

611 NIVCA (2002) cited in McCarron, J. J. (2006) *Civil Society in Northern Ireland: a new beginning?* Civicus Civil Society Index Report for Northern Ireland, p. 8; NCVO (2008) *Changing governance. How are civil society organisations in the UK and overseas experiencing the shift from government to governance?*

612 Collis, B (2005) *An Assessment of Welsh Civil Society* Civicus Civil Society Index Report for Wales p. 26

613 Collis, B (2005) *An Assessment of Welsh Civil Society* Civicus Civil Society Index Report for Wales



way on querying policy outcomes<sup>614</sup>." There is a perception in Northern Ireland that this is also not a strong area. Only 5.9 per cent felt that CSOs were 'quite/very good' at holding the state to account. Organisations such as the *Committee on the Administration of Justice* devote much of their resources to this task but their success is fairly limited. Civicus concluded that there was scope for improvements for CSOs to encourage greater government accountability in Northern Ireland.

## POLICY REFORM

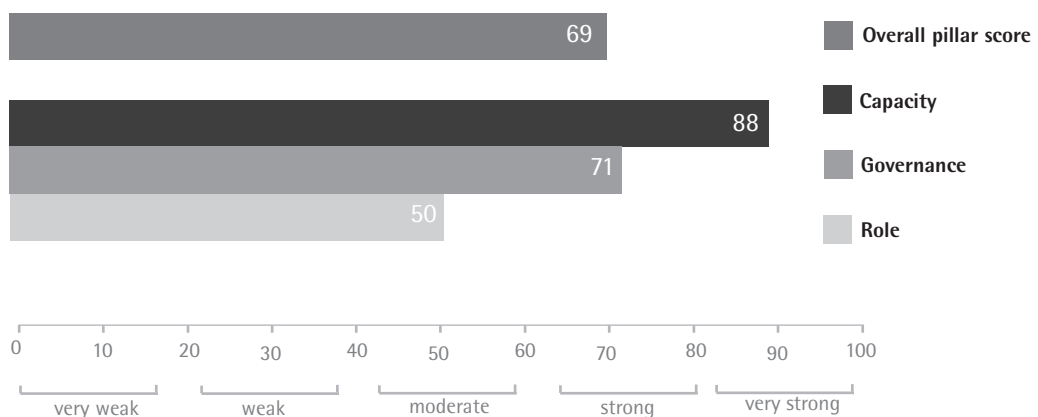
*To what extent is civil society actively engaged in policy reform on anti-corruption?*

**Score 75**

There is clear evidence to suggest that certain organisations have made a substantial difference towards anti-corruption in the UK. In 2010 *Transparency International UK* won a Third Sector award for impact, following its campaign for legislative reform and the 2010 Bribery Act. Their success was described as "a great example of the voluntary sector acting as the conscience of the nation"<sup>615</sup>.

## 6.12

### BUSINESS SECTOR *Status: strong*



#### SUMMARY

The legal framework in the UK serves to create an environment which supports the establishment of businesses free from interference. Furthermore, there are frameworks in place which encourage transparency and good governance. There are, however, weaknesses in the regulatory frameworks that can lead to question marks over the integrity of various aspects of business and the relative priority given to integrity. The absence of regulation on lobbying needs to be addressed and the effectiveness of the auditing of UK banks has been severely criticised. The 2010 Bribery Act is a welcome development, but there is concern that the Ministry of Justice's guidance does not always reflect the spirit of the Act. Annex 1 presents the detailed scores assigned to the business pillar in terms of capacity, governance and role in the national integrity system. Below is a qualitative assessment of the relevant indicators.

*There are... weaknesses in the regulatory frameworks that can lead to question marks over the integrity of various aspects of business*

614 Shah, R (2006) *An Assessment of Scottish Civil Society Civicus Civil Society Index Report for Scotland* p. 53

615 [http://www.transparency.org.uk/attachments/151\\_Third%20Sector%20Big%20Impact%20award%202010.pdf](http://www.transparency.org.uk/attachments/151_Third%20Sector%20Big%20Impact%20award%202010.pdf)

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## RESOURCES (LAW)

*To what extent does the legal framework offer an enabling environment for the formation and operations of individual businesses?*

**Score 100**

The legal framework in the UK provides an extremely enabling environment for the formation and operation of businesses. Regulations against barriers to entry into business were relaxed by the *Companies Act 2006*, which encourages individuals to form limited liability companies and makes company formation easier.

Under the *Companies Act 2006*, every company must have at least one director<sup>616</sup>. Public companies must have at least two directors<sup>617</sup>. A Director's minimum age is 16 years old<sup>618</sup>. No minimum share capital is required to establish a private limited company and this can be as little as £1 – in contrast to other European countries such as Germany. The term 'director' is not defined in the *Companies Act 2006*. Sections 250–251 state that a director does not need to be labelled as such, and is defined as anybody 'acting as a director', which effectively allows someone to be a director without the title. Names of directors are recorded at Companies House<sup>619</sup> and the Registrar of Companies is required to keep a record of the name, date of birth, nationality, former name and 'service address' of directors<sup>620</sup>. Under certain circumstances information does not need to be made public and the Registrar has a duty to omit 'protected information' from any material available for inspection<sup>621</sup>.

There are some further restrictions on company names. A business is not permitted to be registered with a name that, in the opinion of the Secretary of State, would constitute a criminal offence or be offensive<sup>622</sup>. Approval is needed for any name that is likely to give the impression that the company is connected to government or local authorities or includes a word from a designated list: e.g. the word 'police'<sup>623</sup>. Companies must avoid misrepresentation and cannot use a name that is already registered<sup>624</sup>.

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## RESOURCES (PRACTICE)

*To what extent are individual businesses able in practice to form and operate effectively?*

**Score 100**

In practice it is relatively easy to form and operate an individual business. New businesses must comply with section 9–13 of the *Companies Act 2006*, but these are not considered particularly

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<sup>616</sup> s.154 *Companies Act 2006*

<sup>617</sup> s.154(2) *Companies Act 2006*

<sup>618</sup> s.157 *Companies Act 2006*

<sup>619</sup> s.162 *Companies Act 2006*

<sup>620</sup> s.163 *Companies Act 2006*

<sup>621</sup> s. 242 *Companies Act 2006*

<sup>622</sup> s. 53 *Companies Act 2006*

<sup>623</sup> s. 54–55 *Companies Act 2006*

<sup>624</sup> s. 66 *Companies Act 2006*

onerous restrictions<sup>625</sup>. A company must not be formed for illegal purposes<sup>626</sup> and the person(s) setting up the business must subscribe their name(s) to a memorandum of association that satisfies the requirements of sections 9–10 of *Companies Act 2006*. The memorandum of association must be delivered to the Registrar of Companies for England and Wales who, if satisfied, will register the company and the company will then be granted a certificate of incorporation<sup>627</sup>.

According to [www.doingbusiness.org](http://www.doingbusiness.org) the UK ranks as the 17th easiest country in which to start up a business. It states that starting a business takes 13 days, including registering with HM Revenue and Customs<sup>628</sup>. Although a registered office address is required by *Companies Act 2006*, in practice, this could be a virtual address. Indeed, it was suggested that setting up a business in the UK is now so simple that a person can purchase a company off the internet without ever leaving his or her bedroom<sup>629</sup>. Such 'off the shelf' companies can be purchased for a small fee (some websites charge £32) and ready within 4–6 hours<sup>630</sup>.

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## INDEPENDENCE (LAW)

*To what extent are there legal safeguards to prevent unwarranted external interference in activities of private businesses?*

**Score 75**

The question of legal safeguards is contingent on the definition of the expression "unwarranted external interference". Companies have their own separate legal identity which guarantees independence and is distinct from its members, including companies in which there is a sole shareholder. The acts of the company are not his acts and the liabilities of the company are not his liabilities. The identity of a company is not affected by any changes in management or ownership. The legal grounds for investigating a company are set out in the *Companies Act 1985* and the *Companies Act 2006*.

Investors and shareholders need to be the prime decision-makers in business and what is needed from government is a stable environment with a clear view of what the future tax and regulatory framework will look like. It was suggested that the balance in the UK was a reasonable one, and that an overly prescriptive approach would only harm the development and operation of businesses<sup>631</sup>.

Unlike individuals and partnerships, registered companies are subject to having their affairs investigated by a part of the regulatory arm of the Department for Business, Innovation and Skills; the Companies Investigations Branch (CIB).

Most investigations are conducted under powers of s.447 *Companies Act 1985* and supplemented by the *Companies (Audit, Investigations and Community Enterprise) Act 2004*. They can be

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<sup>625</sup> Interview – Senior Lecturer in Business Law

<sup>626</sup> s. 7(1) *Companies Act 2006*

<sup>627</sup> s. 15 *Companies Act 2006*

<sup>628</sup> <http://www.doingbusiness.org/data/exploreeconomies/united-kingdom/>

<sup>629</sup> Interview – Senior Lecturer in Business Law

<sup>630</sup> See, for example, [www.ukincorp.co.uk](http://www.ukincorp.co.uk); and [www.formationsdirect.com](http://www.formationsdirect.com)

<sup>631</sup> Interview – member of Confederation of British Industry

conducted by members of the CIB or any other appointed agent. Such investigations require a company to produce records and information, or require a specific individual person to explain his or her conduct. Investigators have the power to enter premises and remain there for the purposes of the investigation and any failure to provide evidence is a contempt of court. It is an offence to provide false information<sup>632</sup>.

- Investigation by Inspectors, are conducted under s.431 or s.432 *Companies Act 1985*. Section 431 allows an application to be made by a company or by 200 or more shareholders holding at least 10 per cent issued share capital. Section 432: allows for an application for investigation by the Secretary of State if it appears that:
- Company affairs are being or have been conducted with intent to defraud creditors or for a fraudulent or unlawful purpose or in a manner prejudicial to some part of its members, or:
- Persons concerned with the company's formation or management have been guilty of fraud or some other misconduct towards the company or its members; or
- The company's shareholders have not been given all the information with regard to the affairs of the company as they might reasonably expect<sup>633</sup>

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## INDEPENDENCE (PRACTICE)

*To what extent is the business sector free from unwarranted external interference in its work in practice?*

**Score 75**

There is no challenge available to the investigation or the decisions of the CIB. Nonetheless the Secretary of State must be acting 'within powers' and in good faith, and his decision does not imply there is a case to answer. The Secretary of State is not required to reveal evidence prompting action<sup>634</sup>. Investigations are not judicial but are of an 'administrative' nature and inspectors are required to act fairly (e.g. to give an opportunity for a reply).

Such investigations actually give inspectors very strong powers. Inspectors have the power to examine any person on oath and obtain documents<sup>635</sup>. There is a duty on all officers and agents of the company to produce documents and attend before the inspectors to give assistance to the investigation<sup>636</sup>. Inspectors who consider that any other person is or may be in possession of any information concerning the affairs of the company can be required to produce those documents<sup>637</sup>, including, in limited circumstances, information about company and directors' bank accounts<sup>638</sup>.

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<sup>632</sup> s. 431 *Companies Act 1985*

<sup>633</sup> s. 432 *Companies Act 1985*

<sup>634</sup> s. 450-451 *Companies Act 1985*

<sup>635</sup> s. 434(3) *Companies Act 1985*

<sup>636</sup> s. 434(1) *Companies Act 1985*

<sup>637</sup> s. 434(2) *Companies Act 1985*

<sup>638</sup> (s. 435(1)) *Companies Act 1985*

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## TRANSPARENCY (LAW)

*To what extent are there provisions to ensure transparency in the activities of the business sector?*

**Score 75**

Listed companies are subject to the transparency rules of the London Stock Exchange, and the rules on takeovers and mergers provide for transparency in the takeover stage. A major part of this is the requirement for audit. A company's annual accounts for a financial year must be audited in accordance with Part 16 of the *Companies Act 2006*. There are some exemptions to these requirements, notably for small companies<sup>639</sup> and dormant companies<sup>640</sup>.

The small company regime is detailed in s.477 Part 15 Companies Act 2006. To be categorised as a small company two of the following three criteria must apply:

- Company turnover is not more than £5.6 million;
- The balance sheet total is not more than £2.8 million;
- The average number of employees during the financial year is not more than 50.

The directors must provide a statement in the balance sheet that the company is part of the regime. The statement must include the fact that the members have not required the company to obtain an audit for the year in question and the fact that the directors are aware of their need to comply with their requirements in the preparation of accounts. Some companies are excluded from the small company regime, if at any time during the financial year a company was: a public company; an authorised insurance company or a company that carries on insurance market activity; an authorised banking company; certain specified forms of investment companies; deemed ineligible.

A company is classified as dormant if it has 'no significant accounting transactions' during the accounting period<sup>641</sup>. Some companies can be dormant from formation although they need only be dormant since the end of the previous financial year to be exempt from audit, in which case they need only deliver to Companies House an abbreviated balance sheet and notes. Some companies are exempt from dormant status: insurance; banking; financial markets; and investment companies. Exemption ceases if a company begins commercial or trading activity during the financial period and would no longer qualify if some significant accounting transaction needs to be recorded during the period.

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## TRANSPARENCY (PRACTICE)

*To what extent is there transparency in the business sector in practice?*

**Score 75**

Transparency in business is linked to the role of open auditing practices, which must be sufficient to detect material misstatements caused by fraud or error. Auditors have no general duty to

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<sup>639</sup> As defined under s. 382 Companies Act 2006

<sup>640</sup> s. 480 Companies Act 2006

<sup>641</sup> s. 480 Companies Act 2006.

detect fraud. Currently, auditors audit financial statements and not individual transactions: the prevention and detection of fraud is the responsibility of directors. This approach has led to widespread criticism of the work of audit and the lack of transparency in such prevention work. Any fraud test is also a test for error, as anything which can be done on purpose can also be done by accident. The auditor does not need to establish whether a misstatement or a loss resulted from fraud or from error. The company's rights to recover losses are usually unaffected by the question of whether or not the losses were occasioned by fraud. Given the impact of the recent financial crisis, precipitated by activities in the banking sector, it would be remiss of the authors not to touch on this subject. A recent House of Lords Economic Affairs Committee report was scathing in its assessment of the 'big four' auditors of banks. The report noted that the 'complacency' and 'dereliction of duty' of the auditors contributed to the financial crisis<sup>642</sup>.

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## ACCOUNTABILITY (LAW)

*To what extent are there rules and laws governing oversight of the business sector and governing corporate governance of individual companies?*

**Score 75**

There have been several major reviews of corporate governance in the UK since the 1990s, including the Cadbury Report (1992)<sup>643</sup>, which looked at corporate governance generally; the Greenbury report (1995)<sup>644</sup>, which addressed the remuneration of company directors; the Turnbull report (1999), which reviewed internal controls and financial reporting; the Higgs report (2003)<sup>645</sup>, which looked at the role and effectiveness of non-executive directors; and the Smith report (2003)<sup>646</sup>, which looked at the role of the auditor. Other notable reviews include the Hampel report (1998), which updated the findings of the Cadbury report, and more recently the Walker Review (2009), which was a response to the UK financial crisis.

Recommendations from these various reviews have been incorporated into a set of voluntary principles, the UK Corporate Governance Code 2010, which was also known as 'the combined code' (although this title has now been dropped as it was considered no longer relevant.)<sup>647</sup> The code is aimed at companies listed on the London Stock Exchange and is overseen by the Financial Reporting Council<sup>648</sup>. The latest (2010) version of the code contains general principles and also more detailed provisions relating to the governance of companies in five main headings: leadership; effectiveness; accountability; remuneration, (including internal control, financial reporting and auditing); and relations with shareholders. The code has evolved in the UK over a period of years, having first been introduced in 1992, and the latest review in 2009 has led to a number of changes in focus for the present version of the code.

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<sup>642</sup> Economic Affairs Committee (2011) *Second Report. Auditors: Market concentration and their role*

<sup>643</sup> <http://www.ecgi.org/codes/documents/cadbury.pdf>

<sup>644</sup> <http://www.ecgi.org/codes/documents/greenbury.pdf>

<sup>645</sup> <http://www.berr.gov.uk/files/file23012.pdf>

<sup>646</sup> <http://www.frc.org.uk/documents/pagemanager/frc/Smith%20Report%202005.pdf>

<sup>647</sup> FRC (2009) 2009 review of the combined code s2.19

<sup>648</sup> <http://www.frc.org.uk/> the code also derives from the Financial Services Authority's Listing Rules, which have statutory authority under the Financial Services and Markets Act 2000

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## ACCOUNTABILITY (PRACTICE)

*To what extent is there effective corporate governance in companies in practice?*

**Score 75**

It was suggested that the UK was an international leader in terms of corporate governance and reviews such as the Cadbury report had demonstrated the commitment of UK business to corporate governance long before major US developments such as the *Sarbanes Oxley Act* had come into existence<sup>649</sup>. It was further suggested that the voluntary nature of the UK Corporate Governance Code, rather than legislation such as Sarbannes-Oxley, was one of the reasons for its success. The flexibility of the code allows for review and improvement much more readily than legislation permits. Corporate governance in the UK is essentially about best practice, and listed companies make a comply or explain statement of the extent of their compliance with the UK Corporate Governance Code. It was considered that the Financial Reporting Council was the organisation best placed to oversee the code and much of the best practice that has been identified over the years<sup>650</sup>.

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## INTEGRITY (LAW)

*To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?*

**Score 75**

Any legal person can form a company and there is no fit and proper person test for a company director. Directors can, however, be disqualified under the *Companies Act 1985/2006*; *Insolvency Act 1985*; and *Company Directors Disqualification Act 1986*. Disqualifications can be discretionary or mandatory.

A court may make a *discretionary* disqualification order against a person for the following reasons:

- *Conviction of an indictable offence*: In connection with the promotion, formation, management, liquidation or connected with the management of the company<sup>651</sup>. In such cases actual mismanagement need not be proved<sup>652</sup>. No minimum period is given for disqualification but there is a maximum of five years if the case is dealt with at a magistrate's court and a maximum of 15 years if disqualification is issued by a higher court.
  - *Persistent breaches of company legislation*: "persistently in default in relation to companies legislation requiring any return, account or other document to be filed with the Registrar." Presumption where there is conviction of three or more defaults; or some degree of continuance or repetition. Disqualification can be made by a magistrate's court at the same time as conviction of an offence relating to the filing of returns. Disqualification for persistent breaches is for a maximum of five years.
  - *Fraud*: including fraudulent and wrongful trading<sup>653</sup> carries a maximum disqualification of ten years.
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649 Interview - member of Confederation of British Industry

650 Interview - member of Confederation of British Industry

651 S. 2-5 *Company Directors Disqualification Act 1986*

652 *Re Georgiou (1988) 4 BCC 322*

653 Including s.213 and s.214

- *Disqualification after investigation of a company:* If it appears to the Secretary of State following a DTI investigation, that it is expedient in the public interest that a disqualification order should be made against any person who has been a director/shadow director. Under such circumstances, the Secretary of State can apply to a court for a disqualification order of up to 15 years

The *Insolvency Act* introduced the standard of 'unfitness' as a ground for mandatory disqualification. A director of a company which at any time has become insolvent may be deemed "unfit to be concerned in the management of a company"<sup>654</sup>. Disqualifications can be for between two and 12 years, and can be granted by a court, on application by the Secretary of State or if the company is in liquidation.

There is, inevitably, debate around the meaning of unfitness and the standard to which it can be set against. Unfitness can include: a breach of commercial morality; gross incompetence; recklessness; or causing a danger to the public. Unfitness also applies outside the company to which the director belongs: a director is deemed unfit to manage companies generally.

Ordinary commercial misjudgement is not in itself sufficient to demonstrate unfitness. Instead unfitness relates to conduct that displays a 'lack of commercial probity', is 'grossly negligent', or demonstrates 'total incompetence'<sup>655</sup>. Other UK case law shows that unfitness has applied to conduct which falls below the standard of 'commercial morality'<sup>656</sup> or that has completely disregarded creditors' interests<sup>657</sup>.

It was suggested that directors can get around threats by performing their role as a shadow director. A shadow director is defined in s.251 Companies Act 2006: "...a person in accordance with whose directions or instructions the directors of the company are accustomed to act..." but not; "...by reason only that the directors act on advice given by him in a professional capacity". In effect a shadow director as acts 'the power behind the throne'<sup>658</sup>. A shadow director can be disqualified but it is difficult to gather evidence and bring an action against them<sup>659</sup>.

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## INTEGRITY (PRACTICE)

*To what extent is the integrity of those working in the business sector ensured in practice?*

**Score 75**

It is quite difficult to ascertain how successful the integrity of the business sector is ensured in practice. The number of investigations conducted by CIB, for example, is unknown. Although there is a published chronological list of investigations (dating back to the 1950s) that have been deemed in the public interest<sup>660</sup>, the majority of investigations are confidential under Section 447 of the *Companies Act 1985*.

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<sup>654</sup> S.6(1) CDDA 1986

<sup>655</sup> *Re Lo-Line Electric Motors Ltd* (1988)

<sup>656</sup> *Re Dawson Print Group Ltd.* (1987)

<sup>657</sup> *Re Barings Plc* (1999)

<sup>658</sup> Interview – Business Law lecturer

<sup>659</sup> Subject to the obligations imposed by the Companies Act 2006, Insolvency Act 1986, Directors Disqualification Act 1986

<sup>660</sup> <http://insolvency.gov.uk/cib/inspectorsreports.htm>



One indicator is Transparency International's *Transparency in Reporting on Anti-Corruption (TRAC)* survey, which suggests that the UK has the fifth highest score for anti-corruption reporting (based on a sample of 30 companies)<sup>661</sup>. One area where there has been research, and where there is evidence of problems, is in the construction industry. Research by the Chartered Institute of Building suggests that bribery is a significant issue in the construction industry with 41 per cent of those surveyed, all of whom worked in the construction industry, saying they had been offered a bribe on at least one occasion. Furthermore, 43 per cent thought that corruption was 'fairly common'<sup>662</sup>.

Business also tries to lobby political parties and MPs to influence legislation and policy. There has been growing concern about the influence of lobbyists<sup>663</sup>. (Further reference is made to 'lobbying' in the chapter on the legislature). It is worth noting here that although a voluntary register of lobbyists has been established by the UK Public Affairs Council (UKPAC), there are criticisms that the majority of lobbyists are choosing to ignore it<sup>664</sup>.

## ROLE

*To what extent is the business sector active in engaging the domestic government on anti-corruption?*

**Score 50**

There has been some recent dispute regarding the role of the business sector in engaging the domestic government on anti-corruption, particularly around the new Bribery Act, which gained Royal Assent in April 2010 and will come into force in July 2011. In January 2011, Justice Secretary Kenneth Clark called for a further review of the guidance, and some organisations have suggested that the review, and subsequent delay in implementing the act, was a response, in part at least, to pressure by the business sector. Transparency International UK has argued that *"The Act ... has now been delayed due to intensive last-minute lobbying reportedly from some corporate circles against a background of negative coverage and misinformation disseminated by some sections of the media"*<sup>665</sup>. The delay was also brought about by politicians, as Vince Cable (Secretary of State for Business) has admitted that he also lobbied the Ministry of Justice for a review of the act<sup>666</sup>. It was suggested that the business sector supports the new act<sup>667</sup> and the CBI's anti-bribery group spokesman has recently stated that the act is "exactly fit for purpose", contradicting the Director-General of CBI who had earlier stated it was "not fit for purpose"<sup>668</sup>.

## ROLE

*To what extent does the business sector engage with/provide support to civil society in its task of combating corruption?*

**Score 50**

The business sector has a mixed record on engaging civil society on anti-corruption issues. This may reflect a general reluctance in the business community to engage on anti-corruption

661 [http://www.transparency.org/policy\\_research/surveys\\_indices/trac](http://www.transparency.org/policy_research/surveys_indices/trac)

662 *The Chartered Institute of Building (2006) Corruption in the UK construction industry*. Ascot

663 *Public Administration Committee (2009) Lobbying: Influence and access in Whitehall HC 36*

664 <http://www.independent.co.uk/news/uk/politics/lobbyists-register-to-be-published-2229008.html>

665 *Transparency International UK (2011) Bribery Act: myth or reality? P. 2*

666 *The Telegraph 'Vince Cable lobbied for delay in Bribery Act', 9 February 2011*

667 *Interview - member of Confederation of British Industry*

668 *The Guardian 'Justice minister tries to ease anti-bribery rules', 15 March 2011; BBC Radio 4 Today Programme, 30 March 2011*

issues<sup>669</sup>. The construction sector has worked with TI-UK to form a UK Anti-Corruption Forum, at which construction companies, professional services companies and industry bodies meet 'to help create a business environment that is free from corruption'. TI-UK itself seeks to engage companies widely through direct contact and via industry bodies and conferences. Larger extractive companies have engaged stakeholders including civil society through the Extractive Industries Transparency Initiative (EITI)<sup>670</sup>; likewise the Medicines Transparency Alliance (MeTA)<sup>671</sup> and Construction Sector Transparency Initiative (CoST)<sup>672</sup> have brought a small number of companies into constructive dialogue with stakeholders. However, during the recent discussions over the Bribery Act, NGOs had the perception that some companies and industry bodies were reluctant to engage civil society and find common ground. The recent BAE Systems court case reinforced suspicion of the corporate sector among some NGOs<sup>673</sup>. Overall, the engagement between companies and NGOs has been relatively constructive, although restricted to a small part of the UK's corporate sector.

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<sup>669</sup> <http://www.anticorruptionforum.org.uk/acf/pages/acf.php>

<sup>670</sup> <http://eiti.org/>

<sup>671</sup> <http://www.medicinestransparency.org/>

<sup>672</sup> <http://www.constructiontransparency.org/>

<sup>673</sup> <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/bae-fined-in-tanzania-defence-contract-case.aspx>

## 7. CONCLUSION

*The United Kingdom can be characterised as a country with a strong National Integrity System overall, but with notable areas of weakness*

The United Kingdom can be characterised as a country with a strong National Integrity System overall, but with notable areas of weakness. The NIS assessment suggests that the judiciary, the (local government) ombudsman, and the electoral management body are the strongest pillars, while political parties and the legislature are the weakest. These findings reflect public opinion of corruption in the UK, which also sees political parties and the legislature as two of the three UK institutions that are the most likely to be corrupt. The weaknesses in political parties, the relationship of donors with parties and the accountability of current funding structures, have been well-documented and indeed have been the subject of a number of enquiries.

These findings suggest a dichotomy at the heart of the UK National Integrity System. Despite its overall robustness, several pillars show a distinct gap between the legal framework and what happens in practice. This is encapsulated in the strength of the electoral management body, the Electoral Commission, and the relative weakness of UK political parties. While there is evidence of greater transparency across pillars since 2004 (for example, in the executive, legislature, electoral management body and public sector pillars), this has not prevented the emergence of a number of scandals – such as the MPs' expenses scandal – documented in this study. As one respondent commented on political parties "We used to think that sunlight was the best disinfectant, but now we can see that all the sunlight does is cast more shadows<sup>674</sup>."

In general, however, the UK is characterised by another dichotomy: a National Integrity System that is much improved but, nevertheless, faces an uncertain future. The UK NIS has developed strongly since the previous National integrity Assessment was published in 2004. The key issues that emerged from that report were: the balance between self-regulation and compliance models of regulation; the "patchwork quilt" of regulatory bodies; the importance of tradition; the impact of New Public Management; and the relationships between government and business. Although many of these issues remain, the 2011 NIS assessment shows that the UK has made important improvements.

The "patchwork quilt" that was identified in 2004 consisted of a number of key areas of collaborative working: information sharing; developing common standards; joint investigations. In 2011 the patchwork quilt still exists in the sense that there are numerous agencies that have some responsibility for anti-corruption, but in terms of joint investigations and information sharing there has been a rise in inter-pillar work. The response of law enforcement agencies, for example, has moved entirely toward information sharing through the tri-annual SOCA review.

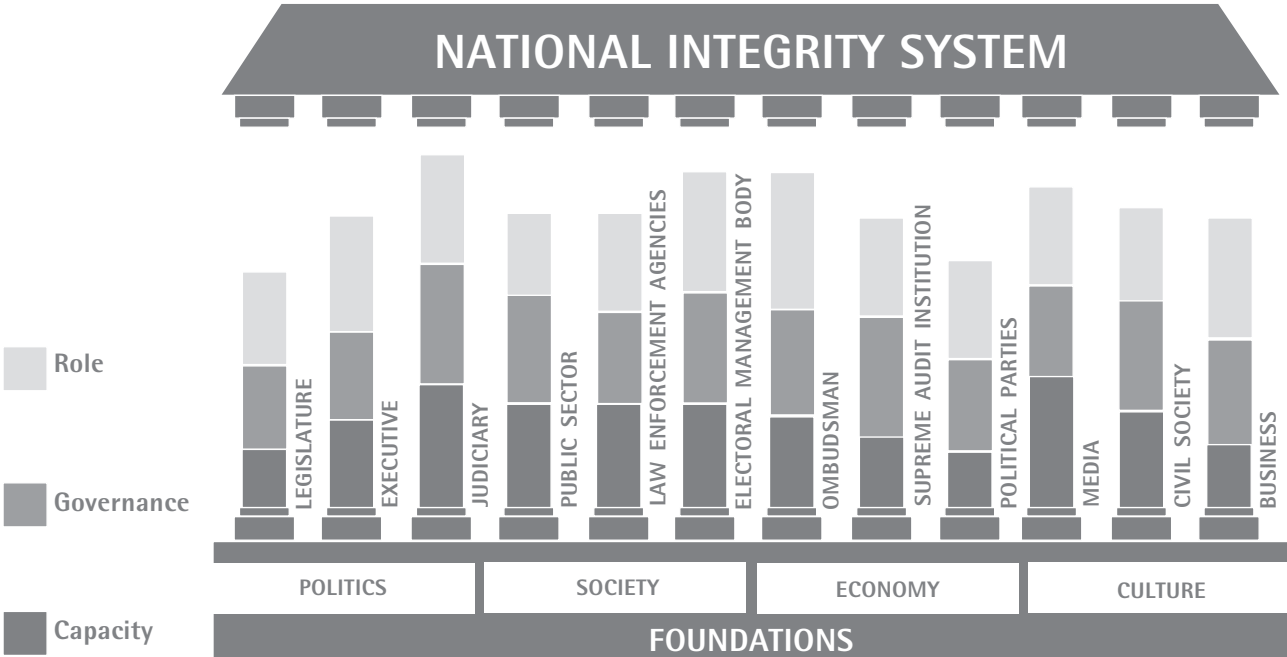
The impact of New Public Management was emerging in 2004 with the rise of perverse incentives in new performance management systems – for example the case of a head teacher caught doctoring school exam results<sup>675</sup>. More recent research suggests that this remains a problem, particularly in the sectors such as the NHS and prisons, in which meeting KPIs may act as an incentive for fraud and corruption<sup>676</sup>. The announcement of public spending cuts, therefore, really is a key concern, as having to do "more with less" may well provide further perverse incentives, and create an environment of temptation for future corruption.

The story of the UK National Integrity System is thus one of great uncertainty. Its previous incarnation as a "patchwork quilt" remains true to an extent, but it is one that until now has been much more securely sewn together. The key challenges for the NIS lie ahead, with reduced funding for sectors, the dismantling of key institutions and organisations and constitutional arrangements that perhaps give too much weight to the Executive. This is not to downplay the many improvements since 2004, perhaps most notably the 2010 Bribery Act. But the UK cannot afford to become complacent and will hopefully respond positively to any potential threats to the NIS.

# ANNEX 1

## Summary tables of NIS pillars

Pillar	Status
Electoral Management Body	Very Strong
Judiciary	Very Strong
Ombudsman	Very Strong
Business Sector	Strong
Civil Society	Strong
Executive	Strong
Law Enforcement Agencies	Strong
Media	Strong
Public Sector	Strong
Supreme Audit Institution	Strong
Legislature	Moderate
Political Parties	Moderate



LEGISLATURE: Overall Pillar Score: 54/100      Status: moderate			
Dimension	Indicator	Law	Practice
Capacity 69/100	Resources	75	75
	Independence	75	50
Governance 58/100	Transparency	75	50
	Accountability	75	50
	Integrity	75	25
Role 38/100	Executive oversight	50	
	Legal reforms	25	

EXECUTIVE: Overall Pillar Score: 75/100      Status: strong			
Dimension	Indicator	Law	Practice
Capacity 100/100	Resources	n/a	100
	Independence	n/a	100
Governance 63/100	Transparency	100	50
	Accountability	75	25
	Integrity	100	25
Role 63/100	Public sector management (law and practice)	75	
	Legal system	50	

JUDICIARY: Overall Pillar Score: 94/100      Status: very strong			
Dimension	Indicator	Law	Practice
Capacity 94/100	Resources	100	75
	Independence	100	100
Governance 100/100	Transparency	100	100
	Accountability	100	100
	Integrity	100	100
Role 88/100	Executive Oversight	100	
	Corruption Prosecution	75	

PUBLIC SECTOR: Overall Pillar Score: 77/100      Status: strong			
Dimension	Indicator	Law	Practice
Capacity 67/100	Resources	50	75
	Independence	75	
Governance 88/100	Transparency	100	100
	Accountability	75	75
	Integrity	100	75
Role 75/100	Cooperation with public institutions, CSOs and private agencies in preventing/ addressing corruption	75	
	Reduction of Corruption Risks by Safeguarding Integrity in Public Procurement	75	

LAW ENFORCEMENT: Overall Pillar Score: 77/100      Status: strong			
Dimension	Indicator	Law	Practice
Capacity 75/100	Resources	100	50
	Independence		75
Governance 79/100	Transparency	100	75
	Accountability	75	75
	Integrity	100	75
Role 75/100	Effective investigation into corruption	75	

ELECTORAL MANAGEMENT BODY: Overall Pillar Score: 83/100      Status: very strong			
Dimension	Indicator	Law	Practice
Capacity 92/100	Resources	n/a	75
	Independence	100	100
Governance 92/100	Transparency	100	100
	Accountability	75	75
	Integrity	100	100
Role 75/100	Campaign regulation	75	
	Election Administration	75	

OMBUDSMAN: Overall Pillar Score: 86/100      Status: very strong			
Dimension	Indicator	Law	Practice
Capacity 100/100	Resources		100
	Independence	100	100
Governance 96/100	Transparency	100	100
	Accountability	100	75
	Integrity	100	100
Role 63/100	Public complaints	75	
	Anti corruption commitment	50	

SUPREME AUDIT INSTITUTION: Overall Pillar Score: 76/100      Status: strong			
Dimension	Indicator	Law	Practice
Capacity 83/100	Resources		75
	Independence	100	75
Governance 88/100	Transparency	100	75
	Accountability	100	100
	Integrity	100	50
Role 58/100	Effective Financial Audits	75	
	Detecting and Sanctioning Misbehaviour	50	
	Improving Financial Management	50	

POLITICAL PARTIES: Overall Pillar Score: 60/100      Status: moderate			
Dimension	Indicator	Law	Practice
Capacity 69/100	Resources	75	75
	Independence	75	50
Governance 63/100	Transparency	50	50
	Accountability	75	50
	Integrity	75	75
Role 50/100	Special interest	50	
	Anti corruption commitment	50	

MEDIA: Overall Pillar Score: 80/100      Status: strong			
Dimension	Indicator	Law	Practice
Capacity 81/100	Resources	75	75
	Independence	100	75
Governance 67/100	Transparency	75	75
	Accountability	75	50
	Integrity	75	50
Role 92/100	Investigate and expose cases of corruption practice	100	
	Inform public on corruption and its impact	75	
	Inform public on governance issues	100	

CIVIL SOCIETY: Overall Pillar Score: 75/100      Status: strong			
Dimension	Indicator	Law	Practice
Capacity 75/100	Resources	75	50
	Independence	100	75
Governance 75/100	Transparency		75
	Accountability		75
	Integrity		75
Role 75/100	Holding government to account	75	
	Engaging in Anti corruption	75	



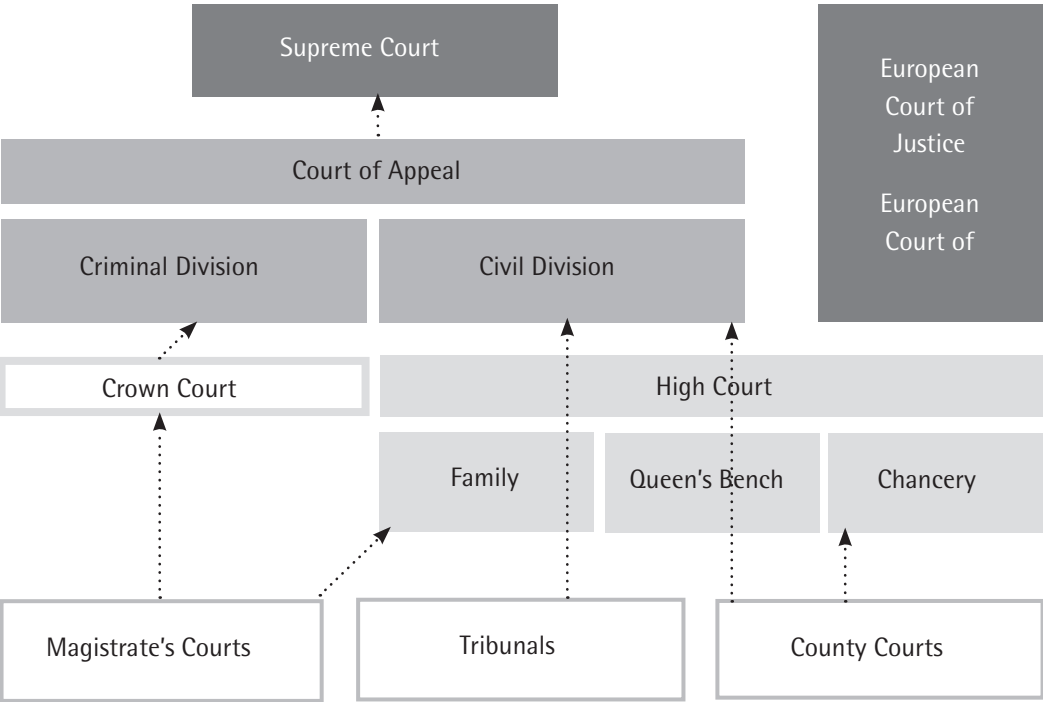
BUSINESS: Overall Pillar Score: 72/100      Status: strong			
Dimension	Indicator	Law	Practice
Capacity 94/100	Resources	100	100
	Independence	75	75
Governance 71/100	Transparency	75	75
	Accountability	75	75
	Integrity	75	50
Role 50/100	Anti-corruption policy engagement	50	
	Support for/engagement with civil society	50	

SUMMARY OF PILLAR SCORES				
Pillar	Capacity	Governance	Role	Total Score
Legislation	69	58	38	54
Executive	100	63	63	75
Judiciary	94	100	88	94
Public Sector	67	88	75	77
Law Enforcement Agencies	75	79	75	77
Electoral Management Body	92	92	75	83
Ombudsman	100	96	63	86
Supreme Audit Institution	83	88	58	76
Political Parties	69	63	50	60
Media	81	67	92	80
Civil Society	75	75	75	75
Business Sector	94	71	50	72

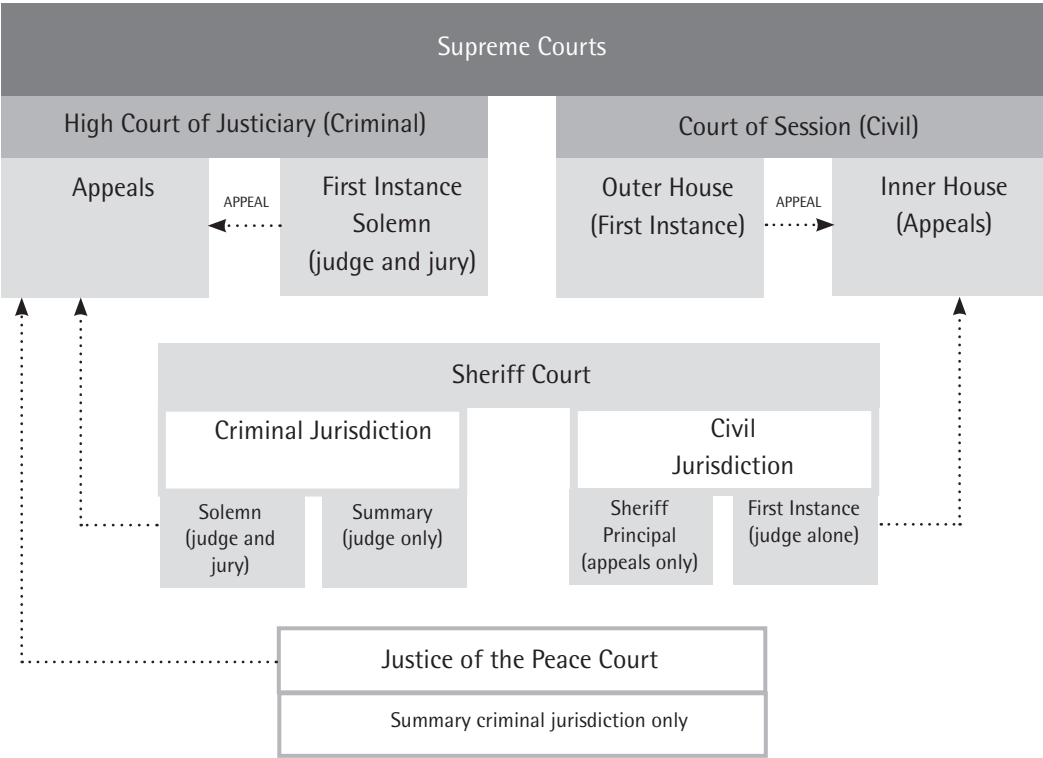
# ANNEX 2

## DIFFERENCES IN JUDICIAL STRUCTURE

### ENGLAND AND WALES



### SCOTLAND





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