

Clean but compromised: Corruption in the UK public administration

by Rebecca Dobson and Paul M. Heywood

Abstract – Clean but compromised: Public administration in the United Kingdom has long enjoyed a reputation for being both impartial and corruption-free. However, from the outset it has sought to manage a tension between efficiency and public accountability; these twin demands have constituted the driving forces of reform initiatives to this day. This paper assesses a system that, whilst increasingly protected by strong anti-corruption compliance mechanisms, faces risks of politicisation, and also integrity and oversight challenges as the lines between public and private become increasingly blurred. These developments threaten the public administration's much-vaunted 'impartiality' and erode its protective features, with potentially negative consequences for controlling corruption.

Keywords: Public administration, UK, Corruption, Impartiality.

Introduction

The UK generally ranks well in global comparative assessments of perceived levels of corruption, such as Transparency International's Corruption Perceptions Index¹ and the World Bank Governance Indicators.² Its public administration has also consistently maintained a reputation for being both impartial and essentially corruption-free. In 2011, Transparency International UK scored the public sector a 'strong' 77 out of 100³; in 2017, the UK was ranked eighth out of 109 countries, with a score of 9.11 on a 10-point scale in the Public Integrity Index, which 'assesses a society's capacity to control corruption and ensure that public resources are spent without corrupt practices'⁴.

While these rankings suggest low levels of corruption coupled with highly developed institutions for controlling it, they provide a partial perspective at best – as previous critiques of their methods have demonstrated⁵. At worst, they create an

¹ In 2016 it received 81 out of 100 in Transparency International's annual Corruption Perceptions Index: www.transparency.org/news/feature/corruption_perceptions_index_2016#table

² In 2016, it scored 94 out of 100 for control of corruption in the World Bank Governance Indicators, info.worldbank.org/governance/wgi/#reports

³ TI UK, 2011. *Corruption in the UK*. London: TI UK, 51

⁴ integrity-index.org/country-profile/?id=GBR&yr=2017. This study uses a combination of opinion surveys and other measures as an aggregate

⁵ See for example: Heywood, P.M. and Rose, J. 2014. "Close but no cigar: The measurement of corruption", *Journal of Public Policy* 34(3): 526; Heywood, P.M. and Johnson, E. 2017. "Cultural specificity versus institutional universalism: A critique of the National Integrity System (NIS) methodology", *Crime, Law and Social Change* 68(3): 309

impression that corruption is not generally a feature of the UK experience, without exploring further the many ways in which the public administration and its ‘impartiality’ can be compromised.

Concrete evidence for the extent of corruption even when it is detected is hard to come by. Particular challenges relate to the confused regulatory system – previously referred to as ‘patchwork’⁶ – and the lack of a general definition of corruption in UK legislation.

Transparency International UK has suggested that, ‘there are potentially hundreds if not thousands of corruption cases that go unreported because they are prosecuted as different offences’⁷. The UK’s 2017 Anti-Corruption Strategy commits to publishing ‘the amount of fraud and corruption detected every year in central government’⁸, but until that happens estimates will continue to rely on the uncovering of large-scale scandals, the results of government audits, reports of public experiences and studies based on public perceptions.

Although bribery does not generally afflict UK citizens directly, they still appear to have grave concerns about wrongdoing in public office. The 2014 Eurobarometer revealed that although not a single respondent reported having to pay a bribe to access a public service, 72% agreed that there is corruption in national public institutions⁹. It also appears that whilst trust in civil servants has increased since the early 1980s, in the 2016 Veracity Index only 56% of people trusted civil servants to tell the truth – a much lower figure than those who trusted nurses (93%), the police (71%) and even the ordinary person on the street (65%)¹⁰.

Another arresting finding is that the public also doubts the ability of public institutions to deal with wrongdoing and uphold standards in public life. A 2014 study found that most respondents were ‘not confident’ in the authorities’ commitment to upholding standards (56%), their ability to uncover wrongdoing (61%), or their capacity to ensure effective punishment (63%)¹¹. Studies based on public perceptions are imperfect gauges of true levels of corruption. However, in the absence of alternative indicators they provide a warning that more needs to be done to check wrongdoing and demonstrate integrity in the public sector.

In the sections that follow we focus on the UK civil service to demonstrate how the changing approach to its management and make-up has transformed the relationship between public officials, politicians and the public, thereby in turn shaping approaches to anti-corruption and the UK’s ethical framework. In section 1 we briefly outline the legal framework for the crime of corruption. Following this, in section 2

⁶ Heywood, P.M. 2012. “Integrity management and the public service ethos in the UK: patchwork quilt or threadbare blanket?”, *International Review of Administrative Sciences* 78(3): 474-493

⁷ TI UK, 2011. *National Integrity System Assessment: United Kingdom*, London: TI UK p.15

⁸ www.gov.uk/government/publications/uk-anti-corruption-strategy-2017-to-2022, p.44

⁹ A similar point was made in Heywood, P.M. and Rose, J. 2014. “Close but no cigar: The measurement of corruption”, *Journal of Public Policy* 34(3): 510; see also: ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_397_en.pdf

¹⁰ Only 25% trusted civil servants to tell the truth in 1983 www.ipsos.com/sites/default/files/migrations/en-uk/files/Assets/Docs/Polls/ipsos-mori-veracity-index-2016-chart.pdf

¹¹

www.gov.uk/government/uploads/system/uploads/attachment_data/file/415746/Survey_of_public_attitudes_to_wards_conduct_in_public_life_2014_final_19_march.pdf

we chart the changing context and management of the civil service and its impact on the nature of ethical responses to corruption and integrity risks. We address the regulatory and oversight challenges, corruption risks and solutions in section

3. Finally, in section 4 we look beyond the civil service to the wider public administration using three case studies to demonstrate the broader ethical and corruption challenges throughout the public sector.

1. The crime of corruption: The legal framework

The legal and regulatory framework on the crime of corruption is fragmentary and made up of both statutory legislation and common law. There is no unified law or agreed legal definition, so it is not always clear which criminal acts would come under the definition of corruption.

However, in recent years there has been a general trend towards placing the crimes related to corruption on a statutory footing.

In 2015, Transparency International UK identified '45 pieces of legislation' and '162 criminal offences on the statute book' relating to corruption¹². However, it still found several forms of corruption either not, or only partially, covered by UK law¹³. Of these, trading in influence (partial), conflicts of interest (partial), abuse of function (partial) and cronyism and nepotism (none) are all serious risks in a public administration.

Despite this, it is reasonable to assume that the majority of corrupt acts committed by public administrators would be covered under the Fraud Act 2006, the Bribery Act 2010, the Theft Act 1968 or the common law offences of perverting the course of justice and – most relevant for the civil service – misconduct in public office.

According to the Attorney General in 2003¹⁴, the offence of 'misconduct in public office' is committed when:

A public officer acting as such.

- Willfully neglects to perform his duty and/or willfully misconducts himself.
- To such a degree as to amount to an abuse of the public's trust in the office holder.
- Without reasonable excuse or justification. The maximum penalty is as high as life imprisonment¹⁵.

Misuse of public office is a broad offence, but also ambiguous in relation to (a) what counts as a public officer; (b) how misconduct is defined; and (c) what would count as a 'reasonable excuse'. In 2015 the Court of Appeal described it as 'without a doubt a difficult area of criminal law'¹⁶.

¹² TI-UK, 2015. *Corruption Laws: A non-lawyer's guide to laws and offences in the UK relating to corrupt behaviour*. London: TI UK: 1

¹³ TI-UK 2015: 2

¹⁴ Attorney General's Reference No. 3 of 2003 [2004] EWCA Crim 868, §61

¹⁵ See Legal Guidance: www.cps.gov.uk/legal/l_to_o/misconduct_in_public_office/#a012.

¹⁶ Lord Thomas CJ in *Chapman* [2015] EWCA Crim 539, [2015] 2 Cr App R 10. Quoted in Consultation paper

In 2016 the Law Commission opened a consultation on whether misconduct in public office should be ‘abolished, retained, restated, or amended’¹⁷. The Standards in Public Life Committee responded with support for the development of a statutory offence and a recommendation that the definition of public officer should be broad and ‘encompass all those whose role impacts on national, public life’¹⁸. This recommendation is particularly pertinent given the increasing role of private and voluntary organizations in the provision of public services, as outlined below.

On 14 October 2017, Mr. Lee Jefferson made a freedom of information request to the Crown Prosecution Service asking for the number of cases of ‘misuse of public office’ on record over the previous seven years¹⁹. The request was only partially answered, but produced a list of offences charged and that reached a first hearing at the magistrate’s court: these ranged from a high of 148 in 2010-11 to a low of 81 in 2016-17. However, it is impossible to know what percentage of these cases was related to corruption.

The 2010 Bribery Act has provided some clarity on a narrow range of crimes that would be considered corruption. It is applicable to civil servants, particularly under section 2, which outlines offences related to being bribed. Under section 11, an individual found guilty of such an offence can be sentenced ‘on conviction on indictment, to imprisonment for a term not exceeding 10 years, or to a fine, or to both’²⁰.

There have been some convictions involving civil servants under the Bribery Act, but data is difficult to access. A freedom of information request by Cordery Compliance Limited revealed that between July 2011 and the end of 2015, 16 cases had been brought under the Act, with two under Section 2 related to bribery: in one such case in 2011 an exchange of £300 resulted in a three-year prison sentence²¹.

2. Ethical framework: Evolving concerns and responses

There are two main approaches to controlling corruption and protecting integrity in public administrations: one focuses mainly on establishing and embedding a values-based approach and the other is based on emphasizing rules and compliance²². Although all integrity management systems entail some form of compromise between the two approaches, the pattern of change in the UK’s ethics framework can be characterized as a gradual evolution ‘within broader systemic changes’ from one primarily based on a public sector ethos with emphasis on ‘informal codes of conduct and moral integrity’ to a more managerially-driven approach based on ‘public service

¹⁷ www.legislation.gov.uk/ukpga/2010/23/section/11

¹⁸ Standards in Public Life Committee: www.gov.uk/government/uploads/system/uploads/attachment_data/file/509254/20160319_su_bmisison_to_law_commission_on_misconduct_in_public_office_FINAL.pdf

¹⁹ www.whatdotheyknow.com/request/cases_of_misconduct_in_public_of

²⁰ www.legislation.gov.uk/ukpga/2010/23/section/11

²¹ bis.lexisnexis.co.uk/blog/posts/anti-bribery-and-corruption/freedom-of-information-request-shows-more-bribery-act-2010-prosecutions

²² Foster Back, P. 2006. “Principles or rules?” *Public Money and Management* 26(1): 7-9

delivery'²³.

This evolution is incomplete, however, resulting in a patchwork of regulations that reveal the 'limits and tensions in the UK's evolving integrity management landscape'²⁴. As will be demonstrated below, a major tension within the UK's integrity management framework is the vacillating emphasis between 'efficiency' in the public service and its levels of 'public accountability'. These twin concerns have been a feature of civil service reform from the beginning and continue to be the main source of tension and driving force of transformations to this day.

In 1854 the Northcote-Trevelyan Report referred to the public administration as suffering 'both in internal efficiency and in public estimation'²⁵. The solution proposed was the establishment of 'an impartial and permanent Civil Service with officials appointed on merit alone'²⁶. The Report's recommendations formed the basis of the modern civil service. They protect the system from corruption and politicization by establishing 'impartiality' as a condition of good governance²⁷, and embedding 'institutional deterrents of corruption'²⁸. The key to these reforms was a system based on meritocratic recruitment, job security with scope for internal promotions and decent pay.

In the years that followed, civil service ethics were to a large extent based upon a faith in the intrinsic moral integrity of the service and rested on informal codes of conduct governing the relationship between civil servants, politicians and the public. In 1918 the Haldane Doctrine established the 'indivisible relationship' between ministers and civil servants, holding that accountability would flow from civil servant to minister, and from minister to parliament²⁹.

This informal system survived broadly unchanged until the early 1990s, when 'radical changes' in the management of the civil service led to an inquiry into its role³⁰. These changes were characterized as being part of so-called New Public Management (NPM), which introduced business-like management structures into the civil service³¹, and have been described as being part of a process of 'hollowing out the state'³²

²³ Heywood, P.M. 2012. "Integrity management and the public service ethos in the UK: patchwork quilt or threadbare blanket?", *International Review of Administrative Sciences* 78(3): 474

²⁴ Heywood, 2012

²⁵ www.civilservant.org.uk/library/1854_Northcote_Trevelyan_Report.pdf

²⁶ Public Administration Select Committee. 2013. *Truth to power: How civil service reform can succeed*. London: HMSO, p.3

²⁷ See: Rothstein, B. and Teorell, J. 2008. "What Is Quality of Government? A Theory of Impartial Government Institutions", *Governance* 21(2): 165–190

²⁸ Dahlström, C., Lapuente, V. and Teorell, J. 2012. "The merit of meritocratization: Politics, Bureaucracy, and the institutional deterrents of corruption", *Political Research Quarterly*, 65(3): 658–670

²⁹ Public Administration Select Committee. 2013. *Truth to power: How civil service reform can succeed*. London: HMSO, p.8

³⁰ O' Toole, B.J. 2007. "The framework of ethical compliance in the UK: Minor problems, disproportionate responses?" *Public Policy and Administration* 22(1): 120. See also: Treasury and Civil Service Committee. 1994. *The role of the civil service*. London: HMSO

³¹ Hood, C.C. and Jackson, M.W. 1991. "The new public management: A recipe for disaster", *Canberra Bulletin of Public Administration* 64: 16–24

³² Rhodes, R. 1994. "The hollowing out of the state: The changing nature of public service in Britain", *The Political Quarterly* 65(2): 138–151

resulting in ‘fundamental distortions of the true role of government’³³. NPM-related reforms have posed significant challenges to the ethical framework on which the civil service is based and prompted a process of codifying standards and implementing compliance mechanisms as a way to retain ethical standards. Indeed, they initiated what has become known as ‘civil service reform syndrome’, which continues to this day³⁴.

Following a series of scandals involving government ministers, the 1994 Nolan Report, the first report of the newly established Committee on Standards in Public Life, outlined the Seven Principles of Public Life (or ‘Nolan Principles’), that are now internationally recognized: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. In parallel, the Civil Service Code was first drawn up in 1996 and outlines the core values of the civil service: honesty, integrity, impartiality and objectivity³⁵. These standards are still broadly recognised by the public and match their own perceptions of what public ethics should look like³⁶.

It was not until 2010, that the civil service, its Code and the independent Civil Service Commission were placed on a statutory basis in the Constitutional Reform and Governance Act 2010. On the whole, however, the Act did not implement significant changes and simply legislated into statute ‘what already existed as Orders in Council’³⁷, so that many of the challenges to the ethics framework were left unmet, including the continuing concerns for impartiality and the balance of accountability between ministers and officials.

In 2013, the Public Administration Select Committee noted that these questions had not been considered by an inquiry, and that since the 1968 Fulton Report, which similarly had not been tasked with considering these issues, civil service reforms had been ‘dominated by managerialism, rather than a strategic evidence-based look at what the Civil Service should do, or thorough consideration of the consequences of reform’³⁸. The Committee also acknowledged concerns that the Civil Service Reform Plan, launched in 2012³⁹, included changes that ‘challenge the Northcote-Trevelyan settlement’, and questioned whether the Haldane Doctrine remains ‘appropriate for the modern age’⁴⁰.

A follow-up report in 2017 by the Public Administration and Constitutional Affairs Committee on its 2016 inquiry into the work of the civil service took the relationship between civil servants and ministers as its central theme. It is significant

³³ Professor Howard Elcock, quoted in Public Administration Select Committee. 2013. Truth to power: How civil service reform can succeed. London: HMSO, p.13

³⁴ Lodge and Hood (2007), quoted in Heywood 2012

³⁵ www.gov.uk/government/publications/civil-service-code/the-civil-service-code

³⁶ Committee on Standards in Public Life, 2014. Ethical Standards for Providers of Public Services. London: Committee on Standards in Public Life

³⁷ Harris 2013, p.4

³⁸ Public Administration Select Committee. 2013. Truth to power: How civil service reform can succeed. London: HMSO, 13

³⁹ www.gov.uk/government/uploads/system/uploads/attachment_data/file/305148/Civil-Service-Reform-Plan-final.pdf

⁴⁰ Public Administration Select Committee. 2013. Truth to power: How civil service reform can succeed. London: HMSO, 3

that the Committee's inquiry was the first explicitly to address this issue and highlight the 'risks to civil service impartiality and accountability'⁴¹, flowing from the changing management context, including the implications of the EU referendum⁴².

In the following section, we assess the contemporary regulatory framework for the civil service in light of these challenges to the ethical framework, the impact of the continuing civil service reforms and the increasing burden on the civil service as a result of the 2016 EU Referendum.

3. Regulatory and oversight framework: Fit for purpose?

Overall, the UK has a strong regulatory and oversight framework, that nevertheless suffers from gaps that threaten its impartiality and increase risks of politicisation. In the context of the changing management practices in the civil service and the increasing 'privatisation of public policy'⁴³, there have been growing concerns that the framework is failing to keep pace with current and emerging corruption risks.

These shortcomings must be seen in the context of the increasing tightening of budgets in the public administration as a result of the austerity agenda since 2010 and the challenges posed by the significant administrative burden resulting from the UK's pending exit from the European Union (Brexit). Whilst there has been considerable political attention paid to the impact of cuts on the provision of services at local level, as funding from central government has been cut by 40% since 2010⁴⁴, significantly less attention has been paid to the impact on the regulatory and oversight capacity of the public administration as funding and staffing levels continue to decline⁴⁵.

This section reflects on the policies and institutions in place that have oversight and regulate the civil service. There are particular concerns relating to:

- The ability of the Civil Service Commission to maintain merit-based recruitment.
- The management of conflicts of interest and the rules and oversight of gifts and declaration of interests and assets.
- Undue influence and the role of special advisers (so-called 'Spads'), revolving doors and lobbying that can potentially distort policy processes.
- Reporting of ethical and legal breaches, auditing capacity, whistleblower protection and the challenges inherent in maintaining effective monitoring in a resource strapped environment.

⁴¹ Public Administration and Constitutional Affairs Committee. 2017. *The work of the civil service: key themes and preliminary findings*. London: HMSO, p.4

⁴² Public Administration and Constitutional Affairs Committee. 2017. *The work of the civil service: key themes and preliminary findings*. London: HMSO

⁴³ Kaufmann, D. 2005. "Myths and realities of governance and corruption", in *The Global Competitiveness Report 2005-2006*. New York: World Economic Forum/ OUP

⁴⁴ fullfact.org/economy/local-authorities-budgets/

⁴⁵

www.ons.gov.uk/employmentandlabourmarket/peopleinwork/publicsectorpersonnel/bulletins/publicsectoremployment/june2017

4. Impartiality: Merit-based recruitment

The Civil Service Commission provides oversight of the civil service, ensuring a merit-based recruitment process and an ‘impartial civil service’, including a complaints mechanism⁴⁶. In principle, the appointment of civil servants should be based ‘on merit on the basis of fair and open competition’⁴⁷. In a recent tussle with the government, the importance of the statutory footing of the Commission was highlighted when it defended its role in overseeing the recruitment of senior civil servants based on merit⁴⁸.

There are exceptions to the rule, however, as indicated by the fact that almost 10% of appointments made in 2016-17 occurred without a ‘fair and open competition’⁴⁹. Exceptions to the recruitment principles are restricted to short-term secondments, but if an adequate business case is presented the Commission can extend the limited period⁵⁰. It is possible that the special arrangements being put in place for recruitment related to Brexit will increase the granting of exceptions in the short-term⁵¹. This is a practical solution to the challenges of recruiting expertise quickly to an administration that is struggling to cope with the additional burdens generated by Brexit, but has potential knock-on effects that could serve to undermine accountability.

Political appointees or special advisers are not subject to the civil service recruitment principles; rather, the Prime Minister formally appoints them and the choice is usually at the discretion of the ministers they are to work under⁵². A significant change in the Constitutional Reform and Governance Act 2010 was that it ‘defined and limited’ the role of special advisers. However, they are not subject to merit-based recruitment requirements and there is no limit placed upon the number that can be appointed⁵³.

The Civil Service Commission operates a complaints procedure that can receive reports of breaches in the recruitment principles and it also conducts regular audits of departments. In 2016, it judged that 58% of total recruitment was deemed to pose significant risks⁵⁴. It also received 83 complaints and uncovered 230 breaches through its own investigations, 10% of which involved recruitment of senior civil servants, which the Commission called a ‘matter of concern’⁵⁵.

Merit-based appointments are a fundamental element in protecting against

⁴⁶ civilservicecommission.independent.gov.uk/civil-service-code/

⁴⁷ civilservicecommission.independent.gov.uk/wp-content/uploads/2017/01/RECRUITMENT-PRINCIPLES-April-2015-as-of-January-2017.pdf

⁴⁸ Harris, J. 2013, 17

⁴⁹ Civil Service Commission. 2017. Annual Report and Accounts 2016/17. London: HMSO, p.8

⁵⁰ civilservicecommission.independent.gov.uk/civil-service-recruitment/exceptions/

⁵¹ civilservicecommission.independent.gov.uk/wp-content/uploads/2017/02/IW-PermSecs_Exiting-the-EU-use-of-Exceptions-1.pdf

⁵² Harris, 2013

⁵³ Harris, J. 2013. Legislating for a civil service. London: Institute for Government, p.22

⁵⁴ civilservicecommission.independent.gov.uk/wp-content/uploads/2017/07/Report-v5-WEB-1.pdf, 28

⁵⁵ civilservicecommission.independent.gov.uk/wp-content/uploads/2017/07/Report-v5-WEB-1.pdf, 34, 40

corruption in the public sector and a significant deterrent against corruption⁵⁶. However, the principle is not necessarily secure in the present UK recruitment system. In 2016, the Public Administration and Constitutional Affairs Committee expressed concern over the recommendations of the Grimstone Review of public appointments, which sought to weaken the role of the Commission⁵⁷. In 2017, despite changes made by the government to the proposals, the Committee remained ‘concerned that there is an effort by Government to weaken the robustness and transparency of public appointments’⁵⁸.

5. Managing conflicts of interest: Declarations and gifts

The management of conflicts of interest risks are set out in Civil Service Management Code, which relates to civil servants’ terms and conditions of service⁵⁹. Section 4.1.3.(c) of the Code states that ‘[w]here a conflict of interest arises, civil servants must declare their interest to senior management so that senior management can determine how best to proceed’. On the receipt of gifts, hospitality and other benefits, section 4.1.3 (d) states that ‘civil servants must not receive gifts, hospitality or benefits of any kind from a third party which might be seen to compromise their personal judgement or integrity’.

Whilst it is possible that an undeclared conflict of interest could lead to an offence of misconduct in public office, there is no specific criminal offence for failing to declare conflicts of interest⁶⁰. Rather, the UK takes a principles-based approach to managing such conflicts and requires each government department to manage risks in their own way⁶¹. There are concerns that as the breaches of the Code are dealt with by departments through disciplinary proceedings, these are not always enacted and instead employees resign or are moved to different positions.

In 2015, the National Audit Office produced reports on each of these risk areas, and concluded that there is an increased potential for conflicts of interest when services are provided by third parties, with the potential for commissioners to ‘buy services from private businesses in which they have a financial or family interest’⁶². The challenge here is that there is only really a duty to report conflicts of interest and relevant business interests when they arise, rather than proactively, which means that they are not easy to monitor independently.

⁵⁶ Dahlström, C., Lapuente, V. and Teorell, J. 2012. “The merit of meritocratization: Politics, Bureaucracy, and the institutional deterrents of corruption”, *Political Research Quarterly*, 65(3): 658–670

⁵⁷ Public Administration and Constitutional Affairs Committee. 2016. *Better public appointments? The Grimstone Review on Public Appointments*. London: HMSO, p.30

⁵⁸ Public Administration and Constitutional Affairs Committee. 2017. *Better Public Appointments? Follow up and the government’s response*. London: HMSO, p.4

⁵⁹ www.gov.uk/government/publications/civil-servants-terms-and-conditions

⁶⁰ This is not the case for the devolved legislatures of Scotland, Wales and Northern Ireland. TI UK. 2015. *Corruption Laws: A non-lawyers guide to laws and offences in the UK relating to corrupt behavior*. London: TI UK, p.25

⁶¹ Comptroller and Auditor General. 2015. *Conflicts of Interest*. London: National Audit Office, 18

⁶² Comptroller and Auditor General. 2015. *Conflicts of Interest*. London: National Audit Office, p.4

There is also no duty to declare interests relating to family members⁶³.

Although civil servants do not have to make proactive asset declarations, major progress in 2016 saw the establishment of the UK's beneficial owners register⁶⁴. This register includes individuals with significant control or influence (25% ownership) over a company. While it has the potential to bring to light conflicts of interest, the threshold of 25% ownership might be too high to catch all cases where public officials might seek to enrich themselves with public money – as emphasised by the NGO, Global Witness, this threshold 'could be exploited by people looking to stay under the radar'⁶⁵.

The Civil Service Commission has responsibility for investigating breaches of the Civil Service Code. In 2016/17 the Commission received 47 new cases, more than double the number compared to the year before, although this was partially explained by the Commission's standardisation of the recording process⁶⁶. The Civil Service People Survey gives some indication of how effective the reporting mechanism is perceived to be by civil servants themselves. In 2016, the Survey found that while 91% were aware of the Civil Service Code, only 67% were aware of how to raise a concern or were confident that it would be investigated properly. The Commission reported it was 'disappointed to see that awareness of how to raise concerns under it and confidence that Code complaints would be properly investigated remains stubbornly low'⁶⁷.

While there are clearly processes in place for addressing conflicts of interest, they may not be sufficient to address emerging challenges as public services are increasingly contracted out to third parties. While the 2017 Anti-Corruption Strategy does not address this issue comprehensively, under its goal to reduce corruption in public procurement and grants it does acknowledge the need for 'guidance to government procurers on applying exclusions in the procurement process, managing conflicts of interest and whistleblowing'⁶⁸.

6.Undue influence in policy-making: Special advisers, revolving doors and lobbying

The norm of impartiality and neutrality is essential not just for civil servants' implementation of law and policy; it also offers significant protection against the politicisation of the

policy-making process, as it ensures that the advice provided by civil servants to ministers is not *parti pris*.

There have been concerns for some time about the changing nature of the advisory relationship between civil servants and ministers and the impact of the role

⁶³ Transparency International UK. 2016. *Corruption Laws*. London: TI UK, p.25

⁶⁴ companieshouse.blog.gov.uk/2016/04/13/the-new-people-with-significant-control-register/

⁶⁵ www.globalwitness.org/en-gb/blog/what-does-uk-beneficial-ownership-data-show-us/?gclid=EAIaIQobChMI8baLyJqT2AIVpp3tCh0BWgBOEAAAYAiAAEgLIL_D_BwE

⁶⁶ civilservicecommission.independent.gov.uk/wp-content/uploads/2017/07/Report-v5-WEB-1.pdf, 42

⁶⁷ civilservicecommission.independent.gov.uk/wp-content/uploads/2017/07/Report-v5-WEB-1.pdf, 44-45

⁶⁸ www.gov.uk/government/publications/uk-anti-corruption-strategy-2017-to-2022, p.42

of special adviser. In 2012, the Public Accounts Select Committee acknowledged the sensitive position of special advisers, who ‘occupy influential positions within Whitehall and have the potential to destabilise the relationship between ministers and officials’⁶⁹.

The Constitutional Reform and Governance Act 2010 had sought to clarify the role of special advisers, ensuring they are subject to a code of ethics and cannot authorise the spending of public funds or manage civil servants⁷⁰. The Ministerial Code, in turn, ensures that ministers are responsible and accountable for special advisers’ conduct⁷¹. Nevertheless, fears remain that they are less accountable than their civil service counterparts and are not subject to the Nolan Principles of impartiality.

The revolving door phenomenon is also a feature of the UK system that threatens to politicise the policy-making and regulatory sphere. The revolving door describes a situation in which individuals move between the private sector and the public sector in a similar domain, taking with them knowledge and contacts that could pose risks of undue influence in the decision-making processes of government. Whilst the arguments in favour of importing talent from across the private sector are strong, and have been consistently promoted by governments in favour of increasing the effectiveness of the civil service, without adequate protections they can pose grave corruption risks and undermine civil service integrity.

In 2016, TI UK reported that there are no statutory regulations on the revolving door⁷². Rather, the major protection against the politicisation (or privatisation) of the civil service is the impartiality test in its recruitment procedures. This has been threatened by the recommendations of the Grimstone Review, which urged a relaxing of the criteria for senior officials (see above)⁷³. This risk is unlikely to abate, given recent significant increases in the number of civil servants being recruited from the private sector: up to around 40% in the 2000s⁷⁴. Whilst the official figure has remained between 20% and 26% over the last three years, this is a rough measure, as it only accounts for applicants’ most recent posts⁷⁵. This means official figures do not track the actual ‘revolutions’ through the door, which may be frequent and include multiple positions in both sectors.

There is limited regulation of the revolving door by the Advisory Committee on Business Appointments (ACOPA), to which senior civil servants can apply for advice on new jobs when leaving public office⁷⁶. This body is meant to limit the ability of civil servants to take their insider knowledge and contacts into industry and give their new

⁶⁹ Public Administration Select Committee. 2012. *Special advisers in the thick of it*. London: HMSO, 3

⁷⁰ Harris, J. 2013. *Legislating for a civil service*. London: Institute for Government

⁷¹ www.civilservant.org.uk/library/2016_ministerial_code.pdf

⁷² www.transparency.org.uk/publications/corruption-laws-a-non-lawyers-guide-to-laws-and-offences-in-the-uk-relating-to-corrupt-behaviour/#.WhPforSFjeQ

⁷³ X

⁷⁴ Wilks-Heeg, S. 2015. “Revolving Door politics and corruption” in Whyte, D. *How Corrupt is Britain?* London: Pluto, p.138

⁷⁵ civilservicecommission.independent.gov.uk/wp-content/uploads/2017/07/Report-v5-WEB-1.pdf, p.19-20

⁷⁶ www.gov.uk/government/organisations/advisory-committee-on-business-appointments

employers unfair advantages. ACOBA can impose waiting times before taking up new jobs, but its role is advisory and so ‘there is nothing to stop individuals from ignoring its advice’⁷⁷.

The 2016 Civil Service Workforce Plan has the potential to increase these risks, as it actively seeks to ‘make it easier for people to be able to move in and out of the Civil Service’⁷⁸. It is noteworthy that whilst the benefits of skills-sharing, expertise and experience are highlighted; the connected integrity risks are not acknowledged either in the Plan or in the government’s 2017 Anti-Corruption Strategy.

Lobbying is another significant area of concern that poses the risks of policy capture and incorporates practices that ‘go beyond the opportunities to “revolve in” to government directly’⁷⁹. Although lobbying can be seen as a legitimate practice of representation in democracies, it is also highly vulnerable to opaque practices that can result in the distortion of the policy process in favour of powerful interests. The extent of the problem is difficult to quantify, but perceptions at least suggest that it is a major concern to the public.

Transparency International reported in its 2013 Corruption Barometer that, ‘59 per cent of respondents think that the UK’s government is “entirely” or “to a large extent” run by a few big entities acting in their own best interests’⁸⁰.

The system of self-regulation for lobbying activity was assessed by the Public Administration Select Committee in 2009. It found ‘very little self-regulation of any substance’⁸¹, and whilst it reported that the regulatory bodies have complaints procedures, the Committee found that they were ‘scarcely ever used’⁸².

In 2014, the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 set up a lobbying register ‘to enhance the transparency of those seeking to lobby Ministers and Permanent Secretaries on behalf of a third party’⁸³. Lobbying remains a risk, however, and the Act has been subject to a wide range of criticisms as outlined by Transparency International, including that the definitions of lobbyist and lobbying target are too narrow; information disclosure is limited; it is not clear what it means to have direct contact; there is a lack of arrangements for monitoring compliance; and sanctions are too weak⁸⁴.

The risks of undue influence posed by special advisors, revolving doors and lobbying practices should not be under-estimated, despite being difficult to detect and often impossible to quantify. Civil service reform agendas rarely consider these areas of risk, despite their tendency to blur the lines between public and private and reduce

⁷⁷ Transparency International UK. 2012. Fixing the revolving door between government and business”, Policy Paper Series No.2. London: TI UK, p.3

⁷⁸ www.gov.uk/government/uploads/system/uploads/attachment_data/file/536961/civil_service_workforce_strategy_final.pdf, p.8

⁷⁹ Wilks-Heeg, S. 2015, p.140

⁸⁰ David-Barrett, E. 2015. Lifting the lid on lobbying: The hidden exercise of power and influence in the UK, London: Transparency International UK, p.12

⁸¹ Public Administration Select Committee. 2009. Lobbying: Access and influence in Whitehall. London: HMSO, p.3

⁸² Public Administration Select Committee. 2009. Lobbying: Access and influence in Whitehall. London: HMSO, p.19

⁸³ registrarofofconsultantlobbyists.org.uk/

⁸⁴ David-Barrett 2015, p.31-32

the distinctive character of a civil service based on the principle of impartiality in favour of business principles and increasing efficiency.

7. Responsibilities of the public administration: Auditing, reporting and whistleblowing

Standards generally remain high in the government's auditing and reporting capacity. The Chartered Institute of Public Finance and Accountancy (CIPFA) provides an annual report on fraud and corruption, based on a survey of public institutions. In 2015/16 it estimated that £325 million worth of public sector fraud had been either detected or prevented⁸⁵.

However, weaknesses in the system are more likely to be exploited as resources are spread ever thinner in the coming years. The National Audit Office (NAO) has reported that since 2006 there had been a 26% reduction in the number of civil servants⁸⁶, and Transparency International UK has warned that the 'the overarching public sector mantra of "do more with less" may well also create perverse incentives', and could have a 'detrimental effect on law enforcement agencies'⁸⁷.

A 2012 study of internal auditing in central government found a range of issues, including a 'wide variation in how overarching standards are applied' and this has implications for the effectiveness of external audits and the information they rely upon⁸⁸. The NAO also conducts external audits, including the accounts of central government departments and a wide range of other public bodies. However, its effectiveness is difficult to assess as its recommendations are rarely adopted in full and practice varies between institutions.

One significant concern in recent years has been the closure of the Audit Commission, which was set up in 1983 to protect the public purse and, until March 2015, audited councils, NHS bodies (excluding NHS Foundations Trust), local police bodies and other local public services in England. It has been replaced by a range of institutions comprising a new, and somewhat disparate, local audit framework involving several different entities⁸⁹.

In 2011, TI UK noted that, 'the enormous change in district audit arrangements is a red flag for future research. What will emerge from the Audit Commission's abolition awaits to be seen'⁹⁰. In 2013, it listed eight new corruption risks emerging from the changes, including: weakened independence, inadequate cover by freedom of information, responsibility delegated to lower level officers and the risk that external auditors may face perverse incentives⁹¹. CIPFA has noted that since the abolition of the Audit Commission, there 'has been no requirement for local authorities to report

⁸⁵ CIPFA, 2016. Fraud and corruption Tracker Summary report, p. 4

⁸⁶ www.nao.org.uk/wp-content/uploads/2017/03/Capability-in-the-civil-service.pdf, p.4

⁸⁷ Transparency International UK. 2011. Corruption in the UK: Part III. London, TI-UK

⁸⁸ Comptroller and Auditor General. 2012. The effectiveness of internal audit in central government. London: National Audit Office, p.6

⁸⁹ www.gov.uk/government/organisations/audit-commission

⁹⁰ TI UK, 2011, p.84

⁹¹ www.transparency.org.uk/publications/corruption-in-uk-local-government-the-mounting-risks/#.WhQB1bSFjeQ

fraud committed against them’ and that about 10% of organisations did not have a dedicated counter-fraud service⁹².

Another core responsibility of the public administration in relation to corruption is to provide appropriate reporting mechanisms for complaints from the public and civil servants, including robust whistle-blower protections. As described above, the Civil Service Commission takes complaints from civil servants relating to the Civil Service Code. The Commission does not encourage anonymous reports, but does state that: ‘We will take very seriously any suggestion that you have been penalised for raising a concern’⁹³. Whilst there is no absolute requirement to report violations of the Code, including corrupt behaviour, it is clear that such violations ‘should’ be reported, with a clear process for escalating reports, including through departments and for reporting criminal behaviour. Moreover, as failure to report corruption is in itself a violation of the Code, and possibly also a crime, this could lead to independent sanctions.

The Civil Service also has a policy on whistleblowing, and whistle-blowers are protected by the Public Interest Disclosure Act 1998⁹⁴. While its application is problematic in relation to disclosures relating to the Official Secrets Act or the Public Interest Disclosure Act itself, legal precedent determines its exact application. Increased protections for whistle-blowers have been provided in both health and education in recent years⁹⁵, and government guidance on whistleblowing makes it clear that civil servants (or any workers) should not be treated unfairly or lose their jobs as a result of blowing the whistle on wrongdoing⁹⁶.

Beyond the civil service, there are several mechanisms for members of the public to complain about fraud and corruption. There is a secure online reporting mechanism offered by the Serious Fraud Office⁹⁷, and allegations of fraud can also be reported to Action Fraud, which passes on the information to the National Fraud Intelligence Bureau⁹⁸. Complaints can also be made to the Parliamentary and Health Ombudsman⁹⁹. There are public reporting mechanisms for various sectors, such the NHS¹⁰⁰ and HMRC¹⁰¹, and at the local level there are various reporting mechanisms for local authorities¹⁰².

⁹² CIPFA, 2016. Fraud and corruption Tracker Summary report, p. 4

⁹³ civilservicecommission.independent.gov.uk/wp-content/uploads/2012/04/Guide-to-bringing-a-complaint-to-the-Commissioners-Civil-Service-Code-March-20121.pdf

⁹⁴ www.legislation.gov.uk/ukpga/1998/23/contents

⁹⁵ Under the Children and Social Work Act 2017 and the Small Business Enterprise and Employment Act 2015

⁹⁶ www.gov.uk/whistleblowing

⁹⁷ www.sfo.gov.uk/bribery--corruption/where-should-i-report-corruption.aspx

⁹⁸ www.actionfraud.police.uk/home

⁹⁹ www.ombudsman.org.uk/

¹⁰⁰ www.reportnhsfraud.nhs.uk

¹⁰¹ www.hmrc.gov.uk/reportingfraud/

¹⁰² See, for example,

www.reigate-banstead.gov.uk/council_and_democracy/about_the_council/fraud_and_corruption/

8. Beyond the civil service: examples of wider issues for public services

In order fully to understand corruption risks in the UK public administration, it is essential to look beyond just the civil service. In 2016, the National Audit Office reported that the public sector ‘spends more money on contracts than it spends on providing services itself’¹⁰³. This increasing contracting out of services is a challenge to integrity and accountability systems. In 2014, the Committee on Standards in Public Life acknowledged that those providing public services through ‘the private or voluntary sectors may not be aware of these [Nolan] Principles or ... consider that they are clearly applicable to them’¹⁰⁴. The Committee is currently conducting a review of how these standards are upheld by providers of public services¹⁰⁵.

In this section we consider the accountability of arm’s-length bodies, which carry out many of the functions of the state, including regulation and public service delivery; the police service, for which a new crime of corruption has recently been created; and integrity management of private companies that provide assessments of claimants of disability and ill health benefits.

9. Arm’s-length bodies – sharing accountability

There are 460 arm’s-length bodies (ALBs) in the UK’s public administration, with a budget amounting to some £250 billion a year¹⁰⁶. ALBs exist to carry out public functions and are insulated from political and government manipulation: they must perform a public function; are required to be politically impartial; and must act independently to establish facts¹⁰⁷. However, the confused management and accountability mechanisms of the various bodies – some accountable to ministers, others accountable to parliament – has meant that when things have gone wrong it has been difficult to know ‘who is accountable for what’¹⁰⁸.

Following the recommendations of the Public Accounts Committee and the National Audit Office, in early 2017 the Cabinet Office produced a Code of Good Practice¹⁰⁹. This provided the ‘opportunity to redefine the relationship between departments and ALBs’¹¹⁰, and address some of the weaknesses identified, including ‘inconsistency, overlaps, confusion and clutter’ in their accountability¹¹¹.

¹⁰³ www.nao.org.uk/wp-content/uploads/2016/11/Commercial-and-contract-management-insights-and-emerging-best-practice.pdf, p.3

¹⁰⁴ Committee on Standards in Public Life, 2014. *Ethical Standards for Providers of Public Services*. London: Committee on Standards in Public Life

¹⁰⁵ www.gov.uk/government/news/ethical-standards-for-providers-of-public-services-follow-up

¹⁰⁶ Committee of Public Accounts. 2016. *Departments’ oversight of arm’s-length bodies*. London: HMSO, p. 3

¹⁰⁷ Comptroller and Auditor General. 2016. *Departments’ oversight of arm’s length bodies: A comparative study*. London: NAO, p.5

¹⁰⁸ Public Administration Select Committee. 2014. *Who’s accountable? Relationships between government and arm’s-length bodies*. London: HMSO, p.3

¹⁰⁹ Cabinet Office. *Code of Good Practice: Partnerships between departments and arm’s-length bodies*. London: HMSO

¹¹⁰ www.instituteforgovernment.org.uk/blog/ministers-reflect-arms-length-bodies

¹¹¹ Public Administration Select Committee. 2014. *Who’s accountable? Relationships between government and arm’s-length bodies*. London: HMSO, p.34

A 2017 survey of chairs and chief executives of public bodies, however, demonstrated that there remained work to be done to embed the principles and that ‘there are several areas where this is not yet being realised’¹¹². In particular, it found that the Code was not widely known about and there had been little consultation over its drafting¹¹³. Without knowledge and buy-in, it is unclear whether the Code will have the necessary impact on improving working relationships and accountability.

10. Managing police corruption

Some of the most high-profile examples of corruption in the UK have involved the police force. These have not only affected individuals directly, but have also seriously undermined trust in the rule of law.

There have been a number of instances over recent decades in which the police have been found to have avoided scrutiny and accountability and, in some cases, even hidden or manipulated evidence¹¹⁴. Examples include the police handling of the racially motivated killing of Stephen Lawrence in 1993¹¹⁵; the 1989 Hillsborough disaster, which led to the deaths of 96 Liverpool football fans with a full inquest finally concluding in April 2016¹¹⁶; the 2009 death of Ian Tomlinson, who died after a blow to the head by a police baton, but was initially declared dead of natural causes¹¹⁷; and the case of Mark Duggan, who was shot dead by a police officer in 2011, but found by an internal investigation to have been ‘lawfully killed’¹¹⁸. In addition, Metropolitan Police officers were implicated in the phone hacking scandals that gave rise to the Leveson inquiry into the culture, practices and ethics of the British press.

These examples paint an ugly picture of police corruption, but it is not clear how widespread it really is. While public trust in the police remains relatively high – 71% trusted the police to tell the truth according to a 2016 survey¹¹⁹ – in 2016-17 the Independent Police Complaints Commission reported that ‘corruption or malpractice’ was alleged 663 times (1% of complaints) and the closely related ‘lack of fairness and impartiality’ prompted 3,306 complaints (5%)¹²⁰.

Some efforts have been made to improve the approach to police corruption. The Criminal Justice and Courts Act 2015 placed on the statute books a new offence of

¹¹² Smith, S., Maloney, E. and Thornton, D. 2017. *Cracking the code of good practice: A survey of the relationships between public bodies and government departments*. London: PCF, ACE and Institute for Government, p.2

¹¹³ Smith, Maloney and Thornton 2017, p. 7

¹¹⁴ These examples are discussed at length in Part II of Whyte, D. (ed.), 2015. *How corrupt is Britain?* London: Pluto

¹¹⁵ Scraton, P. 2015. “Policed by consent? They myth and the betrayal”, in Whyte, D. (ed.), 2015. *How corrupt is Britain?* London: Pluto

¹¹⁶ Coleman, S. 2015. “Hillsborough: The long struggle to expose police corruption”, in Whyte, D. (ed.), 2015. *How corrupt is Britain?* London: Pluto

¹¹⁷ Scraton, P. 2015, p.81

¹¹⁸ Gilmore, J. and Tufail, W. 2015. “Justice denied: Police accountability and the killing of Mark Duggan”, in Whyte, D. (ed.), 2015. *How corrupt is Britain?* London: Pluto, p.94

¹¹⁹ www.ipsos.com/sites/default/files/migrations/en-uk/files/Assets/Docs/Polls/ipsos-moriveracity-index-2016-chart.pdf

¹²⁰ www.ipcc.gov.uk/sites/default/files/Documents/research_stats/complaints_statistics_2016_17.pdf

‘Corrupt or other improper exercise of police powers and privileges’¹²¹. It is too early to assess the real impact this Act will have on prosecutions and deterring police corruption, but it has already been criticised as being open to interpretation, with the potential to confuse misconduct with a criminal offence¹²².

11. Integrity in disability and health assessments

As part of a process of contracting out public services, governments have increasingly been using private companies to conduct assessments of claimants of benefits for disability and ill health, in particular Personal Independence Payments (PIPs)¹²³. However, serious concerns have arisen over the capacity of private companies to provide fair and impartial assessments and the ability of the Department for Work and Pensions (DWP) to oversee their performance and hold them accountable for bad practice.

In 2016, the Public Accounts Committee concluded that the performance of contractors included ‘unacceptable local and regional variations’ with too few meeting the required standards, and that while costs had increased ‘there has been no noticeable benefit for claimants or the tax payer’¹²⁴. The National Audit Office reported that providers had struggled to meet performance targets and that, in setting up new contracts, the DWP might have ‘exacerbated’ these problems through an unclear approach to incentives and risk management, high targets without assessments of resources, and the lack of a clear strategy¹²⁵.

The media has exposed heart-wrenching stories of callous and inappropriate assessments and there have been accusations that these are not simply the result of incompetence and bad management. According to the Guardian newspaper in 2017, evidence from a Disability News Service investigation suggests that, ‘benefits have been removed from disabled people based on entirely fabricated grounds’¹²⁶.

Whilst the DWP rejects the suggestion that there is widespread dishonesty in the assessment process, a March 2017 review of PIP concluded that, ‘public trust in the fairness and consistency of PIP decisions is not currently being achieved’¹²⁷. This is not surprising given the increasing levels of complaints against the PIP process: in 2015/16 142 complaints were lodged against the PIP assessment process, but by 2016/16 this had risen to 1,392¹²⁸, with 65% of the appeals against decisions being

¹²¹ www.legislation.gov.uk/ukpga/2015/2/section/26/enacted

¹²² www.theguardian.com/public-leaders-network/2016/feb/09/law-confuse-police-misconduct-criminal-offence

¹²³ Committee of Public Accounts. 2016. Contracted out health and disability assessments. London: HMSO, p.4

¹²⁴ Committee of Public Accounts. 2016. Contracted out health and disability assessments. London: HMSO, p.5-6

¹²⁵ Comptroller and Auditor General. 2016. Contracted-out health and disability assessments. London: National Audit Office, p.8-9

¹²⁶ <https://www.theguardian.com/commentisfree/2017/oct/30/staggering-rise-pip-complaints-rot-system-disability-benefits>

¹²⁷ Gray, P. 2017. The second independent review of the Personal Independence Payment assessment. London: HMSO, p.3

¹²⁸ www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-10-10/107035/

successful¹²⁹.

12. Conclusion

In this article, we have argued that whilst the UK is generally regarded as having a corruption-free public administration, reflected in its high scores in various perceptions-based rankings, there are grounds for concern that the detailed picture is less positive than such assessments suggest. In particular, there is some confusion both in relation to the definition and meaning of corrupt activity in the public administration, and – more notably – in regard to

the oversight and accountability mechanisms that have been established over time. The UK's integrity management framework reflects the long-term tension between the desire to promote efficiency and the need to ensure appropriate accountability. Whereas for many decades, such tensions were accommodated within a 'patchwork' approach to the promotion of ethics alongside regulatory compliance procedures, in more recent times there has been increasing evidence of strains on the system.

Of particular note has been the emergence of more managerial, performance-driven demands on public service delivery associated with the adoption of New Public Management reforms, alongside the growing emphasis on contracting out. As the core civil service has shrunk, so have new risks to integrity emerged with the increasing use of special advisers, as well as the 'agencification' of service delivery, operating outside the conventional oversight mechanisms. Attempts to rationalise the regulatory framework, through such initiatives as the Constitutional Reform and Governance Act of 2010, have not fully addressed some of the core risks posed by, for instance, revolving door appointments, lobbying practices, and the growing use of arm's-length bodies. As the government is forced to focus ever more attention on the need to negotiate the terms of Brexit, there must be concern that there will neither the capacity nor the commitment to ensuring that these risks are managed through appropriate reforms of the UK's public integrity framework.

¹²⁹www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/new-s-parliament-2017/pip-esa-assessments-launch-17-19/