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Transparency in the Executive Branch of Government: Some Lessons from the UK

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What is meant by the English term 'transparency' and the related English terms 'openness' and 'accountability'?



The *Cambridge Dictionary* published online by Cambridge University Press at <https://dictionary.cambridge.org/> defines:

- the noun '**transparency**' as 'the characteristic of being easy to see through'; see <https://dictionary.cambridge.org/dictionary/english/transparency>
- the noun '**openness**' as 'honesty'; see <https://dictionary.cambridge.org/dictionary/english/openness>
- the noun '**honesty**' as 'the quality of being honest'; see <https://dictionary.cambridge.org/dictionary/english/honesty>
- the adjective '**honest**' as 'telling the truth or able to be trusted and not likely to steal, cheat, or lie'; see <https://dictionary.cambridge.org/dictionary/english/honest>
- the noun '**accountability**' as 'the fact of being responsible for what you do and [being] able to give a satisfactory reason for it, or the degree to which it happens'; see <https://dictionary.cambridge.org/dictionary/english/accountability>

In the UK, accountability, openness and honesty are among ***The Seven Principles of Public Life***. These are '1. Selflessness. 2. Integrity. 3. Objectivity. 4. Accountability. 5. Openness. 6. Honesty. 7. Leadership.' See www.gov.uk/government/publications/the-7-principles-of-public-life

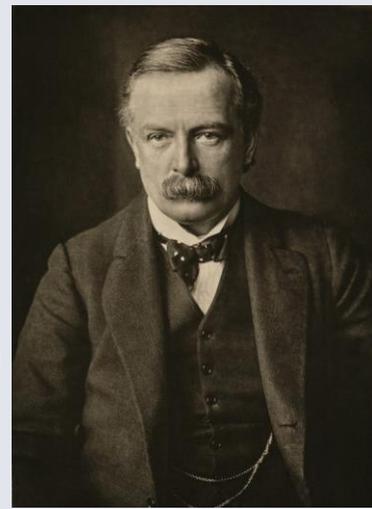
This presentation is built around four propositions:

- **1.** Transparency goes hand in hand with accountability and other fundamental principles associated with a modern democratic society under the rule of law such as open justice, open government, freedom of information and public consultation.
- **2.** Freedom of information is bound up with freedom of speech, freedom of expression, freedom of the press and other manifestations of freedom under the law.
- **3.** Freedom of information laws are key enablers of transparency and accountability. However, such laws alone are not enough. They must be supplemented by other enablers such as a democratic anti-corruption culture which is steeped in ethics and embedded with the facilitators of transparency and accountability identified in this presentation.
- **4.** There is much to learn from what has gone wrong, from what has been put right and from what has been done well in the United Kingdom.

David Lloyd George (1863-1945):

A case study in alleged impropriety in the years before the modern mechanisms of transparency and accountability

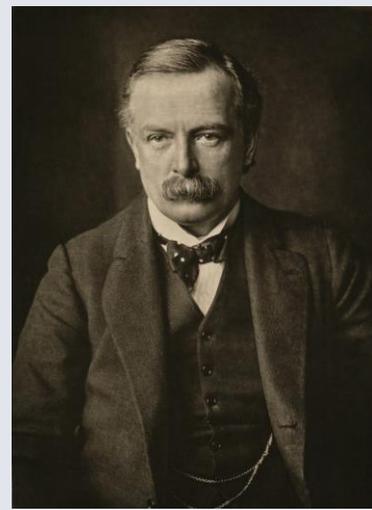
- David Lloyd George held a number of ministerial offices in the UK Government, including the office of Chancellor of the Exchequer from 1908 until 1915 and the office of Prime Minister from 1916 until 1922.
- David Lloyd George was the first – and hitherto the only solicitor – to serve as Prime Minister of the UK; conversely, several barristers have served as Prime Minister e.g. Asquith, Attlee, Thatcher & Blair.
- As a Minister and as Prime Minister, David Lloyd George engaged in a number of legally or morally questionable activities which were carried out behind closed doors and in the absence of the modern mechanisms of transparency and accountability available today.



Source of image: Tara Finn, 'The Battle of Amiens', 8 August 2018, National Archives of the UK, <https://history.blog.gov.uk/2018/08/08/the-battle-of-amiens/> (accessed 28 October 2021)

The essence of the so-called ‘Marconi Insider-Trading Scandal’, as alleged on 18 June 1913 by George Cave KC MP (a future Solicitor General and Lord Chancellor)

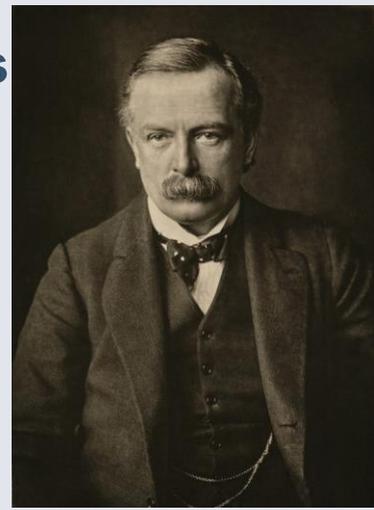
‘I beg to move, “That this House regrets the transactions of certain of His Majesty’s Ministers in the shares of the Marconi Company of America, and the want of frankness displayed by Ministers [including David Lloyd George MP [right], Chancellor of the Exchequer and a solicitor by profession, and Rufus Isaacs KC MP, the Attorney General] in their communications on the subject to the House.” ... [*This motion was not carried by the House of Commons.*]



‘I think that all those [‘Rules and traditions’] to which I have to draw attention are founded upon one general principle, that **no Minister ought to engage in transactions which may bring his private interest or his private sense of obligation into conflict with his public duties.**’ Hansard, House of Commons Debates, 18 June 1913, Columns 391-392, <https://api.parliament.uk/historic-hansard/commons/1913/jun/18/marconis-wireless-telegraph-company>.

The essence of the so-called ‘cash-for-honours scandal’, as alleged on 29 June 1925 by Lord Salisbury, Lord Privy Seal, when moving the Honours (Prevention of Abuses) Bill:

‘A few years ago, public opinion in this was profoundly concerned at certain scandals which had arisen in connection with the distribution and conferring of honours. ... There were grounds for thinking that pecuniary considerations entered into the reasons for the conferring of these honours in a way in which they ought not to have done, and the country became convinced that a matter which ought to be above suspicion had become discredited. It was resented in the country, and properly resented, as an insult to the King and as an outrage upon decency.. ...’. Hansard, House of Lords Debates, 29 June 1925, Columns 817-818, <https://api.parliament.uk/historic-hansard/lords/1925/jun/29/honours-prevention-of-abuses-bill-hl>



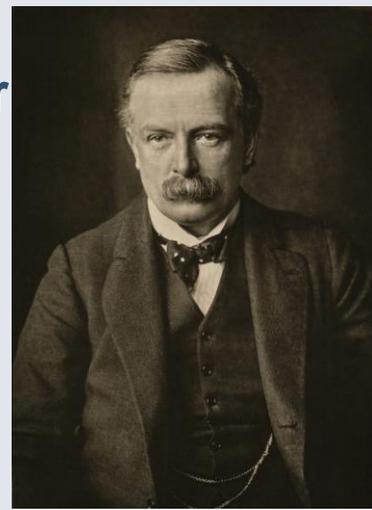
→ Honours (Prevention of Abuses) Act 1925

For much of his political career, David Lloyd George conducted a clandestine and covered-up extra-marital affair with Frances Stevenson, his private secretary. They eventually married in 1943 after his first wife died in 1941.

See *inter alia*:

- John Campbell, *If love were all: the story of Frances Stevenson and David Lloyd George* (London: Jonathan Cape, 2006)
- Carolyn Hitt and Peter Shuttleworth, 'David Lloyd George's 30-year mistress', BBC News, 10 December 2016, www.bbc.com/news/uk-wales-38236344
- Ruth Longford, 'My grandmother was Lloyd George's mistress', 27 October 2021, <https://britishheritage.com/history/grandmother-lloyd-george-mistress>

→ In 1963, 'the Profumo scandal' illustrated the various problems that may arise if a Minister conducts a clandestine extra-curricular affair in a way that muddles up – or appears to muddle up – his private and public life or if the Minister misleads Parliament about the affair.

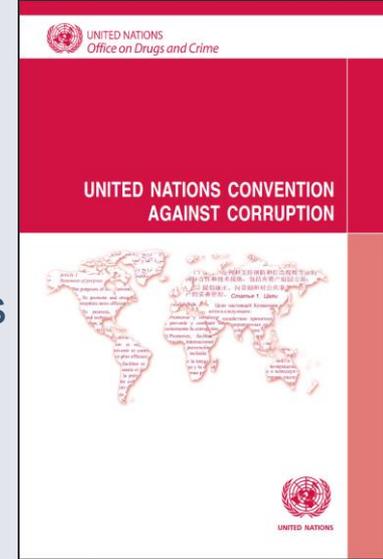


Transparency goes hand in hand with accountability and other fundamental principles associated with a democratic society under the rule of law

‘Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish. ... The adoption of the United Nations Convention against Corruption [of 2003] will send a clear message that the international community is determined to prevent and control corruption. It will warn the corrupt that betrayal of the public trust will no longer be tolerated. And it will reaffirm the importance of core values such as honesty, respect for the rule of law, accountability and transparency in promoting development and making the world a better place for all.’

Foreword of Kofi A. Annan, UN Secretary-General, to the UN Convention Against Corruption 2003,

www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf (accessed on 28 October 2021) Source of image: UN Office on Drugs & Crime, www.unodc.org/unodc/en/treaties/CAC/ (accessed on 6 July 2021).



‘1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

‘2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.’ **Article 5, UN Convention Against Corruption 2003,**

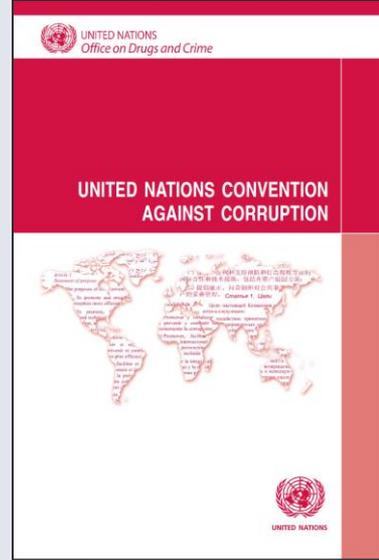
www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf (accessed on 28 October 2021)

→ ***UK anti-corruption strategy 2017 to 2022*** (London: Home Office, 2017), www.gov.uk/government/publications/uk-anti-corruption-strategy-2017-to-2022

→ **Anti-Corruption collection of documents published by the Home Office of the UK Government,** www.gov.uk/government/collections/anti-corruption

→ **The Prime Minister’s Anti-Corruption Champion (John Penrose MP),** www.gov.uk/government/people/john-penrose

Source of image: UN Office on Drugs & Crime, www.unodc.org/unodc/en/treaties/CAC/ (accessed on 6 July 2021).





HM Government

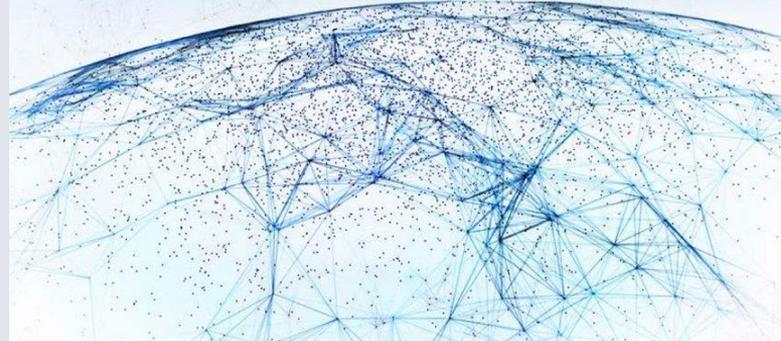
UNITED KINGDOM ANTI-CORRUPTION STRATEGY 2017-2022

‘There is no universally accepted definition of corruption, but it is generally understood to involve the abuse of office and position to benefit a third party (an individual, business or other organisation), in return for payment or other reward. These features are captured in Transparency International’s definition: “the misuse of entrusted power for personal gain.” ...’

United Kingdom Anti-Corruption Strategy 2017-2022
(London: Home Office, 2017), 13,

www.gov.uk/government/publications/uk-anti-corruption-strategy-2017-to-2022 (accessed 6 July 2021).

Source of image: Message of the British Embassy in Jakarta, 12 December 2017,
<https://twitter.com/ukinindonesia/status/940474470078095360> (accessed 6 July 2021).



In England, transparency, accountability & other features of a democratic anti-corruption culture are facilitated by *inter alia*:



- The common law offence of misconduct in public office www.cps.gov.uk/legal-guidance/misconduct-public-office
- The Honours (Prevention of Abuses) Act 1925 www.legislation.gov.uk/ukpga/Geo5/15-16/72
- The Public Record Act 1958 www.legislation.gov.uk/ukpga/Eliz2/6-7/51
- The Parliamentary Commissioner Act 1967 www.legislation.gov.uk/ukpga/1967/13
- The Theft Act 1968 (on false accounting etc.) www.legislation.gov.uk/ukpga/1968/60
- The Public Interest Disclosure Act 1998 www.legislation.gov.uk/ukpga/1998/23
- Government Resources and Accounts Act 2000 www.legislation.gov.uk/ukpga/2000/20
- The Freedom of Information Act 2000 www.legislation.gov.uk/ukpga/2000/36
- The Environmental Information Regulations 2004 www.legislation.gov.uk/uksi/2004/3391
- Other Acts e.g. Proceeds of Crime Act 2002 www.legislation.gov.uk/ukpga/2002/29/contents Fraud Act 2006 www.legislation.gov.uk/ukpga/2006/35/contents, Bribery Act 2011 www.legislation.gov.uk/ukpga/2010/23 and Transparency of Lobbying, Non-Party Campaigning & Trade Union Administration Act 2014 www.legislation.gov.uk/ukpga/2014/4

The facilitators of accountability and transparency applicable to the UK Government & Ministers in the UK Parliament include:



- **Ministerial correspondence, meetings and other communications** – with Parliamentarians, citizens and other stakeholders
- **Ministerial Accountability** to Parliament (e.g. via Question Time and evidence sessions before Parliamentary inquiries). See <https://erskinemay.parliament.uk/section/4569/ministerial-accountability-to-parliament/>
- **Internal UK Government procedures**, especially under the *Cabinet Manual* and the *Ministerial Code*. See www.gov.uk/government/publications/cabinet-manual and www.gov.uk/government/publications/ministerial-code
- **The Annual Report of the Independent Adviser of Ministers' Interests.** See www.gov.uk/government/publications/list-of-ministers-interests
- **The Committee for Standards in Public Life.** See www.gov.uk/government/organisations/the-committee-on-standards-in-public-life
- **The House of Commons Committee on Standards.** See <https://committees.parliament.uk/committee/290/committee-on-standards/> subject to the Resolution adopted by the House of Commons following a debate held on 3 November 2021 and recorded at <https://hansard.parliament.uk/commons/2021-11-03/debates/EA7E30B2-F0D0-4FC8-A608-9845CE43CF28/CommitteeOnStandards> and other subsequent developments since the webinar held on 4 November 2021. See the next slide.
- **The House of Lords Commissioners for Standards.** See www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/house-of-lords-commissioner-for-standards-/house-of-lords-commissioner-for-standards-/

The House of Commons Committee on Standards: Key developments and publications in the days that followed the webinar held on 4 November 2021

- **Richard Kelly, *Standards in the House of Commons* (London: House of Commons Library Report 5359, 5 November 2021,**
<https://researchbriefings.files.parliament.uk/documents/CBP-9359/CBP-9359.pdf> and
<https://commonslibrary.parliament.uk/research-briefings/cbp-9359/>
- **The statement by the Speaker of the House of Commons and the transcript of the debate in the House of Commons on 8 November 2021,**
as published by Hansard at <https://hansard.parliament.uk/Commons/2021-11-08/debates/6924130E-47E7-44D6-8402-C99990B48A4D/Speaker%E2%80%99SStatement> and at <https://hansard.parliament.uk/Commons/2021-11-08/debates/6E81CD0D-33C6-4796-B224-5D88EFAC8F07/CommitteeOnStandardsDecisionOfTheHouse> respectively
- **Richard Kelly, ‘MPs’ paid directorships and consultancies’, House of Commons Library Research Briefing, 16 November 2021,**
<https://commonslibrary.parliament.uk/research-briefings/cbp-9370/>
- **The statement by the Leader of the House of Commons and the Resolution adopted by the House of Commons on 16 November 2021,** as
published by Hansard at <https://hansard.parliament.uk/commons/2021-11-16/debates/B3AC32DF-B65F-4CE8-8786-31D9EAF3A6E3/CommitteeOnStandards>

The facilitators of accountability and transparency applicable to the UK Government & Ministers in the UK Parliament include:



- **The annual reports and accounts of Government ministries**, as audited by the Comptroller and Auditor General in the National Audit Office under the Government Resources and Accounts Act 2000 e.g. Home Office *Annual Report and Accounts 2020-21 (for the year ended 31 March 2021)* at www.gov.uk/government/publications/home-office-annual-report-and-accounts-2020-to-2021
- **Reports of the National Audit Office.** See www.nao.org.uk
- **Reports of the Parliamentary and Health Service Ombudsman** under the Parliamentary Commissioner Act 1967. See www.ombudsman.org.uk/publications/reports-about-government
- **Government Transparency & Freedom of Information Releases** at www.gov.uk/search/transparency-and-freedom-of-information-releases
- **The Information Commissioner's Office** – ‘The UK’s independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.’ See <https://ico.org.uk/>
- **The National Archives of the UK.** See www.nationalarchives.gov.uk/

The facilitators of accountability and transparency applicable to the UK Government & Ministers in the UK Parliament include:



- **Inquiries and Reports of the Public Accounts Committee of the House of Commons and the Responses of the UK Government.** See <https://committees.parliament.uk/committee/127/public-accounts-committee/>
- **Published departmental complaints procedures** e.g. the Complaints Procedure of the Home Office at www.gov.uk/government/organisations/home-office/about/complaints-procedure
- **Judicial Review** e.g. *R (Miller) v The Prime Minister* [2019] UKSC 41 at www.supremecourt.uk/cases/uksc-2019-0192.html
- **Independent Public Inquiries** e.g. *The Report of the Iraq Inquiry* published in 2016 at www.gov.uk/government/publications/the-report-of-the-iraq-inquiry
- **Reviews** e.g. The Nimrod Review published in 2009 at www.gov.uk/government/publications/the-nimrod-review
- **Published Policy Papers & Public consultation Exercises;** see *inter alia* www.gov.uk/search/policy-papers-and-consultations www.gov.uk/find-local-consultations & <https://consult.justice.gov.uk/>
- **Press Freedom, Media Freedom, Investigative Journalism, Academic Research**
- **Relevant legislation** (see the separate relevant slides)
- **Official registers** (see the separate relevant slides)

An example of an ongoing Independent Public Inquiry in the UK



The Grenfell Tower Inquiry is chaired by Sir Martin Moore-Bick, a retired judge. Pursuant to the Inquiries Act 2005 and a Prime Ministerial announcement on 15 June 2017, the Inquiry ‘was created to examine the circumstances leading up to and surrounding the fire at Grenfell Tower on the night of 14 June 2017.’ The Inquiry’s mechanisms of transparency include:

- **The website of the Inquiry:** www.grenfelltowerinquiry.org.uk/
- **Hearings which are generally open to the public and live-streamed:** www.grenfelltowerinquiry.org.uk/venue
- **A published online database entitled ‘Evidence’:** www.grenfelltowerinquiry.org.uk/evidence
- **Published documents, including correspondence, directions and protocols:** www.grenfelltowerinquiry.org.uk/key-documents
- **The Twitter account of the Inquiry:** <https://twitter.com/grenfellingquiry>
- **The Grenfell Tower Youtube channel, including livestream & archive of videos:** www.youtube.com/c/GrenfellTowerInquiry/videos
- **The monthly Newsletter of the Inquiry:** www.grenfelltowerinquiry.org.uk/news

Ministers of the Crown in the UK must declare relevant interests via *inter alia*:



- The ***List of Ministers' Interests*** (including the list of 'Relevant interests of spouse, partner or close family member' of each Minister) published by the Cabinet Office: www.gov.uk/government/publications/list-of-ministers-interests
- ***Ministers' Quarterly Returns on Ministerial Gifts, hospitality, travel & meetings*** e.g. those of Ministers in the Foreign, Commonwealth & Development Office: www.gov.uk/government/collections/minister-data
- ***Register of Members' Financial Interests*** (for all MPs, including Ministers) published by the House of Commons: www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/parliamentary-commissioner-for-standards/registers-of-interests/register-of-members-financial-interests/
- ***Register of Interests of Members' Secretaries and Research Assistants*** published by the House of Commons: www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/parliamentary-commissioner-for-standards/registers-of-interests/register-of-members-secretaries-and-research-assistants/
- ***Register of Lords' Interests*** (for all Peers, including Ministers) published by the House of Lords: www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/register-of-lords-interests/
- ***House of Lords – Register of Members' Staff Interests*** published by the House of Lords: <https://members.parliament.uk/members/lords/interests/register-of-interests-of-lords-members-staff>

‘The establishment of the Register dates from a Resolution of the House of 22 May 1974. ...

‘The defining purpose of the Register [as set out in the *First Report of the Select Committee on Members’ Interests* (1991-92), para. 27] is “to provide information of any pecuniary interest or other material benefit which a Member receives which might reasonably be thought by others to influence his or her actions, speeches or votes in Parliament, or actions taken in his or her capacity as a Member of Parliament”. Members are required to keep that overall purpose in mind when registering their interests.’

‘Introduction’ by Sir Gordon Downey KCB, Parliamentary Commissioner for Standards, to the October 1997 Edition of the *Register of Members’ Interests* See <https://publications.parliament.uk/pa/cm199798/cmregmem/memi01.htm>

‘Under the terms of the Ministerial Code, Ministers must ensure that no conflict arises, or could reasonably be perceived to arise, between their Ministerial position and their private interests, financial or otherwise. On appointment to each new office, Ministers must provide their Permanent Secretary with a list, in writing, of all relevant interests known to them, which might be thought to give rise to a conflict.

‘Individual declarations, and a note of any action taken in respect of individual interests, are then passed to the Cabinet Office Propriety and Ethics team and the Independent Adviser on Ministers’ Interests to confirm they are content with the action taken or to provide further advice as appropriate. ...’.

Introduction to the *List of Ministers’ Interests* published by the Cabinet Office in May 2021 See

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/990395/List_of_ministers_interests_May_2021_1_.pdf

Freedom of information is bound up with freedom of speech, freedom of expression, freedom of the press and other manifestations of freedom under the law.

‘[F]or the common people of England have succeeded to the greatest heritage of all — the heritage of freedom ...

‘The freedom of the individual, which is so dear to us, has to be balanced with his duty; for, to be sure every one owes a duty to the society of which he forms part. ...

‘In the English way of life the freedom of the individual must not be impaired except so far as absolutely necessary. In the totalitarian way of life the freedom of the individual must always give way to the interests of the State.’

Sir Alfred Denning, *Freedom under the law* (London: Stevens & Sons Ltd, 1949), 3, 4 & 14-15,

https://socialsciences.exeter.ac.uk/media/universityofexeter/schoolofhumanitiesandsocialsciences/law/pdfs/Freedom_Under_the_Law_1.pdf and <https://socialsciences.exeter.ac.uk/law/hamlyn/hamlynarchives/>

Censorship is the antithesis to freedom of speech and the free circulation of information

‘Freedom of speech is always the first casualty under a totalitarian regime. Such a regime cannot afford to allow the free circulation of information and ideas among its citizens. Censorship is the indispensable tool to regulate what the public may and what they may not know. ...’



Attorney General v Guardian Newspapers Ltd (No.1)* [1987] WLR 1248, per Lord Bridge of Harwich (dissenting) www.bailii.org/uk/cases/UKHL/1987/13.html

* When the case reached the European Court of Human Rights as *Observer & Guardian v The UK* [1991] ECHR 49, the Court held inter alia that the Government of the UK was responsible for a violation of Article 10 during the period from 30 July 1987 to 13 October 1988’. See www.bailii.org/eu/cases/ECHR/1991/49.html

Source of image: Mark Trainer, ‘3 cases that show what free speech means’, 4 December 2017, website of the Bureau of Global Public Affairs, US State Department, <https://share.america.gov/three-cases-that-show-what-free-speech-means/> (accessed 26 October 2021).

R v Shayler [2002] UKHL 11, per Lord Bingham of Cornhill

www.bailii.org/uk/cases/UKHL/2002/11.html

‘The reasons why the right to free expression is regarded as fundamental are familiar, but merit brief restatement in the present context. Modern democratic government means government of the people by the people for the people. But there can be no government by the people if they are ignorant of the issues to be resolved, the arguments for and against different solutions and the facts underlying those arguments. The business of government is not an activity about which only those professionally engaged are entitled to receive information and express opinions. It is, or should be, a participatory process.’



Source of images: Top: Mark Trainer, ‘3 cases that show what free speech means’, 4 December 2017, Bureau of Global Public Affairs, US State Department, <https://share.america.gov/three-cases-that-show-what-free-speech-means/> (accessed 26 October 2021). Bottom: ‘Balancing freedom of expression in the modern world’, 1 December 2017, EU Agency for Fundamental Rights, <https://fra.europa.eu/en/news/2017/balancing-freedom-expression-modern-world> (accessed 26 October 2021).

R v Shayler [2002] UKHL 11, per Lord Bingham of Cornhill

www.bailii.org/uk/cases/UKHL/2002/11.html

‘But there can be no assurance that government is carried out for the people unless the facts are made known, the issues publicly ventilated. Sometimes, inevitably, those involved in the conduct of government, as in any other walk of life, are guilty of error, incompetence, misbehaviour, dereliction of duty, even dishonesty and malpractice. Those concerned may very strongly wish that the facts relating to such matters are not made public. Publicity may reflect discredit on them or their predecessors. It may embarrass the authorities. It may impede the process of administration.’



Source of images: Top: Mark Trainer, ‘3 cases that show what free speech means’, 4 December 2017, Bureau of Global Public Affairs, US State Department, <https://share.america.gov/three-cases-that-show-what-free-speech-means/> (accessed 26 October 2021). Bottom: ‘Balancing freedom of expression in the modern world’, 1 December 2017, EU Agency for Fundamental Rights, <https://fra.europa.eu/en/news/2017/balancing-freedom-expression-modern-world> (accessed 26 October 2021).

R v Shayler [2002] UKHL 11, per Lord Bingham of Cornhill

www.bailii.org/uk/cases/UKHL/2002/11.html

‘Experience however shows, in this country and elsewhere, that publicity is a powerful disinfectant. Where abuses are exposed, they can be remedied. Even where abuses have already been remedied, the public may be entitled to know that they occurred. The role of the press in exposing abuses and miscarriages of justice has been a potent and honourable one. But the press cannot expose that of which it is denied knowledge.’



Source of images: Top: Mark Trainer, ‘3 cases that show what free speech means’, 4 December 2017, Bureau of Global Public Affairs, US State Department, <https://share.america.gov/three-cases-that-show-what-free-speech-means/> (accessed 26 October 2021). Bottom: ‘Balancing freedom of expression in the modern world’, 1 December 2017, EU Agency for Fundamental Rights, <https://fra.europa.eu/en/news/2017/balancing-freedom-expression-modern-world> (accessed 26 October 2021).

Under European Human Rights Law, the human right to freedom of expression includes ‘freedom to... receive and impart information and ideas ...’.

‘Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises...’

Article 1.1, European Convention on Human Rights 1950,

www.echr.coe.int/documents/convention_eng.pdf (accessed 26 October 2021)



Source of images: Top: Mark Trainer, ‘3 cases that show what free speech means’, 4 December 2017, Bureau of Global Public Affairs, US State Department, <https://share.america.gov/three-cases-that-show-what-free-speech-means/> (accessed 26 October 2021). Bottom: ‘Balancing freedom of expression in the modern world’, 1 December 2017, EU Agency for Fundamental Rights, <https://fra.europa.eu/en/news/2017/balancing-freedom-expression-modern-world> (accessed 26 October 2021).

Under European Human Rights Law, freedom of expression and related freedoms are qualified

‘The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary....’

Article 1.2, European Convention on Human Rights 1950

Source of images: Top: Mark Trainer, ‘3 cases that show what free speech means’, 4 December 2017, Bureau of Global Public Affairs, US State Department, <https://share.america.gov/three-cases-that-show-what-free-speech-means/> (accessed 26 October 2021). Bottom: ‘Balancing freedom of expression in the modern world’, 1 December 2017, EU Agency for Fundamental Rights, <https://fra.europa.eu/en/news/2017/balancing-freedom-expression-modern-world> (accessed 26 October 2021).



Leander v Sweden (1987) 9 EHRR 433,

www.bailii.org/eu/cases/ECHR/1987/4.html

‘The [European] Court [of Human Rights] observes that the right to freedom to receive information basically prohibits a Government from restricting a person from receiving information that others wish or may be willing to impart to him. Article 10 does not, in circumstances such as those in the present case, confer on the individual a right of access to a register containing information on his personal position, nor does it embody an obligation on the Government to impart such information to the individual.’



Source of images: Top: Mark Trainer, '3 cases that show what free speech means', 4 December 2017, Bureau of Global Public Affairs, US State Department, <https://share.america.gov/three-cases-that-show-what-free-speech-means/> (accessed 26 October 2021). Bottom: 'Balancing freedom of expression in the modern world', 1 December 2017, EU Agency for Fundamental Rights, <https://fra.europa.eu/en/news/2017/balancing-freedom-expression-modern-world> (accessed 26 October 2021).

***Kennedy v The Charity Commission* [2014] UKSC 20**, per Lord Sumption (with whom Lord Neuberger & Lord Clarke agreed)

www.supremecourt.uk/cases/uksc-2012-0122.html

‘The right to receive information under article 10 of the Human Rights Convention has generated a number of decisions of the European Court of Human Rights, which take a variety of inconsistent positions for reasons that are not always apparent from the judgments. The more authoritative of these decisions, and the ones more consonant with the scheme and language of the Convention, are authority for the proposition that article 10 recognises a right in the citizen not to be impeded by the state in the exercise of such right of access to information as he may already have under domestic law. It does not itself create such a right of access. Other decisions ... appear to point towards a different and inconsistent view, namely that there may be a positive obligation on the part of the state to impart information under article 10, and a corresponding right in the citizen to receive it.’



Source of image: Supreme Court of the UK, 10 January 2012, at www.supremecourt.uk/news/jonathan-sumption-gc-to-be-sworn-in-as-supreme-court-justice.html (accessed 28 October 2021).

The rationale behind *Your Right to Know*, the White Paper of 1997 which led to the Freedom of Information Act 2000



‘This White Paper explains our proposals for meeting another key pledge - to legislate for freedom of information, bringing about more open Government. The traditional culture of secrecy will only be broken down by giving people in the United Kingdom the legal right to know. The fundamental and vital change in the relationship between government and governed is at the heart of this White Paper.’

‘Foreword’ by Tony Blair MP, the Prime Minister, in *Your Right to Know: The Government's Proposals for a Freedom of Information: Cm 3818: Presented to Parliament by the Chancellor of the Duchy of Lancaster by Command of Her Majesty* (London: Cabinet Office, December 1997) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/272048/3818.pdf

The rationale behind *Your Right to Know*, the White Paper of 1997 which led to the Freedom of Information Act 2000

‘Openness is fundamental to the political health of a modern state. This White Paper marks a watershed in the relationship between the government and the people of the United Kingdom. At last there is a government ready to trust the people with a legal right to information. The right is central to a mature democracy. ... The White Paper strikes a proper balance between extending people’s access to official information and preserving confidentiality where disclosure would be against the public interest. It is a new balance with the scales now weighted decisively in favour of openness.’

‘Foreword’ by David Clark MP, Chancellor of the Duchy of Lancaster, in *Your Right to Know: The Government's Proposals for a Freedom of Information: Cm 3818: Presented to Parliament by the Chancellor of the Duchy of Lancaster by Command of Her Majesty* (London: Cabinet Office, December 1997)



The rationale behind *Your Right to Know*, the White Paper of 1997 which led to the Freedom of Information Act 2000

‘1.1 Unnecessary secrecy in government leads to arrogance in governance and defective decision-making. The perception of excessive secrecy has become a corrosive influence in the decline of public confidence in government. Moreover, the climate of public opinion has changed: people expect much greater openness and accountability from government than they used to.’

Your Right to Know: The Government's Proposals for a Freedom of Information: Cm 3818: Presented to Parliament by the Chancellor of the Duchy of Lancaster by Command of Her Majesty (London: Cabinet Office, December 1997), paragraphs 1.1 & 1.2

→ Freedom of information is bound up with freedom of speech, freedom of expression, freedom of the press and other manifestations of freedom under the law



Freedom of Information Act
2000

***Sugar (Deceased) v British Broadcasting Corporation & Anor* [2012] UKSC 4, per Lord Mance**

www.supremecourt.uk/cases/uksc-2010-0145.html

‘The Freedom of Information Act 2000 reflects the value to be attached to transparency and openness in the workings of public authorities in modern society, and its provisions should be construed “in as liberal a manner as possible”:
Common Services Agency v Scottish Information Commissioner [2008] UKHL 47, [2008] 1 WLR 1550, para 4 per Lord Hope. But, as Lord Walker notes (para 77), Lord Hope went on to add that “that proposition must not be applied too widely”, and “special considerations” may lead to restrictions...’ .



Source of image: Twitter account of the Supreme Court of the UK , 20 September 2017, at <https://twitter.com/uksupremecourt/status/910532697746964481> (accessed 4 November 2021).

***Kennedy v The Charity Commission* [2014] UKSC 20**, per Lord Sumption (with whom Lord Neuberger & Lord Clarke agreed)

www.supremecourt.uk/cases/uksc-2012-0122.html

‘The Freedom of Information Act 2000 was a landmark enactment of great constitutional significance for the United Kingdom. It introduced a new regime governing the disclosure of information held by public authorities. It created a prima facie right to the disclosure of all such information, save insofar as that right was qualified by the terms of the Act or the information in question was exempt. The qualifications and exemptions embody a careful balance between the public interest considerations militating for and against disclosure. The Act contains an administrative framework for striking that balance in cases where it is not determined by the Act itself. The whole scheme operates under judicial supervision, through a system of statutory appeals.’



Source of image: Supreme Court of the UK, 10 January 2012, at www.supremecourt.uk/news/jonathan-sumption-qc-to-be-sworn-in-as-supreme-court-justice.html (accessed 28 October 2021).

***Edenred (UK Group) Ltd & Anor v HM Treasury & Ors* [2015] UKSC**

45, per Lord Hodge (with whom Lord Neuberger, Lord Mance, Lord Sumption and Lord Carnwath agreed), www.supremecourt.uk/cases/uksc-2015-0080.html

‘The principal purpose of EU procurement law, to which this challenge relates, is to develop effective competition in the field of public contracts: *Sintesi SpA v Autorità per la Vigilanza sui Lavori Pubblici* (C-247/02) [2004] ECR I-9215, para 35. Thus if a public body decides to obtain services by a public contract, and the contract exceeds the prescribed threshold (currently €134,000 for public service contracts awarded by central government authorities), the public body must advertise the opportunity and follow fair and transparent procedures ensuring equality of treatment, to enable potential service providers to compete for the work. ... The formula, "clear precise and unequivocal" reflects the jurisprudence of the CJEU on what the principle of transparency requires: *CAS Succhi di Frutta* at para 111. ...’

→ Transparency is a principle of EU Law which the UK ought to take into account in its dealings with the EU and its members in the post-Brexit epoch.



Source of image: Supreme Court of the UK, 30 September 2013, at www.supremecourt.uk/news/lord-hodge-joins-uk-supreme-court-as-new-scottish-justice.html (accessed 2 November 2021).

To recap:

- **1.** Transparency goes hand in hand with accountability and other fundamental principles associated with a modern democratic society under the rule of law such as open justice, open government, freedom of information and public consultation.
- **2.** Freedom of information is bound up with freedom of speech, freedom of expression, freedom of the press and other manifestations of freedom under the law.
- **3.** Freedom of information laws are key enablers of transparency and accountability. However, such laws alone are not enough. They must be supplemented by other enablers such as a democratic anti-corruption culture which is steeped in ethics and embedded with the facilitators of transparency and accountability identified in this presentation.
- **4.** There is much to learn from what has gone wrong, from what has been put right and from what has been done well in the United Kingdom.