

Reforming the United Kingdom's domestic corruption laws

Summary report of roundtable discussion organised by Spotlight on Corruption hosted by Red Lion Chambers, Wednesday 26th February 2025

On 26th February 2025, Spotlight on Corruption organised a roundtable to discuss and improve the UK's current framework against domestic anti-corruption, and specifically the common law offence of misconduct in public office ("MIPO").

The roundtable brought together experts from law enforcement, the legal sector, local and national government, academia, and civil society with the aim of developing consensus around what a new domestic corruption in public office offence should look like.

This discussion was informed by a legal opinion that A&O Shearman had prepared on a pro bono basis for Spotlight on whether proposals made by the Law Commission in 2020 for a new corruption in public office offence:

- Captured behaviour that the UN Convention Against Corruption ("UNCAC") has recommended should be criminalised; and
- Were workable, and enforceable.

This report gives an overview of the key themes identified, and some of the emerging consensus reached by those at the roundtable.

The record to date

Spotlight on Corruption presented its research on recent enforcement of the MIPO offence looking at publicly available data on convictions since 2014. The research found that of the 191 convictions where there is information in the public domain since 2014 92% were prison and police staff, and 98% were junior to mid-level employees.

This resonates with concerns raised with the Law Commission in their 2020 report¹ on reforming MIPO that the offence is largely targeted at junior employees, with 'senior' and high-ranking public officials escaping conviction. Spotlight found just 4 convictions among the 191 cases where public information is available which involved individuals holding a senior position.

Additionally, MIPO has been targeted predominantly at inappropriate and sexual relationships, with just 4% of those convictions (where there is public domain information) relating to crimes such as bribery, extortion, and unauthorised financial dealing.

Practical difficulties

Participants at the roundtable, particularly those with a background in investigating or prosecuting MIPO, highlighted that there were various reasons for why junior officials, particularly in the police and prison services, were largely the target of enforcement. These included:

1. A lack of political will to go after more senior office-holders.
2. The fact that police and prison staff represented easy targets because:
 - a. they are more likely to plead guilty;
 - b. prosecuting inappropriate relationships is very straightforward; and
 - c. anti-corruption units in the police and prison service ensure it is easier to gather evidence.

¹ Law Commission, [Misconduct in Public Office \(2020\)](#)

3. Going after more senior officials, a task which requires evidence which is harder to get, demands considerable time and resources, and there are fewer anti-corruption units in local or national government to meet this challenge.
4. The absence of clear codes of conduct and benchmarks for what “good” conduct looks like at a more senior level, which would be able to establish what kind of behaviour falls below a certain standard.
5. The fact that failures by senior level officials may be collective rather than individual, and that their conduct might involve neglect, which is difficult to prosecute given the high criminal threshold for proving ‘wilful neglect’.

Regardless of any legislative changes, some participants noted that investigators and prosecutors need to display greater “bravery” in their efforts against “top shelf” corruption. There were also proposals that there should be funding for blockbuster domestic corruption cases, as happens with foreign bribery cases conducted by the Serious Fraud Office, to ensure resourcing issues do not prevent the investigation of high level offending.

Reforming the law

While some investigators noted that the MIPO offence is useful in certain circumstances, there was widespread consensus that the offence is no longer fit for purpose. This chimes with the Law Commission’s findings in its 2020 report.

There was recognition that the Law Commission’s proposed new offence of “corruption in public office” would be an improvement on the current status quo. However, participants agreed with findings made by A&O Shearman in its opinion that there were shortcomings in the proposed drafting of that offence which would impede its usefulness.

These included:

1) The scope of ‘public office’

Having a definition of ‘public office holder’ for a corruption offence which is “future-proof” is key to its efficacy. The Law Commission decided that it was “*essentially impossible*” to achieve an all-encompassing definition, and opted for a prescriptive approach, that provided legal certainty in the form of a statutory list. One expert highlighted that a list is helpful, and provides protection for employees.

There was a strong consensus however that a non-exhaustive list, with a ‘catch all’ clause, which could cover individuals from private sector companies that fulfil public functions was essential to making the offence workable. Local authority participants highlighted the dramatic rise in the outsourcing of public responsibilities, with a likelihood that this trend will increase and the desirability of directors and senior managers of companies wholly owned by local authorities being in-scope.

Advantages of having a ‘catch all’ in addition to the list included that it would meet the UNCAC definition more closely, would encourage more creative thinking by investigators and legal counsel, and would empower courts to make context specific findings of fact.

Participants felt that the Law Commission’s recommendation that the Secretary of State for Justice be able to amend the list through an affirmative statutory instrument was a reactionary solution which would fail to keep pace with an evolving public sector.

2) Purpose v intent

The roundtable looked closely at the Law Commission’s proposal that a public office holder would need to have the “*purpose*” of achieving a benefit to themselves or a benefit or detriment to another. A&O Shearman suggested that this should be replaced with “*intent*” not least to capture oblique intent. They indicated that using purpose instead would “*likely hamper enforcement of domestic corruption.*”

There was widespread consensus that using “*intent*” would be preferable, not least because it is more understandable as a concept in English jurisprudence.

3) Whose judgement on whether it was improper? The subjective/objective test

The Law Commission proposed that a new corruption in public office offence should be subject to two tests: an objective test based on whether a “reasonable person” would consider the use or failure to use public office as seriously improper, and a subjective one based on whether the office holder would know a ‘reasonable person’ would consider it so.

A&O Shearman recommended that the subjective test be removed but that it should be made clear in accompanying guidance that the jury, when applying the objective test, should include an analysis of the office holder’s understanding of the facts and circumstances surrounding their actions and their personal circumstances including their background and experience². There was widespread consensus among the participants that an additional subjective test imposes an additional barrier to prosecution and is not consistent with modern case law. Issues that should be considered to ensure conduct by less-experienced public officers is not over-criminalised could be laid out in guidance – and in any event would be taken into consideration when applying the objective test, assuming that the approach set out above is applied.

4) Maintaining a public interest defence

The Law Commission’s proposed offence includes a public interest defence premised on a reverse burden of proof - the defendant must prove their conduct was in the public interest.

Participants discussed whether the defence should be narrowed or tailored to particular situations such as protecting whistleblowers. One expert highlighted that while such a defence might not be so appropriate where there is personal corruption, it would be essential in cases of what might be termed ‘partisan’ corruption - i.e. where the benefit would be for a political or governing party.

There was also some concern that the defence could be used as a ‘get out of jail free’ card. Participants noted that public interest defences are uncommon in English criminal law, and were keen that they should not be allowed to be invoked during investigations into personal corruption.

Overall, there was consensus, particularly among the legal participants, that the defence is an “*important safeguard*” which could protect against abuse of the offence for ‘political lawfare’. These participants expressed optimism that juries would “*see through*” meritless claims, and that prosecutors would effectively highlight their meritlessness.

² This would be consistent with the approach to the objective test for dishonesty under *R v Ivey and Genting*, following the removal of the two stage test under *R v Ghosh* and as applied in *R v Barton and Booth* (2020) EWCA Crim 75.

5) Fostering good governance, senior level accountability and introducing a “failure to prevent” offence

There was recognition by participants that combatting corruption in public office is not a purely legislative issue, but requires cultural and structural change.

Participants observed trends of “organisational failure” in modern public service, most notably within local councils, with dubious contracts and collective corporate failures identified in various independent and government-commissioned reports.

Participants noted the importance of changing the “context” in which public officials worked, so that they could more readily identify certain behaviours and actions as falling below the requisite standards and potentially fraudulent or corrupt. One participant highlighted the lack of benchmarking for what ‘good looks like’ in local and national government, and the importance of identifiable protocols for promoting good governance, which would assist enforcement efforts.

Another participant highlighted lack of training and iLearning resources for fraud, corruption, and misconduct for employees in local councils, and highlighted the urgent need for regular fraud and misconduct awareness training among public servants.

Additionally, participants noted that addressing corporate failure and the role of senior executives at local councils in these corporate failures was important.

Participants discussed whether a failure to prevent corruption in public office offence could be useful to act as a robust preventative tool against public misconduct, and as an instrument for facilitating enforcement. A failure to prevent offence could ensure public officials undertake greater vigilance in dealing with private sector contractors, and assist investigators and prosecutors in surmounting the difficulties of identifying individual offenders.

Participants were sensitive to the risks posed by introducing an FTP offence, including the “major burden” it would impose on public sector bodies already struggling with resourcing issues, and the fact that any penalties for the offence would be payable out of public funds and would therefore impact on an already under-resourced sector, but felt that it was worth further exploration.

Participants also discussed how senior executives could be more effectively held to account and agreed to consider whether the addition of ‘consent and connivance’ clauses to the new corruption offence, such as those in the Bribery Act, to cover those working at director level, would be a useful addition. This could have the benefit of ensuring that senior directors play a more active role in maintaining good standards within their departments and companies.