

# Bond Anti-Corruption Group report on UK compliance with the UN Convention against Corruption, Second Cycle Review, Chapters II (Prevention) and V (Asset Recovery)

July 2018

The Bond Anti-Corruption Group is a coalition of British NGOs who, through their work, witness the devastating effects of corruption on society. The Group has the following core members: Article 19, CAFOD, Corruption Watch, Global Witness, Integrity Action, Natural Resource Governance Institute, ONE, Open Contracting Partnership, Public Concern at Work, Publish What You Pay, The Corner House, The Sentry, and Transparency International UK.

## Overview

We welcome the Government's openness in publishing its self-assessment with Chapters II and V of the UNCAC. We would encourage the Crown Dependencies and relevant Overseas Territories to similarly publish their self-assessments. We note that the Government did not consult civil society while producing its self-assessment which is considered best practice by the UNCAC Coalition, and recommend that in future reviews the Government take a more participatory approach to self-assessments with input from non-governmental stakeholders including academics and civil society.

The BOND group believes that overall the Government has produced some significant achievements in the past few years with identifying, tackling and preventing corruption, with political will to tackle corruption strong in certain parts of government. We particularly welcome the adoption of the Criminal Finances Act which introduced stronger measures relevant to money laundering and corrupt assets, including the introduction into law of the new Unexplained Wealth Order power.

However, we also believe that there are significant areas where the UK Government could improve its compliance with the UNCAC both in letter and spirit. In particular, we believe that in order to improve its compliance with Chapters II and V of the Convention, the UK Government should commit to the following:

**Article 5:** Introduce a stronger oversight mechanism for the Anti-Corruption Strategy including by ensuring that the Anti-Corruption Champion and Minister responsible for Economic Crime give oral evidence to an appropriate parliamentary committee on implementation of the Strategy and increase transparency around the Inter-Ministerial Anti-Corruption Group by publishing minutes and agendas;

**Article 5 (3):** Ensure that there is no weakening of the Bribery Act as it undergoes review, by putting up a robust evidence-based defence of the Act;

**Article 6:** Ensure that there is adequate funding of the Serious Fraud Office and National Crime Agency's International Corruption Unit, and a clearer signposting of which agency is responsible for investigating domestic corruption;

**Articles 7/8:** Implement as a priority the recommendations from the GRECO 5th evaluation of the UK which will also ensure compliance with UNCAC, in particular by:

- strengthening the remit and powers of ACOBA (the Advisory Committee on Business Appointments) or replacing it with a more robust body;
- reviewing the status and remit of the Independent Advisor on Minister's Interests and giving the Advisor greater powers to investigate conflicts of interest and conduct;
- making more information public about meetings between ministers, special advisors and senior civil servants and third parties as well as expanding the scope of the lobbying register to include amounts spent lobbying and the issues lobbied on;
- urgently reviewing whether peerages are being offered in exchange for major party donations; and
- ensuring that MPs financial interests are published as open data.

**Article 9:** Improve transparency in public procurement by:

- Pushing for timely and complete contract data to be published by central and local governments including unique identifiers for companies and buyers;
- assigning a government department to oversee compliance with open contract data; and
- fulfilling its commitment to undertake a review of corruption risks in local council procurement.

**Articles 10/13:** Improve participation of society and public reporting by:

- committing to improved response rates and release of information under the Freedom of Information Act (FOIA);
- extending the FOIA to apply to contractors providing public services and all bodies with law enforcement responsibilities;
- ensuring regular and robust Parliamentary scrutiny of compliance by government departments and other public bodies with the FOIA and open government commitments;
- taking prompt action to improve court transparency in particular by improving open and digital access to court listings, judgements and documents;
- ensuring that a controversial revision to the Official Secrets Act proposed by the Law Commission, which would have a chilling effect on whistleblowers and investigative journalists, is dropped; and
- the Crown Dependencies and relevant Overseas Territories adopting binding legislation that ensures public access to information to enable compliance with Articles 10 and 13.

**Article 12:** Improve private sector accountability by:

- Introducing corporate liability reform in order to ensure 'effective, proportionate and dissuasive sanctions' for private sector actors;

- Ensuring that Companies House is given appropriate powers and resources to ensure proper verification of the UK's Persons of Significant Control (PSC) register and ensure that it is actively enforcing its powers; ensure that the Overseas Territories and Crown Dependencies implement public registers of Beneficial Ownership; and
- reinvigorating its commitment to extractive industry transparency by monitoring, verifying and improving central access to mandatory payments to governments reports, and making progress on transparency around the sales of oil, gas and minerals (commodity trading) and on UK Extractive Industries Transparency Initiative civil society participation.

**Article 14:** Ensure more consistent supervision for money laundering by consolidating the number of AML supervisors, increasing transparency in their operations, and ensuring separation of their lobbying and supervisory functions; and prioritise further reform of the Suspicious Activity Reporting (SARs) regime particularly by urgently providing resources for an IT upgrade for the Financial Intelligence Unit and ensuring sufficient staffing for the unit.

**Chapter V (general):** increase identification of illicit assets in the UK in particular by bringing forward legislation to create a register of beneficial ownership of all offshore-owned property; ensure that law enforcement has the capacity and resources to implement new measures in the Criminal Finances Act; and increase transparency in its asset recovery efforts by establishing a public asset recovery database.

**Article 53 (b):** ensure that compensation can be given in complex corruption cases and that prosecutors do sufficiently comprehensive assessments of loss for the purposes of compensation.

**Article 54/55:** collect and publish comprehensive statistics on the timeliness with which the UK responds to Mutual Legal Assistance (MLA) requests.

**Article 55:** ensure greater transparency and inclusion of civil society when returning assets.

**Article 58:** ensure that reforms to the SARs regime and increased resourcing enable the Financial Intelligence Unit (FIU) to function effectively, and task the FIU to make and publish analysis of illicit financial flows into the UK broken down by region and country.

## Chapter II: Prevention

### Article 5. Preventive anti-corruption policies and practices

#### The UK's Anti-Corruption strategy

The UK's Anti-Corruption Strategy<sup>1</sup> launched in December 2017 is a welcome development. It follows on from the UK's 2014 Anti-Corruption Plan, and commitments made by the UK Government at the 2016 Anti-Corruption Summit. The Joint Anti-Corruption Unit in the

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/388894/UKantiCorruptionPlan.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/388894/UKantiCorruptionPlan.pdf)

Home Office engaged with the Bond Anti-Corruption Group (hereafter referred to as 'the Bond Group') constructively and proactively on development of the Strategy.

Broadly, the Bond Group welcomed the strategy.<sup>2</sup> In particular, we welcomed:

- the scope and breadth of the commitments made;
- commitments made to strengthen open contracting and government procurement;
- the focus on domestic corruption;
- the commitment to develop a good evidence base for corruption risks;
- the commitment to develop a corruption reporting mechanism; and
- the commitment to prioritise anti-corruption clauses in future trade deals.

Additionally, the Bond Group welcomed the appointment of a new Anti-Corruption Champion as well as the creation of a ministerial portfolio within the Home Office responsible for overseeing the UK's response to economic crime.

However, the Bond group also had some concerns about the strategy. These included:

- Lack of action on corruption risks in UK politics, particularly with regard to lobbying scandals;
- Failure to take action to ensure large private sector actors can be held to account for corruption related crimes such as money laundering and fraud;
- Failure to take action to ensure strict anti-corruption due diligence in the UK's provision of Tier 1 (Investor) visas.

While the Bond group welcomes the fact that there will be annual reporting to Parliament regarding delivery of the Anti-Corruption Strategy, we have concerns that this needs to be meaningful and detailed. While appreciating the difficulties in monitoring the implementation of the Strategy, we believe that having the minister and the Anti-Corruption Champion responsible for the strategy give oral evidence to an appropriate Parliamentary Committee would ensure greater and more robust scrutiny of the Strategy.

We welcome the fact that there is an inter-ministerial group on anti-corruption co-chaired by the Champion and the minister responsible for Economic Crime. There is, however, little transparency about what this group discusses and we believe it would be useful for the minutes and agenda of the group to be made public (suitably redacted where necessary to protect sensitive law enforcement information).

### **Article 5 (3). Evaluation of anti-corruption statutes**

The Bond Group notes that the Bribery Act is currently undergoing legislative review by a House of Lords Committee in keeping with Article 3 (5).<sup>3</sup> We have concerns that in the context of Brexit, and with a specific focus on the impact of the Act on Small and Medium Sized Enterprises (SMEs) by the Committee, the review could result in weakening of the legislation. Several of our members will be providing evidence to the Committee and as a group we believe strongly that no such weakening should take place.

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<sup>2</sup> [http://www.transparency.org.uk/uk-anti-corruption-strategy-a-review/#.WzSs\\_S3Mz-Y](http://www.transparency.org.uk/uk-anti-corruption-strategy-a-review/#.WzSs_S3Mz-Y)

<sup>3</sup> <https://www.parliament.uk/business/committees/committees-a-z/lords-select/bribery-act-2010/>

One area where the Bribery Act does disadvantage SMEs, however, is the uneven application of corporate liability principles to different articles within it. While Section 7 allows companies of any size to be prosecuted for failure to prevent bribery, Sections 1 and 6 are still subject to the UK's current corporate liability regime which make it much easier to hold SMEs to account criminally than large companies. This means it is still very hard for prosecutors to prosecute large companies under Sections 1 and 6 of the Bribery Act which are the substantive offences under the Act and incur further potential consequences such as exclusion from public procurement. The Bond Group has ongoing serious concerns about the adequacy of the corporate liability regime in the UK which we outline further in our comments on Article 12.

### **Article 6. Preventive anti-corruption body or bodies**

The UK does not have specific preventive anti-corruption bodies, although the Bond Group acknowledges that the UK's Joint Anti-Corruption Unit plays an important role in coordinating cross-government anti-corruption work. Additionally, the work of enforcement bodies, primarily the Serious Fraud Office and the National Crime Agency's International Corruption Unit, play a key role in preventing corruption. It is not clear to us that the SFO and ICU are sufficiently resourced to deal with investigating the scale of corrupt wealth that has entered or passed through the UK or been facilitated by UK based entities over the past decade and there is lack of clarity about who is responsible for investigating domestic corruption.

Additionally, with regard to these agencies, we remain concerned that the Attorney General has the power to direct that a prosecution is not started or is discontinued on grounds of national security.<sup>4</sup> While we are not aware of this power having been used in the recent past, we are concerned that there are not enough safeguards on this power to prevent its abuse.

### **Article 7 and 8. Public sector and codes of conduct for public officials (transparency in party funding, systems to prevent conflicts of interest and asset declarations)**

The Bond Group notes that the recent Council of Europe's Group of States against Corruption (GRECO) evaluation of the UK with regard to preventing corruption and promoting integrity in central government made a number of observations and recommendations which have considerable relevance to the Second Cycle UNCAC Review of the UK.<sup>5</sup> In particular the GRECO evaluation recommended that the UK:

- Establish a centralised mechanism for analysing and mitigating risks around conflicts of interests and corruption by those in top executive functions;
- Make public more information on meetings between ministers, special advisors and senior civil servants with third parties, and that this information should include subjects discussed and the purpose of intended outcome of the meeting;

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<sup>4</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/15197/Protocol\\_between\\_the\\_Attorney\\_General\\_and\\_the\\_Prosecuting\\_Departments.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/15197/Protocol_between_the_Attorney_General_and_the_Prosecuting_Departments.pdf)

<sup>5</sup> <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/168088ea4c>

- Consider extending the scope of the registry of consultant lobbyists to include in-house lobbyists and lobbying of special advisors and senior civil servants;
- Strengthen the status, remit and powers of ACOBA, the Advisory Committee on Business Appointments, including with more resources, and ensure that breaches of rules on post-employment restrictions are adequately sanctioned;
- Clarify and broaden the scope of what are considered ‘relevant interests’ in ministers’ declarations of interest;
- Review the status, role and remit of the Independent Advisor on Ministers’ Interests to include the interests of ministers, special advisors and permanent secretaries, and give the Advisor greater independence to investigate on their own initiative potential conflicts of interests or conduct.

The UK has until June 2019 to implement these recommendations. The Bond Group considers it imperative that the UK Government gives urgent attention to doing so to ensure greater compliance with both the Council of Europe Convention on Corruption and articles 7 and 8 of the UNCAC.

These recommendations are backed up by research from Bond Group member, Transparency International UK (TI-UK), which analysed the rules that govern behaviour across UK political institutions, evaluating the gaps in the rules that allow hidden lobbying and open the door to corruption. The research – which looks at Westminster, the Scottish Parliament, and the Assemblies in Wales and Northern Ireland – revealed that many recent lobbying scandals involving serious conflicts of interest, were not in violation of the rules, indicating that the rules themselves need revision. TI-UK found roughly 40 examples of loopholes across the UK where rules allow behaviour that can open the door to corrupt activity and lobbying abuses. Some of these are highlighted below.

### 1. Publication of members’ financial interests

MPs financial interests – including those who hold ministerial positions – are not published as open data. Currently, the Register of MP’s Financial Interests is not collected, stored or published as structured open data. This means:

- Members are at increased risk of technical non-compliance with the rules e.g. forgetting to include the dates for outside employment, because the process by which this information is collected allows them to omit these details.
- It is extremely time-consuming to collect and analyse potential conflicts of interest or undue influence, which is the intention of the register. For example, it could take weeks to collect and analyse trips paid for by a secretive lobby group connected to a hostile government over time. If this was collected, stored and published as structured open data this kind of question should be answerable in seconds.
- It is extremely time-consuming for constituents to understand anything regarding the aggregation of their MPs’ financial interests. This inhibits constituents’ ability to hold their MP to account. For example, it could take weeks for a constituent to collect and tally how much time their MP spends on outside employment, or how much they earn from second jobs. If this was collected, stored and published as structured open data this kind of question should be answerable in seconds.

### 2. Revolving door

The poor state of controls around the ‘revolving door’ between public and private sector employment – whereby former public officials may use their insider knowledge to further private interests at the public’s expense after they leave public employment – remains a matter of serious concern.

Moving through the revolving door can be beneficial to both public and private sectors by improving understanding and communication between public officials and business and allowing sharing of expertise. However, the revolving door brings risks that these officials will be influenced in their policy or procurement decisions by the interests of past or prospective employers. Conflicts of interest arise particularly for individuals in government who have responsibilities to regulate business activity or who are charged with procuring goods or services from the private sector.

In order to mitigate this risk some public bodies have cooling-off periods for former public officials, where they are prohibited from lobbying their former employer for a specific period of time. They can also be required to seek advice on any employment or appointment they take after leaving public service with an authority that is tasked with monitoring and ensuring compliance with the rules. However, overall the current arrangements for mitigating these revolving door risks across the UK are inadequate.

In 2012, the Public Administration Select Committee (PASC) published the findings of its inquiry into the current arrangements for managing the post-public employment of UK Ministers and senior civil servants. It concluded that the current body responsible for overseeing this process, the Advisory Committee on Business Appointments (ACOPA), *“lacks adequate powers and resources, and its membership is not in keeping with its role...it [should] be abolished.”* Subsequently, in April 2018, the Parliamentary Public Administration and Constitutional Affairs Committee published a report in which it described ACOPA as a *“toothless regulator”* and urged the government to take steps to improve the ACOPA system swiftly. In June 2018, a cross-party group of backbench Parliamentarians tabled a motion that is to be debated in the House of Parliament calling ACOPA *“an ineffectual regulator which fails to inspire public confidence or respect”*.

Given the numerous recommendations for ACOPA from various sources from GRECO to two parliamentary reports, the Bond Group believes that it is time for the UK Government to take swift and decisive action in this area not least to show compliance with article 7 of the UNCAC.

### 3. Lobbying

The public is still in the dark about who is trying to influence UK politics. Research from TI-UK<sup>6</sup> found:

- Less than 4% of lobbyists are covered by the Government’s lobbying register – almost all lobbyists are completely unaccountable<sup>7</sup>.
- 8/10 of the most frequent lobbyists are from FTSE 100 companies – lobbying is dominated by the corporate world.

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<sup>6</sup> Accountable Influence, Transparency International UK (September 2015), <http://www.transparency.org.uk/publications/accountable-influence-bringing-lobbying-out-of-the-shadows/#.Wzy4oy3Myt8>

The UK's current lobbying register and records of lobbying meetings provide us with very little useful information with which to hold lobbyists to account.

The UK statutory register of consultant lobbyists, launched in 2015, only provides very basic details about a fraction of those trying to influence public policy and decisions. While, towards the end of 2015, there were 96 professional lobbying firms on the register, representing 360 clients, TI-UK identified 2,735 lobbyists that met with UK Ministers in one quarter alone.

As well as being very narrow in its coverage, the UK statutory register of lobbyists does not provide any information regarding:

- how much is being spent on lobbying
- what policy, legislation or issues are being lobbied on
- whether or not they are employing anyone who has previously worked for the departments or organisations that they're now trying to influence.
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The Bond Group believes that the Government must urgently implement GRECO's recommendations to make more information public about meetings between ministers, special advisers and senior civil servants and third parties, and expand the scope of the lobbying register. This is critical to ensure UK compliance with Article 7 (4).

#### 4. Enforcement

Although there are rules for Ministerial conduct and reporting, there are no independent bodies charged with monitoring and ensuring Ministers' compliance, with the Prime Minister or First Minister responsible for enforcing any alleged breaches. There are serious questions as to whether these individuals, even with the support of an adviser on Ministerial conduct, have sufficient independence to enforce the rules robustly enough in the public interest. The Bond Group believes that the Government must take swift action to implement GRECO's recommendation to give greater powers and independence to the Independent Advisor on Ministers' Interests, to ensure compliance with Article 8 of UNCAC.

#### 5. Party funding

The Political Parties, Elections and Referendums Act 2000:

- Introduced a ban on donations from outside the UK and set limits on the amount which could be spent on campaigning at parliamentary elections.
- It also provided that all donations above £7,500 to the central party, and all donations above £1,500 to an 'accounting unit' of a party, must be disclosed as a matter of public record. The onus is on the political parties to disclose donations.

Whilst this law improved the transparency of political party financing, it remains possible for individual donors to make fairly large donations without the need to declare them. Moreover, there are concerns that parties are overly reliant on a few donors, that anonymous donations are sometimes channelled through informal connections, and hence go under the radar of transparency rules.

In the UK, there is no limit on how much an individual or organisation can make in political contributions. So long as the donor or lender has a connection to the UK – for example, they are on a register of UK electors, are a UK-registered trade union or a UK registered company 'carrying on business' within the UK – they can contribute as much as they want. This free-



for-all has seen the larger political parties in Westminster increasingly rely on a small number of big contributors.

This heavy reliance on a small number of donors leaves the door open to corruption, with contributions being offered in exchange for access and apparent influence, or subsequently being recognised with honours and positions; and political parties being unduly conscious of the policy positions of wealthy backers.

Peerages are disproportionately awarded to big party donors, which creates a strong suspicion that they are illegally being awarded in return for cash and favourable loans from wealthy political funders.

Research by academics at Oxford University backs this up. They calculated that the chances of the relationship between donations and the award of peerages being purely coincidental was equivalent to winning the lottery five times in a row. Since 2005, at least 28 big donors have been awarded peerages.<sup>8</sup>

There are also allegations that honours, such as knighthoods, are also used as a 'cheap' way of rewarding big donors. Whether these allegations or perceptions are true, the mere involvement of substantial political contributions constantly raises significant concerns about cronyism and public positions being given in recognition of donations.<sup>9</sup>

### **Article 9. Public procurement and management of public finances**

Since 2013, the UK has made significant progress in making public procurement transparent by implementing integrity measures, and releasing open data. In 2013, the UK endorsed the Open Contracting global principles<sup>10</sup> in its second Open Government Partnership National Action Plan (NAP). In 2016, in its third Open Government National Action Plan,<sup>11</sup> the UK committed: "To implement the Open Contracting Data Standard in the Crown Commercial Service's operations by October 2016; we will also begin applying this approach to major infrastructure projects, starting with High Speed Two and rolling out the data standard across government thereafter."

The 2016 NAP was announced at the International Anti-Corruption Summit, hosted by the UK Government on 12<sup>th</sup> May 2016. Additionally, under Open Government Partnership Sub-National program, Scotland committed to implement Open Contracting Data Standard and released a strategy in late 2017.<sup>12</sup> In the Anti-Corruption Summit Communique hosted by the UK, 40 governments including the UK agreed to better,<sup>13</sup> open deals for their government dollars. This was a significant achievement spurred by the leadership of the UK.

At the Anti-Corruption Summit, the governments of Colombia, France, Mexico, United Kingdom, Ukraine and Argentina, also agreed to come together to found the Contracting 5,

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<sup>8</sup> Andrew Mell, Simon Radford and Seth Alexander Thévoz, Is there a market for peerages? Can donations buy you a British peerage? A study in the link between party political Funding and peerage nominations, 2005-14, Working Paper (March 2015)

<http://www.economics.ox.ac.uk/materials/papers/13888/paper744.pdf>

<sup>9</sup> <http://www.transparency.org/publications/take-back-control/#.WzyVYy3MzR0>

<sup>10</sup> [http://open-contracting.org/global\\_principles](http://open-contracting.org/global_principles)

<sup>11</sup> <http://standard.open-contracting.org/>

<sup>12</sup> <https://beta.gov.scot/publications/scottish-procurement-open-contracting-strategy/>

<sup>13</sup> <http://www.open-contracting.org/news/pledge-make-public-contracting-open-default-major-step-fighting-corruption/>

a group of governments working to foster openness, innovation, integrity and better business and civic engagement in government contracting and procurement. This group has been working well, and the UK has been an active member of Contracting 5.

The Bond Group welcomed the commitment in the 2017 Anti-Corruption Strategy to “reduce corruption in public procurement and grants” (priority four) is identified as one of the six priority areas. The strategy discusses the UK’s commitment to open contracting principles and data standard. The strategy has been effective in ensuring corruption in public procurement is at the top of the agenda of most departments however compliance with these priorities remains weak.

Despite significant improvement on open data in public procurement, there are areas where the Government is falling short. These include the following:

#### 1. Systematic collection and release of procurement data

To make existing decision making better for procurement professionals and increase transparency for civil society and business, the Government needs to prioritise the systematic collection and release of more procurement data. This is particularly true for data in regards to planning of projects, identifiers for buyers and suppliers and implementation of projects. The absence of these data points in the public domain poses a significant corruption risk, as it weakens the strength of existing procurement data and creates barriers for due diligence (both internal and external).

#### 2. Lack of unique open identifiers

For both government spending and contract datasets, the lack of unique open identifiers for companies and buyers has been a consistent challenge. The UK Government has recognised this and has made some technical provisions to address this. The Bond group urges them to prioritise this. However, this year the Government announced ‘data suppression laws’<sup>14</sup> to help company directors, secretaries, people with significant control and LLP members remove their home address from publicly available company documents. Addresses have long been used by civil society to investigate corruption, and identify corporate networks especially where unique identifiers are not available for people.

#### 3. Local procurement transparency is lagging

Local authorities account for the largest share of public-sector spending public procurement, at 45% according to 2012-13 Cabinet Office data. The NHS accounting for the second-largest share at 27%. It is therefore key that public procurement transparency is as strong as that in central government. In practice, there is a gap in availability of public procurement data. The UK has recognised this corruption risk, and has called on a review of local councils in its Anti-Corruption Strategy. It is critical that this review takes place and includes the voices of civil society and government suppliers.

#### 4. Inadequate and late data

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<sup>14</sup> <https://www.gov.uk/government/news/new-laws-to-protect-your-home-address-at-companies-house>

According to Spend Network,<sup>15</sup> only 27% tenders published by Government bodies made it onto Contracts Finder, the Government portal for publishing opportunities and awards. This means that 100,000 tenders failed to make it onto the platform. Many contract award notices are published up to a year after being awarded which reduces the usefulness of this information, especially for businesses who are deciding whether to apply for bids or not. Data on number of bidders is also not published, which is one of the key factors that is known to increase the risk of corruption. The Bond Group recommends that the UK make timeliness and completeness of data published by central government department a priority, and assign a department to oversee compliance.

#### 5. Increasing use of single source tenders

According to the Economist,<sup>16</sup> single bids in the UK have more than quadrupled between 2012 and 2017 - single bids are a significant corruption risk. We recommend the government look seriously at extending the remit of the Single Source Contracting Authority beyond defence spending to include all government spending and provide it with greater powers to investigate single source contracts.

Overall, the UK Government should be commended for prioritising public procurement transparency. The Bond Group urges a greater push for quality data publication and compliance. Lack of good quality information damages trust in public procurement markets, deterring honest businesses from participating and make existing anti-corruption regime less effective.

#### Public financial management

In June 2018, the Public Administration and Constitutional Affairs Committee published a report concluding it is too difficult for the public to know whether public money is being spent as promised.<sup>17</sup> The Committee has called for the government to make significant improvements to departmental annual reports and accounts to ensure that the public can have confidence that money is being spent as promised. The Bond Group urges the government to give priority consideration to these recommendations.

#### **Article 10 and 13. Public reporting and participation of society**

The Freedom of Information Act 2000 (FOIA) provides for a comprehensive system of access to information held by public authorities, including ministries and local governments. The law requires authorities to publish information through publication schemes, as well as respond to requests for information from any person, including members of the public, civil society, businesses, and others. Additionally, the UK has committed to publishing transparency data by government department, including spending over £25,000 and gifts and hospitality of ministers and special advisors.<sup>18</sup>

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<sup>15</sup> <http://spendmatters.com/uk/exclusive-contracts-finder-analysis-suggest-government-tender-opportunities-arent-there/>

<sup>16</sup> <https://www.economist.com/britain/2018/06/30/britains-outsourcing-model-copied-around-the-world-is-in-trouble>

<sup>17</sup> <https://www.parliament.uk/business/committees/committees-a-z/commons-select/public-administration-and-constitutional-affairs-committee/news-parliament-2017/government-accounts-report-published-17-19/>

<sup>18</sup> <https://www.gov.uk/government/collections/how-to-publish-central-government-transparency-data>

The FOIA has some key gaps in its coverage. It does not apply to the National Crime Agency (NCA), which is completely excluded from obligations to publish information on its activities and to respond to requests for information from the public, civil society, or MPs. In addition, information which other public authorities hold which was supplied by, or relates to, the NCA is subject to an absolute exemption from disclosure, regardless of whether disclosure is likely to cause harm. Nor does the FOIA apply to the National Police Chiefs' Council (NPCC). Its predecessor body, the Association of Chief Police Officers (ACPO) was subject to the Act, but this requirement was dropped when the NPCC replaced it in 2015.

Finally, information held by contractors providing services on behalf of public authorities is only subject to the FOIA if the contract itself entitles the authority to the information. If it does, the information is considered to be held on behalf of the authority and can be sought via an FOI request to the authority. If the contract is silent on the question, the information is not subject to the FOIA. The public's rights to such information therefore vary from contract to contract, leaving large volumes of information about contract performance outside the Act's scope.

The Bond Group urges the government to extend the FOIA to private contractors and all bodies with law enforcement responsibilities.

### The FOI Act in Practice

Recent analysis by the Institute for Government (IfG)<sup>19</sup> found that there are deficiencies in public reporting in the UK. In particular it found that there was ongoing patchiness in relation to publication of spending and organisational data, including mandatory data releases of spending over £25,000 and ministerial hospitality. The IfG reviewed different government departments according to their responsiveness to Freedom of Information requests, ministerial correspondence and written parliamentary questions. It found that departments have become considerably less responsive to requests under the Freedom of Information Act over the past eight years.

The IfG found that the number of FOI requests fully or partially withheld increased from 39% in 2010 to 52% in 2017. It also found that some key government departments responsible for public finance, justice and international relations regularly grant fewer than 30% of such requests, including the Cabinet Office, Foreign and Commonwealth Office, Ministry of Justice, HMRC and the Treasury.

In one recent example of how the release of important information relating to meetings between ministers with third parties is resisted by government departments under the FOIA, a journalist sought more detailed information in the form of the diary of engagements of the Secretary of State for Health at the time of the passage of legislation introducing a greater role for the private sector in the provision of health services. The department opposed disclosure. The Information Commissioner ordered it to be released subject to limited redactions, but the department repeatedly - but ultimately unsuccessfully - appealed against this decision to the First-tier Tribunal, Upper Tribunal and Court of Appeal.

A recurring problem is that some government departments repeatedly exceed the statutory 20 working day time limit for answering FOI requests, often by many months. For example,

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<sup>19</sup> <https://www.instituteforgovernment.org.uk/publication/whitehall-monitor-2018/communication-and-transparency>

during 2017 the Information Commissioner's Office served 60 decision notices on the Home Office in cases where it had failed to respond to the request by the time of the notice. In 52 of these there had been no response for over 100 working days with three requests taking over 300 working days without the Home Office either releasing the information or issuing a final refusal.

The FOIA is enforced by the Information Commissioner, who also enforces the UK's Data Protection Act 2018 and the EU General Data Protection Regulation. The Information Commissioner's Office is devoting an increasing proportion of its time to data protection, apparently at the expense of FOI. In May 2018, the Information Commissioner's Office issued a Draft Regulatory Action Policy for consultation. Each of its eight specified priorities related to data protection with none referring to FOI. In particular, there was no reference to the chronic problem of some government departments failing to respond to FOI requests within the statutory deadline. The Information Commissioner's Office (ICO) stated that its specified priorities were likely to govern the allocation of its resources during 2018-19.

The Bond AC Group believes that Government should ensure it complies with the FOIA statutory deadlines and commit to improving release of information under FOIA, and recommends that a parliamentary committee be tasked with oversight of departmental compliance with FOIA as well as implementation of open government commitments (see below).

#### Reform of the Official Secrets Acts

In February 2017 the Law Commission proposed revisions to the UK's Official Secrets Acts (OSA), including the 1989 Official Secrets Act which penalises the unauthorised disclosure of information likely to damage law enforcement, international relations, defence and the work of the security services. The Commission proposed lowering the threshold for the offences. The proposed new offence would be caused by making an unauthorised disclosure of information to which any member of the public would be entitled under the FOIA. It would apply to an unauthorised disclosure 'capable' of damaging law enforcement for instance even if such harm was unlikely.

However, information which is *unlikely* to harm law enforcement is available on request under FOI. If adopted, this proposal would deter officials from discussing matters which they could safely discuss, for fear that they might be committing an offence. Journalists and others who publish information supplied to them without authority by officials would also be at risk under the proposed legislation, if the information was hypothetically capable of causing damage even where that was in reality most unlikely.

The Law Commission is due to report in September 2018 on its final proposal following consultation. The Bond AC Group strongly advises the government not to adopt such contentious changes to the OSA.

#### Open Government Partnership

The UK is a founding member of the Open Government Partnership (OGP), a multilateral initiative launched in 2011 that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. The action plans containing commitments are developed collaboratively with civil society in two-year cycles. The UK is currently developing its fourth action plan, in collaboration with the Open Government Civil Society Network.

Previous plans have included a number of high-profile commitments which have introduced significant change in anti-corruption policy - such as on creating a public register of beneficial owners of companies, adopting open contracting standards, and developing a cross-departmental anti-corruption strategy. There have been commitments to also develop open policy making processes in government, but these have had limited success outside the pilot stage. Access to information is a core pillar of open government, but as mentioned previously appears to be decreasing since the UK's membership of the OGP.

Significant political change over the last two years has limited the engagement of government (and to a lesser extent, civil society) in developing commitments to open government reform more recently. The current lack of high-level ministerial engagement means that it has been harder to develop ambitious or transformative commitments to open government reform. Outside the civil society groups directly engaged in the open government process, there is little knowledge about the multilateral initiative and much less knowledge of the process amongst the wider population.

Meanwhile there is little evidence of a transformative push by government to improve public engagement or to develop new ways to engage a wider proportion of the public in decision making on a significant scale. The IfG found that public consultations made up a very low percentage of government departments' publications (only 4%) suggesting that government departments are not using public consultations to develop policy. While there have been some ad hoc innovations in government departments, it was the UK parliament which recently took the bold step to commission a citizens' assembly for the first time, as a way to overcome the complex and difficult issue of long term funding for social care in England. It is yet to be seen if this has set a precedent on the longer-term impact in the way parliament and government engage with citizens.

The OGP Independent Reporting Mechanism has recommended that a parliamentary select committee oversee and scrutinise open government reforms.<sup>20</sup> The BOND AC group strongly recommends that responsibility for overseeing open government reforms and commitments from the Open Government Partnership is assigned to a specific parliamentary committee and urges the government and parliament to continue to engage and innovate with respect to open policy making.

### Court transparency

Research carried out by Corruption Watch UK reveals that access to information from courts around corruption cases is poor.<sup>21</sup> It is currently very difficult for the public, including the media, to access key court documents, while a significant number of corruption cases are being heard under reporting restrictions, which limits public knowledge about these cases. Court lists also often lack enough detail for journalists to identify forthcoming corruption hearings, meaning the media is failing to report contemporaneously on some major corruption cases. Civil society organisations have called for court transparency to be an action point in the next UK Open Government Partnership Action Plan. The Bond Group

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<sup>20</sup> <https://www.opengovpartnership.org/united-kingdom-mid-term-report-2016-2018>

<sup>21</sup> <https://oecdonthellevel.com/2018/06/28/closed-courts-how-could-open-data-help-the-fight-against-corruption-in-the-uk/amp/>

recommends that the government take urgent steps to ensure greater transparency in corruption court cases.

#### Parliamentary oversight

Responsibility for freedom of information and open government issues is split between several ministries in the government. This results in a lack of comprehensive oversight over the issues among Parliamentary select committees, whose jurisdiction reflects the role of their corresponding ministries, rather than issues. There has not been a review of FOIA by a Parliamentary committee since 2012.

The Bond AC Group recommends that a single parliamentary committee be given greater responsibility for overseeing FOIA and open government reform.

#### Overseas Territories and Dependencies

The FOIA 2000 does not apply to the Overseas Territories and Crown Dependencies. A few of these jurisdictions - Bermuda, Cayman Islands, Isle of Man, the Pitcairn Islands, and Jersey have adopted laws similar to the FOIA while the Falklands, Guernsey and St Helena only have codes of practice. Many still have not adopted any instrument for ensuring public access to information, including Anguilla, British Virgin Islands, Gibraltar, Montserrat, and the Turks and Caicos.

The Bond AC Group recommends that all Crown Dependencies and Overseas Territories adopt comprehensive freedom of information laws.

### **Article 12. Private sector**

There are various aspects to Article 12 where the Bond Group believes that the UK could improve compliance. These include:

#### 1. Corporate Liability reform

Corruption related offences under UK law such as money laundering and fraud are still subject to the current corporate liability regime with no Section 7 style offence. As noted in relation to Article 3 (5), the substantive offences of the Bribery Act, specifically 1 and 6 are also subject to this regime. The corporate liability regime has been recognised by the government as inadequate on various occasions. It makes it almost impossible to prosecute large global companies, creates perverse incentives to insulate a board from knowledge of wrongdoing, thus leading to poor corporate governance and it unfairly penalises SMEs who are more easily prosecutable under the regime. A recent judgement in the UK courts confirms that the rules for corporate liability make it impossible to hold large financial institutions such as banks criminally accountable in the UK.

In 2016, the Government committed to consulting on a failure to prevent economic crime offence. The Call for Evidence it issued on corporate liability for economic crime which closed in March 2017 has yet to be published, despite the government's consultation principles suggesting that the results of such consultations should be published within 3 months.

The lack of action of by the UK on reforming its corporate liability regime is of grave concern to the Bond Group. The Bond Group believes that the UK should introduce a failure to prevent style offence for economic crime and institute a formal Law Commission review at the earliest possible opportunity for reforming the UK's corporate liability regime as it



applies to substantive offences, and abolishing the identification doctrine which is at the heart of that regime.

Furthermore the Bond Group notes that weaknesses in the corporate liability regime make it almost impossible to prosecute companies for books and records failings. English law does not criminalise the misleading of auditors by companies under audit.<sup>22</sup> This meant that the Serious Fraud Office had to drop a case against Olympus corporate in 2015 following a Court of Appeal ruling.

We also note with concern that there do not appear to have been any prosecutions of corporate bodies for money laundering in the UK.<sup>23</sup> Given the UK's size as a centre for financial flows and given the high risks of money laundering identified by the NCA, this is of serious concern.

Without urgent changes to the corporate liability regime, UK compliance with Article 12 (1) in terms of providing 'effective, proportionate and dissuasive sanctions' for offences under the UNCAC committed by private sector actors, will be poor.

## 2. Beneficial Ownership

Article 12 (2) requires State Parties to promote transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities.

Anonymous companies incorporated in the UK have been at the centre of some of the biggest money laundering and corruption scandals in recent years, including those revealed by the Panama Papers, and the Russian and Azerbaijani Laundromats. Research from TI-UK identified 766 UK corporate vehicles allegedly used in 52 large-scale corruption and money laundering cases amounting to nearly £80 billion.

Set up in 2016, the UK's PSC Register is the world's first public register of individuals who own or control companies (i.e. beneficial owners), accessible in open data format. Public information on these individuals includes their name, month and year of birth, nationality, and details of their interest in the company. It allows any member of the public, including other businesses, journalists and civil society organisations, to see the information and download it as structured data – meaning it can be downloaded in bulk and connected to other data sets. The UK should be commended for leading the way on this issue.

Earlier this year, Global Witness released initial results from the biggest ever analysis of the beneficial ownership data in the PSC Register. After downloading the PSC data in bulk and using algorithms to analyse the data, they have been able to build an unprecedented picture of UK companies and their owners, and found:

- Nearly one in ten UK companies - 350,000 - still haven't named a PSC in the PSC Register.
- 4,000 beneficial owners are listed under the age of two, including one who has yet to be born.

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<sup>22</sup> <https://www.sfo.gov.uk/cases/gyrus-group-limited-olympus-corporation/>

<sup>23</sup> <http://www.fcpablog.com/blog/2018/3/20/susan-hawley-the-uk-doesnt-prosecute-money-laundering-and-th.html>



- Four in five Scottish Limited Partnerships (SLPs) have not named a PSC.
- Of the SLPs that have named a PSC, over 40% list one beneficial owner as a national of a former-Soviet country or a company incorporated there. This compares to just 0.01% of all Limited Companies (by far the most widely used UK company type).
- More than 9,000 companies listed PSCs also control at least 99 other businesses.
- Five beneficial owners control more than 6,000 companies, which raises cause for concern that these individuals could be nominees (i.e. people who front a company in place of the people who really control it).
- 7,000 companies declared they are controlled by companies registered in secrecy jurisdictions (i.e. where there is a refusal to share financial information with legitimate authorities), which is prohibited under the regulations.
- Another 25,000 companies stated that they are ultimately controlled by companies which themselves list no PSC.

Global Witness's analysis of the PSC data shows that thousands of companies are either not complying with the rules or are filing highly suspicious entries. Were it not for the publicly accessible and open data format of the PSC Register, they never would have found these problems in the first place. The challenges they identified include:

**Loopholes in the way companies are able to file their PSC statements:** this has enabled individuals to continue to hide their true ownership of a UK company. Methods for avoiding disclosure range from simply filing a PSC statement that says the company has no PSC to more sophisticated means such as using a nominee PSC or listing companies in tax havens as their PSC.

**A lack of clear powers and adequate resources at Companies House to verify the statements made by UK companies of their beneficial ownership data:** Companies House only has limited legal competence for verifying PSC data and, until recently, only had six staff responsible for ensuring compliance of 4 million companies. In January, the UK Government confirmed there are now 20 staff employed at Companies House to deal with PSC compliance activities. While this new capacity at Companies House is welcome, more staffing is needed to address the challenge of verification and there should be dedicated resource for data scientists to scrutinise the data.

**Remaining gaps in data entry and validation processes:** despite some recent steps taken by Companies House to address this issue (such as age prompts and validated nationality and country data fields), there are remaining gaps for ensuring data validation (e.g. validated UK addresses) and verification (e.g. proof of identity, crosschecking with other data sets).

**A lack of enforcement of credible and dissuasive sanctions for non-compliance:** failure to provide accurate information to the PSC Register could be a criminal offence and may result in a fine and/or a prison sentence of up to two years. However, so far no fines have been issued for failing to disclose or providing misleading PSC information, including for SLPs. Although Companies House recently issued its first prosecution for filing false company information, ordering Kevin Brewer to pay over £12,000, the case has been described as a farce. Brewer had set up fake companies as a stunt to expose the lack of checks conducted by Companies House during incorporation.

The Bond Group believes that Companies House should be given more resources and clear responsibility for ensuring companies comply with the PSC Register. This should include having effective systems to validate PSC data and verify its accuracy. Companies House should also proactively identify cases of non-compliance and suspicious activity, prosecuting individuals that mislead or provide false information to the Register.

### *Beneficial ownership transparency in the Overseas Territories*

On 1 May 2018, the UK Parliament passed an amendment to the Sanctions and Anti-Money Laundering Bill requiring the UK Government to ensure that the Overseas Territories (OTs) establish publicly accessible registers of the beneficial ownership of companies by the end of 2020. This represents a huge step forward in ensuring corporate transparency in the OTs, which has so far fallen short of what is needed, with some OTs failing to even hold the information centrally.

The Bond Group hopes that the UK Government will do all it can to assist the Overseas Territories as they come to implement public registers and push the Crown Dependencies to follow suit.

In the meantime, the Overseas Territories and the Crown Dependencies will continue to send beneficial ownership information to UK law enforcement on request as per the 'exchange of notes' system established in 2016. The UK Government was due to publish an assessment of the system in March 2018. As of July 2018, the report has yet to be released. The Bond group recommends that the UK Government publishes the promised assessment as a matter of urgency.

### 3. Promoting transparency and developing standards in the natural resources (extractive industries) sector

The UK Government has continued to show leadership in global efforts to combat corruption and fiscal mismanagement in the extractives (oil, gas and mining) sector. Mandatory country-by-country project-level reporting of payments to governments by UK-incorporated and London Stock Exchange-listed extractives companies is now well into its third year, with 100 companies disclosing their payments made in 2016 and close to 60 to date disclosing payments made in 2017. To date, over £280 billion in payments to governments have been disclosed by these companies. The Government's 2018 post-implementation review of the UK's mandatory reporting regulations (implementing EU Accounting Directive chapter 10) concluded that this type of transparency disclosure is expected to deliver benefits to investors, governments, companies and civil society over the medium to long term and does not disadvantage business interests, and reaffirmed the UK's international policy commitment in this area.

The UK is also leading international efforts to improve transparency around sales of oil, gas and minerals (commodity trading) by co-chairing and championing an international dialogue on this issue at the OECD. The UK also continues to implement the Extractive Industries Transparency Initiative (EITI) and is an active EITI-supporting country at global level.

The UK's performance has been less than exemplary in several respects, however. There is no oversight by government officials of extractive company mandatory reporting (unlike for example in Canada): monitoring of compliance is left entirely to civil society, with the UK Company Registrar and Listing Authority doing no more than follow up with companies on receipt of complaints from civil society. Payment reports by London Stock Exchange-listed

extractives companies are difficult to locate and in many cases appear not to fully comply with recently introduced legal requirements for both machine-readable data and a separate report for consumption by the general public. The Government has alienated mainstream civil society, including major NGOs, from the UK EITI by allocating nomination rights to 50 per cent of civil society seats on the UK multi-stakeholder group to a single organisation that is not recognised by the others as genuinely representative and has recently been struck off the register of companies at Companies House.

The Bond Group believes that the UK Government should reinvigorate its performance in all these areas, in particular by:

- Taking responsibility for monitoring and enforcing its mandatory reporting regulations for UK-incorporated and London Stock Exchange-listed extractives companies by resourcing a small team of officials to monitor company reporting, make all company reports subject to a compliance test, requiring deficient reports to be corrected and taking action in line with statutory penalty provisions towards companies seriously and persistently in default of their reporting obligations.
- Committing, in its fourth Open Government Partnership National Action Plan, to introduce a new mandatory reporting requirement for UK-incorporated and UK-listed extractive and trading companies to report payments to governments for the sale of oil, gas and minerals (commodity trading) under the Reports on Payments to Governments Regulations 2014.
- Exploring possibilities for joint coordination between Companies House, the Financial Conduct Authority and the National Storage Mechanism ([www.morningstar.co.uk/uk/NSM](http://www.morningstar.co.uk/uk/NSM)) to provide users of mandatory extractives company reports with a single online access point for all reports, in both machine-readable open data and a separate report for consumption by the general public, submitted under UK legislation.

#### **Article 14. Measures to prevent money-laundering**

The Bond Group believes that the UK's regulatory and supervisory regime is too fragmented and suffers from conflicts of interest to provide the comprehensive regulation required by Article 14 (1). Research by TI-UK, has found numerous weaknesses in the UK's supervision of its AML regime.<sup>24</sup> These include:

- Poor oversight
- Lack of transparency
- Ineffective sanctions and
- Widespread institutional conflicts of interest.

A study on money laundering and professional service providers by the Royal United Services Institute (RUSI) published in April 2018 called for more visible and robust AML supervision, particularly from HMRC, which supervises estate agents, company formation agents and high value dealers and other sectors at high risk of being used for the laundering

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<sup>24</sup> <http://www.transparency.org.uk/publications/dont-look-wont-find-weaknesses-in-the-supervision-of-the-uks-anti-money-laundering-rules/#.WzUFbi3MyCQ>

of corrupt wealth.<sup>25</sup> The fact that there are 25 supervisors for different sectors also raises questions as to whether the UK's AML Supervision is coherent and consistent across the board. It is too early to say whether the establishment of the Office for Professional Body Anti-Money Laundering Supervision (OPBAS), created in January 2018, will have a significant effect on improving AML supervision. However, the Bond Group believes that the overall number of supervisors should be consolidated; transparency must be improved around enforcement by AML supervisors; and the Government must ensure that lobbying and supervisory powers of bodies responsible for sectoral AML supervision are institutionally separated.

The Bond Group has particular concerns about whether HMRC has an appropriate mechanism for sharing information as required under 14 1 (b) of the UNCAC. HMRC is not covered by the new OPBAS body, and a duty of confidentiality clause placed on HMRC has made it difficult for the agency to share intelligence with other bodies as well as publicise its enforcement actions for money laundering.

#### Suspicious Activity Reporting regime

In relation to Article 14 (1), it is also important to point out that the UK's Suspicious Activity Reporting (SARs) Regime has been described as lacking in effectiveness.<sup>26</sup> The UK Government has recognised this and has committed to a review of the regime. The UK's Law Commission is currently undertaking a review tasked by the Home Office into the UK's Anti-Money Laundering framework, including whether the automatic defence against a failure to disclose money laundering offence where a body has filed a suspicious activity report under the Proceeds of Crime Act is being abused by the private sector and leading to over-filing of such reports, and inadequate reports with low intelligence value.

The Bond Group considers it is essential that the Government prioritise reform in this area, including by law reform and in particular by urgently resourcing new IT infrastructure for the Financial Intelligence Unit, and ensuring that there is sufficient staffing. We are concerned that while the UK government has highlighted the Joint Money Laundering Intelligence Taskforce (JMLIT) as a best practice developed in the UK, it is not clear how useful it has been in relation specifically to corruption related financial flows, and we urge the government to ensure greater transparency about the outcomes of JMLIT in relation to corruption and illicit financial flows.

## **Chapter V. Asset Recovery**

### **Overall implementation**

In December 2017, in preparation for the Global Forum on Asset Recovery, TI-UK and Corruption Watch produced a detailed report on the UK's asset recovery efforts to date.<sup>27</sup> The report found that while the UK has considerable political will to return assets, it has not

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<sup>25</sup> [https://rusi.org/sites/default/files/20180409\\_known\\_unknowns\\_final.pdf](https://rusi.org/sites/default/files/20180409_known_unknowns_final.pdf)

<sup>26</sup> <http://www.oecd.org/corruption/anti-bribery/UK-Phase-4-Report-ENG.pdf>

<sup>27</sup> <http://www.transparency.org.uk/publications/accountable-asset-return-uk-country-level-civil-society-report-by-corruption-watch-and-transparency-international-uk/#.WznceS3Myt->

been as successful as to be hoped in identifying, freezing and confiscating such assets, given the scale of potential corrupt assets in the UK.

The high-end property market in the UK has become one of the go-to destinations to invest and launder questionable funds, making serious corruption and organised crime not only possible, but attractive.

Investigations conducted by Global Witness have identified the risk that corrupt individuals will frequently transfer criminal funds through complex corporate vehicles and offshore jurisdictions, utilising anonymous companies in order to invest in the UK property market. These companies are registered in jurisdictions that do not publish the identity of their beneficial owners and as such, enable the corrupt and criminal to own UK properties without disclosing their interest.

In their 2018 assessment of serious and organised crime, the NCA stated that Criminals continue to purchase property in the UK, in particular within the London super-prime property market, through companies and trusts.<sup>28</sup>

In 2015, it was revealed that at least £122bn worth of property in England and Wales is owned by offshore companies.<sup>29</sup> In 2017, that figure was estimated to be closer to £170bn.<sup>30</sup> Analysis of data from the Metropolitan Police has revealed that 75% of properties whose owners were under investigation for corruption made use of this kind of secrecy.<sup>31</sup>

In December 2017, Global Witness analysed the UK's Land Registry and discovered that over 85,000 properties are owned offshore. Roughly two-thirds of these properties (57,000) are owned by companies registered in British OTs and Crown Dependencies (CDs).<sup>32</sup>

The UK Government first stated its intention to reveal the true owners of UK properties back in 2015, stating that a register would be up and running in 2018. However, the Government's current timetable will not see the legislation passed until the summer of 2019, and the register will only come into effect in 2021. The Bond Group is concerned that the delay in introducing this register will allow those holding property in the UK bought with corrupt assets plenty of time to shift their ownership patterns or their assets outside the UK.

In order to improve the UK's asset recovery efforts so that the UK can be compliant in spirit with the Convention, the Bond Group believe that the Government must take greater steps in relation to the following:

#### 1. Identifying Illicit Assets

The UK Government must expedite the property register and ensure that when draft legislation is published, stakeholders are given the opportunity to identify loopholes and propose amendments.

Additionally, as we note below in relation to article 58 (Financial Intelligence Unit), we do not believe that the UK is being transparent enough about identifying financial flows into

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<sup>28</sup> <http://www.nationalcrimeagency.gov.uk/publications/905-national-strategic-assessment-for-soc-2018/file>

<sup>29</sup> <http://www.transparency.org.uk/case-for-ending-offshore-corporate-secrecy-the-uk-property-market/#.WzyLvtJKiUk>

<sup>30</sup> <http://www.private-eye.co.uk/registry>

<sup>31</sup> <http://www.transparency.org.uk/case-for-ending-offshore-corporate-secrecy-the-uk-property-market/#.WzyLvtJKiUk>

<sup>32</sup> <https://www.globalwitness.org/en/blog/two-years-still-dark-about-86000-anonymously-owned-uk-homes/>

the UK by region, country and type. This kind of analysis is conducted by African FIU's such as in Zambia and Uganda, and it would be very useful for the UK to conduct such analysis and make it public to show it is serious about identify illicit flows into the UK.

### 2) Ensuring that new powers in the Criminal Finances Act (specifically Unexplained Wealth Orders) are implemented effectively with proper resourcing and coordination

There must be greater transparency and accountability in how the UK implements various aspects of the Criminal Finances Act including Unexplained Wealth Orders (UWO) and reforms to the Suspicious Activity Report (SAR) regime. One way of achieving this would be for law enforcement bodies to produce an annual public report on their experience of and obstacles to the use of UWOs and the impact of modifications to the SARs regime.

Currently, there is little public information about UWOs that are proceeding through the courts aside from a brief news release in February 2018 from the NCA that two UWOs had been secured.<sup>33</sup> Furthermore, it is not clear that any documentation about UWOs from these proceedings will become public. The Bond Group understands the need for confidentiality during the early stages of the process, but is concerned that the public and civil society cannot properly assess the effectiveness of UWOs without proper transparency in the use of UWOs, including ensuring that court documentation becomes public at an appropriate point of time, and that appropriate stages of UWO hearings are open to the public, subject to necessary restrictions.

The Bond Group believes that the NCA's International Corruption Unit should give serious consideration to introducing a list of investigations it is undertaking where to do so would not impede operational progress to ensure public confidence that action is being taken.

Additionally, the Bond Group recommends that the Government ensures that the law enforcement agencies tasked with implementing the new powers are given proper capacity and resources.

### 3) Improving transparency and accountability in the asset recovery process

It is very difficult to access public information about the UK's asset recovery efforts. In particular, it is impossible to get access to public information about how many assets relating to corruption have been frozen and confiscated by the UK. We urge the Government to consider making a public national database of asset recovery relating to grand corruption; ensure that key court documents in relation to asset recovery cases should be made public at the appropriate point; ensure that authorities from countries whose assets have been restrained are kept properly informed at all stages of the asset recovery process. The Bond Group notes that transparency is essential to maintaining confidence in the UK's asset recovery efforts.

### 4) Strengthening Accountability in the Private Sector

The Bond Group believe that in order to prevent and detect corrupt assets, accountability in the private sector must be improved in the UK, by taking the measures we outlined in relation to Article 12 and 14 above.

## **Article 53 (b). Compensation**

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<sup>33</sup> <http://www.nationalcrimeagency.gov.uk/news/1297-nca-secures-first-unexplained-wealth-orders>

The Bond Group welcomes the publication of Compensation Principles by the UK law enforcement and prosecuting bodies on 1st June 2018. We also welcome the recent return of compensation to Kenya, Mauritania, Tanzania and another country that can't be mentioned due to reporting restrictions, as well as the forthcoming return of funds to both Chad (from a civil recovery process led by the SFO). We have concerns that these principles, which have been in informal operation since 2015, are however hampered by court rules that state that compensation cannot be granted in complex cases, and that applying the principles, the prosecuting bodies take too narrow approach to assessing compensation.

#### **Articles 54 and 55. Recovery of property through MLA and international cooperation**

The OECD Working Group on Bribery Phase 4 review of the UK noted that it was very difficult to assess whether the UK is providing prompt and effective Mutual Legal Assistance in relation to foreign bribery cases because of the absence of detailed and comprehensive statistics.<sup>34</sup> The Bond Group believes that in order to be able to monitor the UK's compliance with international cooperation and assistance articles under UNCAC, the UK Government must make public detailed statistics on how it handles MLA requests, not just for foreign bribery but for corruption generally and the relevant authorities should collect and publish comprehensive data on timelines for providing MLA in relation to specific corruption offences.

#### **Article 55. Return and disposal of assets**

We note that there is no domestic law that requires the UK to return stolen assets to their country of origin and that the UK Government views the repatriation and sharing of assets as a diplomatic issue outside the scope of domestic law. We believe that the UK Government is genuinely committed to returning funds, but at the moment this done in an un-transparent and ad hoc manner. We welcome the development of the principles for disposition and transfer of confiscated stolen assets in corruption cases at the Global Forum on Asset Recovery, however we remain concerned that transparency and accountability and the inclusion of non-governmental stakeholders in the return process (Principles 4 and 10) remain under-developed in practice. The Bond Group would like to see the UK Government publish before return of proceeds of corruption, the amount to be returned, and any agreements made about how the money should be used, and would particularly like to see non-governmental stakeholders included in decisions about how returned funds should be allocated.

#### **Article 58. Financial intelligence unit**

While the UK has a well-established FIU, there have been concerns over its effectiveness, and whether it has sufficient resources, both in terms of personnel and IT infrastructure, to process the large amount of Suspicious Activity Reports it receives. The OECD Working Group on Bribery's review of UK implementation of the OECD Convention Against Bribery under Phase 4, published in March 2017, noted that it the lack of detection of foreign bribery by the UK's FIU was "*a source of great concern.*" The OECD called upon the UK to adopt further reforms to the FIU and the SAR regime. It is likely that the Financial Action Task Force (FATF) mutual evaluation of the UK, due to be published in October 2018 will have recommendations for improvement in these areas too.

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<sup>34</sup> <http://www.oecd.org/corruption/anti-bribery/UK-Phase-4-Report-ENG.pdf>

The Bond Group notes that the FIU, nor any other part of the UK Government, does not make public any analysis of financial flows into the UK by region and country. It is therefore not clear to us whether this analysis is being carried out by anyone within the UK Government or enforcement bodies. We believe such an analysis is critical to establishing what role the UK may play in receiving illicit financial flows.

## **About Bond**

Bond is the UK membership body for organisations working in international development or supporting those that do through funding, research, training and other services. Established in 1993, we now have over 450 members ranging from large agencies with a world-wide presence to smaller, specialist organisations.

[www.bond.org.uk](http://www.bond.org.uk)