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Groupe d'États contre la corruption

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## FOURTH EVALUATION ROUND

Corruption prevention in respect of members of  
parliament, judges and prosecutors

## SECOND COMPLIANCE REPORT

## UNITED KINGDOM

Adopted by GRECO at its 75<sup>th</sup> Plenary Meeting  
(Strasbourg, 20-24 March 2017)

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## I. INTRODUCTION

1. The Second Compliance Report assesses the measures taken by the authorities of the United Kingdom to implement pending recommendations issued in the Fourth Round Evaluation Report on the United Kingdom (see paragraph 2) concerning "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. The Fourth Round Evaluation Report on the United Kingdom, was adopted at GRECO's 57<sup>th</sup> Plenary Meeting (19 October 2012) and made public on 6 March 2013, following authorisation by the United Kingdom ([Greco Eval IV Rep \(2012\) 2E](#)).
3. The Fourth Round Compliance Report was adopted by GRECO at its 66<sup>th</sup> Plenary meeting (12 December 2014) and made public on 19 January 2015, following the authorisation by the United Kingdom ([Greco RC-IV \(2014\) 3E](#)). As required by GRECO's Rules of Procedure, the authorities of the United Kingdom submitted a Situation Report on further measures taken to implement the pending recommendations. This report was received on 3 October 2016 and served, together with the information submitted subsequently, as a basis for the Second Compliance Report.
4. GRECO selected Ireland and Slovenia to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr John Garry, on behalf of Ireland and Ms Vita Habjan Barborič, on behalf of Slovenia. They were assisted by GRECO's Secretariat in drawing up the Second Compliance Report.

## II. ANALYSIS

5. It is recalled that GRECO addressed eight recommendations to the United Kingdom in its Evaluation Report. In the Compliance report, GRECO concluded that recommendations i and ii had been dealt with in a satisfactory manner, recommendations vii and viii had been implemented satisfactorily and recommendations iii-vi had been partly implemented. Compliance with the pending recommendations is dealt with below.

### *Corruption prevention in respect of members of parliament*

#### Recommendation iii.

6. *GRECO recommended (i) providing clearer guidance for Members of the House of Commons and the House of Lords concerning the acceptance of gifts, and (ii) that consideration be paid to lowering the current thresholds for registering accepted gifts. The devolved institutions of Scotland, Wales and Northern Ireland should be invited similarly to take action in accordance with the recommendation.*
7. It is recalled that in the Compliance Report, GRECO concluded that this recommendation was partly implemented; more precisely that the second part of the recommendation had been dealt with in a satisfactory manner. As far as the first part of the recommendation was concerned, GRECO noted that its implementation in full would require further measures (or more complete information) in order to provide clearer guidance concerning the acceptance of gifts in respect of members of the House of Commons and the House of Lords.

8. The authorities of the United Kingdom now reports that in March 2015, the *House of Commons* adopted a new Code of Conduct and Guide to the Rules for Members which address gifts in an extended section in paragraphs 39 to 46.<sup>1</sup> Based on recommendations from the Committee on Standards, this gives guidance to Members on what should be registered, including the need to consider “the possible motive of the giver and the use to which the gift is to be put” where a gift falls below the financial threshold. The new Code and Guide came into operation after the May 2015 General Election. After that Election, the House of Commons ensured that all new Members were aware of the rules, including those on the acceptance of gifts, by providing each of them on arrival with a full set of the rules and by ensuring that they received induction training, both as a group and individually. This provided opportunities to explore questions about the proportionality and appropriateness of gifts and also alerted members to the fact that the Office of the Parliamentary Commissioner for Standards is available to offer advice in particular cases. This Office continues its work providing regular briefing sessions for members and their staff.
9. The authorities also submit that the threshold for registering gifts was lowered by the House at the time the new Code came into force from approximately £660 (€750) to £300 (€340) from a single source in a calendar year, whether that source is within or outside the United Kingdom. The definition of gifts includes hospitality and material benefits of all kinds. To ensure transparency, members must declare gifts in relevant proceedings as set out in the rules on declaration. There is a requirement for the Committee on Standards to review the Code of Conduct and Guide to the Rules once a parliament. The review for the current Parliament is already underway and will include consideration of whether further clarification or guidance is needed in connection with the rules on the acceptance of gifts.
10. In respect of the *House of Lords*, on 8 July 2015 the Committee for Privileges and Conduct published a report entitled “Guidance to members on accepting gifts, benefits and hospitality”<sup>2</sup>. The report sets out how various existing provisions of the Code of Conduct and Guide to the Code of Conduct relate to the acceptance by members of gifts, benefits and hospitality. It explained how general provisions of the Code—those prohibiting paid parliamentary advice or services, and those requiring registration and declaration of interests—relate to the acceptance of gifts. It included advice on accepting gifts from lobbyists. It also covered members accepting gifts when they host banqueting functions and set out the requirement for members’ staff to register certain gifts. The report encouraged members to seek advice of the Registrar of Lords’ Interests when in doubt about how the Code of Conduct applies to the acceptance of gifts. The report has been made available to all members of the House in hard copy and published on the parliamentary website. It is now referred to in the relevant section of the Guide to the Code of Conduct.
11. GRECO takes note of the additional information provided, which indicates that clearer guidance now has been provided to members of the House of Commons in the form of a Code of Conduct and Guide to the Rules for Members which address gifts more extensively than in the past. It is also noted that the thresholds for reporting gifts has been considerably lowered and that the new code and the guide have been included in the training of MPs. As far as the House of Lords is concerned, GRECO welcomes that the Committee for Privileges and Conduct has published a report entitled “Guidance to members on accepting gifts, benefits and hospitality”, which clearly is a step forward and in line with the requirement of the recommendation. The measures taken are in line with the requirements of the pending first part of the recommendation. The second part of the recommendation

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<sup>1</sup> [Code of Conduct and Guide to the Rules](#), Session 2014-15, HC 1076

<sup>2</sup> Guidance to Members on accepting gifts, benefits and hospitality, issued 8 July 2015 <http://www.publications.parliament.uk/pa/ld201516/ldselect/ldprivi/14/14.pdf>

was already dealt with in a satisfactory manner, as concluded in the Compliance report.

12. GRECO concludes that recommendation iii has been implemented satisfactorily.

Recommendation iv.

13. *GRECO recommended that the Codes of Conduct and the guidance for both the Commons and the Lords be reviewed in order to ensure that the Members of both Houses (and their staff) have appropriate standards/guidance for dealing with lobbyists and others whose intent is to sway public policy on behalf of specific interests. The devolved institutions of Wales and Northern Ireland should be invited similarly to take action in accordance with the recommendation.*

14. GRECO recalls that this recommendation was considered partly implemented in the Compliance Report, while noting that the recommendation had been complied with by the various parliamentary assemblies, except for the *House of Commons*, where further measures were required for full implementation; it was noted in particular that the Committee on Standards and Privileges of the House of Commons had proposed revisions to the Guide to the Rules relating to the Conduct of Members to strike a balance between prevention of improper lobbying and the democratic right to representation in Government, which, if approved, would increase transparency further by clarifying the rules on the registration of gifts and hospitality, including benefits given to third party organisations etc.

15. The authorities of the United Kingdom now report that the new Code of Conduct was agreed by the House of Commons in March 2015. This increases the transparency expected of Members with regard to lobbying by clarifying the rules on the registration of gifts and hospitality, including benefits given to third party organisations; requiring Members to register family members involved in lobbying in the public sector and extending the requirement to declare interests on all occasions when significant hospitality is offered at a function in a room booked on the Parliamentary estate. The authorities furthermore submit that the revised Guide to the Rules makes explicitly clear that Members are personally responsible for their adherence to the Code including when breaches may have been caused by the actions of a member of staff. Furthermore the House has recently developed an intranet page for Members' staff, which brings together existing rules and guidance, and also two new handbooks for them. (One is specifically targeted at Members' staff in the constituency.) These measures are supplemented by other means, such as training events and constituency outreach. The new rules for all party parliamentary groups came into effect in May 2015<sup>3</sup>. The authorities also submit that the ongoing review of the Code of Conduct and the Guide to the Rules, referred to in relation to recommendation iii, will give a further opportunity to ensure that the rules are working as they should and to introduce any further changes necessary.

16. GRECO notes that the intention to amend the Code of Ethics of the House of Commons has materialised with the adoption by the House of an amended Code in May 2015. The amended text relates to members' dealings with lobbyists, in particular to provide for more transparency through registration of gifts and hospitality contacts with lobbyists and other third parties. The Code extends to such contacts involving MPs' family members. It also follows from the information provided that Members of the House of Commons are now responsible not just for their own conduct but also that of their staff, and staff are provided with comprehensive guidance in respect of the rules that apply to them.

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<sup>3</sup> [Guide to the Rules on APPGs \(March 2015\)](#)

17. GRECO concludes that recommendation iv has been implemented satisfactorily.

Recommendation v.

18. *GRECO recommended (i) reviewing the available disciplinary sanctions for misconduct of Members of the House of Commons and Members of the House of Lords in order to ensure that they are effective, proportionate and dissuasive; and (ii) better describing in the relevant guidance to the Codes of Conduct the applicable sanctions for breaches of the rules.*

19. It is recalled that this recommendation was partly implemented in the Compliance report. The recommendation as far as the *House of Lords* was concerned had been complied with, following dedicated measures taken by that House to establish new sanctions and also new legislation on the House of Lords Reform Act 2014, providing a range of disciplinary measures at the disposal of the House of Lords. In relation to the House of Commons, GRECO noted in the Compliance report that the Committee on Standards of the House of Commons had considered this recommendation in 2012 but concluded that the current sanctions were appropriate for which reason no pertinent measures aiming at reviewing the available disciplinary sanctions had been taken. That said, GRECO welcomed that the Standards Review Sub-Committee at the time was re-considering the matter and was expected to address the question on sanctions in a report in 2015. Furthermore, GRECO noted the on-going work by the Government on “the Recall of MPs Bill” planned to be issued in 2015, which it found could have an impact on the overall assessment of the situation. It therefore concluded that the recommendation, as far as the House of Commons was concerned, had not been more than partly implemented.

20. The authorities of the United Kingdom stress that members of both Houses of Parliament are subject to the general law and enjoy no immunity from prosecution if they have committed a criminal offence and refer to a number of successful convictions of serving and former MPs over the years. They also state that criminal proceedings against members of the House of Commons take precedence over the House’s own disciplinary proceedings.

21. The authorities furthermore submit that in 2015 the sub-committee of the Committee on Standards reviewed the available sanctions in its report on the standards system in the House of Commons.<sup>4</sup> It concluded that the range of sanctions available was appropriate and sufficient, noting that they ranged from simply reporting that a breach had occurred, to, in principle at least, recommending expulsion from the House. It also noted that within the last five years, reports by the committee recommending suspension of an MP had resulted in members voluntarily resigning from the House (and on one occasion being subsequently prosecuted, found guilty and sentenced to imprisonment). Moreover, the report recommended that the composition of the Standards Committee be changed to create a committee of seven MPs and seven lay (non-MP) members, the latter group appointed through open recruitment. The House accepted this recommendation and the additional lay members (four were already in post) took up their role in May 2016. The Committee on Standards therefore now has equal numbers of elected and lay members which, according to the authorities, contributes towards regular assessment of the proportionality, effectiveness and dissuasive impact of the available sanctions.

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<sup>4</sup> [Committee on Standards](#), Sixth Report of Session 2014-15, The standards system in the House of Commons, HC 383

22. The authorities also submit that in March 2015 Parliament passed the *Recall of MPs Act* which provides the House of Commons with an additional disciplinary power, namely the ability to trigger the conditions for a recall petition if an MP is suspended by the House for more than 10 sitting days following a report from the Committee on Standards.
23. Finally, the authorities state that on 26 March 2015 Parliament passed the *House of Lords (Expulsion and Suspension) Act 2015*, which for the first time allows the House to expel a member, or to suspend a member for any length of time, for misconduct. Previously the House had power to suspend only until the end of the Parliament then in existence. In a report published on 8 July 2015 the Committee for Privileges and Conduct recommended a scheme for implementing the new disciplinary powers. This report and the accompanying new standing order were agreed by the House of Lords on 16 July 2015 and the process for applying the new sanctions is now set out in the Guide to the Code of Conduct.
24. GRECO takes note of the information provided, indicating that the disciplinary rules of the House of Commons have been re-assessed by the appropriate committee of that House. The fact that the existing sanctions were considered appropriate does not mean that they have not been duly reviewed. Moreover, the composition of the Standards Committee has been changed to provide for an equal number of MPs and lay members (7/7) would appear to strengthen the independence of this Committee, also in respect of applying sanctions against MPs. Above all, GRECO notes that new legislation was passed in March 2015, "the Recall of MPs Act", which provides the House of Commons with an additional disciplinary power, namely the ability to trigger the conditions for a recall petition if an MP is suspended by the House for more than 10 sitting days following a report from the Committee on Standards. With these tangible measures, GRECO is of the opinion that the House of Commons has complied with the requirements of this recommendation.
25. GRECO also welcomes that the House of Lords has continued its efforts in the area of disciplinary measures with the passing of the House of Lords (Expulsion and Suspension) Act 2015, which for the first time allows that House to expel a member, or to suspend a member for any length of time, for misconduct. The House of Lords has also agreed on the process for applying these new sanctions as set out in the Guide to the Code of Conduct.
26. GRECO concludes that recommendation v has been dealt with in a satisfactory manner.

#### *Corruption prevention in respect of judges*

##### Recommendation vi.

27. *GRECO recommended in order to ensure security of tenure for judicial office holders, that the number of fee-paid judges is reviewed with a view to reducing it in favour of salaried judges, particularly at first in relation to the High Court and district level.*
28. It is recalled that this recommendation was partly implemented in the Compliance Report. While recognising that the overall reason for having in place a system of fee-paid judges as a complement to the permanent judges was a means for a more flexible use of judicial resources and accepting that the sitting days of such judges were rather limited (20%) as compared with the ratio of such judges and noting that the situation of fee-paid judges was part of an ongoing litigation process in respect of their benefits as part of the judicial reform in the United Kingdom, GRECO accepted that the measures under way were partly compliant with the

recommendation. GRECO also took into account that, in Scotland, the use of temporary judges had been reduced.

29. The authorities again refer to various ongoing considerations concerning wider reform of the judiciary, while repeating their view that it is more meaningful to illustrate the extent of reliance on fee-paid judges on the basis of their proportion of sitting days rather than on the number of such judges as compared with the salaried judges. In 2015, 24% of the total sitting-days were sat by fee-paid judges, (including recorders<sup>5</sup>) and only 11% (excluding recorders). Furthermore, the authorities submit that the use of fee paid judges, who enjoy adequate security of tenure, is in accordance with international standards<sup>6</sup>. The authorities also submit that fee-paid judges to a large extent are subject to automatic renewal until the date of their retirement as provided for by statute and that they can only be removed from office on the ground of inability or misbehaviour or on a ground specified in their term of appointment.<sup>7</sup> Furthermore, regulation 8 of the Fixed Term Employees' (Prevention of Less Favourable Treatment) Regulations 2002<sup>8</sup> provides that, where a person is employed on a fixed term contract, and that contract has previously been renewed, then any provision which restricts the duration of the employment will be ineffective if the person has been continuously employed under the contract or contracts for more than 4 years, or the use of a fixed term contract was not objectively justified at renewal or (if it has not been renewed) when it was entered into. This means, according to the authorities, that, save in some defined circumstances, fee-paid judges do in fact currently enjoy security of tenure until pensionable retirement. Any future reform programmes will continue to adhere to the key principle of security of tenure, whether to pensionable age or within the framework of fixed terms of office.
30. The authorities also state that fee-paid judges are recruited via a meritorious, transparent and independent process run by the Judicial Appointments Commission and deployed to provide a degree of operational flexibility to meet changes in workloads and short-term resource needs. Fee-paid judicial posts remain an important means of gaining judicial experience and act as a potential route into the salaried judiciary, whilst balancing private legal practice with a part time judicial fee-paid post. Fee-paid work has proven an attractive entry route for a diverse range of candidates, and a more regular turnover helps encourage greater diversity among judges.
31. As far as the judicial reform process is concerned, the authorities report that the recent litigation has further equalised the position of fee paid judges in relation to their salaried counterparts. Flowing from the UK Supreme Court's judgment in *O'Brien v Ministry of Justice*<sup>9</sup> that fee-paid judges are "workers" for the purposes of EU employment rights, litigation has taken place across more than 1,800 cases relating to the equal treatment of fee-paid judicial offices in England & Wales, Scotland and Northern Ireland, their entitlement to pensions and other benefits. Following *Miller and Others v Ministry of Justice*,<sup>10</sup> the Ministry has implemented policies to ensure that the terms of the judgment have been complied with. These

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<sup>5</sup> "Recorders" are fee-paid / part-time judges sitting in the Crown courts (the higher criminal courts).

<sup>6</sup> "Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists" and "Judicial appointments should normally be permanent; whilst in some jurisdictions, contract appointments may be inevitable, such appointments should be subject to appropriate security of tenure."

<sup>7</sup> See Part 4 Schedule 13 of the Crime and Courts Act 2013, which includes amendments to the various legislative provisions relating to the appointment of fee paid judicial office holders

<sup>8</sup> Although Regulation 8 of the 2002 Regulations refers to employees, the effect of the litigation in *O'Brien v Ministry of Justice* (detailed further below) is to apply its provisions to fee-paid judges. This is because the Supreme Court considered fee-paid judges to be workers for the purposes of EU law and therefore also under the provisions of the 2002 Regulations, which implement the Fixed-term Workers Directive.

<sup>9</sup> *O'Brien v The Ministry of Justice* [2013] UKSC 6

<sup>10</sup> *Miller and others v Ministry of Justice* UKSC 2015/0246

measures include, *inter alia*, increased training fees, re-calculated daily fees and fees for certain tasks, new policy on sick pay etc. Following the judgment in O'Brien v Ministry of Justice, the Ministry accepts that fee-paid judicial office holders with a full-time salaried comparator are entitled to a pension and equivalent non-pension benefits. To date, 4,038 judicial office holders have been compensated and the Ministry of Justice is committed to introducing a fee-paid Judicial Pension Scheme for eligible fee-paid judicial office holders.

32. The authorities also refer to a Steering Group - established by the Lord Chancellor (LC), the Lord Chief Justice (LCJ) and Senior Presidents of Tribunals (SPT) - to consider future provisions of judges in the context of wider reforms of court processes. The Steering Group considered, amongst other things, terms and conditions of salaried and fee-paid judges and its work has been instrumental for determining the content of a formal public consultation on "Modernising Judicial Terms and Conditions", open for public consultation between 15 September and 10 November 2016. Issues such as appointment of fee-paid judges on a non-renewable fixed term basis are included in this still on-going process.
33. GRECO takes note of the position of the United Kingdom authorities, which in principle remains the same as it was reflected in the Compliance Report, namely that the number of "sitting days" of the fee-paid judges is more relevant than the number of such judges as compared with the salaried ones. GRECO already acknowledged the importance of this fact in its Compliance Report. Further, GRECO welcomes the new information provided by the authorities, i.e. that the on-going litigation process has further equalised the position of fee paid judges in relation to their salaried counterparts, for example in terms of their rights to continued employment, to better fees and other benefits. The authorities should be commended for these important achievements which clearly go in the right direction to deal with the reasons for this recommendation, i.e. to provide the same strong safeguards for all judges, as a main principle. GRECO also welcomes the work of a high level Steering Group (established by LC, LCJ and STP) and the public consultation process on judicial reform which comprises considerations relating to judicial reforms, including conditions of fee-paid judges, which also may have an impact on the conditions of various forms of judges. That said, the fact remains that the ordinary salaried judges still enjoy a considerably stronger security of tenure than do the fee-paid judges, even if the difference may be less significant now than it was in the past and that the gap may even decrease further in the future. In this context, GRECO notes that insufficient progress has been made thus far in reviewing the number of fee-paid judges and/or the use of fee-paid judges. While welcoming the substantial progress achieved so far, GRECO cannot conclude that full compliance with this recommendation has been achieved at this stage.
34. GRECO concludes that recommendation vi remains partly implemented.

### III. CONCLUSIONS

35. In view of the foregoing, GRECO concludes that the United Kingdom has implemented satisfactorily or dealt with in a satisfactory manner seven of the eight recommendations contained in the Fourth Round Evaluation Report. The remaining recommendation has been partly implemented.
36. More specifically, recommendations i, ii and v have been dealt with in a satisfactory manner, recommendations iii, iv, vii and viii have been implemented satisfactorily and recommendation vi has been partly implemented.
37. With respect to members of parliament, it is to be welcomed that all recommendations have been duly considered within the various parliamentary



structures of the United Kingdom and the issues raised by GRECO in the Evaluation Report have been dealt with and tangible results have been achieved. For example, existing codes of conduct have been subject to revision, clearer guidance concerning the acceptance of gifts have been provided as well as in respect of MPs dealings with lobbyists, reporting obligations in respect of gifts received have been strengthened, disciplinary proceedings and sanctions within the parliamentary contexts have been reviewed and, in certain assemblies, amended.

38. GRECO welcomes, as far as judges and prosecutors are concerned, that considerable efforts have been made in order to develop future training including substantial elements of ethics. The authorities have shown that a range of important measures, for example, to develop new training material, and the use of e-learning have been put in place. It would appear that the training of judges and prosecutors now covers elements of judicial ethics, often put in a real context where the participants are required to be active. Above all, it is to be welcomed that the new training will be provided regularly and that it will cover induction as well as in-service training. The rather frequent use of fee-paid judges (as opposed to salaried judges) in England, Wales and Northern Ireland remains an issue of some concern, although the United Kingdom has implemented measures to improve secure their tenure and employment rights. It would appear that this matter is under further consideration within the on-going reform of the judiciary in the United Kingdom.
39. GRECO commends the authorities of the United Kingdom for the substantial measures taken in order to implement the recommendations. The adoption of the Second Compliance Report terminates the Fourth Round Compliance procedure in respect of the United Kingdom.
40. Finally, GRECO invites the authorities of the United Kingdom to authorise, as soon as possible, the publication of the report and to make it public.