

# Centre for the Study of Corruption



## The Bribery Act 2010

*Key moments in the campaign*

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# The Bribery Act 2010

## *Key moments in the campaign<sup>1</sup>*

### Introduction

On April 8<sup>th</sup> 2010, the Bribery Bill gained Royal Assent in the ‘wash-up’, the frantic three-day period between Prime Minister Gordon Brown’s formal announcement of the General Election, and parliament being prorogued (dissolved).

It was touch and go as to whether the Bribery Bill would pass: whether the government would put it into the wash-up or drop it in favour of other legislative priorities; and whether the opposition would support it, knowing that any amendments or delaying tactics at that stage would scupper it.

The behind the scenes messages from the Tory opposition were that if the Bill failed, it would be very low down the priority list for a new Conservative government. That was entirely believable: after all, getting the Bribery Bill to this stage had already taken the Labour government twelve years since signing up to the OECD Anti-Bribery Convention.

My over-riding memory of that period was of restless activity, well-resourced opposition, and genuinely not knowing whether we would succeed or fail until that last moment. I found myself at the forefront of the campaign, as the Director of External Affairs for Transparency International in the UK. I was appointed to this position in 2008, and so much of what I cover in this lecture was the work of others, who had been working with TI for years to ensure the UK had anti-bribery legislation that was ‘in line with its international commitments’ and was ‘fit for purpose’ – the two phrases that we used as the lynchpin of our campaign.<sup>2</sup>

The legal aspects of the Bribery Act are well-rehearsed: how it progressed from the Law Commission to the Bribery Bill, and thence into law and the sudden arrival of the Adequate Procedures industry. The story I want to tell here is the inside story of the campaign, told for the first time – and to do that, I will pick out five key moments which contributed to the success.

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<sup>1</sup> This lecture was first broadcast on the website of Mayer Brown on the tenth anniversary of the Bribery Act, April 8<sup>th</sup> 2020.

<sup>2</sup> Laurence Cockcroft, Graham Rodmell and notably Jeremy Carver all played a significant role in this long campaign; joined in the final heat of battle by Chandu Krishnan, John Drysdale and Emma Smith. A number of other TI Board members, staff and Members were involved, whose names are recorded by TI – a true team effort.

## 1. Avoiding second best

On the face of it, having a gap of twelve years between ratifying the OECD Convention and the Bribery Act seems rather a long time for the government to bring forward legislation. As early as June 2000, the Government had announced its intention to bring forward new legislation.<sup>3</sup> But the Government was not very clear about its objectives. There had been discussions for a number of years, including a Law Commission report from 1998, about reforming UK corruption laws.

These discussions had originated in concerns about domestic corruption, politely termed 'standards in public life'. But the OECD Convention gave them a different hue – how could UK companies paying bribes overseas be prosecuted?

So the Blair Government was suddenly trying to achieve several things simultaneously: complying with the OECD Convention and addressing standards in public life, while updating the laws from 1889, 1906 and 1916.

To do this would require a wide-ranging definition of corruption and both a model that worked for prosecuting a public official who had deliberately not operated in the public interest and a model for prosecuting a senior executive in a company who had not paid a bribe themselves but whose employee or agent had paid a bribe overseas. That is a lot of complex concepts of corruption to get into one law.

In the succeeding years, the debates flowed into a number of rabbit holes, and included the clauses on extra-territoriality in the Anti-Terrorism, Crime and Security Bill of 2001 and the draft Corruption Bill of 2003.<sup>4</sup>

The 2003 Bill brought about the unlikely sight (in light of the later events) of the CBI – Britain's large and influential corporate lobbying group - and TI being on the same side: they both opposed it.<sup>5</sup> Having waited for so long, this must have been particularly galling for TI and anti-corruption campaigners. But by now, there was a general consensus that building a new and all-encompassing law round the principal-agent model recommended in the Law Commission's 1998 report,<sup>6</sup> would not work; TI felt they could not support such imperfect legislation.

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<sup>3</sup> *Raising Standards and Upholding Integrity: the Prevention of Corruption*, White Paper, HMSO June 2000, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/260777/4759.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/260777/4759.pdf)

<sup>4</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/251042/6086.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/251042/6086.pdf)

<sup>5</sup> Joint Committee on the Draft Corruption Bill, Report together with formal minutes, oral and written evidence, July 17 2003 <https://publications.parliament.uk/pa/jt200203/jtselect/jtcorr/157/157.pdf>

<sup>6</sup> *Legislating the Criminal Code: Corruption*, Law Commission 1998, <https://www.lawcom.gov.uk/project/corruption/>

A brief excursion into the principal-agent issue. The problem it creates is perhaps best described in the Law Commission's 2008 report as 'dependence on the need to show a betrayal of a principal by an agent'.<sup>7</sup> This has multiple inherent questions: who is the principal, who is the agent, what is the betrayal and how can the betrayal be demonstrated? You can see how complicated the principal-agent approach makes things compared to the Bribery Act's eventual approach:

- requesting
- agreeing to receive
- or accepting
- a financial or other advantage
- for the improper performance of a function.

The 2003 Corruption Bill was withdrawn and things went quiet for a long while. There was another consultation. In March 2007, the Home Secretary John Reid reported in a Written Update: "no consensus has emerged from the consultation as to what the scheme of new offences should look like ... I regret to conclude that there is insufficient support for any one particular model to justify its being submitted to Parliament at this time."<sup>8</sup> The matter was again referred to the Law Commission.

Anticipating this, TI decided it needed to kick-start the debate and put to bed the question of whether the complex concepts could be written into a modern law. TI secured a grant from the Joseph Rowntree Charitable Trust to draft a new Bill that demonstrated the key sticking points could be overcome.<sup>9</sup> TI explained it had 'commissioned the professional drafting of this Bill in response to frustration among parliamentarians across the spectrum at the Government's failure to produce a Bill 'fit for purpose'.'

Initially introduced in to the House of Commons in November 2006 by Hugh Bayley under the ten-minute rule, it re-surfaced as a Private Members' Bill in the Lords in May 2007 introduced by Lord Chidgey. The Bill did not get government support – but it did its job. In fact, it did three jobs.

First, it showed overwhelming cross-party support for a new law. Secondly, the debates reinforced the urgency – it had been a long time since signing the OECD Anti-Bribery Convention, and the UK was getting embarrassed internationally. Thirdly, and most

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<sup>7</sup> *Reforming Bribery*, Law Commission (Law Com no 313), November 2008, para 3.122, <https://www.lawcom.gov.uk/project/bribery/>

<sup>8</sup> *Official Report*, Commons, March 5 2007; col. 116WS, [https://hansard.parliament.uk/Lords/2007-03-16/debates/07031654000003/CorruptionBill\(HL\)?highlight=chidgey%20corruption%20bill#contribution-07031654000130](https://hansard.parliament.uk/Lords/2007-03-16/debates/07031654000003/CorruptionBill(HL)?highlight=chidgey%20corruption%20bill#contribution-07031654000130)

<sup>9</sup> [https://www.transparency.org/news/pressrelease/20070314\\_reform\\_of\\_uk\\_corruption\\_law\\_statement\\_by\\_transparency\\_internationa](https://www.transparency.org/news/pressrelease/20070314_reform_of_uk_corruption_law_statement_by_transparency_internationa)

importantly, the Chidgey/TI Bill showed that concepts and language could be found that worked.

Many in the Lords followed Lord Jay's view that it was 'professionally and impressively drafted', and it fundamentally moved the debate away from the principal-agent model towards what we see in the Bribery Act: a modern definition of bribery; the notion of corporate liability; and the compliance-style defence.

The government gave way, and enlisted the Law Commission again, but this time the work led – brilliantly led - by Professor Jeremy Horder resulted in today's Bribery Act.<sup>10</sup>

What do we learn from this long initial phase of the campaign? First, that TI and its supporters had the courage to avoid a 'second best' Act in 2003, and keep up the pressure for good legislation. Secondly, it used a great campaigning technique – draft the law, to prove it can be done; third it had numerous allies across both houses of parliament; and fourth, those who opposed a new anti-bribery law were not really able to muster convincing arguments.

A final observation is that the voices from civil society, though powerful and often influential, were sparse: essentially, it was just Transparency International and the Corner House, which between them had no more than half a dozen employees. That resource gap was set to become a major issue in the next phases.

## **2. The Scandal: key moment number two**

There are lots of difficult memories for the UK about the BAE Systems scandal: the shock of naked political interference, the failure to prosecute, the global embarrassment, the decline in the UK's international standing. But let's look on the bright side.

Following Winston Churchill's advice – 'never let a good crisis go to waste' – it was obvious to all concerned that this was a scandal that almost by itself would give impetus for new bribery legislation. That story is well documented.

What is less well known is one specific impact this had on the Law Commission's proposals. It was never inevitable corporate liability would form part of the Bribery Bill – the 'failure to prevent' offence, and in consequence the 'adequate procedures' defence. In fact, there were long discussions as to whether this should be dealt entirely separately by the Law Commission or (as the CBI maintained) it was inappropriate to include in a Bill that would anyway criminalise the individuals who actually paid and received the bribes.

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<sup>10</sup> *Reforming Bribery*, Law Commission (Law Com no 313), November 2008, <https://www.lawcom.gov.uk/project/bribery/>

Though only a single paragraph amongst the 211 pages of its report, the Law Commission is quite explicit that the BAE case – or more accurately, the Woolf Committee report that BAE commissioned as a result of the case – was instrumental in recommending the failure to prevent offence. The Law Commission said:

‘Although a majority of consultees favoured deferring the issue, we have now decided that this would not be the right course. After the end of the consultation period, following the publication of the CP [consultation paper], the Woolf Committee published its report on ethical business conduct in BAE Systems PLC. The findings and recommendations in that report have led us to the view that it would be right to recommend that the criminal law be used to address the issue of culpable organisational failure to prevent bribery offences.’<sup>11</sup>

It is hard to conceive the Bribery Act without ‘adequate procedures’. The Woolf Committee’s report on BAE’s inadequate procedures showed the way.

### **3. The campaign proper: lobbying and counter-lobbying**

The announcement of the Bribery Bill in the Queen’s Speech of November 2009 fired the starting gun on the intensive lobbying against the Bill. This was led by the CBI, which convened a special working group on the Bill. Somewhat non-transparently, this was never referenced on the CBI website or in public documents, but the companies we at TI came across the other side of the table at the CBI were some of the crown jewels of British Industry: British American Tobacco, BG, BP, GSK and Shell.

I will often reference the CBI in this lecture, as it was the public face of corporate Britain’s campaign: but it is important to remember they were representing Britain’s largest companies, which were able to hide behind the cover of their industry body. The people TI came across from those companies during the Bribery Act campaign were very different to those we had typically engaged with. They were often from the General Counsel’s office or government and public affairs; they were more suspicious of TI as an NGO and their default position seemed to be to see new legislation as a threat. Prior to this, TI had typically been in touch with corporate responsibility or compliance teams, who often seemed more enlightened – even when they were in the same company.

The CBI led the charge, and was periodically supported by the International Chamber of Commerce (ICC) and various City lobbying groups. All of the large companies involved had law firms advising them, of which the most prominent to us – because it played a convening role at certain points – was Simmons & Simmons.

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<sup>11</sup> *Reforming Bribery*, Law Commission (Law Com no 313), November 2008, para 6.42  
<https://www.lawcom.gov.uk/project/bribery/>

But what were they lobbying against? In general, the line was that while a new bribery law was to be welcomed, it needed to be a law that did not act as a restraint on business – though they often struggled to explain what that meant. Some business voices went further – happy to argue very explicitly that the only way to do business in some places was to pay bribes, and we should just fit in with local culture. That view was represented in a letter to the FT by oil industry CEO Algy Cluff, still going on about it a few years later: ‘It is challenging enough, particularly in Africa, to compete with new entrants such as China, Russia and India without our own government undermining our efforts.’<sup>12</sup>

One theme that kept coming back was that companies should not be held responsible for people who did illegal things in their name – the so-called ‘rotten apples’. This might be rogue members of their own staff, their agents, or people in distant subsidiaries and joint-ventures. The presumption of companies was that bribery was committed by a few such rotten apples; the presumption of civil society, drawing on the BAE experience and the Woolf Report, was that this was at least permitted by the corporate culture, and at times actively endorsed or encouraged – hence the need for corporate liability.

At TI, we closely scrutinised the CBI’s campaign, and came up with a series of rebuttals. We did not publish these at once, but held them back and drip fed them in at key moments of the parliamentary debates – usually in the form of briefing papers which we circulated to those we knew had an interest or influence or were likely to speak in the debates.

Obviously, this required us to know what the CBI was saying, and that was actually quite hard as – unlike TI’s – their lobbying was taking place behind closed doors. We picked up clues wherever we good – often through the press, sometimes through companies telling us they were not happy with the CBI’s stance on a particular issue, and sometimes through those parliamentarians who had been lobbied telling us what they had been told. A good source of information was the responsible investment analysts in the City, particularly F&C Asset Management and Hermes, which early and prominently came out in support of the new law.

I felt the CBI was not serving its members well. TI was very open to discussion about some of the nuances, although our over-riding objective was to get the Bill through. There were indeed some important questions to resolve such as the law’s application to subsidiaries, joint ventures and agents; and more broadly, whether the OECD would ensure a level playing field by making sure that those countries with up to date laws and strong enforcement were not putting their companies at a commercial disadvantage. The opportunity for constructive discussion seemed to have been lost once clear battle lines were drawn for and against the Bill.

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<sup>12</sup> *Business held back by the Bribery Act*, Financial Times Letters, March 17 2013, <https://www.ft.com/content/c7d14b60-8be6-11e2-8fcf-00144feabdc0>

The representatives of companies supporting the CBI were by and large a very decent group of people, doing the best for their companies and law firms. But by the time this transformed into CBI policy, it became the theatre of the absurd. There was a lot of gleeful mud flung at the French and Germans who, it was claimed, would happily carry on paying bribes while British business – which of course was not paying them anyway – would be unnaturally constrained. This was meat and drink to TI – we simply asked, ‘if you are not paying bribes anyway, why would you worry about a new law?’

But the CBI’s campaign became bizarrely focussed on the ‘cup of coffee’. The line of argument was that because the lower limits of hospitality were not defined, a company might face prosecution for offering even a cup of coffee in a meeting with a public official. No serious legal analyst gave this any credence, but a small number of rather noisy people in the CBI and its working group seemed so pleased with this apparent problem with the Bill that they could not help themselves from touting ‘the cup of coffee’ problem around the press and boardrooms and parliament. At TI, as campaigners ourselves, we could hardly believe our luck. The CBI was just making itself look trivial and ill-informed.

It was never going to be easy for the CBI to oppose legislation that put the UK in line with international commitments, and when the Law Commission had twice said the UK needed new legislation while the BAE scandals had embarrassed the UK internationally and demonstrated the old laws were not fit for purpose. Indeed, by 2009, the Brown government, under Secretary of State for Justice Jack Straw, was always likely to want the Bribery Act.

So irrespective of the quality of its arguments, the CBI’s best hope was that the Bill should be delayed so that it did not pass before the General Election; and then, if a Conservative government was elected, to persuade the new regime that this was a misconceived, burdensome Labour plan that was entirely unnecessary. Delaying tactics thus became as important as winning the argument.

Some of this played out behind the scenes in small ‘stakeholder meetings’ convened by Jack Straw, with representatives from business and civil society. At the first meeting,<sup>13</sup> of the ten non-government participants, eight were from the private sector and two from civil society, although the numbers became more balanced in due course.<sup>14</sup> However, it became clear

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<sup>13</sup> Held on May 12<sup>th</sup> 2009

<sup>14</sup> TI and Tearfund from civil society, and this only after TI (which had been invited alone) insisted on further civil society representation. This coincided with the formation of the Bond Anti-Corruption Group by CAFOD, Global Witness, Tearfund and TI, which gave a much wider reach to the campaigning than TI and The Corner House had previously managed. Further members of the Bond Anti-Corruption Group were invited to the second meeting held on October 13<sup>th</sup> 2009 now convened as a ‘Foreign Bribery Roundtable’; the third and final meeting was on February 10<sup>th</sup> 2010.

that the Government was growing impatient with the private sector's lack of support for the Bill.

One of my memories of this period is how stretched we felt at TI. We had few staff and lots to do. Even finding the budget to pay for media monitoring was a stretch, but without it we could not easily gather information or mount our own media campaign. We definitely felt out-gunned by those who were lobbying on the other side.

As we approached the wash up, it became clear that we were in a desperate rush for the finishing line. The Conservative opposition spokesperson on the issue, shadow Solicitor-General Jonathan Djanogly, wrote to the Financial Times 'the unacceptable rush we now face to push this bill through in only a few weeks is hardly an example of thoughtful or effective government' – but he did not threaten to oppose it.<sup>15</sup>

He also told the Commons: 'If the Bill is passed, the UK will have among the strictest bribery laws in the world. Consequently, we have been told' – presumably by the CBI – 'that there is a real danger that UK businesses could be put at a competitive disadvantage when compared with international businesses whose domestic bribery laws will be less strict than our own.'<sup>16</sup>

The implication was that the Bill needed to be less 'strict' so the UK could stay competitive; and that there had been insufficient time for a proper debate, even though the discussion had already lasted for twelve years.

In a private meeting with TI, Djanogly had indicated that the Conservatives ultimately supported the Bill, although they would prefer to see changes. This was reassuring, but we had no idea how much the CBI's intensive lobbying might cause the Tories to buckle. So we had to keep up the pressure ourselves, and make sure that it would be very obviously the Conservatives' fault if the Bill was lost.

Our increasing number of allies in civil society were able to help. Groups like CAFOD, Global Witness and Tearfund had come on board with the campaign;<sup>17</sup> they had their own reach into parliament, the press and wider groups of supporters who could speak to their MPs, and they were hugely supportive in these final stages.

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<sup>15</sup> *Rushing through a bribery bill is unacceptable*, Financial Times Letters, March 4<sup>th</sup> 2010.

<sup>16</sup> Hansard 3 Mar 2010 Column 977

<https://publications.parliament.uk/pa/cm200910/cmhansrd/cm100303/debtext/100303-0009.htm>

<sup>17</sup> Global Witness had long been supportive of the principle, but had focussed on other international campaigns

It was clear that the CBI and TI, the main protagonists outside parliament, did not agree. TI was then contacted by law firm Simmons & Simmons and invited to meet senior representatives of a group of companies. We met on March 12<sup>th</sup>. An offer was made: if TI was willing to support various changes, the CBI would back off. This was an awkward moment. At TI, although it was interesting that the CBI was confident our voice would cause the Government to accept the changes, we felt that the proposed changes would weaken the Bill. But we knew that time was against us, and it might be better to get a watered down Bribery Act than no Act at all. There was a nagging thought that we might play the CBI at their own game: string them along until it was too late for them to do anything. We decided to hold firm, and not to resort to dirty tricks.

As the wash-up approached, over twenty amendments were put down by the Conservatives, reported by the Guardian as 'Conservatives attempt to water down bribery bill under CBI pressure.'<sup>18</sup> It was a last-ditch effort to persuade the Government to incorporate the CBI's changes, with the implied threat that the Bill would otherwise be lost. But Straw and the Government also held their nerve.

The Bill went into the wash-up and was passed with all-party support.

At TI, we all breathed a sigh of relief.

Reflecting on the campaign, I view the key role of TI as being to get it over the line in the six months between the Queen's Speech and the wash-up. The constant pressure from the OECD and the BAE scandal had probably made a new law inevitable; the Chidgey/TI Bill and the Law Commission had made it clear what shape the legislation would take. But in April 2010, it so nearly failed. We had the intellectual high ground and the moral high ground, but we lacked resources and were not willing to resort to dirty tricks.

We got there. But there were two big battles still to come before the Bribery Act formally came into force in July 2011.

#### **4. Defining Adequate Procedures**

One of the changes between the Law Commission's draft Bill and the Government's own Bribery Bill was the agreement that there should be guidance issued for companies about what Adequate Procedures would look like. Companies had pressed strongly for this, not least in the stakeholder meetings run by Jack Straw, and the concession was made.<sup>19</sup> TI had actually opposed it at first, as we felt the experience of the anti-money laundering guidance

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<sup>18</sup> *Conservatives attempt to water down Bribery Bill under CBI pressure*, The Guardian, April 5 2010, <https://www.theguardian.com/business/2010/apr/05/cbi-conservatives-dilute-bribery-bill>

<sup>19</sup> Jack Straw, March 4<sup>th</sup> 2010, Hansard column 949 <https://publications.parliament.uk/pa/cm200910/cmhansrd/cm100303/debtext/100303-0009.htm>

from the early 2000s was that the process could easily be distorted by vested interests and lengthily extended, delaying the implementation.

But the Government agreed that there should be official guidance, and the Ministry of Justice started drafting it as soon as the Bribery Bill was announced.

It was clear, not least from our AML experience, that the official guidance would be critical. It could set the bar high for companies, reinforcing the Act; or could present numerous opportunities to weaken and undermine the Act.

In late November 2009, TI was contacted by the MoJ and invited to become part of an informal experts' group 'to discuss the possible content of the guidance.'<sup>20</sup> The group was a mixture of business and civil society representatives, but notably not the CBI – although we were never sure if they were being consulted separately. Over time there were more business representatives added, with civil society represented by TI (myself and Peter Wilkinson, a formidable TI expert on compliance procedures) and the Institute of Business Ethics.

The business representatives were excellent: pragmatic, not trying to fight the principles of the Bribery Act through the back door, genuine experts in the complexities of how companies get caught up in bribery, and constructive in approach. By March 2010, the guidance was ready in draft for the Bill to be passed.

There was a natural delay after the wash-up and passing of the Bribery Act, as the country went into election mode. Meanwhile, we started to get some disturbing messages. The CBI, apparently left out of drafting the guidance, wanted it to be re-opened after the election. We heard that the Conservatives were likely to be amenable to this. A number of City lobby groups felt the Act could deter London listings by overseas companies. Yet at the same time, companies wanted to get ready: what were these Adequate Procedures that they would now soon be needing?

So TI decided to take the initiative.<sup>21</sup> Within a few weeks, TI published the first set of Adequate Procedures guidance to be available, written by Peter Wilkinson and a first-class editorial committee<sup>22</sup> – a comprehensive volume, complete with checklist, available to

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<sup>20</sup> *Subject: Bribery Bill - Meeting to discuss 'adequate procedures' guidance* Email from MoJ, November 30 2009, source: TI archive

<sup>21</sup> The idea came from TI-UK's Chair, John Drysdale, enthusiastically supported by the Executive Director Chandu Krishnan.

<sup>22</sup> In addition to the TI staff: Julian Glass, Neil Holt & Ian Trumper, with legal support from Roger Best and Patricia Barratt of Clifford Chance; a number of companies commented on the text but declined to be acknowledged, perhaps concerned that they might seem to be signing up their companies to standards that the CBI was already trying to water down.

download free of charge. In a typical TI fashion, it was guidance written by experts, for experts, and was just what companies needed.<sup>23</sup>

This was to prove a masterstroke. The longer the Government delayed publishing the official guidance, the more companies started to use the TI guidance. If the Government were to publish procedures at a lower standard, it would both cause confusion and open itself to the accusation that it was watering down the Bribery Act, possibly re-opening the fight with the OECD.

TI's guidance was underpinned by the cache of having long campaigned for the Bribery Act. It was likely that if anyone knew their way round this new legislation it would be TI. The TI guidance spread far and wide in the vacuum left by the absence of official guidance, and even ten years later remains the most downloaded document from TI's UK website.

Second only to the passing of the legislation itself, this seizing of the narrative about Adequate Procedures was the finest hour of the campaign.

## 5. The backlash

If we thought of the Bribery Act as a done deal when it received Royal Assent in April 2010, we were very much mistaken.

The next stages were meant to be the publication of the official guidance and the Act's formal commencement date. With the guidance finished in draft by early March, there was no reason why the Act should not have been commenced in July 2010.

From TI's perspective, things went suspiciously quiet. We were assured that Commencement might be in September, and that the unusual situation caused by there being a Coalition Government meant that things may take a bit longer than usual. So we concentrated on producing the Adequate Procedures guidance. In July, the MoJ announced that the guidance would be published early in the new year.

We woke up too late to the fact that a furious rearguard lobbying action was taking place. It was classic lobbying – direct from trade bodies to government, completely out of the public eye, so it was almost impossible to get hold of information or talk sensibly about something that might or might not be happening.

We had formed good links with civil servants over the past few years, but were perhaps too scrupulous in not pressing them for information as we did not want to place them in a

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<sup>23</sup> *Adequate Procedures, Guidance to the UK Bribery Act*, Transparency International UK, July 2010  
<https://www.transparency.org.uk/publications/adequate-procedures-guidance-to-the-uk-bribery-act-2010/>

difficult situation – a good example of where we found ourselves playing by different rules when up against serious professional lobbyists.

Journalists were much better informed than us, and a good source of information. To our surprise the Evening Standard, which had shown no interest in the matter until now, came out strongly against the new Bribery Act – which was ‘potentially disastrous for British companies.’ Alarming, the paper started to argue in favour of bribe-paying by British companies.<sup>24</sup>

‘they have had to make concessions to local culture and norms. In other words, they do business the way the locals do — which more often than not means being prepared to make such payments if they want to get things done within a respectable time horizon.’

The battle was on for the official guidance to make an exemption for facilitation payments. We went to see the Editor of the Evening Standard. He explained that his business editor was in constant contact with FTSE-100 Chairmen – whom he would not name – and who were telling him about the dangers of the Bribery Act.

By January 2011, it had got worse. The new head of the CBI declared the Bribery Act was ‘not fit for purpose.’<sup>25</sup> The Evening Standard was reporting ‘Some firms now want the Justice Secretary, Ken Clarke, to drop it altogether.’<sup>26</sup> Soon afterwards, he announced that the official guidance and Commencement would be delayed, with the MoJ saying: ‘We are working on the guidance to make it practical and comprehensive for business. We will come forward with further details in due course.’<sup>27</sup>

At this point, we really felt the resource gap between civil society and a coordinated, well-funded corporate lobbying effort. There were so many groups piling in against the Bribery Act, in so many ways, that it was hard to find out what was going on, let alone design and execute a plan to counter it.

A significant change from the year before was that TI and civil society were no longer in the room. The business-civil society roundtables with the Secretary of State were gone – it was now just for business. Mr Clarke steadfastly refused requests to meet TI. It was clear that we had lost any insider influence over the official guidance – but the law existed, and TI’s unofficial guidance was out there setting the pace. The Government had limited room for

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<sup>24</sup> *Britain's new Bribery Act lacks proportion*, Evening Standard, November 11 2010

<sup>25</sup> *British Firms Face Bribery Blacklist*, The Guardian January 31 2011

<https://www.theguardian.com/business/2011/jan/31/british-firms-face-bribery-blacklist>

<sup>26</sup> *Bribery Act could hurt British business*, Evening Standard January 7<sup>th</sup> 2011,

<https://www.standard.co.uk/news/bribery-act-could-hurt-british-business-6553143.html>

<sup>27</sup> *British Firms Face Bribery Blacklist*, The Guardian January 31 2011

<https://www.theguardian.com/business/2011/jan/31/british-firms-face-bribery-blacklist>

manoeuvre, unless it wanted to do something very controversial like amend or repeal the Act itself – which was by no means likely to command the support of the LibDem partners in the Coalition.

TI was very concerned, but the OECD was successfully leading the response. Its influential Anti-Bribery Working Group was distinctly unamused by the UK government dragging its heels and fired several powerful broadsides. TI meanwhile published ‘The Bribery Act: Myth and Reality’ which was distributed to dozens of MPs and members of the Lords and helped put the debate back onto a more factual and rational footing.<sup>28</sup>

The Coalition Government was cornered. It had shown a willingness to listen to business, but eventually had no choice but to publish the official guidance. This had indeed changed from the draft negotiated between government, civil society and companies a year earlier; although TI described the changes as ‘deplorable’,<sup>29</sup> we were as annoyed by the opaque lobbying as much as the changes themselves.

One of the most significant changes – which we later learned was due to lobbying by the London Stock Exchange – was over the definition of ‘doing business’ in the UK. Para 36 of the new guidance stated ‘The Government would not expect, for example, the mere fact that a company’s securities have been admitted to the UK Listing Authority’s Official List’ to count as doing business in the UK – which to our great satisfaction was flatly contradicted by the Director of the SFO who responded that he anticipated a ‘wide jurisdiction.’<sup>30</sup>

The long battle was over, and the action would now move to the SFO and the Courts.

The Bribery Act finally commenced in July 2011.

## Concluding remarks

Ten years on, my memories are still fresh of the intensity of the Bribery Act campaign. I also have some lingering questions.

- Why did large corporates buy and large oppose it? The individuals I met were personable and reasonable; the apocalyptic visions of what this would do to British business seemed unrealistic; and Britain was so clearly lagging the rest of the world. How did they let themselves get so worked up and still be on the losing side of the argument? And how was TI, which is a very moderate NGO, not able to bridge the

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<sup>28</sup> *Bribery Act: Myth and Reality*, Transparency International UK, February 2011  
<https://www.transparency.org.uk/publications/bribery-act-myth-and-reality/>

<sup>29</sup> TI Press Release March 30 2011

[https://www.transparency.org/news/pressrelease/20110330\\_guidance\\_weakens\\_bribery\\_act](https://www.transparency.org/news/pressrelease/20110330_guidance_weakens_bribery_act)

<sup>30</sup> *Serious Fraud Office vows to pursue corrupt foreign companies*, The Guardian, March 25 2011

<https://www.theguardian.com/law/2011/mar/25/serious-fraud-office-overseas-firms-bribery-act>

gap and build more consensus around those issues that were genuinely problematic?

- How can lobbying be better regulated so there is a more level playing field between those with huge resources but a poor argument, and those with tiny resources but a compelling argument?
- Finally, how should we make this law work? DPAs, strong enforcement by the SFO – ten years on, we are still a long way from where we might have hoped to be.

Having joined TI from the private sector, I was not innately suspicious of the corporate world, but seeing power and influence at work first hand made me think twice about my assumptions. More positively, once the situation was finally settled, the Bribery Act was embraced by the business community – just another bit of legislation to comply with, and we found that companies which had sat the other side of the table were now willing to work with us.

We estimated that TI's campaign had cost £90,000, plus the £20-odd thousand spent on drafting the 2007 Corruption Bill. TI won an award that year for excellence in campaigning, with the citation 'a great example of the voluntary sector acting as the conscience of the nation.'<sup>31</sup>

It had taken thirteen years, but finally gave the UK a law that was in line with its international commitments and was fit for purpose.

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<sup>31</sup> <https://www.thirdsector.co.uk/excellence-awards-third-sector-awards-big-impact-award-winner-transparency-international-uk/communications/article/1031929>

# Centre for the Study of Corruption



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