Chapter 1

Timeline

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Up to 1970: The Dark Ages for Commercial Bribery

Bribery is certainly not a recent phenomenon, and there are several reports of bribery among ancient Egyptian writings and in the books of The Old Testament. Leaving these historical accounts aside, though, bribery was first properly outlawed when the UK passed the Corrupt Practices Act of 1695, a law designed to prevent bribery during parliamentary elections. This forerunner of the modern bribery laws prevented prospective candidates or their associates from making any 'gift, reward or entertainment' in exchange for votes.

Although most lawmakers slowly reflected popular opinion by criminalizing political corruption, the prevailing wisdom was that bribery was a fact of life when doing business, particularly internationally, and so for the first 80% of the twentieth century there were almost no prosecutions for bribery outside the political arena anywhere in the world.

The UK was one of the first countries in the world to have explicit statutory provisions outlawing bribery. But although they sounded impressive, they were little used, and piecemeal reforms over the years had given rise to a myriad of overlapping offences contained in the common law, and in dated legislation.

1971: Lockheed

In 1971 the US government helped Lockheed Corporation, at the time the country's second largest defence contractor, to avoid bankruptcy by providing it with a $250m loan guarantee. Soon afterwards, regulators discovered that Lockheed had been paying numerous bribes to foreign governments

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over the course of many years, with multi-million dollar backhanders having been made to obtain contracts in Holland, Japan and Italy. These were not just payments to low and mid-ranking bureaucrats, but bribes to very senior figures. The scandal that resulted damaged relations both inside and outside the US.

Lockheed was reluctant to cooperate with subsequent governmental investigations and refused to stop making political payments, claiming that it was simply doing what was necessary to carry out business in certain parts of the world. Such payments, it said, were essential to maintaining sales and were 'consistent with practices engaged in by numerous other companies abroad'.

1972: Watergate

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In June 1972, the US Democratic Party offices at the Watergate hotel complex were broken into. The subsequent FBI investigation revealed that the Watergate episode was just one part of a huge operation to spy on and sabotage the Democrats' election chances.

Republican candidate Richard Nixon was ultimately re-elected, and although he maintained that he knew nothing about the matter, when he refused to comply with an order of the Supreme Court to hand over tapes of conversations that took place inside the White House, he was impeached and charged with obstruction of justice.

Meanwhile, in 1973, during his fifth year as Nixon's Vice President, Spiro Agnew was under investigation by the US Attorney's office in Maryland on charges of extortion, tax fraud, bribery and conspiracy. Rather than face a bribery trial, he was allowed to plead 'no contest' to a charge of evading income tax, with the condition that he resign his office.

In August 1974, Nixon – facing increasing pressure over his role in the Watergate scandal – resigned, the first US president to do so. When Vice President Gerald Ford became president in his place, he later pardoned Nixon of all charges related to the Watergate case.

1976: Post-Watergate Repercussions

During his investigation of corporate payments to Nixon's election campaign, the Watergate special prosecutor found evidence of hidden 'slush funds' being set up by some of the US's largest companies, including such stalwarts as 3M, American Airlines and Goodyear Tire & Rubber. These payments had been used to make illegal payments to the Republican election campaign. Subsequent probes uncovered numerous cases of corporate money being illicitly passed to domestic politicians, foreign officials or often both.

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Motivated more by an attempt to reduce share price volatility resulting from major contracts being obtained by bribery as any moral imperative to try to eliminate it, the US regulators proposed a programme of voluntary disclosure. The SEC encouraged any company to come forward and self-report a bribe or illicit payment, whereupon they would be informally assured that they would not face prosecution. In return, however, the company would have to conduct an independent investigation into the payments and disclose the results before putting right any problems uncovered.

Some companies complied, others partly complied; some resisted. The resulting 1976 SEC publication, *Report on Questionable and Illegal Corporate Payments and Practices*, analysed information obtained from 89 companies, many of which were part of the Fortune 500, which had self-reported bribes or other illicit payments made to foreign governmental officials. The SEC recommended establishing new and stricter

accounting, record-keeping and management practices for large US companies.[1]

Mid-1970s: Easing of Tensions in the Cold War

The 1970s also represented a period of more cordial relations between NATO and the Warsaw Pact countries. Both sides were feeling that the financial cost of the nuclear arms race was becoming unsustainable, particularly in the US, where the economy was under pressure from having to pay for the Vietnam War at the same time as the welfare state was being expanded. Diplomats recognized there was no longer a pressing reason for the US government or its agents to support corrupt regimes around the world under the guise of national security, and became conscious that paying bribes tarnished the US image abroad and weakened its standing in global politics. To build and preserve alliances, the US government embarked on a post-Cold War agenda of transparency.

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1977: Foreign Corrupt Practices Act Passed

Fuelled by scandals of Watergate, news of widespread international bribery and the easing of international political relations, US voters had grown wary of shady deals and questionable dealings by the country's political and business leaders, and started to demand a new accountability. Under US law, bribery of domestic politicians had for some time been illegal, however, even the most blatant bribery overseas was not an offence. Senator William Proxmire proposed new rules to extend existing anti-bribery legislation to payments to overseas officials.

After considerable debate, the Foreign Corrupt Practices Act 1977 was enacted by President Jimmy Carter on 19 December 1977. The legislation was designed not only to ensure more ethical conduct by US business by punishing those caught bribing, but also as a foreign policy tool to build economic and political goodwill by encouraging US businesses to invest in developing economies.

1978: First FCPA Settlement

The US-listed oil exploration company, Katy Industries, together with two of its directors, settled claims brought by the SEC under the new FCPA.[2] The company acknowledged that it had used an agent to pay bribes to government officials in Indonesia to obtain an oil exploration concession.

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1988: Amendment of the FCPA

Despite the FCPA having been in place for nine years, small petty bribes were still occurring largely unabated. The legislation was reworded to refocus efforts on the 'grand bribery' schemes that caused the most economic harm. Under the legislative amendments, overseas 'facilitation payments' were exempted from the FCPA, meaning that businesses would not be prosecuted in the US for making certain small payments overseas to secure basic services.

1994: The 'Cash for Questions' Scandal

The tortuous history of legal reforms that eventually gave rise to the UK's Bribery Act has its roots in the 1994 'cash for questions' scandal. The revelation that two Conservative

Members of Parliament had accepted money for asking questions in the House of Commons led to the UK Prime Minister, John Major, setting up the Committee on Standards in Public Life to address concerns about unethical conduct amongst MPs. Former judge Lord Nolan chaired the Committee.[3]

1997: OECD Convention

The OECD Convention on Combating Bribery of Foreign Public Officials in International Transactions – which for obvious reasons I shorten in this book to simply 'the OECD Convention' – was signed in December 1997 after several years of private and not-so-private international diplomacy. The OECD Convention created a degree of parity between US businesses – which had felt themselves disadvantaged having been subject to the FCPA since 1977 – and businesses in the other OECD countries. US business concerns were not satisfied this time by relaxing the FCPA, but instead by strengthening the laws of other countries, and also by enforcing the FCPA in particular against non-US companies. The OECD Convention entered into force on 15 February 1999, once it had been ratified by the required number of member states.

The OECD Convention is the most effective international convention to date, with widespread support by governments and business organizations.

1998: Further Amendments to the FCPA

With the signing into law of the International Anti-Bribery and Fair Competition Act 1998, the FCPA was amended once again to comply with the US's obligation to enact the OECD

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Convention. These amendments expanded the scope of the FCPA to include jurisdiction over some foreign nationals, as well as acts by US nationals overseas.[4]

1990s Onwards: Vigorous Prosecution of the FCPA

The DOJ and SEC made the FCPA a prosecution priority, targeting not only US firms for their overseas corruption, but also non-US overseas firms operating in the US. Most of these cases did not come to court, but instead settled under non-prosecution agreements or deferred prosecution agreements, with heavy fines and a period of supervised corporate probation.

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1996–2010: Multi-Lateral Anti-Bribery Treaties

During this period, most of the major country groups enacted conventions and treaties against bribery, committing their members to enacting their own anti-bribery legislation. These include:

- Inter-American Convention Against Corruption (adopted 1996)[5]
- The European Union Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the EU (1997)[6]
- Council of Europe Conventions (1998 and 1999)[7]
- The Asian Development Bank/OECD Action Plan (2001)[8]
- European Union Framework Decision on Combating Corruption in the Private Sector (2003)[9]
- African Union (2003)[10]

- United Nations Convention against Corruption (2003)[11]
- The G20 committed to adopt and enforce laws against transnational bribery, such as the OECD Anti-Bribery Convention (2009).[12]

2001: UK Enacts the OECD

In December 2001, the UK enacted aspects of the OECD Convention. It achieved this by including provisions within the Anti-Terrorism, Crime and Security Act 2001 that extended UK jurisdiction to bribery committed abroad by UK nationals, and widened the bribery laws to encompass foreign public officials.[13]

2003: Draft UK Corruption Bill

The Nolan Committee's first report in 1995 created waves in Parliament by recommending full disclosure of MPs' outside interests. More interestingly for present purposes, it also suggested that the Law Commission should consider a revision of the law on bribery. The subsequent report, *Raising Standards and Upholding Integrity: The Prevention of Corruption* was crafted into the UK's (first) Corruption Bill.[14]

The draft Bill did not however win the necessary Parliamentary backing; the Joint Committee that subjected the bill to scrutiny was critical of its vague nature. The fact that private sector bribery was reduced to the betrayal of trust placed in an agent by a principal meant that some corruption would not be covered by the proposed rules (for example, when principals bribe each other). A further government consultation paper, *Bribery: Reform of the Prevention of Corruption Acts and SFO Powers in Cases of Bribery of Foreign Officials*, was published in 2005 – but no clear consensus emerged on how this should be achieved and the project floundered.[15]

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2003, 2005, 2007 and 2008: OECD Criticism of the UK

Meanwhile, the OECD produced a series of reports that continued to be critical of the UK's outdated and fragmented bribery laws and apparent reluctance to put in place an effective regime for corporate liability for bribery. It stated that there was:

> 'a lack of clarity among the different legislative and regulatory instruments in place. ... The current substantive law governing bribery in the UK is characterized by complexity and uncertainty.'[16]

In its October 2008 report the OECD expressed continued disappointment with the UK's lack of progress in fully implementing the OECD Convention, and requested that the UK government enact:

> 'modern bribery legislation and establish effective corporate liability for bribery as a matter of high priority.'[17]

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2008: Balfour Beatty Settles Bribery Allegations in the UK

An important result for the Serious Fraud Office came when it obtained the UK's first civil recovery order against UK-based engineering company Balfour Beatty plc. The matter related to irregular payments made in connection with a huge Egyptian engineering project, the Bibliotheca Alexandrina. Balfour Beatty was not charged with a criminal offence; instead, the matter was dealt with using the SFO's new civil powers,

allowing property obtained by illegal actions to be recovered without the need for a criminal prosecution.[18]

2008: Siemens Settlement

In December 2008 Siemens settled charges brought by US and German prosecutors, paying a record-breaking $1.6bn in penalties.[19]

2009: Second UK Bribery Bill

Following the failure of the first UK Bribery Bill, the Law Commission was asked to draft a law that was simpler and more appropriate to modern times. In its report *Reforming Bribery*, published in October 2008, it rejected the principal/agent, or the breach of trust approaches to defining bribery. Instead its new definition of bribery was based on offering or accepting *an advantage* in connection with the *improper performance* of the recipient's functions. The draft Bribery Bill was published by the Ministry of Justice in March 2009.[20]

2010: BAE Settlement

The DOJ and SEC continued to prosecute the FCPA very vigorously and successfully, and out-of-court settlements had become routine. In 2010, BAE Systems entered into a simultaneous plea agreement with the US and UK prosecutors to resolve bribery charges. While the US court had no problems approving a $400m fine against the company, the UK

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court had a number of criticisms and reservations. Eventually, however, it approved the agreed penalty of £500,000 plus £28.5m in reparations to be made to the people of Tanzania.[22]

2010: UK Bribery Act Passed, then Delayed

The Bribery Act 2010 received Royal Assent on 8 April 2010. It did not immediately though come into force. The most important changes to the legislative structure – the corporate offence of failing to prevent bribery carried out on its behalf – was a sweeping change to existing practice and the government stated that this would only became law once guidance on the 'adequate procedures' defence had been published by the Ministry of Justice. It was initially expected that these would be published in early 2011, and the Act would become fully effective in April 2011.

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July 2011: UK Bribery Act Comes into Force

The Bribery Act Guidance was finalized on 30 March 2011; the Bribery Act fully came into effect on 1 July 2011.

September 2011: First Prosecution under the Bribery Act

A court clerk, Munir Patel, was the first person to be prosecuted under the Bribery Act. He admitted to taking £500 from

a member of the public to avoid putting details of a traffic summons on the court database. The now former clerk was charged under Section 2 of the Act (as well as charges of misconduct in public office and perverting the course of justice, which related to other alleged misconduct during his employment) for allegedly requesting and receiving a bribe intending to improperly perform his functions. He was sentenced to six years' imprisonment.[21]

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2012 Onwards

It remains to be seen what the impact of the Bribery Act will be. I set out some of my predictions in 'What Are My Predictions for 2012 and Beyond?' on page 455.

Further reading

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