

A sign of the times... or an aberration?

Lawrence McNamara & Celia Rooney discuss how the UK justice system fares in the global corruption stakes

Transparency International's *Global Corruption Barometer*

reported this month that 24% of people in the UK believe the courts and judiciary are corrupt or extremely corrupt, and that 20% of people who used the courts in 2012 said they or a household member had paid a bribe in relation to that.

These findings have had little attention. They even went unmentioned by the co-chair of the All Party Parliamentary Group on Anti-Corruption.

Yet, they seem remarkable. Can they really be correct? What are we to make of them?

Temperature gauge

The *Barometer* is derived from surveys of 1,000 people in each of 107 countries about their perception and experience of corruption in a dozen institutional categories including "Judiciary (courts)".

First, perception. While 24% think the courts and judiciary are affected by corruption, this is not out of kilter with common law countries such as Australia (28%), Canada (25%), or New Zealand (20%). Still, it is up from 19% since the 2011 report and confidence in the courts is not as widespread as might be hoped. The most likely explanation is that it reflects a widespread diminution of confidence in institutions generally, especially with revelations of phone-hacking, parliamentary expenses and sexual abuse scandals.

Second, experience. The survey asked those who had come into contact with the various institutions whether they or a household member had paid a bribe. Seventy-five people (6% of the UK sample) said they had contact with the judiciary or courts. Of those, 15 people reported paying a bribe, which is 20% of those who had contact with the courts. This is starkly different from Australia, Canada and New Zealand where only 3-5% of respondents with court contact reported paying a bribe.



It may be wise to read the UK figures conservatively. Five of the 15 people indicated the bribe was a gift to express gratitude. The remaining 10 people—13% of those who had contact—said the bribe was to get a cheaper or faster service or, in one case, simply to get a service. It is not stated whether bribes were paid to a judge, justice system employees, or others such as lawyers. Regardless, systemic bribery would constitute a serious affront to access to justice and the rule of law.

Figures in context

Could this sample be representative? On the population limb, did 6% of our 63 million people have contact with the courts last year? It is difficult to tell, but over 1.6 million civil cases were heard in England, Wales and Scotland, and 1.6 million criminal cases went to magistrates' courts. Allowing for cases in superior courts and tribunals, and for justice system employees, it could be that around 6% of the population (or 3.78 million people) had contact with the courts.

On the reporting limb, taking the conservative reading of the figures, is it plausible that 13% of 3.78 million people paid a bribe relating to court services and the judiciary? That would be over 490,000 people. 9,400 bribes a week. This would be astonishing.

The available evidence is scant but suggests it is extremely unlikely. Transparency International's 2011 report found little evidence of corruption in either the judiciary or the legal profession. The current data does not sit comfortably against this background. It might be, then, that the most recent survey results are something of an aberration.

Is ignorance bliss?

So, can we ignore the current Transparency International data regarding the UK courts and judiciary? Unfortunately, the answer is no. Rather, it should challenge us to

consider carefully the possibility of flaws and where in the legal system they may lie, distinguishing if need be between the judiciary, different courts, the bureaucracy and the legal profession.

Bribery and misconduct in the courts are not unknown. In 2009 a crown prosecutor was convicted of accepting a £20,000 bribe to drop a case. The first prosecution under the Bribery Act 2010 was against a clerk at Redbridge Crown Court, found to have accepted bribes. A judge is currently awaiting trial on charges of perverting the course of justice. In an International Bar Association survey of UK lawyers in private practice in 2010, almost 40% of respondents thought corruption was "an issue in the legal profession" in the UK. In the last three years the Office of Judicial Complaints (OJC) received 5,407 complaints about misconduct (rather than corruption), though this does not represent all complaints made against the 3,600 judges, 7,000 tribunal members and 29,000 magistrates. Complaints to the OJC saw 89 office holders (mostly magistrates) removed, 53 resign, and 72 reprimanded. New regulations will soon see misconduct rules revised and the OJC become the Judicial Conduct Investigations Office, reflecting the continued reality of the need for integrity mechanisms.

Even if one rejects the proposition that 13% of court users paid bribes last year, what if the true figure was just one-tenth of that at 1.3%, or 940 bribes a week? Or one-hundredth at 0.13%, which is 94 bribes a week? A mere one-thousandth would still mean nine bribes per week. The convictions of one court clerk and one prosecutor are unlikely to be representative of the extent to which bribery features in our justice system.

In a country where judicial independence and impartiality is considered axiomatic, faith in the administration of justice and confidence in the courts should be supported by evidence. The Transparency International survey should not prompt conclusions that bribery is commonplace in our justice system, but nor should it be ignored. It should lead us towards robust monitoring and research which examines rigorously and in depth the possibility that corruption may occur in the administration of justice, as it does in other institutions.

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