



## **British secrecy jurisdictions and the Privy Council**

*Tax Justice Network, October 2013, Updated February 2020*

The Judicial Committee of the Privy Council, a legacy from the British Empire, is the final court of appeal for all of Britain's Crown Dependencies and Overseas Territories, and for a number of British Commonwealth jurisdictions too (see [map](#)).

This legal backstop to these (mostly small) jurisdictions' legal systems – which covers both civil and criminal cases<sup>1</sup> - provides a potent bedrock upon which their financial services industries have been built. Skittish owners of financial capital tend to be more cautious about fully independent jurisdictions without such an external legal backstop, fearing local corruption in the judiciary which might threaten the safety of their assets. [Cases such as this one](#) help protect and preserve this bedrock.

Beyond this role as a final court of appeal, Britain's Privy Council serves many other roles that are beyond the scope of this report. To find out more about this peculiar, ancient British institution, see this [commentary](#) on the Privy Council in a modern democracy, and the official UK Privy Council [website](#).

There are correlations between British Commonwealth countries' secrecy scores and their having the Judicial Committee of the Privy Council as final court of appeal or not.

For instance, the average secrecy score for the 23 British Commonwealth countries (excluding the UK but including Overseas Territories and Crown Dependencies) that have the Judicial Committee of the Privy Council as their final appeal court and are included in the Financial Secrecy Index is 71. In contrast, those 24 Commonwealth countries included in the index that did not retain the Privy Council have a secrecy score of 66.12. Of those Commonwealth

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<sup>1</sup> To use the Judicial Committee of the Privy Council as a final court of appeal, leave must be granted by a lower court. This happens only in certain circumstances. As the Judicial Committee of the Privy Council [notes](#): "In civil cases, the lower court will generally grant you leave to appeal if the court is satisfied that your case raises a point of general public importance. In criminal cases, it is unusual for the lower court to have the power to grant leave unless your case raises questions of great and general importance, or there has been some grave violation of the principles of natural justice."

members that retained the Judicial Committee of the Privy Council, 63 per cent (19 of 30) have a secrecy score of 65 or more, pointing to secrecy jurisdiction status; but of those that did not retain the Privy Council, only just over one third (13 of 37) have a secrecy score above 65, suggesting that offering financial secrecy is unlikely to be a core economic strategy of most Commonwealth countries not within the jurisdiction of the Privy Council.<sup>2</sup> (For comparison purposes, the average secrecy score for all countries included in the Financial Secrecy Index 2020 is 63.86.) The following table provides the data.

*Table 1. Jurisdiction of the Judicial Committee of the Privy Council and secrecy scores for Commonwealth countries*

<b>Commonwealth countries</b> incl. Overseas Territories and Crown Dependencies	<b>Privy council</b> See <a href="#">here</a>	<b>Secrecy score 2020</b>
Anguilla	x	78.20
Antigua and Barbuda	x	76.08
Australia		50.90
Bahamas	x	75.38
Bangladesh		72.73
Barbados		74.00
Belize		73.93
Bermuda	x	72.73
Botswana		62.24
British Virgin Islands	x	71.30
Brunei	x	78.30
Cameroon		71.48
Canada		55.84
Cayman Islands	x	76.08
Cook Islands	x	70.30
Cyprus	x - sovereign base areas only	61.08
Dominica	x	73.65
Falkland Islands	x	
Fiji		
Gambia		74.88
Ghana		51.70
Gibraltar	x	69.48
Grenada	x	70.55
Guernsey	x	70.65

<sup>2</sup> We are only making comparisons and noting correlations here, not commenting on causation. The reasons for these scores are likely to be complex. At least part of the reason for these trends is likely to be because larger jurisdictions (such as Australia, Canada and India) have sufficiently well-developed legal systems to not need the UK's backstop; these larger jurisdictions tend not to be as aggressive as smaller jurisdictions in offering secrecy, since the smaller jurisdictions frequently feel they have few other tools to attract footloose financial capital. Nicholas Shaxson's book [Treasure Islands](#) discusses some of the politics around how some British Caribbean jurisdictions were both seeking to be, and were being actively encouraged by London to be, secrecy jurisdictions, though it did not explore the particular point about whether or not to retain the Judicial Committee of Council the Privy. Further research would be needed to obtain a fuller picture of correlation and causation here and of the true importance of the Privy Council to these jurisdictions.

<b>Commonwealth countries</b> incl. Overseas Territories and Crown Dependencies	<b>Privy council</b> See <a href="#">here</a>	<b>Secrecy score 2020</b>
Guyana		
India		47.84
Isle of Man	x	64.68
Jamaica	x	
Jersey	x	65.53
Kenya		75.95
Kiribati	x	
Lesotho		
Malawi		
Malaysia		69.53
Maldives		79.83
Malta		61.75
Mauritius	x	71.53
Montserrat	x	74.60
Mozambique		
Namibia		
Nauru		59.95
New Zealand		59.20
Nigeria		70.15
Niue	x	
Pakistan		55.05
Papua New Guinea		
Pitcairn Islands	x	
Rwanda		63.00
Samoa		74.63
Seychelles		70.44
Sierra Leone		
Singapore		64.98
Solomon Islands		
South Africa		56.24
Sri Lanka		72.18
St Helena	x	
St Kitts and Nevis	x	75.18
St Lucia	x	71.03
St Vincent and the Grenadines	x	65.65
Swaziland		
Tanzania		70.78
Tonga		
Trinidad and Tobago	x	64.65
Turks and Caicos	x	77.83
Tuvalu	x	
Uganda		
United Kingdom	x	46.20
Vanuatu		76.30
Zambia		