

Bond Anti-Corruption Group Parallel Report and Questionnaire on The UK's Compliance with the UN Convention Against Corruption

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Name of Country: United Kingdom
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Disclaimer

All reasonable efforts been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of September 2011.

Nevertheless, the members of the Bond Anti-Corruption Group cannot accept responsibility for the consequences of its use for other purposes or in other contexts. Policy recommendations reflect the collective opinion of the Bond Anti-Corruption Group but may not reflect the opinion of each member organisation. This Report has been produced for information only and should not be relied on for legal purposes. Legal advice should always be sought before taking action based on the information provided.

Executive Summary

The Bond Anti-Corruption Group conducted an independent, parallel review of the United Kingdom's compliance with two chapters (3 and 4) of the United Nations Convention Against Corruption (UNCAC). The review finds the UK to have a sound legal framework in place that complies with most of the relevant provisions of the UNCAC and that UK authorities have been transparent and inclusive in their review process. However, our overall conclusion is that compliance is incomplete, because:

- Although we welcome the introduction of far-reaching anti-bribery legislation, the Ministry of Justice's guidelines, while not legally-binding, risk weakening the legislation in certain areas and creates unnecessary confusion for companies.
- Embezzlement and misappropriation are crimes in the UK. But monitoring and auditing will be weakened by the impending abolition of the Audit Commission, and arrangements for its replacement are unsatisfactory.
- The UK's legal framework to criminalise the laundering of proceeds of corruption is largely sound. However, there has not been enough action against the facilitators of corruption, for example the lawyers, bankers and accountants that handle corrupt transactions. There is also a serious problem with the implementation and enforcement of the customer due diligence requirements, as shown by a recent report by the UK financial regulator, which found systemic weaknesses in banks' anti-money laundering systems.
- The UK provides strong and comprehensive protection for workplace whistleblowing. However, three out of every four adults do not know anything about the legislation on whistleblowing.
- The UK has systems in place to enable and support international cooperation in the investigation and prosecution of corruption offences. However, there is limited information in the public domain on mutual legal assistance casework.

Our key concern therefore is around enforcement. We believe the drivers of enforcement to be the following: a) institutional will to pursue corruption-related cases as a priority; b) adequate resources; c) availability of specialist teams; and d) a single agency responsible for investigation and prosecution. Institutional will to pursue corruption as a priority appears to have been eroded by the Ministry of Justice Bribery Act Guidance that created potential loopholes. It is not clear whether the Serious Fraud Office, which is principally in charge of enforcing the Bribery Act 2010, will be adequately resourced. And it is not clear how well the Crown Prosecution Service will liaise with the City of London Police or other police forces for prosecutions under the new Bribery Act.

Cases brought against commercial organisations have increased in recent years. But many have been settled short of criminal conviction, with civil recovery orders being made. Only two cases have resulted in corporate convictions for corruption offences. The most high-profile case, the SFO's investigation into the BAE Systems activities in Saudi Arabia, was dropped in circumstances which generated criticism both at home and abroad.

Furthermore, we are concerned that the UK is not improving standards in some areas. The UK does not collect information on the ultimate or beneficial owners of UK companies, nor does it exert pressure on Crown dependencies and overseas territories to publish their company registries. The 'revolving door' between public and private sector remains to be a problem, eroding standards in public life. Under English criminal law, the burden of proof for embezzlement still rests with the prosecution.

In light of these findings, we recommend that:

- The final UK UNCAC Self-Assessment Report be published and debated in Parliament
- The government should ensure UNCAC is extended to all Crown Dependencies and Overseas Territories.
- Sufficient dedicated resources to pursue prosecutions under the Bribery Act must be a priority in order for the Bribery Act 2010 to remain credible. Resource constraints should not undermine the capacity of law enforcement.
- Plans for the abolition of the Audit Commission should be put on hold until there has been proper consultation and a thorough assessment of alternative options.
- Stronger regulations be enforced on private consultancies and lobbying of government and Parliament. Legislation to require mandatory registration of lobbyists should be given a higher priority in Parliament's legislative programme.
- Legislation around regulation of the revolving door between government and the private sector need to be considered and introduced.
- More diligence be pursued in enforcing know-your-customers rules, and expanded to other professional services like accounting, law, and other service providers.
- Protection for whistleblowing be better publicised.
- The government should collate and publish corruption-related data on a regular basis.

Overall, we wish to emphasise that it has been difficult to understand the nature and extent of corruption in the UK, and therefore also to monitor the UK's compliance with international anti-corruption standards. This is because the government has no mechanism for tracking or categorising corruption cases and so data are either non-existent or very hard to obtain.

Note: Bond is the membership body for UK international development organisations. Established in 1993, Bond has 360 members ranging from large bodies with a world-wide presence, to smaller, specialist organisations working in certain regions or with specific groups of people. The Anti-Corruption Group within Bond has the following core members: CAFOD, Christian Aid, The Cornerhouse, Corruption Watch, Global Witness, Tearfund, Transparency International-U and TIRI. For this review, the Anti-Corruption Group coordinated with Public Concern at Work.

A. Introduction

Corruption has devastating effects on developing economies and their citizens' quality of life. Its cost in Africa alone has been estimated at US \$148 billion a year, representing 25% of the continent's GDP. Corruption undermines economic growth rates and cripples public services, as money which should be destined for re-investment and public expenditure finds its way into private bank accounts, often abroad.¹ It is for this reason, that the Bond Anti-Corruption Group believes that corruption must be tackled – and now.

The Bond Anti-Corruption Group is made up of likeminded British NGOs who, through their work, witness the devastating effects of corruption on developing countries every day. Our experience has taught us that corruption continues to be one of the biggest obstacles to development, poverty alleviation and good governance. Our aim is to draw attention to the impact of corruption on developing countries and provide a platform for the voices of our partners and southern civil society organisations to be heard in the UK. We intend to use our joint influence to campaign for changes in policy to help bring an end to corruption around the world.

The United Nations Convention Against Corruption (UNCAC) is the most comprehensive global anti-corruption legal instrument for tackling corruption. It is to be applauded for its strengths in addressing issues of corruption both between states and within them.

The UK signed the Convention in December 2003 and subsequently ratified it in February 2006. The Bond Anti-Corruption Group regards the UK's Review of its compliance with Chapters 3 and 4 of the UNCAC (beginning in summer 2011) as an excellent opportunity for the UK to look at the comprehensive nature of its anti-corruption efforts, particularly analysing them in line with international conventions. This parallel report therefore seeks to analyse the transparency of the review process and highlights key aspects of the UK's compliance, noting the particular areas where the UK falls short of its international commitments and where more needs to be done in order for the UK to play its part in tackling international corruption.

Furthermore, the Bond group hopes that this report will feed into wider global debates in order that a broader analysis of the implementation of the Convention can be done. This global analysis will help to identify key aspects of UNCAC Chapters 3 and 4 that need greater attention and action on the global stage.

¹ According to an often quoted African Union study on corruption in Africa that was prepared in 2002 and which fed into the development of the African Union's anti-corruption declaration approved in 2003 – see: Smith, Pieth and Jorge (February 2007). 'The Recovery of Stolen Assets: A Fundamental Principle of the UN Convention Against Corruption' Briefing Paper. Prepared for the Basel Institute on Governance, International Centre for Asset Recovery. Published by the U4 Anti-Corruption Resource Centre, Norway, <http://www.u4.no/themes/uncac/asset-recovery.cfm>

B. Key Findings

1. Conduct of process

At the time of writing, the UK UNCAC Review Process was conducted in a transparent and inclusive manner. The lead agency and focal point, the Department for International Development (DFID), consulted with the Bond group before the Review process started and made a formal announcement seeking input into the review from civil society, the private sector and interested members of society. DFID invited civil society organisations to comment on the self-assessment during a consultation phase and has agreed to allow civil society to meet with the peer review teams during the forthcoming country visit. We hope that the final UK UNCAC Report will be published in full and debated in Parliament. Any weaknesses identified in the UK's compliance should be addressed urgently.

2. Availability of information

Lack of information and data on corruption is a matter of concern, and a challenge for the research behind this report. Data availability is extremely poor and information appears to be made selectively available by the Serious Fraud Office. Details of settlements, in particular, are sketchy and opaque. Data on domestic corruption cases is almost non-existent and given that there is limited data in the public domain it is unclear how, or whether the relevant authorities collect and collate their information.

Apart from making the prevalence and scale of corruption difficult to assess, the lack of data is also an indication that corruption is not considered to be a problem.

As noted in Transparency International's recent 'Corruption in the UK' report the 'problem is that potentially hundreds, if not thousands, of corruption cases go unreported because they are prosecuted as different offences. In 2009 alone, there were 10,090 prosecutions under the 2006 Fraud Act, with no indication as to how many may have included some elements of corruption'.²

3. Implementation into Law and Enforcement *(key points on implementation and enforcement – include any noteworthy case law, challenges and key concerns)*

Note: The below information was compiled in the summer of 2011. The cut off date for the data collection was the 1st September, so the information given below reflects this.

UNCAC article	Status of implementation (Is the article Fully / Partially / Not implemented?)	How are these provisions enforced in practice? (Good/ Moderate/ Poor)
Art 15 (bribery of	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Good

² June 2011, p13.

<p>national public officials)</p>	<p><input type="checkbox"/> In part <input type="checkbox"/> No <i>Comment (one line):</i> The coming into force of the Bribery Act on 1 July 2011 means that the UK has fully implemented Art. 15 into domestic criminal law, without any of the weaknesses referred to in the guidelines of this review.</p>	<p><input checked="" type="checkbox"/> Moderate <input type="checkbox"/> Poor <i>Comment (one line):</i> It took one year and three months for the Act to come into force after it was passed in parliament. This in itself cannot be considered a good start to enforcement. However, it is too early to assess enforcement in practice.</p>
<p>Art. 16 (bribery of foreign public officials)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> In part <input type="checkbox"/> No <i>Comment (one line):</i> Section 6 of the Bribery Act implements Article 16 and also finally makes the UK fully compliant with the OECD Anti-Bribery Convention.</p>	<p><input type="checkbox"/> Good <input checked="" type="checkbox"/> Moderate <input type="checkbox"/> Poor <i>Comment (one line):</i> It is still too early to assess enforcement in practice and it remains to be seen whether weaknesses in the MOJ's Guidance have the effect of weakening enforcement in this area. There are also concerns around the resourcing for the prevention, investigation and prosecution of complex international cases of bribery.</p>
<p>Art.17 (embezzlement, misappropriation or other diversion of property by a public official)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> In part <input type="checkbox"/> No <i>Comment (one line):</i> The issues encompassed by UNCAC Article 17 are dealt with under English law by the general criminalisation of embezzlement, misappropriation or diversion of property by an individual and is not specific to public officials.</p>	<p><input type="checkbox"/> Good <input checked="" type="checkbox"/> Moderate <input type="checkbox"/> Poor <i>Comment (one line):</i> Civil society is concerned that whilst at present the legislative framework allows for this to be implemented in practice, the future abolition of the Audit Commission may have the effect of weakening enforcement in this area.</p>
<p>Art. 20 (illicit enrichment)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> In part <input type="checkbox"/> No <i>Comment (one line):</i> The issues encompassed by Article 20 are dealt with under English law by a variety of legislation. It should also be noted that Members of the UK</p>	<p><input type="checkbox"/> Good <input checked="" type="checkbox"/> Moderate <input type="checkbox"/> Poor <i>Comment (one line):</i> The series of scandals over alleged trading in influence suggest there are problems in this area.</p>

	Parliament are required to register business interests, gifts and hospitality received in their position above a certain value.	
Art.23 (laundering of proceeds of crime)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> In part <input type="checkbox"/> No <i>Comment (one line):</i> The UK's Proceeds of crime Act (POCA) 2002 criminalises money laundering.	<input type="checkbox"/> Good <input checked="" type="checkbox"/> Moderate <input type="checkbox"/> Poor <i>Comment (one line):</i> There have been a few successful cases of individuals being prosecuted and there continue to be weaknesses in the UK's money laundering regulations (MLR 2007),
Art. 26 (Liability of legal persons)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> In part <input type="checkbox"/> No <i>Comment (one line):</i> UK law does recognise and provide that legal persons may be liable for bribery and corruption offences.	<input type="checkbox"/> Good <input type="checkbox"/> Moderate <input type="checkbox"/> Poor <i>Comment (one line):</i> The Bribery Act 2010 s.7 (became law on 1 July 2011) creates a specific corporate offence, but there have been no prosecutions yet.
Art. 33 (protection of witnesses, reporting persons)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> In part <input type="checkbox"/> No <i>Comment (one line):</i> The UK's Public Interest Disclosure Act, 1998 goes further than witness protection and offers a strong comprehensive protection for workplace whistleblowing.	<input type="checkbox"/> Good <input type="checkbox"/> Moderate <input checked="" type="checkbox"/> Poor <i>Comment (one line):</i> Outside of the health service, PIDA has not been actively promoted by the UK government. Hence, enforcement is weak and more needs to be done to promote whistleblowing in the public sector.
Article 46(9)(b) &(c) (MLA)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> In part <input type="checkbox"/> No <i>Comment (one line):</i> The UK has approximately 37 bilateral agreements currently in place with a broad range of countries. In recent years, steps have been taken to strengthen the UK Central Authority in the Home Office.	<input checked="" type="checkbox"/> Good <input type="checkbox"/> Moderate <input type="checkbox"/> Poor <i>Comment (one line):</i> The UK authorities receive approximately between 40 – 50 new requests for Mutual Legal Assistance a year from all over the world. It is not known how many requests the UK makes itself.

QUESTIONNAIRE

EVALUATION OF THE REVIEW PROCESS

Please provide as much information about the following as available at the time of submission of the report, to be updated following submission of the rest of the report.

Table 1: Transparency of the government's review process

Transparency of the Government's Undertaking of the Review Process		
Did the government make public the contact information for the country focal point?	Yes	The UK's focal point, the Department for International Development (DFID) agreed to announce the UNCAC review, the name and contact details of the focal point and outline the schedule. This announcement was made on the 15 th July and included an email notification to all those involved in the Bribery Act consultation.
Was civil society consulted in the preparation of the self-assessment?	Yes If yes, who? (please tick) <input type="checkbox"/> Women's groups <input type="checkbox"/> Access to information groups <input type="checkbox"/> Trade unions <input type="checkbox"/> Academic networks <input checked="" type="checkbox"/> Anti-corruption groups <input type="checkbox"/> Other (please list)	DFID has consulted with the Bond Anti-Corruption Group and other stakeholders. In the announcement it requested that those seeking to input into the review process contact the focal point offering their comments.
Was the self-assessment published on line or provided to the expert assessing? If so, by whom?	Yes	The UK published the draft self-assessment online and invited comments. It also invited various stakeholders to attend a meeting to comment on the self-assessment before it was finalised.
Did the government agree to a country visit?	Yes	Planned for early 2012
Was a country visit undertaken?	Planned for early 2012	Planned for early 2012
Was civil society invited to provide input to the official reviewers? Please enter the form of input invited.	Yes	Civil society was invited to submit a parallel report at the time of the self-assessment so that DFID

		could use and input the data. They were also invited to comment on the self-assessment during a 2 week consultation phase before the assessment was sent to the peer reviewers. DFID has agreed for civil society to meet with the peer review team in early 2012
Has the government committed to publishing the full country report (Please indicate if published by UNODC and/ or country)	Yes	Yes – the UK published the final pilot report, although this took a while for it to be published.

*Civil society organisations (CSOs) are defined as not-for-profit organisations including non-governmental organisations (NGOs), community groups, trade unions, indigenous groups, charitable organisations, faith-based organisations, academic institutions and foundations.

ACCESS TO INFORMATION

1. Is there access to information legislation in your country?

Yes

Explanation:

The UK Freedom of Information Act 2000 creates a public 'right of access' to information held by public authorities.

2. Did you try to make a formal access to information request based on legislation? If so, please specify the relevant legislation.

No

3. Which government bodies or institutions were contacted in order to obtain information necessary to fill in this questionnaire?

This questionnaire drew upon a variety of data, evidence and continued contact with government, including the Department for Business, Innovation and Skills and the City of London Police.

4. What obstacles did you encounter in obtaining the necessary information?

The government has no mechanism for tracking or categorising corruption cases and so data are either non-existent or very hard to obtain.

5. Is information on numbers of cases accessible?

No

Note: If not, please indicate the official or other reasons why not:

Data on domestic corruption cases are almost non-existent and no data is made publicly-available or, apparently, collected or collated by the relevant authorities. Information on foreign bribery cases can be obtained through requests to BIS, the SFO and the City of London Police.

6. Is information on case details accessible?

No

Note: If not, please indicate the official or other reasons why not:

Data availability for UK corruption cases is extremely poor. General information on foreign bribery cases is available from the Serious Fraud Office. However, details of negotiated settlements of foreign bribery cases are sketchy and opaque.

IMPLEMENTATION INTO LAW OF KEY ARTICLES

ARTICLE 15: Bribery of national public officials

1. Has the article been implemented into domestic criminal law?

Yes

Explanation:

The UK Bribery Act has come into force on 1 July 2011 and to our knowledge means that the UK has fully implemented Art. 15 into domestic criminal law, without any of the weaknesses referred to in the guidelines of this review.

Note: Please ensure reference to both active and passive bribery components.

2. What priority steps need to be taken to ensure compliance with the UNCAC?

With the very recent commencement of implementation of the Bribery Act, it is essential that enforcement is monitored and evaluated carefully.

ARTICLE 16: Bribery of foreign public officials

1. Has the article been implemented into law?

Yes.

Explanation:

We believe the UK Bribery Act, which came into force on 1 July 2011, to be one of the strongest anti-bribery laws worldwide, with appropriate reference to the bribery of foreign public officials.

However, we have doubts as to whether the UK is fully compliant with Article 16, because of the following weaknesses in the non-statutory guidance of the Ministry of Justice on adequate bribery-prevention procedures:

- *Bribes for the benefit of third parties or coursed through certain intermediaries are not included.*

Clause 42 of the Ministry of Justice guidance asks for the prosecutor to demonstrate that there is a causal link between a bribe paid and a direct business advantage or benefit to the parent company. In other words, the Secretary of State suggests that a business advantage to the parent company by virtue of its corporate relationship with the subsidiary or as a result of the payments of dividends by the subsidiary, does not constitute a direct business advantage or benefit for the purposes of the Act. We are concerned such interpretation could open up a loophole allowing companies to “outsource” bribery to subsidiary partners.

The December 2010 OECD Anti-Bribery Working Group Report 3 noted that, “the [Bribery Act] Section 7 offence of failure to prevent bribery ... does not apply to unincorporated bodies such as trusts, unincorporated associations or unincorporated charitable organisations. Also, there may be issues where an agent bribes a foreign official on the company’s behalf but performs no other services, and where a company fails to prevent bribery committed on its behalf by a second company (including a subsidiary).” In our experience, the complex operations of extractives companies in the developing world often include subsidiary arrangements and charitable organisations that might potentially be used to avoid liability under the Act.

- *A high standard of evidence is required to prove a corruption agreement and to establish intent.*

Clause 42 of the Ministry of Justice guidance suggests that a prosecutor will need to establish an intention on the part of a subsidiary to obtain a business advantage for the parent rather than for itself. Again, this seems to potentially open a loophole that parent companies could use to “outsource” bribery of a foreign public official to a subsidiary.

- *Uncertainty is created with definitions of jurisdictional limitations (see also Article 42), for example, restrictions on application of nationality or territoriality jurisdiction*

Parts of the MoJ Guidance on adequate procedures have created uncertainty about the extra-territorial reach of Section 7 of the Bribery Act 2010. Although the Guidance is non-statutory we are concerned that clause 36⁴ contradicts the spirit of Section 7 of the Act which in our view needs to be broadly interpreted in order to prevent an unfair playing field for UK companies. This means including all companies listed on UK stock exchanges and foreign companies that operate subsidiaries in the UK.

Also, the OECD Anti-Bribery Working Group has noted that “companies incorporated in the Crown Dependencies, but which do not carry on a business in the U.K., can be used to commit foreign bribery without fear of prosecution under the Bribery Act”.⁵ This could potentially be very significant

3 Point 83, UNITED KINGDOM: PHASE 1 Report, OECD Working Group on Bribery in International Business Transactions, 16 December 2010.

4 Clause 36... “The Government would not expect, for example, the mere fact that a company’s securities have been admitted to the UK Listing Authority’s Official List and therefore admitted to trading on the London Stock Exchange, in itself, to qualify that company as carrying on a business or part of a business in the UK and therefore falling within the definition of a ‘relevant commercial organisation’ for the purposes of section 7. Likewise, having a UK subsidiary will not, in itself, mean that a parent company is carrying on a business in the UK, since a subsidiary may act independently of its parent or other group companies.

5 Points 86 and 88, UNITED KINGDOM: PHASE 1 Report, OECD Working Group on Bribery in International Business Transactions, 16 December 2010.

considering that 802,850 companies were incorporated in the British Virgin Islands alone as of 2007.⁶ And in 2008 and 2009, the figures for FDI to the British Virgin Islands were almost the same as for the whole of Brazil.⁷ Considering the UK can and has directly legislated in Overseas Territories in certain cases, the government should ensure that UNCAC is also extended to all Crown Dependencies and Overseas Territories.

2. What priority steps need to be taken to ensure compliance with the UNCAC?

In addition to resolving the points raised in the preceding section above, the following issues should be taken into account with regard to the implementation of the Bribery Act:

- *Adequate resources*: Resource constraints should not undermine the capacity of law enforcement authorities to enforce the Bribery Act. Sufficient dedicated resources to pursue prosecutions under the Bribery Act must be a priority in order for the Act to remain credible.
- *Governmental capacity*: There must be ample capacity, awareness, political backing and will in overseas diplomatic posts to assist UK companies in dealing with corruption risks. This will mean dedicated anti-corruption training and continued governmental support for those staff who work with UK businesses overseas.
- *Penalties*: Penalties for offences under the Act must be substantial enough to ensure that the law acts as a strong deterrent against bribery. High penalties would also encourage companies to self-report and strengthen the hands of prosecutors in negotiating settlements.

ARTICLE 17: Embezzlement, misappropriation or other diversion of property by a public official

1. a) Has the article been implemented into law?

Yes.

Explanation:

The issues encompassed by UNCAC Article 17 are dealt with under English law by the general criminalisation of embezzlement, misappropriation or diversion of property by any individual and is not specific to public officials. Relevant legislation includes:

- *Fraud Act 2006 – s.2* – the offence of ‘fraud by making a false representation’, s.3 the offence of ‘fraud by failing to disclose information’, and s.4 – the offence of ‘fraud by abuse of position’ is committed by a person who occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person, and dishonestly abuses that position. For all three offences the offender must intend by means of the false representation, the failure to disclose information or the abuse of that position to make a gain for himself or another or to cause loss to another or to expose another to a risk of loss. A person may be regarded as having abused his

6 OECD, U.K.’s Phase 2bis Report (para. 268)

7 World Investment Report 2010. In 2008 both Brazil and BVI received £45 billion dollars. In 2009 Brazil, recorded FDI inflows of \$26 billion and BVI \$25 billion

position even though his conduct consisted of an omission rather than an act. “Gain” or “loss” may relate to money or any other property and may be permanent or temporary.

- *Theft Act 1968 – s.1* - A person is guilty of the basic offence of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.
- *Proceeds of Crime Act 2002* – this Act covers a range of offences that apply to activities of diversion of criminal property, including concealing, disguising, converting or transferring criminal property. Once again, this offence concerns any individual and is not specific to public officials.

b) If so, does the burden of proof shift to the defendant to prove that the funds in question were legally obtained?

No

Explanation:

No, the burden of proof under English criminal law proceedings rests with the prosecution to prove, beyond reasonable doubt, the elements of the offence in question.

2. What priority steps need to be taken to ensure compliance with the UNCAC?

Though there is general provision under English law for offences of embezzlement, there is no specific offence of what is encapsulated by UNCAC Article 17. That said, the existing legislation provides avenues for the prosecution of offences envisaged by UNCAC Article 17.

However, civil society has a very strong concern that the monitoring and auditing arrangements with regard to public officials in the UK are being significantly weakened by the abolition of the Audit Commission and unsatisfactory arrangements for its replacement. There are concerns that local authorities will now face conflicts of interest in being able to choose their auditors, and that private audit firms may not be suitable for the task. Plans for the abolition of the Audit Commission should therefore be put on hold until there has been proper consultation and a thorough assessment of alternative options for auditing local government and the NHS.

ARTICLE 18: Trading in Influence

1. a) Has the article been implemented into law?

No.

Explanation:

The UK does not criminalise the offering, promising or giving advantages in relation to the exercise of influence generally, as this would catch legitimate lobbying and marketing.

However, this creates a 'revolving door' in which public officials join the private sector, exemplified by a series of scandals. This potentially allows trading in influence involving former public officials, parliamentarians and government ministers.⁸ Also, the conflict of interest arrangements for members of parliament and peers with regard to consultancies and paid advisory services are poorly regulated, increasing the potential risk of trading in influence or even corrupt enrichment.

⁸ For more information see 'The Revolving Door called Cabs for Hire' Transparency International, May 2011

2. What priority steps need to be taken to ensure compliance with the UNCAC?

The absence of legislation in this area means that standards in public life are vulnerable to erosion, as evidenced by the scandals related to the 'revolving door' between government and the private sector. In a number of cases, questions have been raised about whether there may have been illegitimate trading in influence. Rules and procedures for regulating the revolving door continue to be very weak and are in urgent need of reform.

The Independent Parliamentary Standards Authority should draw up post-public employment rules for MPs, taking into account differences in the incidence of conflict-of-interest risk between various roles, and being sensitive to the job insecurity that elected MPs face. Consideration of this issue should be linked to an examination of the remuneration of MPs.

The Committee on Standards in Public Life (CSPL) should undertake a review in 2012 of the effectiveness of Parliament's key accountability and integrity mechanisms.⁹

ARTICLE 20: Illicit enrichment

1. a) Has the article been implemented into law?

Yes.

Explanation:

Legislation and issues discussed in respect of UNCAC Article 17 similarly applies to UNCAC Article 20.

It should also be noted that Members of the UK Parliament are required to register business interests, gifts and hospitality received in their position that are above a certain monetary value. This register has been established with a view to improving transparency and minimising opportunities for illicit enrichment. There is a similar requirement for local government officials (mayors, county councillors, borough councillors and parish councillors). There have been long-standing civil society concerns about the consultancy and lobbying activity undertaken by members of both houses of parliament, as well as the 'revolving door' between public and private sector. Both of these areas are poorly regulated, and the regulation is poorly enforced.

Note: for the purposes of this article illicit enrichment refers to a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

b) If so, does the burden of proof shift to the defendant to prove that the enrichment in question was legally obtained?

No.

Explanation:

No, the burden of proof under English criminal law proceedings rests with the prosecution to prove, beyond reasonable doubt, the elements of the offence in question.

⁹ For more information see 'Corruption in the UK' Transparency International, June 2011

2. What priority steps need to be taken to ensure compliance with the UNCAC?

Civil society has a very strong concern that the monitoring and auditing arrangements with regard to public officials in the UK are being significantly weakened by the abolition of the Audit Commission and unsatisfactory arrangements for its replacement.¹⁰ Consequently, plans for the abolition of the Audit Commission should therefore be put on hold until there has been proper consultation and a thorough assessment of alternative options for auditing local government and the NHS.

ARTICLE 23: Laundering of proceeds of crime

1. a) Is money laundering defined as a crime under criminal law?

Yes

Explanation:

The UK's Proceeds of Crime Act (POCA) 2002 criminalises money laundering.

b) Does the list of predicate offences for money laundering include corruption offences?

Yes

Explanation:

POCA takes an all crimes approach. Therefore, although corruption is not explicitly listed as a predicate offence, it is covered by the law.

2. What priority steps need to be taken to ensure compliance with the UNCAC?

- Bring more actions, including prosecutions, against the facilitators of the laundering of the proceeds of corruption, for example the lawyers, bankers and accountants that handle the transactions.
- Strengthen the 2007 Money Laundering Regulations (Arts. 14 and 52 of UNCAC), particularly in relation to Customer Due Diligence (CDD) in relation to PEPs, and improve their enforcement.

Explanation:

The UK's legal and regulatory framework to criminalise laundering of the proceeds of corruption is generally sound and there have been a few successful cases of individuals being prosecuted. For example, a former Nigerian governor is currently on trial for money laundering. His lawyer, wife, sister and mistress have already been convicted. The Metropolitan Police's Proceeds of Corruption Unit should be commended for its work on these cases, as should the Department for International Development for funding this unit's work. Sadly, these cases are still rare.

However, there appear to have been few attempts to prosecute the facilitators of corruption. Even those few civil corruption-related cases which have occurred suggest a reluctance to recognise the role that can be played by professional service providers and bankers: In 2008 a London-based lawyer called Iqbal Meer was cleared by the Court of Appeal of civil liability in facilitating the theft of Zambian state funds by former

¹⁰ For more information see 'Corruption in the UK' Transparency International, June 2011

President Chiluba through use of a client account held by his law firm. The appeal judge said that: ‘the more probable explanation for Mr Meer's conduct is that he was honest, albeit foolish, sometimes very foolish, and far from competent in his understanding, as well as in his application and observance, of relevant professional duties, above all the need to comply with the warnings about money-laundering.’ (Attorney General of Zambia v Meer Care & Desai (A Firm) & Ors [2008])

In 2007 the High Court ruled in a civil case brought by the Federal Government of Nigeria that corrupt funds brought to the UK by two former Nigerian state governors, Diepreye Alamieyeseigha and Joshua Dariye should be returned to Nigeria. The ruling made it clear that these funds, some of which consisted of bribes from state contractors, had been accepted by banks in London including HSBC, Barclays, Natwest, RBS and UBS. (The Federal Republic of Nigeria vs Santolina Investment Corp & others, [2007] and The Federal Republic of Nigeria vs Joshua Chibi Dariye & others [2007]). There has been no attempt made to investigate or prosecute the role played by these banks in handling corrupt funds.

Articles 14 and 52 of UNCAC – ‘Prevention and Detection of transfers of proceeds of crime’ – are implemented in the UK through the 2007 Money Laundering Regulations, which implement the 3rd EU Anti-Money Laundering Directive, which is binding on all EU member states.

The problem in the UK is that, despite improvements in recent years, there continue to be significant weaknesses in the AML regime, which means that in practice, some financial institutions are failing to carry out adequate customer due diligence on their customers, particularly politically exposed Persons (PEPs).

A major weakness in the AML regime is that the Guidance provided by the Joint Money Laundering Steering Group does not make it an absolute requirement for reporting institutions to determine if a person is a PEP, and thus fails to meet the terms of FATF Recommendation 6, which requires enhanced due diligence on PEPs. The MLR and the JMLSG guidance should make it unambiguous that a reporting institution should always have systems in place to detect and identify PEPs. MLR 14 should require PEPs identification as part of risk management and it should be normal practice to have specified measures defined in an institution’s AML policy for establishing whether or not any customer is a PEP¹¹.

A June 2011 report from the British financial regulator, the Financial Services Authority (FSA), belatedly recognised these weaknesses and described how three quarters of Britain’s banks are not doing enough to identify corrupt money from abroad and that it is ‘likely that some banks are handling the proceeds of corruption’. As the FSA acknowledged, these findings are very similar to those of a previous FSA report in 2001 after former Nigerian President Sani Abacha’s funds, stolen from Nigeria, passed through London. This shows that the FSA, and its successor body the Financial Conduct Authority, need to be much tougher on banks that are failing to properly implement CDD procedures in relation to PEPs. This needs to be done proactively on an on-going basis, rather than waiting for ten years and performing another review. Tough action needs to include naming and shaming banks with inadequate systems and imposing stiff financial penalties.

To our knowledge there have been no equivalent reviews of how other regulated sectors – eg. accountants, lawyers or trust and company service providers – carry out customer due diligence in relation to PEPs. Regulators of these sectors should be required to do so.

HM Treasury is currently proposing to remove the criminal liability for failure to carry out customer due diligence under the Money Laundering Regulations 2007. To our knowledge there have not been any examples of imposition of criminal penalties so far. The theory behind this proposed change is to encourage regulated firms to focus their attention on their high risk customers rather than focus resources on endless

¹¹ Combating Money Laundering and Recovering Looted Gains – Raising the UK’s Game, Transparency International-UK, June 2009.

regulatory box-ticking in low risk situations. It would be undesirable to make this change, given the weaknesses we have referred to earlier. If this proposal were to be implemented, it will be even more important for regulators to impose the maximum civil penalties at their disposal in cases where financial institutions do not comply with the Money Laundering Regulations by doing appropriate customer due diligence. (Criminal penalties for laundering money under POCA will remain.) The majority of respondents to a HM Treasury on this proposal opposed this change on the basis that it would weaken the UK's anti-money laundering regime.¹²

Articles 14.1.a and 52 stress the importance for banks to identify the beneficial owner of funds managed by a financial institution. Money launderers, including corrupt politicians, frequently use British shell companies to hide their identity and their corruptly acquired assets. Banks and law enforcement can find it difficult to get behind the corporate veil and understand who actually controls a British company, whether for mandated customer due diligence purposes or for investigation purposes. The UK's companies' registry, Companies House, is at least open for view but does not currently collect information on the ultimate or beneficial owner of UK companies. In addition, the information it does collect, for example on shareholders, is unverified and often not up to date. In addition the UK chooses not to encourage the Crown Dependencies and Overseas Territories to publish their company registries as the UK does.

ARTICLE 26: Liability of legal persons

1. a) Has the article been implemented into law?

Yes; UK law does recognise and provide that legal persons may be liable for bribery and corruption offences.

Explanation:

Note: Please explain whether legal persons are liable under criminal, civil or administrative law.

Prior to the implementation of the Bribery Act 2010 (the "Act"), there was widespread criticism of the complexity and uncertainty of the UK's old bribery laws. The Act is intended to address those concerns. Prior to the Act, the UK's bribery laws were to be found in a combination of common law and various statutes. Under the old law, a company could only be convicted under corporate liability principles, where a senior officer representing the "controlling mind" of the company was responsible for key elements of the offence (under what is known as the "identification doctrine"). With large corporate organisations with complex management structures, it has often proved very difficult for UK prosecutors to establish the necessary elements of the bribery offence held by the "controlling mind" of the organisation. As a result, there have been very few corporate convictions for bribery offences under the old bribery laws.

The Act came into force on 1 July 2011. It abolishes the UK's existing bribery laws and introduces a suite of bribery offences, two of which are new. Whilst it remains the case that to achieve a corporate conviction for bribery offences under the Act still requires the identification doctrine to be satisfied, Section 7 of the Act introduces a new offence whereby a relevant commercial organisation may be liable if it fails to prevent bribery by an "associated person" (a term which includes all those persons who provide services for or on behalf of the commercial organisation) who commits a bribery offence intending to obtain or retain business or a business advantage for that commercial organisation.

This new offence creates corporate liability because, save as provided in the Act, the commercial organisation has no defence to this particular offence if a person associated with it commits a bribery offence with the

¹² HM Treasury, Consultation on proposed changes to the money laundering regulations 2007: summary of response, November 2011, para. 2.3

requisite intention. The only defence provided by the Act is for the commercial organisation to establish that it had “adequate procedures” in place to prevent such bribery from occurring. Importantly, there is no requirement for UK prosecutors to establish that the controlling mind of the commercial organisation had any knowledge or intention in relation to the underlying bribery offence – that is not a requirement of the new section 7 offence and it is likely that corporate convictions for this offence will be easier as a result. On conviction for this new offence, a commercial organisation is subject to a sanction of an unlimited fine.

This new offence under Section 7 of the Act only became law on 1 July 2011. There have been no prosecutions as yet.

b) How many companies have received sanctions under criminal, civil and administrative law for corruption-related offences in the past three years?

Criminal law: 12

Civil law: 5

Administrative law: 2

c) Are the sanctions for legal persons committing corruption-related offences effective, proportionate and dissuasive?

No. The sanctions that have been carried out were under the old bribery laws. The new penalties under the Bribery Act are ten years' imprisonment for individuals and unlimited fines for individuals and companies still remain to be seen. Companies are also subject to debarment upon conviction for bribery offences under an EU Directive. It is too early to say how sanctions will be applied under the new law.

Explanation:

It is unclear what penalties will be sought by prosecutors or imposed by the Courts under the new law. In terms of previous practice, there are concerns that the sanctions may have been insufficient in two areas. First, the SFO has made use of Civil Recovery Orders and sought to reach settlements, which in some cases have resulted in penalties that are unlikely to be a deterrent. Note that no company has yet faced debarment from public sector contracts or, for example, debarment from seeking export credit guarantees from the ECGD.

2. What priority steps need to be taken to ensure compliance with the UNCAC?

The Bond Anti-Corruption Group contends that inadequacies in the legal framework in relation to bribery must be addressed. The 2010 Bribery Act came into force on 1 July 2011. However, parts of the ‘Guidance’ to companies on procedures to prevent bribery (in relation to Section 9 of the Act), which was published by the Government on 30 March 2011, undermine key features of the Act as passed into law by Parliament. Although the Guidance is non-statutory and does not modify the provisions of the Act, UK courts will have to take account of its contents. Examples of loopholes that could be exploited by unscrupulous companies are as follows:

- 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]
- Subsidiaries: 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]

- Subcontractors: 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]

Uncertainty is also created by jurisdictional issues. As highlighted in the UK Phase 1 Report of the OECD Working Group on Bribery (WGB), 2013, the UK Overseas Territories (OTs) of Anguilla, Turks and Caicos, Bermuda, Gibraltar and Monserrat are not compliant with the OECD Convention. The UK Government has taken the position that it cannot impose legislation directly on OTs. However, it would be desirable for the Government to agree with these OTs an urgent time-frame for their compliance, because inaction could limit the Bribery Act's effectiveness.

Another deficiency, also highlighted by the WGB, is that the Bribery Act does not provide the UK with jurisdiction to prosecute legal persons incorporated in the Crown Dependencies (CDs) and OTs. It confers nationality jurisdiction to prosecute natural persons from the CDs and OTs, but not with respect to legal persons incorporated there. The Section 7 'failure to prevent bribery' offence would apply to a company incorporated in the CDs and OTs only if the company carries on a business, or a part of a business, in the UK. Companies incorporated in CDs and the Cayman Islands are subject to prosecution by the authorities in those Dependencies. However, companies incorporated in other OTs which do not carry on a business in the UK could be used to commit foreign bribery. This is a significant loophole since some OTs are major financial centres where many companies are incorporated and/or operate. This underscores the urgency of encouraging the remaining OTs to become fully compliant with the Convention so that it can be extended to them.

ARTICLE 33: Protection of reporting persons

1. a) Has the article on protection for reporting persons been implemented into law?

Yes.

Explanation:

In terms of promoting whistleblowing and protecting whistleblowers as part of an effective anti-corruption strategy, it is not enough under the Convention for a signatory to implement witness protection measures as set out in Article 32¹⁴. Article 33 requires measures to protect those who report concerns whether or not they are required to testify in a court. The UK's Public Interest Disclosure Act, 1998 goes further than witness protection and offers strong and comprehensive protection for workplace whistleblowing.

The Public Interest Disclosure Act (PIDA) covers most workers in the UK (apart from those working in the armed forces or intelligence services who are not protected by the Act). It is not limited by sector nor type of wrongdoing and, significantly, it protects external disclosures.

b) Has the article on protection for reporting persons been implemented into law?

¹³ Adopted by the Working Group on 16 December 2010.

¹⁴ Article 32, UNCAC, deals with the protection of witnesses, experts and victims who give 'testimony' in a court of law and in particular, witness protection measures, evidentiary rules to protect court witnesses, and inter-state agreements to relocate such individuals where necessary.

Yes. However PIDA can only act as an effective anti-corruption tool if employers and workers know that internal and, importantly, external disclosures are protected. Outside of the health service, PIDA has not been actively promoted by the UK government.

2. What priority steps need to be taken to ensure compliance with the UNCAC?

- More public and consistent promotion of anti-corruption measures and whistleblowing across the public sector.
- Although legislation is in place, the UK government should fully implement the recommendation from the OECD with respect to promoting PIDA more widely and raising public awareness.
- The UK Government should encourage employers to promote whistleblowing within their organisations ensuring staff know there are safe external routes to report a concern and that they can access independent advice.

Explanation:

The OECD clearly recommended the UK “pursue its efforts to make the measures of encouraging and protecting whistleblowers better known to the general public [emphasis added]”¹⁵ as part of an effective anti-foreign bribery strategy. Although the Council of Europe praised PIDA in 2010¹⁶ as an example of comprehensive whistleblower legislation, the vast majority of UK adults still know nothing about it. A YouGov survey (2011)¹⁷ commissioned by Public Concern at Work, found that despite 85% of working adult respondents saying that they would raise a concern about possible corruption, danger or serious malpractice at work with their employer, 77% of all adult respondents did not know or thought that there was no law to protect whistleblowers.¹⁸ The risk is that where a serious public interest concern is not properly addressed by the organisation itself, or the matter is so serious it needs to be raised externally, workers do not realise they have the power to raise it elsewhere nor who is best placed to handle their disclosure (i.e. regulator, police, MP, media).

Clearly the declaratory effect of a law that protects those who blow the whistle in the public interest is important and is another reason why promoting PIDA should be seen as a vital component in the fight against corruption in the UK. However, real protection for workers comes from employers encouraging their staff to speak up about a concern, reassuring them that it is safe to do so and that there are safe external routes, responding effectively and proportionately to the concern, and acting swiftly to protect the reasonable and honest whistleblower from any reprisals.

It is worth noting that the Bribery Act 2010 provides a defence to the corporate offence of bribery (section 7) if the company can show it had ‘adequate procedures’ to in place to prevent it. This has pushed whistleblowing back up the UK corporate agenda and it will help ensure that companies review their whistleblowing arrangements and consider how to sustain these over time – in particular through

15 OECD (2005) United Kingdom: Phase 2 Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions, OECD Directorate for Financial and Enterprise Affairs, at 16. (<http://www.oecd.org/dataoecd/62/32/34599062.pdf>)

16 Council of Europe Resolution 1729 (2010) Protection of “whistleblowers” (<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/ERES1729.htm>)

17 For more details see http://www.pcaw.org.uk/news_attachments/Results%20for%20PCAW-YouGov%20Survey.pdf.

18 21% of respondents thought that there was no law to protect whistleblowers (Ibid, Note 5).

management training and ensuring staff have access to independent advice. The Ministry of Justice Guidance in this respect is helpful.

ARTICLE 46(9)(b)&(c): Mutual legal assistance in the absence of dual criminality

1. a) Is there a legal provision in the legislation of the country allowing the provision of MLA in the absence of dual criminality?

Yes.

Explanation:

The UK is party to a number of multilateral conventions, bilateral treaties and Memoranda of Understanding that provide for mutual legal assistance arrangements. It has approximately 37 bilateral agreements currently in place with a broad range of countries.

The UK authorities receive approximately between 40-50 new requests for Mutual Legal Assistance a year from all over the world.¹⁹ It is not known how many requests the UK makes itself for Mutual Legal Assistance as these statistics are not in the public domain.

b) Has your country confronted any obstacles in providing or obtaining mutual legal assistance?

No information publicly available

Explanation:

Note: If possible, please indicate the countries with which the mutual legal assistance problems have occurred.

There is limited information available as to the substance of requests for or provision of Mutual Legal Assistance by the UK. It is therefore not currently determinable whether there are any obstacles being confronted in this context but available statistics do show that approximately 55% of active requests get completed in a year [based on figures for 2006, 2007, and 2008]. Press comments have highlighted difficulties that have arisen (most notably: in relation to BAE Systems and specifically in relation to South Africa; and the Anglo Leasing case in Kenya) but no statistics on such matters are publicly available. There has also been press comment that in the settlement of the BAE Systems case there was less than optimal cooperation with the US Department of Justice.

2. What priority steps need to be taken to ensure compliance with the UNCAC?

Nothing to report – no information available.

STATUS OF ENFORCEMENT

Please indicate whether the enforcement system is adequate in the following areas or other significant areas. Where the response is not 'yes' please provide a short description of the main deficiencies and if relevant, please indicate which specific articles the enforcement problem relates to.

¹⁹ SFO Annual Reports for 2006-2007 and 2007-2008, noting the trend for the preceding three years. Information for future years could not be identified in later Annual Reports.

1. Organisation of enforcement (Article 36)

Yes, in part

Explanation:

Enforcement of the Bribery Act rests principally with the Serious Fraud Office (SFO), along with Overseas Anti-Corruption Unit (OACU) of the City of London Police. This is a satisfactory arrangement as long as a) there is institutional will to pursue corruption-related cases as a priority, b) there are adequate resources, c) there are specialist teams in corruption-related cases and d) investigation and prosecution functions are within the same agency. At present, conditions a) and d) exist. Condition c) is subject to the SFO and OACU being adequately resourced, and it is notable that the SFO's budget has been considerably reduced. Moreover, the Director of the SFO is due to retire in 2012, and it is unknown what priority his successor will accord to bribery given that the SFO has a dual remit and the Director can choose how to allocate resources between fraud and bribery.

2. Coordination between investigation and prosecution

Yes, in part

Explanation:

This exists within the SFO. It is not yet apparent how well the Crown Prosecution Service (CPS) will liaise with the City of London Police (CoLP) or other police forces for prosecutions under the new Bribery Act.

3. Specialised units among the Prosecutors Offices (Article 36)

Yes

Explanation:

Both the SFO and CoLP have specialist teams.

4. Independence of public prosecutors and other enforcement agencies (Articles 11 and 36)

Yes

Explanation:

Under previous legislation, the SFO required the consent of a political official (the Attorney General) to prosecute bribery cases. This is no longer the case under the Bribery Act as there is no requirement to obtain the Attorney General's consent to bring a case, although theoretically the Attorney General still has discretion to intervene in cases in certain circumstances.

5. Adequate resources (Article 36)

No. The SFO has taken budget cuts and more cuts to police agencies' budgets are expected.

Explanation:

Although , the UK's enforcement record (in relation to foreign bribery) has improved considerably in recent years, there are serious doubts about whether adequate resources are available to enforce the Bribery Act. The SFO's budget has been severely cut and may be reduced even further in future years.

6. Capacity of enforcement authorities (Article 36)

No.

Explanation:

As noted earlier, resources for enforcement are inadequate and this is bound to affect capacity adversely. Furthermore, there continues to be some uncertainty about the long term future of the SFO and the organisation of law enforcement machinery.

7. In your view, have any investigations or cases been hindered or dropped for improper reasons?

Yes.

Explanation:

The SFO's investigation into BAE Systems' activities in Saudi Arabia is a well-documented case in which the investigation was dropped in circumstances which generated criticism both at home and abroad. Further information is available from Transparency International UK²⁰ and The Corner House.

8. Status of cases

Please list in numbers the amount of the cases brought in the last three years under each category.

Table 2: Statistics on cases

	Prosecutions (under way and concluded) Please provide a breakdown into civil and administrative actions if possible.	Settlements	Convictions	Acquittals	Dismissals	Pending
Bribery of national public officials (active) (Article 15(a)) (Note: Public Bodies Corrupt Practices Act 1889, s1(2).)	5 (R v. Ghafar, R v. Webster and Pearce (x4 counts))		1 (one count under R v. Webster and Pearce)			

²⁰ See OECD Anti-Bribery Convention Progress Report 2009, Transparency International. Page 52

Bribery of national public officials (passive) (Article 15(b)) (Note: Public Bodies Corrupt Practices Act 1889, s1(1).)	1 (R v Webster and Pearce – other counts)		1 Pacific Consolidated Industries			
Bribery of foreign public officials (Article 16) (eg conspiracy to corrupt)		4 (Dougall and BAe Systems); Aon and Willis were not criminal convictions but rather FSA regulatory enforcement)	10 (Mabey & Johnson; Mabey & Johnson executives; Innospec; Messent; Jessop; CBRN executive and Ugandan FPO; Weir Group; Al-Hassan; El-Taher; Heath			
Embezzlement, misappropriation or other diversion by a public official (Article 17)						
Illicit enrichment (Article 20)						
Money laundering, corruption –related (Article 23) (Note: Proceeds of Crime Act 2002)	Approx 500 cases potentially involve POCA issues		5 - Balfour Beatty, Amec, Kellogg, Macmillan, DePuy			

Note: Please provide the following information about any major prosecutions and civil and administrative actions in each category of cases:

1. Name of the case, including parties
2. Date when prosecution was brought
3. Summary of principal charges
4. Penalties or other sanctions sought

5. *Status of case, including expected trial date or appeal date.*
6. *To your knowledge, are there any obstacles holding up the case?*

Note: In determining whether a case is major, consider for example whether the case involves a large multi-national corporation or a senior government official, the amount of capital involved, and the seriousness of the case. If there is a large number of cases please select ten of the most important.

The number of corruption cases against companies has increased over recent years. There have been cases brought against commercial organisations for bribery and corruption related offences under pre-Bribery Act law but a number of these have been settled short of conviction with civil recovery orders being made; only two cases have resulted in corporate convictions for corruption offences (Mabey & Johnson and Innospec) both of which followed guilty pleas. More recently a case involving BAE Systems was settled by the company pleading guilty to a charge of false accounting - the prosecution did not pursue a charge for the more significant corruption offences, a decision which drew strong criticism from the sentencing judge.

Recent cases are listed below.

Criminal convictions:

- CBRN Team Limited (9/08) – an employee of CBRN and a Ugandan Government Official pleaded guilty to bribery offences – first UK conviction for bribery of a foreign public official
- Heath (10/08) – convicted in the UK of conspiring to corrupt the US Attorney-General.
- Mabey & Johnson Limited (07/09) – pleaded guilty to corruption offences - £4.6m imposed by way of fines and disgorgement, £1.5m of which was required to be paid in reparations to the affected countries. This was the first prosecution by the SFO of a UK corporate for overseas corruption.
- Innospec Limited (3/10) – resulted from information passed to the SFO by the DoJ following the UN Inquiry into the Oil for Food Programme – Innospec pleaded guilty to corruption offences and a financial penalty of US\$12.7m (or £ equivalent) was agreed – concluded as part of a global settlement involving Innospec, the SFO, the DoJ, the SEC and OFAC
- Dougall (4/10) – former executive of a UK subsidiary of Johnson & Johnson pleaded guilty to involvement in overseas corruption offences – co-operated fully with the SFO and, following an appeal, received a 12 month suspended sentence.
- Messent (10/10) – former CEO of PWS International Ltd pleaded guilty to overseas bribery offences – 21 month jail sentence and ordered to pay £100,000 compensation to the country affected (Costa Rica) within 28 days or serve an additional 12 months in prison – disqualified from acting as a company director for 5 years.
- BAE Systems Plc (12/10) – following a settlement agreement with the SFO, in which BAE Systems agreed to plead guilty to accounting offences under s221 Companies Act 1985 and to pay £30m as a fine and an ex gratia payment for the benefit of the people of Tanzania (the largest fine ever levied in the UK). The company was ordered to pay £500,000 of that settlement as a fine. The settlement was strongly criticised by the Judge, as was the decision to prosecute a 'books and records' offence rather than corruption.
- Weir Group (12/10) – Weir Group, in Scotland, pleaded guilty to paying kickbacks to Saddam Hussein's government to secure lucrative business contracts. A fine of £3m was imposed.

- David Mabey, Richard Forsyth and Richard Gledhill of Mabey & Johnson Limited (02/11) – after Mabey & Johnson’s conviction in 2009, two of its directors and its sales manager were prosecuted for providing kickbacks to the Iraqi government of Saddam Hussein. The individuals were ordered to pay fines of between £75-£125k and were sentenced to between 8 months – 2 years imprisonment as well as being disqualified as directors.
- Aftab Noor Al-Hassan (2/11) – criminal conviction over an Iraq Oil For Food case; received a 16-month suspended prison sentence.
- Riad El-Taher (2/11) – criminal conviction over an Iraq Oil For Food case; received a 10-month prison sentence.
- Mark Jessop (04/11) – Between 1996 and 2003 he sold medical goods to the Iraqi market through various companies. Sentenced in April 2011 to 24 weeks’ imprisonment after he admitted kickbacks to Saddam Hussein’s government and other arrangements involving illegal payments in return for receiving information on tenders. Also ordered to pay £150k compensation to the Development Fund for Iraq plus prosecution costs.

Civil Recovery Orders:

- Balfour Beatty Plc (10/08) – self reported following an internal investigation – in a Civil Recovery Order, Balfour Beatty agreed to repay £2.25m, make a contribution towards the SFO’s costs, to introduce new compliance processes and to appoint an external monitor
- Amec Plc (10/09) – self reported following an internal investigation – Civil Recovery Order of £4.9m agreed
- MW Kellogg Limited (02/11) - just over £7 million ordered to be paid by a Civil Recovery Order.
- DePuy International Limited (04/11) – DePuy International is part of the Johnson & Johnson group of companies. Following an internal investigation in 2006, Johnson & Johnson reported its findings to the US Department of Justice and the SEC. In 2007, following a referral from the DoJ, the SFO launched its investigation into the English company. In April 2011, DePuy International was ordered to pay £4.829m (plus prosecution costs) in a Civil Recovery Order in recognition of unlawful conduct relating to the sale of orthopaedic products in Greece between 1998 and 2006. Criminal and civil sanctions also imposed on the parent company in the US and the Greek authorities froze assets located in Greece.
- Macmillan Publishers Limited (07/11) - ordered to pay in excess of £11 million in recognition of sums it received which were generated through unlawful conduct related to its Education Division in East and West Africa.

Administrative [note: it is debatable whether regulatory fines fall within this definition, but two recent fines by the Financial Services Authority (FSA) are included here for the sake of completeness]. In these cases, fines were imposed for the 'failure to take reasonable care to establish and maintain effective systems and controls to counter the risks of bribery and corruption associated with making payments to overseas firms and individuals', rather than acts of bribery or corruption themselves:

- Aon (1/09) – fined £5.25 million by the FSA
- Willis (7/11) – fined £6.9 million by the FSA

Note: Please state the source of information for each case.²¹

9. a) Is the information for each case publicly accessible? Is information on case details accessible?

'YES, partly' - the information on foreign bribery cases was available from press releases and court notices.

b) If not or in part, please indicate the official or other reasons why it is not:

Data is available but not easy to access and collate. Information is made available on some cases by the Serious Fraud Office and City of London Police. However, details of settlements, in particular, are sketchy and opaque. Details on domestic corruption cases are almost non-existent and no data are made publicly-available or, apparently, collected or collated by the relevant authorities.

NOTEWORTHY RECENT DEVELOPMENTS

Note: Please describe recent developments in the areas covered in this questionnaire or any other areas that you feel are relevant to the implementation of Chapters III and IV of the UNCAC, eg. new legislation, institutional changes in the last three years.

The most noteworthy recent developments include:

- The Bribery Act 2010, which was implemented in July 2011. For more information see Article 15.
- A June 2011 report from the British financial regulator, the Financial Services Authority (FSA), belatedly recognised that three quarters of UK banks it surveyed are not doing enough to identify corrupt money from abroad and that it is 'likely that some banks are handling the proceeds of corruption'. As the FSA acknowledged, these findings are very similar to those of a previous FSA report in 2001 after Sani Abacha's funds, stolen from Nigeria, passed through London. This shows that the FSA, and its successor body the Financial Conduct Authority, need to be much tougher on banks that are failing to properly implement the PEP obligations.
- Another recent development is the UK's government support for Europe to introduce mandatory financial reporting rules for extractive companies. Delivering a speech in Lagos in July 2011, Prime Minister David Cameron expressed that 'mineral wealth should be a blessing and not a curse'. The European Commission proposals have recently been published and Bond therefore calls on the EU to enact this legislation in order that there is improved transparency, increased accountability and for corruption to continue to be tackled.

Areas which show good practice

We believe the UK Bribery Act, which came into force on 1 July 2011, to be one of the strongest anti-bribery laws worldwide and the area which shows best practice.

The Act creates a new offence – the failure to prevent bribery by commercial organisations. This makes it imperative for all public and private commercial bodies to take appropriate measures to prevent bribery – including: demonstrating top-level commitment; conducting thorough risk assessments; knowing who clients, suppliers and partners are; training staff and personnel in the relevant areas and skills; and communicating anti-bribery policies effectively.

²¹ Sources for the above include the FSA and SFO websites and legal search engines such as LexisNexis Butterworths and Westlaw.

However, it remains to be seen whether Section 7 can be effectively enforced. Other countries, notably the US, have strict corporate liability but without an adequate procedures defence, and have done much better in terms of enforcement.

Areas where there are deficiencies

Indicate the relevant UNCAC article, then indicate the relevant national legislation (if any) and explain the deficiencies.

Please provide 2 – 3 examples of deficiencies – you may find it useful to consider the examples of deficient implementation provided in the TI Guidelines on the questionnaire). References to domestic legislation should include reference to the date when the law was promulgated, the specific articles/provisions being discussed, etc.

The Bond Anti-Corruption Group contends that the main deficiencies surround:

- *The implementation of Article 17 and 20.* These crimes are covered in such laws as the Fraud Act of 2006, the Theft Act of 1968, the Proceeds of Crime Act of 2002 and also the Bribery Act of 2010. There are concerns that the monitoring and auditing arrangements will be weakened by the abolition of the Audit Commission, and the arrangements for its replacement are unsatisfactory. Conflicts of interests also appear imminent as for example, local authorities will be able to choose their own auditors. Furthermore, there have been long-standing concerns about the private consultancy and lobbying by MPs, as well as on the ‘revolving door’ between public and private sector. Both these areas are poorly regulated, and whatever regulation exists is poorly enforced.
- *The reluctance to recognise the roles of professional intermediaries, particularly banks, in facilitating money laundering – Article 23, 14 and 52 of UNCAC.* The UK’s legal framework to criminalise laundering of the proceeds of corruption is generally sound and robust - money laundering is a criminal act under the Proceeds of Crime Act (POCA) 2002. However, certain cases suggest a reluctance to recognise the roles of professional intermediaries, particularly banks, in facilitating money laundering, and no attempts have been made to investigate and prosecute the role played by these banks in handling corrupt funds. A June 2011 report from the British financial regulator, the Financial Services Authority, has belatedly recognised that three quarters of Britain’s banks are not doing enough to identify corrupt money from abroad. It concludes that it “is likely that some banks are handling the proceeds of corruption”. Furthermore, while the FSA reviews the banks’ compliance with due diligence rules, there appears to be no equivalent reviews of how other regulated sectors – eg. accountants, lawyers or trust and company service providers – carry out ‘know you customer’ checks in relation to politically exposed persons.

SUMMARY OF PRIORITY ACTIONS NEEDED IN YOUR COUNTRY

Your suggestions and recommendations

Please list, in order of importance, the most important actions the government in your country should take to promote enforcement and compliance with the Convention.

1. The final UK UNCAC Report be published and be debated in parliament.
2. The government should ensure UNCAC is extended to all the Crown Dependencies and Overseas Territories.

3. Resource constraints should not undermine the capacity of law enforcement authorities to enforce the Bribery Act 2010.
4. Plans for the abolition of the Audit Commission should be put on hold until there has been proper consultation and a thorough assessment of alternative options.
5. Legislation around regulation of the revolving door between government and the private sector need to be considered and introduced.
6. Stronger regulations be enforced on private consultancies and lobbying by MPs and on the revolving door between government and the private sector.
7. The 2007 MLR need to be strengthened in relation to due diligence on PEPs. Greater diligence is needed in enforcing know-your-customers rules, and extending them to other professional services like accounting, law, and other service providers.
8. The government should collate and publish corruption-related data on a regular basis.

9. INFORMATION FROM THE RESPONDENT

I have shown this report to a member of my country's delegation to the UNCAC Conference of States Parties and taken into account their feedback:

Yes No

Report prepared by:

_____ (signature)

Name of respondent:

Affiliation:

Professional experience: