

**Centre for the Study of Corruption
University of Sussex**

Foreign Affairs Committee

Call for Evidence - Responding to illicit and emerging finance

Response from the Centre for the Study of Corruption

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Contact: Professor Robert Barrington

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- **Research:** undertaking rigorous academic research to address the world's major corruption issues
- **Courses & Teaching:** training the next generation of anti-corruption professionals around the world from undergraduates to PhDs, with three Masters courses
- **Policy:** ensuring that our research informs evidence-based policy and helps change the world.

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<https://www.sussex.ac.uk/research/centres/centre-for-study-of-corruption/policy>

How effective are existing international governance regimes and other measures to tackle illicit finance, and what gaps remain?

1. The term illicit finance can cover many areas, including tax evasion and the proceeds of corruption, as well as the flow of funds that are of suspicious or unexplained origin, but have not been proved to be of illegal or corrupt origin. This response deals mainly with funds in the latter category: funds of suspicious or unexplained origin. The difficulty of proving the origin of illicit funds, especially from countries where there is kleptocracy or state capture, is widely understood in UK law enforcement circles, and was one of the prime reasons for introducing legislation to create Unexplained Wealth Orders in 2017.

2. Global governance in this area has much room for improvement. It is always subject to a lowest common denominator effect. Furthermore, there is a risk that non-cooperative or hostile powers will try to capture and subvert the relevant institutions, as the Russian involvement with Interpol illustrates. A recent article published by Chatham House examines this issue.¹

3. The very slow global progress on agreeing to and implementing beneficial ownership transparency indicates how hard it is to gain consensus and make progress. While not giving up on international progress, the UK might view the greater freedom of action afforded by Brexit as an opportunity to make faster progress in some areas – should the political will exist.

4. For example, further progress might be made through two mechanisms:

a) a group of leadership countries, willing to proceed further and faster than multilateral processes permit. Sanctions over Ukraine have demonstrated how powerful this can be, if the right countries are on board.

b) private sector mechanisms such as increasing transaction costs or timescales for dealing with certain jurisdictions. This could be justified by a risk-based approach. The UK could regulate to adjust the balance of risk in this way, or encourage the City to take a voluntary approach.

How effective are the UK's sanctions regimes on corruption and human rights?

How could sanctions be used to greater effect in countering illicit finance?

5. Most illicit financial flows, particularly those related to corruption, operate outside the context of the sanctions regimes. This is because sanctions are imposed politically as a last resort, whereas illicit financial flows are a business as usual scenario. The Russia-Ukraine situation has demonstrated the value of:

a) imposing sanctions early before assets can be transferred

¹ <https://www.chathamhouse.org/publications/the-world-today/2020-08/losing-fight-against-graft>

- b) good preparation, so that individuals, companies, assets can be identified immediately and action taken
- c) coordinating with like-minded partners.

6. However, the UK has been held back by a number of factors that are within the government's control. These include:

- a) slow reactions, with action lagging the public commitments. Regrettably, in the context of extensive Russian donations to the Conservative Party, this has led to the perception that the government's decision-making may have been influenced by its donors.
- b) lack of transparency. The years of inaction have enabled those who are allegedly corrupt to make full use of the network of financial secrecy to obscure the origin, size and current location of their assets.

7. Adding to the complexity is the role of the UK's so-called 'professional enablers': this refers to law firms, accountants and others who have provided their services to those who are now under suspicion. A recent article in the Law Society Gazette² highlights how members of the legal profession have prioritised commercial advantage over professional ethics. As stated in Parliament, some firms have been assisting corrupt individuals in hiding their assets, laundering their reputations and silencing their critics.

8. While much of the activity of professional enablers will have been legal, much may also be considered as unethical, placing the interests of the client too far above the interests of justice and the rights of victims. Since the professions are substantially self-regulating, the government should consider:

- a) sanctions for professional bodies which fail to ensure their members are following the ethical norms expected of the profession
- b) removing the privilege of self-regulation
- c) exploring other options for moderating the behaviour of professionals who are acting for those whose wealth is of suspicious origin, ensuring that any solutions are compatible with the UN's Basic Principles on the Role of Lawyers.

9. For wealthy clients, London also provides so-called 'concierge services' which specifically aim to sell access and influence. It is a plausible hypothesis that the close links between concierge clients, politicians and PR strategies play a role in undermining political will to act against unexplained or suspicious wealth. This undermines democracy and the rule of law, and itself may partly explain weaknesses and loopholes in the UK's sanctions regime.

² <https://edition.pagesuite.com/html5/reader/production/default.aspx?pubname=&edid=4b84cf11-fb16-446b-aa7c-6a07b9f2005e> pp.32-33

What other measures beyond sanctions can counter illicit finance, including bilateral and multilateral approaches?

10. **The single biggest factor holding back the UK's approach is lack of effective enforcement.** A recent paper³ from the Centre for the Study of Corruption reported:

- 'Our research estimates that £43.1 million of resourcing is allocated annually to enforcement activity which relates to the tackling of grand corruption, foreign bribery and related money- laundering and confiscation of proceeds. Of this £43.1 million, around half the budget and staff are allotted to HMRC, whose AML enforcement Transparency International has described as offering 'little deterrent.' Some key law enforcement units assigned to the task of tackling money laundering do not appear to have any full-time staff dedicated to this exercise.
- 'It would be desirable to double the budgets of key agencies.
- 'Political will within the incumbent government is also a necessary component, both for budget allocation and creating an environment that is favourable to investigations and prosecutions.
- 'This should go hand in hand with practical reforms, including:
 - a) better use of tech
 - b) measures to improve staff retention
 - c) much quicker case progression using a variety of legal routes
 - d) buying-in tech and other expertise from the private sector
 - e) key legislative solutions such as corporate liability reform.'

How, and how effectively, does the FCDO co-ordinate with other UK government departments and agencies to respond to illicit and emerging finance?

11. The UK's anti-corruption architecture is not fit for purpose. As well as being poorly resourced, the organic evolution has led to a multiplicity of agencies with overlapping responsibilities and little strategic direction. CSC research in 2019⁴ concluded:

'The UK has made progress both in tackling corruption and in its international standing. This is very positive, and credit must be given to those in government, the civil service, law enforcement agencies and others who have got the UK to this point. Precisely because things have improved, it may be tempting to leave things as they are – because having an active Champion, a national Strategy and an expert civil service team in JACU is so much better than it could have been.

³ <https://www.sussex.ac.uk/webteam/gateway/file.php?name=csc-wp-series-barrington-resourcing-uk-law-enforcement-jan-2022-final.pdf&site=405>

⁴ <https://www.sussex.ac.uk/webteam/gateway/file.php?name=csc-wp-series-barrington-uk-a-c-governance-may-2020.pdf&site=405>

‘However, the achievements have come via a series of tactical decisions rather than a strategic approach; the architecture and governance of the UK’s anti-corruption response reflect this, and that is usually an approach that both has a limited shelf-life and is unable to withstand shock. What this paper outlines is distinctly unimpressive in governance terms. It is – literally – all over the place: spilt between different departments, overlaid by different committees, with several ministers, and a non-minister, all seeming to be in charge at the same time. There has been minimal transparency and accountability, but above all it is simply not possible to answer one key question: who is in charge of overseeing the UK’s national well-being with regard to corruption?’

‘There is a mis-match between the current system of ad-hoc governance and the Government’s stated aspirations on a subject which it has repeatedly said is important for economic prosperity and national security, and regarding which there are significant international commitments to fulfil. In other words, while certain aspects of the national anti-corruption approach have been successfully updated (creation of JACU and the Strategy 2017-22, key legislation), the governance has yet to catch up.’

12. We reiterate the recommendations of that paper:

‘A review should examine three areas:

‘1. How best the UK’s anti-corruption governance can be designed to fulfil the aims and aspirations of the United Kingdom Anti-Corruption Strategy 2017-22, considering how the many moving parts fit together, where they can be streamlined and coordinated, and the key question of who should be in charge; evaluating examples from peer countries; and committing that post-Brexit Britain will aim to operate to world class standards.

‘2. More specifically, the arguments for and against creating an Anti-Corruption Agency in the UK. This is a standard mechanism used by other countries, and even if the UK decides not to create one, the process of examining what an ACA does, the gaps in the UK system compared to this, and what the UK already does well or not so well in the absence of an ACA, would be highly beneficial.

‘3. The case for creating an Independent Commissioner for Corruption, akin to other Commissioners in the UK. Perhaps the best comparator is the Modern Slavery Commissioner. This could complement or replace the Anti-Corruption Champion position, and create a clearer distinction between the political and non-political aspects of the role.’

13. In particular, we believe the case has strengthened for establishing an Independent Commissioner, who may be either an Anti-Corruption Commissioner or an Economic Crime Commissioner. The role might provide oversight of the implementation and effectiveness of

relevant government strategies, assist coordination efforts by identifying where and how coordination could be improved, and/or a measure of accountability for how well the UK is living up to its international commitments.

14. There remains a case for wider systemic reform of the UK's anti-money laundering system, in which institutional arrangements and governance may play a part. However, steps can be taken immediately without waiting for a complete overhaul; although they should incorporate into their design the prospect of a future overhaul.

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