

Citizens' Assembly on Democracy in the UK:

Briefing Paper on Draft Resolutions and Recommendations

This paper provides an overview of the Assembly's draft resolutions and recommendations. It draws from the results of the prioritising vote last week and brings together some commentary intended to help you refine and strengthen your recommendations. We will use it to help structure the deliberations over the weekend.

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1. Government and Parliament

Proposed resolution: We believe that Parliament needs to be able to play a stronger role in scrutinising the actions of Government. Collectively, it represents the voice of the electorate as a whole, whereas not everyone voted for the government.

a. Policy decisions

Possible recommendation	How it currently works	Commentary
<p>1A. While there needs to be scope for the opposition to question policies proposed by a democratically elected government, and for MPs to scrutinise details, when a policy was clearly laid out in their manifesto the government should not be unduly blocked or delayed in implementing it.</p>	<p>This essentially describes the situation as it is now. The government’s significant control over the House of Commons agenda, combined with a convention that the House of Lords does not interfere in manifesto policies, adds up to this.</p>	<p>As a statement of the existing situation this could be seen as unnecessary, but on the other hand this would demonstrate support for the principle that the government should have the ability to deliver on its manifesto, even if checks on the government should be increased. Could be combined with the next statement to demonstrate this balance.</p>
<p>1B. When significant* new policies are proposed by the government (that are outside their manifesto commitments or respond to changing circumstances) there should be opportunity for full parliamentary debate and public scrutiny before they are implemented.</p> <p>*With significance determined by a cross-party parliamentary group</p>	<p>This is not always the case in emergency situations, and in terms of secondary legislation (whether an emergency or not) – as addressed by further proposals below. In addition, there are concerns about parliament not always being consulted early enough when new announcements are made.</p>	<p>In terms of lawmaking, this is quite similar to 1E. It could be better to distinguish this a bit from lawmaking, perhaps by focusing on major announcements always being made to parliament? It could be simplified by removing reference to the ‘cross-party parliamentary group’.</p>
<p>1C. In the interest of transparency there should be a public record of the expert advice given to the government to inform their policy decisions so that members of the public can understand the basis of the decision, even if they don’t agree with it.</p>	<p>This is not always the case. Sometimes there will be a public indication of the advice, sometimes it will be obtainable via a Freedom of Information (FOI) request, but some advice to ministers is not covered by FOI.</p>	<p>It would be important to define advice. E.g. ministers hold meetings with academics, or business leaders, and not everything said is written down. Should it be? Should some things be excluded, e.g. legal advice, market sensitive information or defence decisions?</p>

b. Making new laws (legislation)

Possible recommendation	How it currently works	Commentary
1D. Government should not be able to make significant legal changes – whether through primary or secondary legislation – that are not scrutinised by the people and their representatives in Parliament.	Although secondary legislation is often used for small changes, there has been growing concern about its use for larger, more significant changes – and secondary legislation is not subject to full parliamentary scrutiny. It is often not debated, and cannot be amended in parliament.	As a statement of principle this is in line with what many expert groups have called for. In practice it would be important to define ‘significant’, and maybe to give the role to a cross-party parliamentary committee to determine this.
1E. In cases of emergency when there is a need to introduce new laws quickly without allowing for full scrutiny and debate, these should be identified as temporary laws, with a scheduled review date at which point Parliament should have the opportunity to debate the law, and to amend it or repeal it.	Sometimes this is the case, but not always.	There is a question regarding how to balance this up with 1D. Should there be an exception to that to allow for emergencies? If so, this is a possible wording. The length of time for which a temporary law should apply is an interesting question. Would this be a matter of weeks, or months? Would it depend on the severity of the law? To be in line with 1D this should perhaps say ‘significant new laws’.
1F. When voting on new laws that were not key manifesto pledges, Members of Parliament should have permission to vote in a way that represents the views of their constituents, even if that is against the position of their party, without penalty.	This would be a big change to the current situation. Normally, MPs are expected to vote in line with their party and can be punished if they do not – though sometimes leaders are more tolerant when a proposal (such as a new railway, like HS2) directly affects an MP’s constituency.	One question to balance here is whether MPs involved in the decision (e.g. members of the Cabinet) should also be allowed to vote against, or whether there should be an expectation of respecting ‘collective responsibility’ for a decision and falling in behind the majority view. Another question is whether there should be more consultation with backbench MPs before a vote takes place.

c. Proposing bills and deciding what Parliament should discuss

Possible recommendation	How it currently works	Commentary
<p>1G. MPs need to have the ability to ensure that issues that are important to the public and/or have significant public support are raised in Parliament and debated publicly and decided, even if they are not part of the Government’s programme or are something that the government actively disagrees with</p>	<p>Currently there are some opportunities for MPs who are not members of the government to propose debate topics, but these are quite limited and it is difficult for such MPs to force a decision (i.e. a vote) on the topic. Where the Commons does occasionally vote on such issues (in opposition days and backbench business), the government does not consider itself bound to implement these decisions, even if MPs support them.</p>	<p>One question is whether there should be more opportunities to get such debates and decisions. Another one is whether the government should be bound to implement the decisions of parliament in such cases, even if it disagrees with them.</p>
<p>1H. The right of all elected Members of Parliament to propose a bill should be protected. A cross-party committee should decide which bills are debated in Parliament. Where there is substantial support for a bill, time should be available to scrutinise it and decide on it properly.</p>	<p>At the moment the procedure for private members’ bills allows them easily to be blocked by the government. The decisions over which bills are given proper time for debate depends on a random allocation, rather than weighing up the merits of the proposals. A change such as this has been proposed by MPs themselves, but not scheduled for debate by the government.</p>	<p>This would support a recommendation of the House of Commons Procedure Committee, and could ensure that the bills with the widest support get debated. It would also in practice require some change to procedures to guarantee that such bills had time for debate and were voted upon. Both of these things are captured in the proposed statement.</p>
<p>1J. As there is not time to properly debate and decide all Private Members’ Bills in Parliament, the decision on which ones are most important to be debated should be made by a panel of citizens, appointed like a jury.</p>	<p>The current situation is set out at 1H. The proposal here is that bills should be selected for debate by citizens rather than a committee of MPs.</p>	<p>It would be important to think about how the citizens were chosen, how to ensure that this was a representative group, etc, and how often and for how long they would meet. It is more complicated than the previous proposal as it would introduce another layer beyond the parliamentary process.</p>

Possible recommendation	How it currently works	Commentary
<p>1K. Greater time needs to be reserved in the Parliamentary schedule to ensure that matters such as Private Members' Bills and public Petitions can be debated, although without unduly limiting the right of Government to have the time to deliver on what they were elected to do.</p>	<p>Currently there is quite limited time for both private members' bills and petitions to be debated. Decisions generally are not taken on petitions, and bills can easily be blocked.</p>	<p>This focuses on the time made available to discuss non-government business in parliament (rather than the power for parliament to decide, as covered in other statements). Many people would like to see this, but would also agree that there must be enough time left for government.</p>

d. When Parliament should sit

Possible recommendation	How it currently works	Commentary
<p>1L. A petition signed by half of the elected Members of Parliament should be able to demand that Parliament is recalled from recess to debate important decisions.</p>	<p>At present the House of Commons can only be recalled from recess by a decision of the government. Other MPs have no formal means to force a recall.</p>	<p>Proposals such as this have been made many times over the years. Sometimes a lower threshold than half has been suggested, but this could perhaps enable mischievous attempts by opposition parties. Generally a threshold of half will require some government backbenchers to support the move, which makes that less likely and would ensure that a recall only happened when it had wide support.</p>
<p>1M. The Government should propose when Parliament goes to recess, with MPs able to debate and amend the proposal before a vote in Parliament. Government can however recall Parliament in the case of exceptional circumstance / emergency.</p>	<p>This describes something similar to the current position, in that government proposes the date and government can activate a recall. But at the moment, MPs do not get to debate the decision of when a recess takes place, and cannot amend the proposal (e.g. by suggesting a different date).</p>	<p>Normally a majority of MPs will be happy to support what the government proposes, but this would create a safeguard (for example if MPs want to sit for longer to ensure that a topical issue is debated).</p>
<p>1N. The Prime Minister should only be able to call an early general election if it is supported by a vote in the House of Commons.</p>	<p>This is the case at the moment under the Fixed-term Parliaments Act, but a government bill currently passing through parliament would return this power to the Prime Minister.</p>	<p>Normally a majority of MPs will be happy to support the Prime Minister, but this would create a safeguard (for example if MPs want to sit for longer to ensure that a topical issue is debated).</p>

2. The Role of the Public

Proposed resolution: We believe that the UK public as a whole has to become more engaged with the existing opportunities to influence our representative system (voting, contacting MPs, supporting/ joining political parties or campaign groups etc) but we don't think that will happen unless they have more reason to believe that they can make a difference.

Proposed resolution: We believe that a good democracy in the UK needs voters who are engaged, well-informed and able to consider other points of view and opposing arguments in a constructive way.

Possible recommendation	How it currently works	Commentary
2A. The public need to see honest and transparent politics taking place on a day-to-day basis through politicians being closer to, and more visible in, the communities they represent (e.g. via coffee mornings, Zoom options, libraries, etc), in order to help build connections and trust.	When not engaged with work at Westminster, most MPs hold regular constituency surgeries and try to get out and about in their constituencies as much as possible. Over 100,000 people live in the average constituency, so it would take a very long time for even a hard-working MP to meet everyone.	Should this statement acknowledge that many MPs do work hard to contact their constituents, and encourage all others to follow this example? Part of the equation may also be members of the public taking up these opportunities.
2B. Parliament needs to regularly (weekly / monthly) report on the business of Government and what has been debated in a factual and accessible way, to prevent the media being able to skew public perceptions (e.g. through a subscribable newsletter or public briefing)	A huge amount of information is produced by Parliament every day, including records of what was debated. The difficulty may be not too little information, but too much – it can be overwhelming, and difficult to know where to look. There is currently no single weekly/monthly summary.	It would help to clarify whether this statement is about parliament or government or both. One question is how people can work out what information they want and how they can find it. This may need both better education on where to look, and more accessible information. Producing summary information that everybody agrees is unbiased and purely factual can be challenging.

Possible recommendation	How it currently works	Commentary
2C. To make democracy in the UK the best it can be, the public needs to take responsibility for ensuring that they educate themselves to make an informed choice when they cast their vote, but to support this they need to be able to easily access clear, unbiased information about the political process, political parties and individual candidates.	The BBC and other broadcasters have to provide impartial coverage of politics. But basic information such as that described in the draft recommendation can be difficult to find.	Basic information on political processes, parties and candidates wouldn't be too difficult to provide.
2D. We need a strong, independent media, supported by enhanced regulation, to ensure the fair and balanced reporting of political issues and increased public access to reliable factchecking services.	The UK has a strong independent media sector. Broadcasters must report impartially, while print and online publications can express strong views. Regulation of the print and online media is often seen as quite weak.	This statement is fairly uncontentious, though how to make it work in practice would raise some big questions that the Assembly hasn't had time to get into.
2E. To allow for effective public participation in political debate and scrutiny, freedom of speech and the right to protest need to be protected.	Freedom of speech and protest are generally seen as basic democratic principles, so very few people would oppose this statement. But there is some debate about how to balance these rights against other rights.	The government has proposed a new law that would allow the police to place tighter limits on protests that could be noisy or disruptive. Some people say this is needed to protect the rights of bystanders. Others say it unreasonably restricts the right to protest.
2F. The education systems across the UK need to give more focus to educating young people and life-long learners to be 'political citizens' - ensuring they understand the system and the opportunities they have to influence decision-making.	There is some 'citizenship education' in schools at present. But many people find that it isn't presented in a way that is particularly effective or interesting. There is only limited provision for adults.	Almost everyone would agree that education about politics matters. It is important to teach it impartially. There are always pressures on how much can be covered in the school curriculum.

Possible recommendation	How it currently works	Commentary
2G. Ministers need to be knowledgeable in the field they are appointed to so that the public can be confident that the decisions they are recommending are responsible and evidence-based.	The Prime Minister will consider many factors when deciding on ministerial appointments. These could include expertise, as well as skills, and whether someone shares the Prime Minister's priorities.	It could be hard to come up with a formal knowledge test. So this might be an informal expectation instead.
2H. The people elected to represent the public in Parliament need to be more diverse and more closely represent the make-up of the UK population so that people can recognise themselves and their interests within the representative system.	At present, 66% of MPs are men and 34% are women. 10% come from ethnic minority backgrounds (compared to at least 14% in the population). The huge majority – 87% – of MPs have been to university. Interestingly, only 11 of the 650 current MPs went to Eton.	This is a clear statement. It raises a big question of how to achieve greater diversity, which the Assembly hasn't had time to consider.

3. The role of Petitions

Proposed resolution: We believe that Petitions are an important way for the public to influence government policy and what is debated in parliament, and that the use of petitions should be extended.

Possible recommendation	How it currently works	Commentary
<p>3A. To encourage more participation, and give people a practical experience of involvement in the political process without being connected to any political party position, there needs to be much wider public awareness of the petitions process, the petitions that are 'live' and what they can deliver as an outcome.</p>	<p>Information on these points is available on the Petitions website.</p>	<p>The difficulty may be that awareness of the Petitions website is quite low. Ideas from the Assembly on how to change that could be very welcome.</p>
<p>3B. Any parliamentary debate initiated through the petitions process should be meaningful, with Government and Parliament engaging seriously with the issues. One way to achieve that might be to require a minimum number of MPs to attend (perhaps a percentage of the number of seats held by a party).</p>	<p>Debates on petitions often take place, but there are not many cases of clear follow-up action. There are no attendance requirements at present. If introducing them meant that MPs sat in on debates just to make up the numbers, would anything really be achieved?</p>	<p>The core idea that Government and Parliament should engage seriously provides a strong steer. There hasn't really been time to consider whether minimum attendance rules would be the best way to achieve that, so this might best stay just as an illustration.</p>

Possible recommendation	How it currently works	Commentary
3C. The powers of the Petition system should be expanded to allow the public, once a petition has a 'high' number of signatures (number to be determined), to demand a public inquiry into an issue.	At present, a petition with at least 10,000 signatures gets a response from the government. A petition with at least 100,000 signatures generally leads to a debate in parliament. That doesn't necessarily lead to further action.	<p>This note relates to three possible recommendations on petitions. All three would increase the power of petitions, and help force issues onto the agenda. On the other hand, they might require spending time and money on ideas that only a minority support and that won't get through in the end.</p> <p>Possible issues to consider:</p> <ul style="list-style-type: none"> • The three options vary in how much control they give to voters and how much the enable considered decision-making. Is one better than others? Could this depend on the issue? • How many signatures would be needed? Should this vary between the options? • Should there be a role for parliament or a citizens' panel in sifting proposals? <p>An alternative (or addition) to these proposals would be to strengthen parliament's role in the process. For example, to require not only a debate but also a vote on popular petitions, and/or to require the government to comply with the outcome of that vote.</p>
3D. The powers of the Petition system should be expanded to allow the public, once a petition has a 'high' number of signatures (number to be determined), to demand a referendum on an issue.	As previous.	
3E. The powers of the Petition system should be expanded to allow the public, once a petition has a 'high' number of signatures (number to be determined), to demand a Citizens' Assembly be convened to provide advice to ministers on the considered view of a representative group of the public on an issue.	As previous.	

4. The role of referendums

Proposed resolution: We believe that referendums are an important tool for direct democracy that can add to a good democracy in the UK by handing important decisions back to the people.

Possible recommendation	How it currently works	Commentary
<p>4A. Referendums should be used sparingly and predominantly for constitutional issues of significant national (or regional) importance.</p>	<p>This basically describes how referendums are used in the UK at the moment.</p>	<p>Many people would agree that the strongest case for holding a referendum is on constitutional issues – because decisions on the structure of government should not be made just by people who work in government.</p> <p>Other people think some other issues could also be suitable for referendums, such as moral questions.</p>
<p>4B. In order to generate the trust needed for genuine, free and authentic conversations, involvement and outcomes, when a referendum is called there should be an impartial, non-political body (like the Electoral Commission) that is responsible for providing the public with clear, unbiased, factual information that they can use to understand the issues involved.</p>	<p>No body has this role at present, though the BBC and other broadcasters must provide impartial coverage.</p>	<p>Impartial information is provided and widely valued in referendum processes in some other countries, including Ireland, Switzerland, New Zealand, and parts of the United States. Sometimes information just sets out basic facts. In other cases it presents expert analysis of the effects of different options, or the findings of deliberative processes such as citizens' assemblies.</p>

Possible recommendation	How it currently works	Commentary
<p>4C. Referendums should be used more frequently to hand power to the public, but should be restricted to clearly defined choices where the consequences of implementation can be accurately set out in advance - they need to unite people rather than divide them.</p>	<p>For some referendums in the UK (e.g., devolution to Scotland, Wales, and Northern Ireland in 1997–98), most details were worked out in advance, so the choice was clear. For others (e.g., Scottish independence and Brexit), much less had been worked out before the vote.</p>	<p>This statement has several elements. Would it be better to focus it on just one part? Is it about using referendums more frequently? Or making sure there is a clearly defined choice? Or trying not to divide people? It's hard for a referendum not to divide people, so the third part could be difficult.</p>
<p>4D. Referendums should only be used to decide moral and ethical issues (like the referendum in Ireland to legalise same sex marriage) if there has been a long process of public education and deliberation that engages the whole public in understanding the issues and the implications of the decision, so that people not directly affected by the issue can make an informed choice.</p>	<p>There have been no referendums about moral or ethical issues in the UK to date. Public information ahead of referendums has generally been limited in the UK, and there have been no deliberative processes before referendums. The BBC and other broadcasters are, however, required to provide impartial coverage.</p>	<p>This statement has two parts. Does the Assembly want to make a statement about education that applies only to referendums on moral or ethical issues, or does it want such arrangements to apply to all referendums? The statement could be clearer as to whether or not the Assembly supports more referendums on moral or ethical issues in principle.</p>
<p>4E. Referendums should only be considered as binding instructions to government if there is a clear majority result, for example 60% of those who vote being in favour. Otherwise they have the risk to be divisive across society as 50% +1 support is not enough to have a mandate.</p>	<p>The basic threshold for a result has been 50% +1 in all referendums in the UK. In referendums on devolution in Scotland and Wales in 1979, there was an additional threshold, that at least 40% of those <i>eligible</i> to vote supported the change.</p>	<p>A higher threshold guarantees that change happens only if a substantial majority support it. But if, say, 55% of voters support a change, they might reasonably feel that their wishes are being unfairly denied. Some experts would say it is better to get a clear result through a multi-step process, with Parliament and perhaps a citizens' assembly looking at the issue before it goes to a referendum.</p>

Possible recommendation	How it currently works	Commentary
4F. Referendums should only be considered as binding instructions to government if there has been a high voter turnout, for example 70% of registered voters. Otherwise their results should be considered as guidance regarding public views.	See previous.	The same points apply as above. Also, a turnout rule can encourage people to boycott the vote. It may be better to avoid holding referendums on issues that might not attract a high turnout.

5. The role of deliberative processes (e.g. citizens' assemblies)

Proposed resolution: We believe that deliberative processes like citizens' assemblies should be used more often by governments and parliaments throughout the UK to understand the views of the public.

Possible recommendation	How it currently works	Commentary
5A. The results of deliberative processes like citizens' assemblies that are initiated by Government or Parliament need to have an impact. When they are convened, there should be a guarantee that their results will be made public, their recommendations will receive a detailed response from the convening body, and they will be debated in Parliament.	Citizens' assemblies in Scotland, Ireland, and elsewhere have had such a position. Those set up by the UK parliament have not yet had such guarantees.	Few people would argue against this – if a government or parliament sets up a citizens' assembly, most people would say it should take the assembly's conclusions seriously, even if it has the right to reject them.
5B. Deliberative processes should be used on divisive issues that are really important to people, either locally or nationally, and widely publicised and scrutinised so that they become trusted by the public and politicians.	At the moment, there are no standard practices in the UK for when citizens' assemblies are called.	There would be little point in holding an assembly on an issue if everyone agrees what should happen. But if an issue is very divisive and many people have already made up their minds, members might not be willing to listen and learn. Assemblies might be best on difficult issues where the political parties and many voters don't have clear views yet.

Possible recommendation	How it currently works	Commentary
5C. The results of a deliberative process like a Citizens' Assembly should provide advice to decision makers but should not be binding, as that would be undemocratic since the members are not elected.	All citizens' assemblies in the UK and most around the world have made recommendations for elected representatives, not binding decisions.	Some experts think that in some circumstances assembly recommendations could be binding – say, if they are agreed by more than 80% of members. But most agree with the statement and think that final decisions should be made by elected representatives.
5D. Deliberative processes should mainly be used to enhance local decision making - in communities and regions - so that decisions are made that are informed by what local people, who understand the place-based issues, want (rather than centrally in Westminster).	Deliberative processes can be, and are, used at all levels of government from local to national.	Most people would say that some issues are best dealt with locally, some nationally, and some in between. Does the statement mean that deliberative processes should be used only for issues dealt with locally? If so, that might be made clearer, and reasons given.
5E. Citizens' Assemblies or Juries should be convened to advise on and sense-check new laws proposed by the government that are outside their manifesto commitments, as a formal mechanism of public scrutiny of new proposals. Their findings should be published.	At the moment, there are no standard practices in the UK for when citizens' assemblies are called.	Who would decide whether a proposal is outside manifesto commitments? Should this proposal apply to all new laws or only significant ones – and who would decide what is significant? What if there are emergencies needing quick action? Would this provision best be a convention rather than a hard rule?
5F. MPs should hold locally based deliberative processes with a cross section of their constituency before voting on controversial policy issues so that they can better understand the concerns of their electorate.	MPs generally try to speak with as many people in their communities as possible, so that they know what people are thinking. But they don't currently have resources to run deliberative processes.	Deliberative processes can be very effective for finding out what people really think. But they also require considerable resources to organise and run. MPs would need support to run high-quality processes.

6. The role of regulators in upholding ethical standards

Proposed resolution: We believe that the public should be able to trust their elected representative to behave honestly and selflessly. While the political system is intended to have mechanisms in place to police this, we believe that they are not working well and that greater involvement of independent regulators is needed.

Possible recommendation	How it currently works	Commentary
6A. The public should be able to expect Members of Parliament to conduct themselves ethically in their work and that regulators will investigate conduct that appears dishonest or self-interested, or lacks integrity.	This is effectively a statement of how the system is supposed to work at present.	Most people would agree with this as a general principle. Some of the statements below build on it.
6B. The Code of Conduct for MPs, peers and government ministers needs to be strengthened to give clear guidance on what a breach will result in. Regulators need to recommend consistent sanctions to all parties and levels of office, and the public should be able to expect these to be imposed.	At the moment the Code of Conduct is overseen by the Parliamentary Commissioner for Standards and the Committee on Standards. On the basis of the details of the case, they will recommend a penalty. As these are independent and cross-party bodies the sanctions should be consistent between parties and levels of office.	The main change here would be to give greater clarity regarding what kind of penalties should apply to which breaches of the Code. Mostly this is a clear statement that the current system should be applied robustly.
6C. In the workplace MPs should be subject to the same sanctions as other employees regarding the treatment of staff. Bullying or harassment should not be tolerated.	Processes in parliament regarding bullying and harassment have been tightened up significantly recently. However, MPs are not employees of parliament, but representatives of their voters.	Partly this question comes down to who should be able to 'sack' or punish MPs who behave badly. Ultimately their 'boss' is the electorate.

Possible recommendation	How it currently works	Commentary
6D. Lying or intentionally misleading Parliament should be able to be identified as 'contempt of Parliament'. As well as being made to give a public apology, MPs who break this rule should be fined or otherwise punished.	At the moment there is no hard sanction against lying to parliament. The Ministerial Code requires that ministers shouldn't lie, but this is policed by the Prime Minister rather than by parliament (or, e.g., the Speaker). MPs are supposed to respect good standards of behaviour, and indeed accusing an MP of lying in parliament will result in the accuser being reprimanded, rather than the person being accused.	There is quite a lot of concern about the lack of regulation in this area. However, it is quite tricky: who should decide whether a statement is true or not? Should this role be given, for example, to the Speaker, or to a cross-party committee, and might that involve those making the judgement in controversy?
6E. The public needs to be able to trust that the recommendations made after an investigation of ministerial conduct by an independent regulator appointed to do this will be respected and implemented by Government. If this cannot be guaranteed through the political process then it may require regulators to be given greater powers.	At present there is an Independent Adviser to the Prime Minister on ethics, who can be asked to investigate breaches of the Ministerial Code. The Adviser reports to the Prime Minister, who will decide whether action should be taken when there is a breach.	The Committee on Standards in Public Life has suggested that the Adviser should be able to initiate investigations, rather than depending on instruction from the Prime Minister. The question of who can deliver punishment is more tricky: should anyone be able to override the Prime Minister over who sits in their Cabinet?
6F. In matters concerning the conduct of MPs we need to be able to rely on the political process, supported by independent regulators, to result in action by Parliament. Matters relating to ethical behaviour should only be a matter for the courts if there is evidence of illegal activity, like fraud or theft.	This is basically a description of the current situation.	

7. The role of the courts

Proposed resolution: We believe that there is an important role for the courts to play in limiting the laws that can be passed by government when they are seen to challenge basic rights and core democratic principles.

NOTE TO MEMBERS: We are going to treat consideration of proposed recommendations regarding the role of the courts a bit differently from in the sections above.

In the last round of voting we asked you to make a choice between two different proposals for recommendations that contradicted each other – with the option that received the greatest support going through for further development. In both cases you preferred the proposals that gave the courts more power.

Possible recommendation	How it currently works	Commentary
7A. Courts should be able to overturn laws that are judged as violating legally recognised human rights. Otherwise they should not have the power to override the sovereignty of parliament.	If the government is challenged in court about a law on the basis that it breaches the Human Rights Act, the court can rule that the law is 'incompatible' with rights, cannot overturn it. The question then returns to parliament to consider.	This statement would strengthen the role of the courts on human rights, allowing them to overturn laws (in this limited case only). Some people would support this. Others would argue that it breaches the sovereignty of parliament by putting the courts above MPs.
7B. The basic features of our democracy that protect the public's constitutional rights to participate and be represented should be hard for any government or parliament to change, and courts should be able to overturn, or require modifications to, laws that challenge basic democratic rights.	Individual rights to participate have some additional protection under the Human Rights Act (see 7A). Other features of democracy are not protected in the same way. Under the principle of parliamentary sovereignty, parliament can normally make or unmake any law. In general, if parliament agrees a change it will happen. Though some constitutional changes are put to a referendum, this is not formally required.	Many countries that have written constitutions setting out basic features of democracy. These constitutions are often harder to change – e.g. needing a 'supermajority' (say 2/3) in parliament, or a referendum. There would need to be careful thought about which questions this would apply to, and also what extra process would be useful. The words after the comma on the role of the courts (which is already captured in other statements) might be replaced with consideration of this.

Given this the wording of some of the other proposed areas for consideration has been revised below to be consistent with these goals.

Possible recommendation	How it currently works	Commentary
7C. In particular, the courts should be able to overturn laws that restrict the rights of minorities, even if those laws are politically popular and well supported by the public.	See 7A.	See 7A.
7D. In particular, the courts should be able to overturn laws that restrict basic democratic freedoms such as the public's right to protest and freedom of speech, which are currently under threat.	See 7A.	See 7A.
7E. The government should not be able to limit the ability of the Supreme Court to scrutinise secondary legislation.	Currently the courts (not just the Supreme Court) have power to overturn secondary legislation. There have been reports that the government wants to limit this power, but its plans are not very clear.	This statement would effectively be a defence of the role of the courts, indicating that the government should not reduce their powers in this area. It might be clearer if it said 'courts' rather than just 'Supreme Court'.
7F. So long as the courts have only soft powers to review laws and ask for them to be reconsidered, overriding a court ruling should require Parliament's explicit consent. There should be no fast-track procedure available to government.	This is how the system under the Human Rights Act works at present. See 7A. There have been reports that the government wants to make it easier to override court decisions, but its plans are not very clear.	This statement would effectively defend the current role of the courts.

Possible recommendation	How it currently works	Commentary
<p>7G. If the courts were to be given wider scope to challenge unfair laws and ask Parliament to think again (beyond legally protected human rights) that power would have to be used sparingly. If overused it could mean we lose important features of our democracy and be governed by the courts rather than the people we elect to represent us.</p>	<p>This statement is considering the hypothetical situation that the power of the courts is strengthened (e.g. in line with statement 7A)</p>	<p>The courts apply the law, and will respond to the legal challenges that are put in front of them. They therefore have limited discretion to decide how often a power is used. Some would argue that frequent overturning of government decisions by the courts would create controversy, but the number of cases may depend largely on how the government, and external groups that pursue legal cases, behave.</p>