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Action Plan Review: United Kingdom 2021-2023

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Introduction

In January 2021, the IRM rolled out the new products that resulted from the IRM Refresh process.[1] The new approach builds on the lessons after more than 350 independent, evidence-based and robust assessments conducted by the IRM and the inputs from the OGP community. The IRM seeks to put forth simple, timely, fit for purpose and results-oriented products that contribute to learning and accountability in key moments of the OGP action plan cycle.

The IRM products as of 2021 are:

1. **Co-creation Brief** - brings in lessons from previous action plans, serves a learning purpose, and informs co-creation planning and design.
2. **Action Plan Review** - an independent, quick, technical review of the characteristics of the action plan and the strengths and challenges the IRM identifies to inform a stronger implementation process.
3. **Results Report** - an overall implementation assessment that focuses on policy-level results and how changes happen. It also checks compliance with OGP rules and informs accountability and longer-term learning. This product is scheduled to roll out in a transition phase in 2022, beginning with action plans ending implementation on 31 August 2022. Results Reports are delivered up to four months after the end of the implementation cycle.

This product consists of an IRM review of the United Kingdom (UK)'s 2021-2023 action plan. The action plan is made up of five commitments, which the IRM has organised into six.[2] This review emphasises its analysis on the strength of the action plan to contribute to implementation and results. For the commitment-by-commitment data, see Annex 1. For details regarding the methodology and indicators used by the IRM for this Action Plan Review, see section III. Methodology and IRM Indicators.

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[1] For more details regarding the IRM Refresh visit https://www.opengovpartnership.org/process/accountability/about-the-irm/irm-refresh/

[2] In addition to the five commitments, the action plan references potential future work around local transparency, to be led by the Department for Levelling Up, Housing and Communities (added to the action plan by the government without civil society input). As the details of this work will be published in 2022, during the action plan's implementation period, the IRM has not assessed it as a commitment in this Action Plan Review.

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Section I: Overview of the 2021-2023 Action Plan

The UK's fifth action plan includes a promising commitment on open contracting, while also covering new topics like open justice and algorithmic transparency and accountability. Despite iterative dialogue between stakeholders during the co-creation process, civil society was strongly dissatisfied with the government's unilateral changes that weakened the ambition of commitments at the last stage of the process. The UK should use the opportunity for amending the action plan to restore a strong domestic OGP process.

The UK's fifth action plan builds on previous efforts in open contracting, health sector transparency, and international illicit finance, while also pursuing new areas of open justice and algorithmic transparency and accountability.[1] Commitment 1 on open contracting is a promising commitment which includes activities that could considerably improve the transparency of government procurement. The other commitments, though verifiable, lack specific and measurable milestones that would allow detailed analyses of their potential for results. Some commitments involve engaging stakeholders, but the structures of these engagements and intended results are not well-defined.

The co-creation process kicked off at a stakeholder meeting in December 2020.[2] Government and civil society participants agreed to explore nine themes[3] as potential commitments and working groups were formed around each theme.[4] The point of contact (PoC) at the Cabinet Office invited relevant government representatives to join the working groups, while the UK's Open Government Network (OGN) oversaw civil society participation and appointed a civil society co-chair for each group. The theme of anti-corruption and international illicit finance (Commitment 5) did not have a working group. Instead, the Cabinet Office drew upon ongoing work from the UK's chairmanship of the G7. The Home Office had already been discussing these initiatives with civil society through the UK Anti-Corruption Coalition[5] and the Cabinet Office did not want to duplicate these existing discussions.[6]

The level of engagement in the working groups varied by theme, but the PoC noted that engagement was stronger

AT A GLANCE

Participating since: 2011
Action plan under review: 2021-2023
IRM product: Action Plan Review
Number of commitments: 6

Overview of commitments:
- Commitments with an open gov lens: 6 (100%)
- Commitments with substantial potential for results: 1 (17%)
- Promising commitments: 1 (17%)

Policy areas carried over from previous action plans:
- Open contracting
- Health sector transparency
- Anti-corruption and international illicit finance

Emerging in this action plan:
- Open justice
- Algorithmic transparency and accountability

Compliance with OGP minimum requirements for Co-creation:
- Acted according to OGP process: No

than under the previous action plan.[7] Membership of, and discussions in, the working groups were kept flexible. This approach produced mixed results. For some themes, stakeholders had clear expectations from past commitments that allowed them to quickly reach a consensus on

deliverables (i.e., open contracting). For new themes, discussions were less focused due to lack of past experience in OGP processes (i.e., open justice). Some themes were excluded because the working groups could not agree on a set of draft activities that the Cabinet Office considered workable (i.e., natural resources/climate change and standards and public life). The PoC noted that it was challenging in some working groups to achieve a balance between having a diversity of views and the necessary expertise in the topics.[8] Meanwhile, both civil society and the PoC felt that not having the right people at the discussions, either in terms of thematic expertise or decision-making authority, made co-creation more difficult.[9] Nonetheless, both the PoC and the OGN chair acknowledged that their counterpart remained dedicated to the process, despite external constraints (there were several ministerial turnovers at the Cabinet Office during the co-creation period) and limited resources (the OGN chair and other civil society stakeholders had volunteered their time to organise civil society participation[10]).

The draft commitments were sent for ministerial approval in late 2021, before their adoption and submission to OGP. At this stage, many commitments had activities removed or significantly reduced in ambition, without further explanation or consultation with non-government stakeholders. For example, the commitment on international illicit finance saw the removal of a key activity around the Economic Crime Bill, while the commitment on algorithmic transparency and accountability was reduced to "gauging the feasibility" of mapping existing appeal mechanisms. The ministerial approval procedures did not allow for stakeholders to be given feedback around how or why the changes were made before the deadline for action plan submission (31 December 2021).[11] Unlike the previous action plan, the commitments in the fifth plan did not list any civil society partners that would support their implementation, indicating a change in the level of civil society-government co-ownership over the plan. After the publication of the action plan, the OGN put out a statement criticising the last-minute changes and what they saw as a failure of the government to engage civil society on key areas of reform.[12]

As a member of the OGP Steering Committee, the UK should ensure that its domestic OGP process strengthens its status as a global leader in open government. At the same time, recent changes to the domestic and international context could provide greater momentum for strong implementation, particularly around open contracting (in light of the new Procurement Bill), and international illicit finance (in light of Russia's invasion of Ukraine). Before the end of August, the IRM recommends using the opportunity afforded to OGP members to amend their action plans. The UK government and the OGN could work together to revive the working groups (with targeted civil society participation), to agree on amendments to the existing commitments that were removed or altered and revisit the themes that were not covered in the action plan (such as freedom of information, natural resources/climate change, and standards in public life). It may also be beneficial to formalise the multi-stakeholder forum to bring more stability and consistency to the discussions. Finally, the UK could ensure strong implementation of Commitment 1 on open contracting by putting in place mechanisms to check the accuracy of procurement data and using contracting data to address gender and regional inequalities in government procurement.

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[1] Open Government Partnership, UK Open Government National Action Plan 2021-2023, https://www.opengovpartnership.org/wp-content/uploads/2022/02/United-Kingdom_Action-Plan_2021-2023.pdf
[2] UK Open Government, Strategic discussion on open government multistakeholder forum, 9 December 2020, https://www.opengovernment.org.uk/2021/02/15/strategic-discussion-on-open-government-multistakeholder-forum/
[3] These themes were: 1) open contracting/procurement, 2) open justice, 3) data ethics (including algorithmic transparency), 4) health, 5) freedom of information, 6) misinformation, 7) the environment (including natural resources and climate change), 8) democracy building, and 9) standards and public life. Some of these topics were discussed

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by stakeholders on an ad hoc basis but did not have individual working groups. These included freedom of information, misinformation and democracy building.

[4] Readouts for all working group meetings were published on the OGN website, https://www.opengovernment.org.uk/home/take-action/

[5] UK Anti-Corruption Coalition, https://www.ukanticorruptioncoalition.org/

[6] IRM interview with Sam Roberts, point of contact to OGP at the Cabinet Office, 6 May 2022.

[7] IRM interview with Sam Roberts, point of contact to OGP at the Cabinet Office, 6 May 2022.

[8] IRM interview with Sam Roberts, point of contact to OGP at the Cabinet Office, 6 May 2022.

[9] IRM interview with Kevin Keith, Open Government Network, 13 May 2022, and IRM interview with Sam Roberts, point of contact to OGP at the Cabinet Office, 6 May 2022. For example, the civil society co-chair for the working group on health felt that the people that would have enabled deeper discussions around the topic from the Department of Health and Social Care or the National Health Service were not present at the meetings (IRM email correspondence with Mor Rubinstein, civil society co-chair of the health working group, 23 May 2022.).

[10] IRM interview with Kevin Keith, Open Government Network, 13 May 2022.

[11] IRM interview with Sam Roberts, point of contact to OGP at the Cabinet Office, 6 May 2022.

[12] UK Open Government, UK government backslides on commitments to open government in new national action plan, 2 February 2022, https://www.opengovernment.org.uk/2022/02/02/uk-government-backslides-on-commitments-to-open-government-in-new-national-action-plan/

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Section II: Promising Commitments in the UK's 2021-2023 Action Plan

The following review looks at the commitment that the IRM identified as having the potential to realise the most promising results. This review will inform the IRM's research approach to assess implementation in the Results Report. The IRM Results Report will build on the early identification of potential results from this review to contrast with the outcomes at the end of the implementation period of the action plan. This review also provides an analysis of challenges, opportunities and recommendations to contribute to the learning and implementation process of this action plan.

The IRM has selected **Commitment 1** on open contracting to review in greater detail due to its measurable indicators and potential to significantly improve transparency of government procurement. The other commitments are summarised below but are not reviewed in greater detail as promising commitments, due to lack of specificity of their activities. The IRM recommends amending these commitments by revisiting earlier ideas from the working groups and making the activities more specific and measurable.

Commitment 2 aims to strengthen public access and understanding of the justice system by improving court data, publishing case law, improving access to existing information on hearings and reporting restrictions, and facilitating observation of remote hearings. However, these milestones lack measurable indicators or baselines that would help in assessing the extent to which they will improve existing practices. Moreover, all milestones are "ongoing", indicating they aim to continue existing policies. The UK could revisit the priorities of the open justice working group that were in a draft of this commitment but later removed.[1] These included providing complete coverage of judgments and decisions from all courts and tribunals on the new database launched by the National Archives. Other activities involved appointing civil society members to the newly created Senior Data Governance Panel through a transparent process and creating a user group to raise issues with access to court information for the panel.[2]

Commitment 3 focuses on transparency and accountability of algorithmic-assisted decisions. While the focus on accountability is commendable (owing to civil society's original prioritisation), the UK government reduced the scope from mapping existing legal requirements for appeal mechanisms around algorithmic-assisted decisions and sharing this information with the public, to "gauging the feasibility" of mapping.[3] According to the civil society co-chair of the data ethics working group, the government has so far not engaged the OGN on how it intends to carry out the mapping exercise.[4]

During implementation, the mapping exercise could be used to improve compliance by teams building algorithms with existing accountability requirements and to address gaps in existing laws. Where needed, the UK could establish new mechanisms for citizens to appeal algorithmic-assisted decisions and develop guidelines for building algorithms responsibly. In addition, the UK could develop ways for the government to engage affected people as part of algorithmic impact assessments, for example by creating forums for the public to discuss algorithm-assisted decisions with government officials. The UK could also encourage uptake of the public sector

with the Algorithmic Transparency Standard[5] and revisit earlier working group discussions around increasing transparency of the procurement of algorithms, possibly in collaboration with the open contracting working group (Commitment 1).[6] Lastly, the UK should leverage its involvement in OGP's Open Algorithms Network to learn from other countries' work in this area.[7]

Commitment 4 aims to improve access and transparency of health data and decision-making relating to public health. This commitment has three objectives: 1) transparency and engagement around the use of health data, 2) standards and interoperability of health data, and 3) transparency and monitoring of clinical trials. Because of the divergence of the third objective from the other two, the IRM has looked at these milestones as a separate commitment (4.2) from the other two (4.1).

Under the first objective of Commitment 4.1, the National Health Service and Department of Health and Social Care will work with stakeholders and health users to "co-design a reset of how they can be involved in decisions about how data is used". The UK could revisit ideas discussed by the working group on health, such as improving transparency and public awareness of how health data is collected and for what purposes, with a focus on health data collected and used during the COVID-19 pandemic.[8] Moreover, the civil society co-chair recommended greater emphasis on diversity, equity and inclusion in the health sector.[9] The second objective involves developing common standards around data interoperability across the health and adult social care sectors, though the civil society co-chair noted that there were few discussions in the working group around this topic.[10] Another civil society expert believed that the activities under this objective are statements of existing government policy.[11]

The third objective (Commitment 4.2) aims to strengthen transparency of clinical trials. The activities involve registering all clinical trials (starting with medicines) and monitoring and publishing metrics on performances of communities against transparency requirements for research. This commitment is in line with an existing strategy from the Health Research Authority (HRA) to make all government-funded trials open by 2023[12] and is the result of long-term engagement with civil society. According to a civil society representative, given the international nature of clinical trials, this commitment offers the UK an opportunity to become a global leader in this area.[13] During implementation, the government could create opportunities for ongoing civil society engagement in monitoring the implementation of research transparency requirements. The government could also explore publishing all research used by chief scientists to inform government decisions around public health.

Commitment 5 aims to improve transparency and collaboration in the UK government's efforts to address international corruption and illicit finance. The activities derive from the UK's G7 presidency and involve continuing to engage the Beneficial Ownership Leadership Group, helping Overseas Territories implement publicly accessible registers of company beneficial ownership, and engaging with civil society and the private sector in domestic and multilateral spaces (i.e., the 2021 UNCAC Conference of States Parties and the Summit for Democracy Year of Action). It also entails engaging stakeholders in the development of the successor to the UK's Anti-Corruption Strategy and a new Economic Crime Plan, as well as strengthening transparency of asset recovery and return.

While some activities represent ongoing work, the commitment includes new activities, particularly publishing annual data on international asset returns and recovered assets stemming from proceeds of crime, and publicising bilateral agreements on the use of returned assets. However, the OGN criticised the government's removal of plans to introduce a new Economic Crime Bill, which would have included a reform of Companies House, a reform of the limited partnerships law and the introduction of a register of overseas entities owning property in the UK.[14] The UK government could also follow recommendations by Transparency International UK to support Crown Dependencies and Overseas Territories to ensure that they will meet the goal of introducing public registers by 2023. The UK could also require companies that claim they do not know who their beneficial owner is, or do not believe they have one, to outline how the company is controlled, and increase the frequency of companies having to report changes to their beneficial owners.[15] Lastly, the UK government could introduce verification checks on the property register and investigate and remove false information.[16]

Table 1. Promising commitments

Promising Commitments
Commitment 1: Open contracting – This commitment would require all contracting authorities to implement the Open Contracting Data Standard. It will also increase the availability of above-threshold tenders and awards.

Commitment 1: Open contracting

For a complete description of the commitment, see Commitment 1 in the action plan here.

Context and objectives

The UK government spends about 300 billion GBP annually on procuring goods and services from external suppliers, accounting for roughly a third of all public expenditure.[17] The UK has used past action plans to steadily increase the transparency of how these vast public resources are spent. In the fourth action plan (2019-2021), the government committed to improve the quality of its public contracting data and mainstream the Open Contracting Data Standard (OCDS) on the national portal 'Contracts Finder'.[18] This commitment led to a considerable increase in the availability of above-threshold contracts on Contracts Finder and better adherence of Contracts Finder to OCDS. However, at the end of the fourth action plan, Contract Finder was still not fully OCDS compliant, and the tenders associated with a given contract were not always published, making it difficult to match contracts with the relevant tender notice.[19]

The commitment in the fifth action plan will expand this work. One of the stated objectives is to require all contracting authorities to implement the OCDS for data on buyers, suppliers, contracts, spending and performance. Another objective is to also create a central platform for supplier registration. The platform will provide public access to all published data online and through APIs,[20] as well as improvements to the central debarment list,[21] procurement pipelines, a register of complaints and a register of legal challenges. Lastly, the commitment entails introducing primary and secondary legislation, "supported by a learning and development programme to implement increased transparency in public procurement". However, the legislation is not explained in more detail in the objectives or in the milestones. The milestones include publishing 95 per cent of above-threshold tenders on Contracts Finder, publishing 90 per cent of above-threshold awards within 90 calendar days. They also involve reporting annually on publication of documents and redactions in central government contracts and issuing twice-yearly reports on progress in meeting these activities.

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This commitment was the result of at least four formal working group meetings during the co-creation. Participation in these meetings was rich and varied, with sessions hosting representatives from government, civil society and procurement experts.[22] Participation also extended to the private sector such as World Contracting[23] and Commerce and Spend Network,[24] who helped identify potential bottlenecks in the implementation of the proposed work. Moreover, stakeholders met in between these formal meetings, for example at the University of Oxford's Procurement of Government Outcomes (POGO) club. CSOs and the point of contact (PoC) discussed aligning the open contracting commitment with broader UK reforms on procurement as outlined below.[25] Stakeholders drew on the results of the previous action plan as well as broader developments in this area, such as the announced overhaul of the UK's procurement regulations (including a consultation process called Transforming Public Procurement),[26] and the launch of a National Procurement Policy Statement.[27]

Interviewed stakeholders mentioned that increased recognition of using open contracting to avoid opaque government contracting, exhibited for example during the COVID-19 pandemic, helped assure meaningful discussions around the commitment. However, it was not always clear for civil society what would happen next. The pandemic limited in-person meetings and government officials were also deployed to deal with the pandemic response. At the same time, some participants felt that there was insufficient political backing to secure ministerial approval for the proposed work. Some civil society priorities in initial drafts of the commitment were ultimately not included, such as extending the scope of the Freedom of Information Act (FOIA) to include private contractors that provide public services.[28] This was also a recommendation from the IRM 2019-2021 Design Report.[29] The government was not able to provide feedback to stakeholders as to why the proposed work was taken out of the final commitment text.[30]

Potential for results: Substantial
Despite lacking some stakeholder proposals from the co-creation process, this commitment represents a significant improvement when compared to the previous action plan. If the work is carried out effectively and the necessary human and financial resources are made available, the potential for results is substantial. In particular, the plans to require all contracting authorities to implement the OCDS have strong potential for results, given the gaps in the quality and completeness of data currently on Contract Finder. Full compliance with OCDS would lead to better ability for stakeholders to analyse trends in UK government procurement. Moreover, the establishment of a central platform for supplier registration that (may) include debarment lists and a register of legal challenges would provide an important space for public oversight on companies suspended for performing poorly or for corruption. This could provide companies with additional incentive to improve and allow for broader public scrutiny into cases where wrongdoing or alleged corruption occurred. It could also allow public bodies to check this information more easily before buying, potentially improving efficiency in the system.

At the same time, the commitment promises that 95 per cent of above-threshold tenders will be made available on Contracts Finder. Combined with the promised availability of 90 per cent of above-threshold central government awards, this should allow for better tracking of public expenditure and increase the ability for external users to search and compare spending data, particularly when OCDS compliance is in place for most contracts. It would also mean a significant step up in comparison to the current data availability, particularly regarding contract awards data on Contracts Finder, where it is currently estimated to be available for around 60

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per cent.[31]

Opportunities, challenges and recommendations during implementation
Ensuring that public contract performances can be tracked and assessed throughout their commercial lifecycle is critical for verifying overall value for money (VfM). Meanwhile, the UK's upcoming Procurement Bill creates a strong momentum for stakeholders to work on this topic across different levels of government.[32] However, the commitment does not specify some important points, such as if it will involve working with unique organisation identifier numbers (critical to track all contracts with a specific company) or how it will improve compliance with disclosure policies without excessive redacting. Moreover, as noted by the UK Anti-Corruption Coalition, the Procurement Bill does not explicitly commit to best practice disclosure standards and the use of open data formats (such as OCDS) and leaving these details to secondary legislation and implementing regulations could make the disclosure regime subject to administrative discretion and at risk of rollback.[33] This contrasts with the Green Paper, which promised a single rulebook with transparency across the full life cycle of public contracts. With an eye towards possible amendments to the commitment and ensuring strong implementation, the IRM recommends the following:

- **Improve the commitment's design by developing measurable milestones that meet all stated objectives and specifying a government agency to lead the work**. This commitment currently includes three objectives, namely introducing primary and secondary legislation, embedding transparency by default throughout the commercial lifecycle, and establishing a central platform for supplier registration. However, the milestones do not address these objectives directly. Likewise, the OCDS requirement is mentioned in the narrative of the commitment but not under its milestones. These discrepancies between the objectives and milestones could make it difficult to track the implementation of the commitment. If this commitment is amended, stakeholders could specify what activities will be carried out to fulfil all stated objectives. In addition, stakeholders should consider appointing a designated government agency to lead this work in tandem with civil society. This way, poor implementation as a result of unclear responsibility can be reduced, and decision-making and work in progress can be streamlined to assure there is no duplication of efforts.

- **Focus on using procurement data to address structural inequalities, particularly around gender, and supporting social development outside of major urban areas**. Earlier deliberations on open contracting in the UK have also seen calls to assure gender-responsive procurement policies.[34] Others have discussed how UK procurement can play an important role in reducing structural inequalities and discrimination, including by promoting gender equality.[35] Making sure that relevant gender data is captured could help to inform policymaking and to evaluate whether the new regulation is meeting this objective of the Procurement Bill. Another objective of the Bill is to increase opportunities for small businesses and social enterprises to benefit from government procurement opportunities.[36] To meet this objective, the UK could use data from this commitment to help small businesses apply for procurement by local governments. This could increase public spending in marginalised areas of the UK and help address structural and economic inequalities in the country. The UK government could connect this work to the 'Levelling Up' agenda of the Department for Levelling Up, Housing and Communities.[37]

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- **During implementation, endeavour to prevent the over-use of confidentiality clauses in procurement contracts**. Stakeholders could ensure that, when disclosing contract data, key parameters of awarded contracts such as price, volume(s), and duration are not redacted. The commitment plans to report yearly on the extent of redactions in government contracts, which was also planned but not fully realised in the fourth action plan. Stakeholders could seek to limit such redaction to an absolute minimum by co-developing guidance for bidders and contracting authorities on what data should be published (and in what format) and what data could be redacted, for example because it is commercially sensitive. At present, no such guidance appears to be available and, in some cases, the decision on what data will be disclosed and what information will be redacted is subject to contract negotiations. Furthermore, OCP has recommended tightening the rules of redacting commercial information and the exemptions from duties to publish or disclose information in the Procurement Bill.[38]

- **Develop analytical tools around the data in Contract Finder and put in place additional mechanisms for verifying the accuracy of data**. The commitment calls for working with local communities to build analytical tools around the data in Contract Finder but does not specify what will be done to develop these tools. These tools may be important to stimulate the use and re-use of spending data and boost citizen engagement. Amendments to the commitment could clarify what will be carried out. The UK could look to examples of other countries when building user-oriented analytical tools, such as Italy's OpenCoesione.[39] In addition, civil society have noted that they often find gaps in the quality and completeness of the data on Contract Finder. The Cabinet Office could ensure that mechanisms for checking the accuracy of the data are put in place (beyond OCDS) and discuss with civil society how to monitor the data most effectively. Finally, accountability mechanisms could be set up to enable reporting of suspected abuse or corruption of procurement with transparent investigations.

[1] Open Justice NAP5 Draft Commitment, https://docs.google.com/document/d/e/2PACX-1vRf4NdnBJAjHmsSZoPol77BvUM2iT7caAlXzPTo-bsIgwhByGSDGhaRL6hL5eiFAbkmw_myPmjR1HDw/pub

[2] A Lawyer Writes, Open government at risk, 31 January, https://rozenberg.substack.com/p/open-government-at-risk?s=r

[3] IRM email correspondence with Peter Wells, civil society co-chair of the data ethics (algorithmic transparency) working group, 6 April 2022.

[4] IRM email correspondence with Peter Wells, civil society co-chair of the data ethics (algorithmic transparency) working group, 6 April 2022.

[5] Gov.uk, Algorithmic transparency standard, 29 November 2021, https://www.gov.uk/government/collections/algorithmic-transparency-standard

[6] NAP5 Draft Commitment Template, https://docs.google.com/document/d/19vaX2z5oSlTBOBVG1Q3_qGox05ecfwXoqt0Gmc3CrJc/edit#

[7] Open Government Partnership, Open algorithms network, https://www.opengovpartnership.org/about/partnerships-and-coalitions/open-algorithms-network/

[8] Health commitments, https://docs.google.com/document/d/1cGPEBkBJS5NNo5C3mGdkhiLyI2oph27BDVBQ8R8-4Rc/edit#

[9] IRM email correspondence with Mor Rubinstein, civil society co-chair of the health working group, 23 May 2022. See also https://morchickit.medium.com/on-equity-diversity-and-inclusion-open-government-on-a-day-of-repentance-1b207770e412

[10] IRM email correspondence with Mor Rubinstein, civil society co-chair of the health working group, 23 May 2022.

[11] Information provided to the IRM by Sam Smith, medConfidential, 8 May 2022.

[12] NHS, Health Research Authority, Research transparency, 11 October 2021, https://www.hra.nhs.uk/planning-and-improving-research/policies-standards-legislation/research-transparency/

[13] Information provided to the IRM by Sam Smith, medConfidential, 8 May 2022.

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[14] UK Open Government, UK government backslides on commitments to open government in new National Action Plan, 2 February 2022, https://www.opengovernment.org.uk/2022/02/02/uk-government-backslides-on-commitments-to-open-government-in-a-new-national-action-plan/. Parliament later passed the Economic Crime Bill in March 2022 in light of Russia's invasion of Ukraine, see https://www.bbc.com/news/uk-politics-60646119

[15] Transparency International UK, Economic crime bill: Interim measures essential to prevent asset flight, 9 March 2022, https://www.transparency.org.uk/economic-crime-bill-latest-news-property-register-analysis

[16] Transparency International UK, Economic crime bill analysis: Gaps in legislation could limit impact, 1 March 2022, https://www.transparency.org.uk/economic-crime-bill-analysis-property-register-overseas-entities

[17] Institute for Government, Summary – Government procurement: The scale and nature of contracting in the UK, https://www.instituteforgovernment.org.uk/summary-government-procurement-scale-nature-contracting-uk

[18] Gov.uk, Find a contract, https://www.contractsfinder.service.gov.uk/Search

[19] Independent Reporting Mechanism (IRM): United Kingdom Transitional Results Report 2019-2021, https://www.opengovpartnership.org/documents/united-kingdom-transitional-results-report-2019-2021/

[20] Including, but not limited to: registers of suppliers; a register of commercial tools (framework agreements, dynamic purchasing agreements and so on).

[21] Debarment refers to the exclusion of a person from participating in procurement transactions with the government.

[22] IRM interview with Ruairi Macdonald, Government Outcomes Lab, Oxford University, 25 May 2022.

[23] World Commerce and Contracting, We are united with Ukraine, https://www.worldcc.com/

[24] Spend Network, About us, https://spendnetwork.com/about/

[25] Government Outcomes Lab, July Oxford POGO Club call, https://golab.bsg.ox.ac.uk/community/events/july-oxford-pogo-club-call/

[26] Gov.uk, Green Paper: Transforming public procurement, https://www.gov.uk/government/consultations/green-paper-transforming-public-procurement

[27] HM Government, National_Procurement_Policy_Statement.pdf (publishing.service.gov.uk)

[28] UK Open Government, NAP 5 – Open contracting, https://www.opengovernment.org.uk/2021/07/20/nap-5-open-contracting-wk4-readout/

[29] Open Government Partnership, IRM UK Design Report, p 35, https://www.opengovpartnership.org/wp-content/uploads/2021/01/United-Kingdom_Design_Report_2019-2021.pdf

[30] The action plan cites that due to 'the constraints on civil society time, combined with a public sector still deployed into critical pandemic response roles', it was not possible to discuss every topic extensively, including FOIA. See https://www.gov.uk/government/publications/uk-national-action-plan-for-open-government-2021-2023/uk-national-action-plan-for-open-government-2021-2023

[31] Independent Reporting Mechanism (IRM): United Kingdom Transitional Results Report 2019-2021, https://www.opengovpartnership.org/documents/united-kingdom-transitional-results-report-2019-2021/

[32] UK Parliament, Procurement Bill, https://bills.parliament.uk/bills/3159

[33] Draft Procurement Bill, https://docs.google.com/document/d/1hAKFkuZa6YGDJhOJJYvXifyQj50zXu7oiTxi_t0lK1Q/edit

[34] See for example an earlier analysis from the UK Women's Budget Group on the NAP 4 and a more recent analysis in 2021 by Spend Network.

[35] Gov.uk, Promoting gender equality and social inclusion through public procurement, 10 September 2020, https://gds.blog.gov.uk/2020/09/10/promoting-gender-equality-and-social-inclusion-through-public-procurement/

[36] Gov.uk, Simpler, more flexible and transparent procurement, 12 May 2022, https://www.gov.uk/government/news/simpler-more-flexible-and-transparent-procurement

[37] Gov.uk, Levelling up the United Kingdom, 2 February 2022, https://www.gov.uk/government/publications/levelling-up-the-united-kingdom

[38] UK Anti-Corruption Coalition, Our ten point improvement plan for the 2022 UK Procurement Bill, https://docs.google.com/document/d/1hAKFkuZa6YGDJhOJJYvXifyQj50zXu7oiTxi_t0lK1Q/edit#

[39] Open Stories, OpenCoesione: Making EU funds expenditure more transparent, 29 September 2021, https://www.ogpstories.org/opencoesione-making-eu-funds-expenditure-more-transparent/

Section III. Methodology and IRM Indicators

The purpose of this review is not an evaluation as former IRM reports. It is intended as an independent quick technical review of the characteristics of the action plan and the strengths and challenges the IRM identifies to inform a stronger implementation process. The promising commitments highlighted in this review by the IRM are either those which have the highest potential for results, or are a high priority for country stakeholders, or are a priority in the national open government context or are a combination of these factors.

To determine which reforms or commitments the IRM identifies as promising the IRM follows a filtering and clustering process:

> **Step 1:** determine what is reviewable and what is not based on the <u>verifiability</u> of the commitment as written in the action plan.
> **Step 2:** determine if the commitment has an <u>open government lens</u>. Is it relevant to OGP values?
> **Step 3:** Commitments that are verifiable and have an open government lens are reviewed to identify if certain commitments need to be clustered. Commitments that have a common policy objective or commitments that contribute to the same reform or policy issue should be clustered and its "potential for results" should be reviewed as a whole. The clustering process is conducted by IRM staff, following the steps below:
>   a. Determine overarching themes. They may be as stated in the action plan or if the action plan is not already grouped by themes, IRM staff may use as reference the thematic tagging done by OGP.
>   b. Review objectives of commitments to identify commitments that address the same policy issue or contribute to the same broader policy or government reform.
>   c. Organise commitments by clusters as needed. Commitments may already be organised in the Action Plan under specific policy or government reforms or may be standalone and therefore not clustered.
>
> **Step 4:** assess the <u>potential for results</u> of the cluster or standalone commitment.

The filtering process is an internal process and data for individual commitments is available in Annex I below. In addition, during the internal review process of this product the IRM verifies the accuracy of findings and collects further input through peer review, the OGP Support Unit feedback as needed, interviews and validation with country-stakeholders, an external expert review and oversight by the IRM's International Experts Panel (IEP).

As described in the filtering process above, the IRM relies on **three key indicators** for this review:

I. Verifiability
- "Yes" Specific enough to review. As written in the action plan the objectives stated and actions proposed are sufficiently clear and include objectively verifiable activities to assess implementation.

- "No": Not specific enough to review. As written in the action plan the objectives stated and proposed actions lack clarity and do not include explicit verifiable activities to assess implementation.

  *Commitments that are not verifiable will be considered "not reviewable", and further assessment will not be carried out.

II.   Does it have an open government lens? (Relevant)

This indicator determines if the commitment relates to open government values of transparency, civic participation or public accountability as defined by the Open Government Declaration, the OGP Articles of Governance and by responding to the guiding questions below. Based on a close reading of the commitment text, the IRM first determines whether the commitment has an open government lens:

- **Yes/No:** Does the commitment set out to make a policy area, institutions or decision-making process more transparent, participatory or accountable to the public?

The IRM uses the OGP Values as defined in the Articles of Governance. In addition, the following questions for each OGP value may be used as a reference to identify the specific open government lens in commitment analysis:

- **Transparency:** Will the government disclose more information, improve the legal or institutional frameworks to guarantee the right to information, improve the quality of the information disclosed to the public, or improve the transparency of government decision-making processes or institutions?
- **Civic Participation**: Will government create or improve opportunities, processes or mechanisms for the public to inform or influence decisions? Will the government create, enable or improve participatory mechanisms for minorities or underrepresented groups? Will the government enable a legal environment to guarantee freedoms of assembly, association and peaceful protest?
- **Public Accountability**: Will the government create or improve opportunities to hold officials answerable for their actions? Will the government enable a legal, policy or institutional frameworks to foster accountability of public officials?

III.   Potential for results
Formerly known as the "potential impact" indicator, it was adjusted taking into account the feedback from the IRM Refresh consultation process with the OGP community. With the new results-oriented strategic focus of IRM products, this indicator was modified so that in this first review it laid out the expected results and potential that would later be verified in the IRM Results Report, after implementation. Given the purpose of this Action Plan Review, the assessment of "potential for results" is only an early indication of the possibility the commitment has to yield meaningful results based on its articulation in the action plan in contrast with the state of play in the respective policy area.

The scale of the indicator is defined as:

- **Unclear:** the commitment is aimed at continuing ongoing practices in line with existing legislation, requirements or policies without indication of the added value or enhanced open government approach in contrast with existing practice.

- **Modest:** a positive but standalone initiative or changes to process, practice or policies. Commitments that do not generate binding or institutionalised changes across government or institutions that govern a policy area. For example, tools like websites, or data release, training, pilot projects.
- **Substantial:** a possible game changer to the rules of the game (or the creation of new ones), practices, policies or institutions that govern a policy area, public sector and/or relationship between citizens and state. The commitment generates binding and institutionalised changes across government.

This review was prepared by the IRM in collaboration with Bart Scheffers and was reviewed by external expert Andrew McDevitt. The IRM methodology, quality of IRM products and review process is overseen by the IRM's International Experts Panel (IEP).

For more information about the IRM refer to the **"About IRM" section of the OGP website** available here.

Open
Government
Partnership

Independent
Reporting
Mechanism

Annex 1. Commitment by Commitment Data

Commitment 1: Open contracting
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Substantial

Commitment 2: Open justice
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Unclear

Commitment 3: Algorithmic transparency and accountability
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Unclear

Commitment 4.1: Health data use and interoperability
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Unclear
- This commitment has been un-clustered from Commitment 4 (Health)

Commitment 4.2: Clinical trials
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Modest
- This commitment has been un-clustered from Commitment 4 (Health)

Commitment 5: Anti-corruption and international illicit finance
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Modest

Annex 2: Minimum Requirements for Acting According to OGP Process[1]

According to OGP's Procedural Review Policy, during development of an action plan, OGP participating countries must meet the "Involve" level of public influence per the IRM's assessment of the co-creation process.

To determine whether a country falls within the category of "involve" on the spectrum, the IRM assesses different elements from OGP's Participation & Co-creation Standards. The IRM will assess whether the country complied with the following aspects of the standards during the development of the action plan, which constitute the minimum threshold:

1. **A forum exists:** there is a forum to oversee the OGP process.
2. **The forum is multi-stakeholder:** Both government and civil society participate in it.
3. **Reasoned response:** The government or multi-stakeholder forum documents or is able to demonstrate how they provided feedback during the co-creation process. This may include a summary of major categories and/or themes proposed for inclusion, amendment or rejection.

The table below summarises the IRM assessment of the three standards that apply for purposes of the procedural review. The purpose of this summary is to verify compliance with procedural review minimum requirements, and it is not a full assessment of performance under OGP's Co-creation and Participation Standards. A full assessment of co-creation and participation throughout the OGP cycle will be provided in the Results Report.

As per the table below, the UK has not met all the minimum requirements and is therefore deemed to have acted contrary to OGP process.

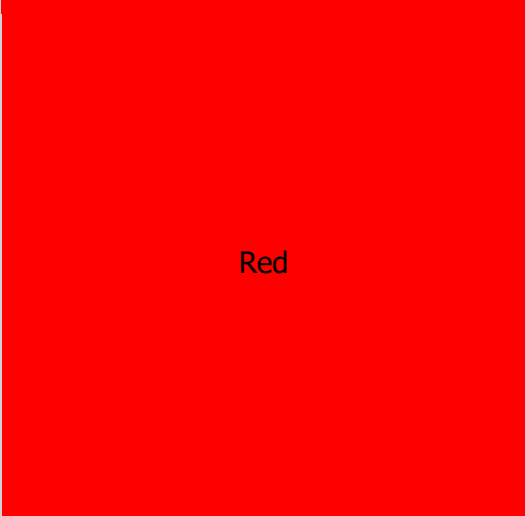**Table 2. Summary of minimum requirements to act according to OGP Process**

Key:
Green= Meets standard
Yellow= In progress (steps have been taken to meet this standard, but standard is not met)
Red= No evidence of action

OGP Standard	Was the standard met?
A forum exists. The UK formed a multi-stakeholder forum (MSF) during the co-creation period. The MSF has a terms of reference that was reviewed and discussed by members in the early stages of the co-creation process.[2]	Green
The forum is multi-stakeholder. The UK's MSF had an even balance of government and	Green

civil society representatives (11 each). However, membership was kept fluid throughout the co-creation process as a result of high turnover within both government and civil society.	*(green)*
The government did not provide a reasoned response on how the public's feedback was used to shape the action plan. While there were active discussions between government representatives and civil society in the working groups, the ministerial approval process in late 2021 resulted in significant changes to the scope of most commitments without consultation with stakeholders. Civil society contacted by the IRM confirmed that they were not informed by the government about why these changes were made or how the final decisions for the commitments were arrived at.	Red

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[1] On 24 November 2021, OGP's Steering Committee approved an update to the OGP Participation & Co-Creation Standards. The changes became effective on 1 January 2022, for any country co-creating in 2022 and onwards. Countries that submit action plans for the 2021-2023 cycle will be assessed with the previous version of the standards because their co-creation took place before the changes were approved.
[2] Terms of reference, https://docs.google.com/document/d/18595jO4xGqa9Rbcyp5WLtSR4Pc8ydJNn6AYkCzhCKSM/edit