

Second Submission to the Joint Committee on the draft Bribery Bill

1. There was insufficient time on 11 June when The Corner House gave oral evidence to the Joint Committee to answer fully two points raised by Committee members. We should like to respond to these in this additional written submission.

Lord Lyell of Markyate asked:

“We are a parliamentary democracy. If you remove the power, and hence the responsibility, of the Attorney General, how do you get parliamentary accountability?”

His oral question was supplementary to the Committee’s written question:

“To explore whether the draft Bill does enough to reform the Attorney General’s powers of consent and direction; and whether it is likely that serious cases of bribery may never be prosecuted due to ‘national security’ concerns.”

Mr David Borrow MP stated:

“. . . if you are the prime minister and you feel that something is a threat to national security then you want to have the freedom and the power to do what is necessary to protect the nation without having lots of laws and restrictions which would actually force you to demonstrate in public a lot of stuff which may undermine that national security . . . [A]s a backstop, at the end, at some point the person in No 10 needs to be able to say, ‘I need to be able to pull that lever to stop that in order to protection national security’.”

If you remove the power of the Attorney General, how do you get parliamentary accountability?

2. The Corner House welcomes the Attorney General’s consent for bribery prosecutions being removed. At present, the Attorney General is appointed by the Prime Minister, is a member of the Government and a member of parliament and is the Government’s chief legal adviser; s/he is also responsible

for all crown or state litigation. As long as the office of Attorney General has this dual role combining political and legal functions, The Corner House (and the OECD Working Group on Bribery) contend that a political appointee should not determine which bribery cases are investigated and prosecuted and which not.

3. The UK's parliamentary democracy is based upon a clear separation of powers between Parliament, the Executive/Government and the Judiciary: Parliament creates, amends and ratifies laws; the Judiciary interprets the law on a case-by-case basis (within which independent prosecutors apply the laws as passed by Parliament); and the Executive manages and administers the country on a day-to-day management and promotes laws.

Under this separation of powers, the judiciary, encompassing judges and prosecutors, is not accountable to Parliament, and neither the executive nor Parliament should be involved in prosecution decisions (which is why we welcome the removal of Attorney General consent for bribery prosecutions).

Parliament and the Executive have no proper constitutional role to object to or be involved in a specific decision concerning a bribery prosecution or investigation; they should have no role in applying the law. Parliament, however, does have the role of amending a law if it is not content with the application of existing law.

Indeed, one reason for removing Attorney General consent for bribery prosecutions is to remove the obligation on the prosecutorial decision maker to be accountable to Parliament or the Executive.

4. If the Attorney General's consent for bribery prosecutions is removed, however, there are mechanisms for informing parliament about bribery investigations and prosecutions that could be explored.

For example, since the Bank of England was granted operational independence in 1998 allowing it to set domestic interest rates, the Bank's Monetary Policy Committee explains its actions regularly to parliamentary committees, particularly the Treasury Committee.¹

A similar mechanism could be introduced in order that Parliament is fully informed about prosecutorial decisions.

5. The Corner House believes that the existing mechanisms for informing Parliament about decisions to investigate and prosecute bribery offences and for public accountability could, in any event, be improved.

The OECD Working Group on Bribery has noted that the Director of the Serious Fraud Office (SFO) does not have to make public any decision about investigations or prosecutions, or to give reasons for proceeding or terminating investigations and prosecutions.²

When the Attorney General gave a brief explanation to the House of Lords about the Serious Fraud Office's termination of its BAE-Saudi investigation in December 2006, he stated that he did so only because of "the intense interest

in this issue and its market sensitivity”.³ This suggests that, absent such interest or commercial considerations, the Attorney General would not have made such a statement to Parliament.

6. Any duty or requirement to report to or inform Parliament, however, does not substitute for judicial review. It is important that whoever takes a controversial decision knows that s/he may have to explain and justify that decision before independent judges. As noted above, the judiciary can rule whether a decision is lawful or not and can interpret and clarify the law in the process; it would be up to Parliament to consider changing the law subsequently if needs be.

Does the draft Bill do enough to reform the Attorney General’s powers of consent and direction?

7. Even though the draft Bribery Bill would remove the requirement for the Attorney General to give consent to bribery prosecutions, concerns remain about the power of the Attorney General to stop a bribery investigation or prosecution in circumstances when continuing is deemed to threaten national security, and the accountability of exercising such a power.
8. There seems to be general confusion as to what the existing powers of the Attorney General are, a lack of consensus as to what they should be and an underlying lack of clarity as to what checks and balances should be applied when prosecutions are halted on national security grounds. All these issues are connected to the combined political and legal role of the Attorney General; difficulties thrown up by this dual role have still to be resolved and are part of ongoing constitutional reform.
9. The confusion came to the fore after March 2008 when the Government published its draft Constitutional Renewal Bill, which aims, in part, to separate the Attorney General’s political and legal functions.

But it would also establish a statutory right for the Government, through the Attorney General, to halt any criminal prosecution or a Serious Fraud Office investigation on the grounds of a broadly defined national security; would provide for extremely limited oversight by Parliament when this power is exercised; and would effectively prevent judicial review of it.⁴

Giving the Executive the statutory right to intervene directly in the independent prosecution process raises significant domestic constitutional issues that need to be properly assessed, given the unprecedented nature of such a right.

10. The draft Constitutional Renewal Bill is separate legislation that this Joint Committee is not considering. But The Corner House notes that there is always the risk when politicians rely on national security that it will be elided with the interests of the Government, especially if there is no democratic or legal scrutiny of the relevant decision (*see* further below).

Will serious cases of bribery never be prosecuted due to “national security” concerns?

11. If the Attorney General’s consent to prosecute a bribery offence is removed, consent in future will be required only from the Director of the Serious Fraud Office (SFO).
12. To halt a prosecution or investigation on ‘national security’ grounds, the Director should be able to demonstrate to a court that his/her decision passes a “strict necessity test”. This test comprises three elements:
 - i) There was an imminent threat of loss of life or serious injury to identifiable persons or groups of persons unless the decision was taken.
 - ii) All reasonable alternatives to violating the rule of law had been tried and failed.
 - iii) The consequences of violating the rule of law had been properly recognised and considered (in particular the encouragement given to others to make similar threats in the future), and weighed in the balance.
13. It would not be necessary for the Director to seek the permission of a court to apply this test before deciding to stop on national security grounds an investigation or prosecution that otherwise would continue. But if s/he made a decision and if a judicial review of that decision were to be brought, the decision-maker should satisfy this necessity test for the decision to be considered lawful. This is similar to the onus on a decision-maker to justify, when challenged, that their decision accords with human rights legislation.

This test ensures that a proper balance is maintained between the (sometimes urgent) interests of national security and the integrity of the UK criminal justice system, including that it does not easily capitulate to blackmail or threats. It also ensures that the separation of powers and rule of law essential to its functioning democracy is maintained.
14. The Director of the SFO is not a national security expert, however, and may feel s/he does not have enough expertise on national security to make such a decision. Depending on when and how the role of the Attorney General is reformed, the Director of the SFO should consult before taking such a decision with a member of the Executive who would have greater access to special information and expertise on security and international law.
15. But given the evidence released during the judicial review of the decision by the SFO Director to terminate the SFO’s BAE-Saudi investigation, The Corner House has grave concerns about the manner in which national security issues are currently raised and assessed by the Executive, and the real potential for abuse.

Documents released during the judicial review show that the national security issues raised were not based on rigorous intelligence assessments from the Security Services themselves on the basis of any objective criteria, but from an

assessment made by the Cabinet Office's Permanent Secretary for Intelligence, Security and Resilience that did not include any detailed analysis of the credibility of the threats, the reliability of the source of the threats, the impact if such threats were to be carried out, or the measures the Government and security services might be able to take to mitigate any such impact.

16. Thus any decision by the Director of the Serious Fraud Office to stop a briber investigation or prosecution on national security grounds should be based on full, rigorous objectively verifiable intelligence assessments from the security services with no political mediation or interpretation through ministers; the Director should see such assessments directly. As much of this assessment should be made public as possible to ensure as much transparency as possible about the grounds on which the decision is based.
17. The procedures outlined above would go some way to ensuring that national security does not serve as a pretext upon which to stop a bribery investigation or prosecution. The incorporation of Article 5 of the OECD Anti-Bribery Convention into domestic law would also assist.

Documents released during the judicial review of the decision by the SFO Director to terminate the SFO's BAE-Saudi investigation illustrate that concerns about the UK's national security were raised only *after* the Director had refused to stop the investigation because of commercial considerations or potential damage to international relations – concerns that had been raised by various Government ministers and BAE itself. Article 5 of the OECD Anti-Bribery Convention prohibits a bribery investigation or prosecution from being stopped because of these latter considerations.

Given that national security issues can become intermingled with commercial considerations and potential damage to international relations during bribery investigations and prosecutions, the UK courts would be able to assess whether any decision by the Director of the Serious Fraud Office to stop a bribery investigation or prosecution was made on national security grounds or on Article 5 prohibitions, and whether the Director had correctly understood and applied Article 5, if and only if Article 5 was incorporated into domestic law (*see* Corner House first submission to Joint Committee).

18. At present under UK law, the courts cannot consider whether a decision to stop an investigation or prosecution breaches Article 5 of the OECD's Anti-Bribery Convention and the Director of the Serious Fraud Office has no obligation to do anything to resist a threat made by someone abroad if the UK Government asserts that the threat endangers national security.
19. The Corner House believes that unless Article 5 is incorporated by primary legislation and unless the courts are required to assess whether a decision to abandon a bribery investigation or prosecution follows a strict necessity test, it may well continue to be the case that serious cases of bribery may not be prosecuted because "national security" concerns are cited.

How could the prime minister do what is necessary to protect the nation from a national security threat without having to reveal publicly information that may undermine that national security?

20. The Corner House welcomes statements in the Cabinet Office's March 2008 document, *The national security strategy of the United Kingdom*,⁵ that repeatedly emphasise the importance of "legitimate and accountable government" and "strong parliamentary and judicial oversight" in maintaining national security.
21. The Corner House accepts that the Executive has a duty to protect the public from threats to national security.

But it is critical that the public has absolute confidence and trust that national security arguments are not being abused in order to avoid political, commercial or diplomatic embarrassment or to pursue the commercial interests of favoured companies or for the UK to get out of its obligations under international law. Public confidence and trust in such Executive decisions needs to be upheld and maintained and is especially important at a time of heightened concern about international terrorism.

As noted above, The Corner House believes that there is always the risk when politicians rely on national security that it will be elided with the interests of the Government, especially if there is no democratic or legal scrutiny of the relevant decision.

22. Under current constitutional arrangements, administrative decisions involving national security are generally accepted to be the sole responsibility of the Executive; the courts give wide discretion to the Executive on decisions that invoke national security. But the UK courts do have competence, expertise and responsibility to assess whether a decision justifies a departure from the law, even in contexts of terrorism and national security.⁶

Under general international law, moreover, when a state wishes to breach an international obligation on the grounds of national security, the state is not entitled to be the sole judge of whether it has met the objective standard allowing it to do so lawfully. A national security justification is a matter for determination on objective grounds, one that should ultimately be carried out by the courts. There is clear authority for this from the International Court of Justice.

23. In the context of bribery investigations and prosecutions, where the Executive has national security concerns, its responsibility is to explain those concerns to an independent prosecutor. Procedures for doing so have been established since 1951.⁷

The prosecutor will make an impartial assessment of the extent to which national security requires the investigation or prosecution to be halted. This is the role currently undertaken by the Attorney General in a quasi-judicial capacity entirely independent from her/his political functions.

It is an important part of the UK's *existing* constitutional framework that the Attorney General may disagree with the opinions of the Executive (the Prime Minister or other Government ministers) as to whether a bribery prosecution or investigation should continue or not.

The Prime Minister (as head of the Executive) does not have and should not have the power to halt a bribery prosecution on national security grounds. It would be a retrograde step undermining parliamentary democracy if the Executive were to be given more power to do so (*see* paras 7-10 above).

Supplementary questions from the Joint Committee

24. After The Corner House had given oral evidence, the Joint Committee asked two further supplementary questions to which it requested written replies:

You stated that the “legitimately due” test should be removed from Clause 4 [of the draft Bribery Bill]. Would this lead to any conduct being criminalised which should not be criminalised? In particular, should clause 4 be amended to require the “advantage” to be “undue” or “improper”?

It has been suggested that clause 5 should be turned into a civil / regulatory regime for imposing fines on companies rather than imposing a criminal offence. This would leave corporate criminal liability for bribery to be addressed (as with other criminal offences) by the Law Commission's ongoing review. What are your views, including whether a civil regime would meet the UK's international commitments?

If the “legitimately due” test was removed from Clause 4, would any conduct be criminalised that should not be criminalised?
Should Clause 4 be amended to require the “advantage” to be “undue” or “improper”?

25. The Corner House believes that the “legitimately due” test can be removed without criminalising conduct that should not be criminalised, provided that Clause 4 is amended to embrace an intention to induce or reward improper behaviour. The Corner House would support amending Clause 4 to require the “advantage” to be “improper”.
26. Clause 1 of the draft Bribery Bill clearly conditions the act of bribery on its *intended* effect, namely *to induce or reward improper behaviour*. Merely making a payment or giving a gift to a person is therefore, by definition, not a crime under the proposed Bill. Corporate hospitality would thus be legal under the Bill, unless its intention was to induce or reward improper behaviour. Similarly payments made under, say, a consultancy agreement would be protected from criminalisation except in circumstances where it could be shown that the purpose of the agreement was to provide a vehicle for making a payment that was intended to corrupt. Where that intention is demonstrated, no

payment is legitimate, regardless of whether it appears to have a legal contractual basis, since, under the draft Bill, it would by definition constitute a bribe.

27. Clause 4 of the draft Bill abandons this approach, however, making the test of legality not an intention to induce or reward improper conduct but instead whether the advantage offered, promised or given to a foreign official is “legitimately due” or not. As the explanatory notes make clear, Clause 4 “does not require that action expected in return [for a financial or other advantage] must itself be improper”, only that “the giver of the bribe must intend to influence the recipient in the performance of their functions as a public official, and must intend to obtain or retain business or a business advantage”.⁸ As a result, the offering of an advantage that is not intended to induce or reward improper behaviour could be criminalised if the legitimately due test was removed. Corporate hospitality, for example, is clearly intended to gain influence in order to obtain a business advantage.
28. The Corner House believes that the draft Bill should adopt a uniform approach to what constitutes bribery throughout all its clauses. The test should be whether the advantage offered to a foreign official, whether directly or through a third party, is intended to induce or reward improper behaviour which, in turn, would secure an improper advantage for the briber.
29. The Corner House would therefore argue for the removal of the “legitimately due” test and for the phrase “advantage” to be amended to “improper financial or other advantage”. The definition of “improper”, if it is needed, could be based on improper influence or improper conduct models, where the intention behind the advantage offered, promised or paid is to induce a public official to conduct an improper act. As in Clause 3 of the draft Bill (“Function or activity to which briber relates”) defining what is reasonable and unreasonable, “improper” can be defined in relation to general, universal norms of a duty on public officials, including breach of trust, duty to act impartially, and duty to act in the public interest (as recognised by the International Code of Conduct for Public Officials adopted by the UN General Assembly in December 1996 and noted in the UN Convention Against Corruption, Article 8 on Codes of Conduct for Public Officials). Such norms would recognise that receiving advantages in return for taking a particular action in favour of an individual or company is never in the public interest. This approach would be in keeping with the commentaries on the OECD Anti-Bribery Convention, which state that where (for instance) the notion of a breach of duty is implied in a statute, it must be “understood that every public official had a duty to exercise judgment or discretion impartially and that this was an ‘autonomous’ definition not requiring proof of the law of the particular official’s country”.⁹
30. If Clause 4 was amended along these lines, The Corner House believes that the removal of the “legitimately due” test would not result in the criminalisation of behaviour that should not be criminalised. It does not know of any countries whose written laws require or permit an official to accept an advantage that is intended to induce or reward improper behaviour. It cannot therefore conceive of any “legitimately due” advantage that is permissible to a foreign official but

which would be unfairly criminalised as a result of removing the “legitimately due” test. For this reason, The Corner House would argue, as stated in oral evidence, for the removal of the “legitimately due” test.

Should Clause 5 be turned into a civil/regulatory regime imposing fines on companies rather than a criminal offence?

Would a civil regime meet the UK’s international commitments?

31. The Corner House believes that Clause 5 of the draft Bribery Bill (“Failure of commercial organizations to prevent bribery”) should not be turned into a civil or regulatory regime for imposing fines on companies rather than imposing a criminal offence.
32. Bribes are invariably paid by an employee or individual for company benefit and advantage, if not with company facilitation and knowledge, rather than solely for the employee’s or individual’s personal gain. As the Serious Fraud Office itself has noted:

“ . . . it is in the pursuit of corporate objectives that individual employees use bribes. Individuals do the bribing, corporations benefit. Thus to sideline the key player/offender is to ignore the essence of the problem. This is not a case of an offence which sometimes corporations also commit, such as for example fraud or even manslaughter. The mischief at which the bribery offences are directed is almost entirely confined within business activity . . . ”¹⁰

As such, it is the company that should face criminal liabilities for the criminal offence of bribery.

Imposing a civil or regulatory scheme of fines would send a message that bribing and any attendant fines are simply the cost of doing business abroad. It might also encourage companies based in those countries that do have corporate criminal liability to channel their bribes through their UK-registered subsidiaries and affiliates.

33. It would be preferable for corporate criminal liability to be introduced across the board for all criminal offences. But it is unclear when the Law Commission’s ongoing review of corporate criminal liability for criminal offences will be completed and its recommendations followed up by Government. The process is, however, likely to continue for another few years.

The OECD Phase *2bis* report on the United Kingdom recommended that “the UK adopt appropriate legislation on a high priority basis *irrespective of any broader reform efforts on corporate liability*”.¹¹

Given that the UK has not introduced an effective regime against corporate bribery with dissuasive sanctions despite signing and ratifying the OECD Anti-Bribery Convention more than ten years ago, The Corner House does not believe that corporate criminal liability for bribery should be left any longer.

When the Law Commission's review is completed, however (and depending on its conclusions, recommendations and Government follow-up), there should be scope to improve the Clause 5 offence of corporate failure to prevent bribery and bring it into line with overall corporate criminal liability. The OECD Working Group on Bribery and others have noted that "any appropriate harmonisation of the law relating to bribery with a broader corporate liability regime could be addressed if broader reform is subsequently achieved."¹²

34. In considering whether to turn the proposed criminal offence, "Failure of commercial organizations to prevent bribery", outlined in Clause 5 into a civil/regulatory regime, The Corner House would like to stress the opening points made in its oral evidence to the Committee: bribery is not a victimless crime; it kills.

The Corner House
25 June 2009

¹ "The Bank's relationship with Parliament", <http://www.bankofengland.co.uk/about/parliament/index.htm>

² paras 113 and 114, OECD Working Group on Bribery, *United Kingdom: Phase 2bis, Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions*, 16 October 2008, <http://www.oecd.org/dataoecd/23/20/41515077.pdf>.

113. There is no guarantee of publicity for decisions in the UK to shut down viable investigations based on the public interest (or not to open investigations for the same reason). No statistics are kept. The existence of allegations not investigated for public interest reasons may never become known to the public; if the allegations were received in confidence by the SFO, they also may remain secret after the case is closed.

114. There is also no general requirement for any written recording of the public interest reasons for termination of the investigation. The only written recording of reasons by the Director of the SFO in the Al Yamamah case is in the very short SFO press release . . .

³ "BAE Systems: Al Yamamah Contract", Statement by Attorney General Lord Goldsmith to House of Lords, 14 December 2006, <http://www.publications.parliament.uk/pa/ld200607/ldhansrd/text/61214-0014.htm>.

⁴ For more information, *see*:
–Dinah Rose QC, Ben Jaffey, Richard Stein and Jamie Beagent, "Note on draft Constitutional Renewal Bill for OECD", 31st March 2008, <http://www.thecornerhouse.org.uk/pdf/document/ConstRenBillOECD.pdf>.
–The Corner House, "Submission to the Joint Committee on the Draft Constitutional Renewal Bill", May-June 2008, <http://www.thecornerhouse.org.uk/pdf/document/ConRenBillSubJointCom.pdf>.
–Jeffrey Jowell QC, "Legal Opinion on the 'constitutionality' of draft Constitutional Renewal Bill", 12 June 2008, <http://www.thecornerhouse.org.uk/pdf/document/JeffreyJowellLegOp.pdf>.

⁵ http://interactive.cabinetoffice.gov.uk/documents/security/national_security_strategy.pdf

⁶ The Law Lords have reviewed two executive decisions (the use of evidence obtained by torture, and indefinite detention) taken to combat terrorism and protect national security to assess whether the

correct legal principles had been applied in making these decisions and whether the evidence for doing so met the applicable legal standard.

–In December 2005, seven law lords ruled that evidence that may have been obtained from terrorist suspects by torture cannot be used in British courts (<http://www.parliament.the-stationery-office.com/pa/ld200506/ldjudgmt/jd051208/aand-1.htm>).

–In December 2004, nine law lords ruled that foreign nationals suspected of terrorism cannot be detained indefinitely without being charged but are entitled to a fair trial (<http://hansard.millbanksystems.com/lords/2004/dec/20/anti-terrorism-laws-law-lords-judgment>).

⁷ The proper role of the Executive in prosecution decisions was stated by Attorney General Sir Hartley Shawcross in Parliament on 29 January 1951:

“I think the true doctrine is that it is the duty of an Attorney-General, in deciding whether or not to authorise the prosecution, to acquaint himself with all the relevant facts, including, for instance, the effect which the prosecution, successful or unsuccessful as the case may be, would have upon public morale and order, and with any other considerations affecting public policy.

In order so to inform himself, he may, although I do not think he is obliged to, consult with any of his colleagues in the Government; and indeed, as Lord Simon once said, he would in some cases be a fool if he did not. On the other hand, the assistance of his colleagues is confined to informing him of particular considerations which might affect his own decision, and does not consist, and must not consist, in telling him what the decision ought to be. The responsibility for the eventual decision rests with the Attorney General, and he is not to be put, and is not put, under pressure by his colleagues in the matter.”

The immediate genesis of this Shawcross statement of principle was a series of illegal strikes during the third Labour Government (1945-51) during which the Executive seemed not to recognise or accept the proper role of an independent prosecutor. Sir Hartley Shawcross was concerned about “some misunderstanding... as to the constitutional position of the Attorney General in relation to his political colleagues in such matters” (Edwards, p.320) because there had been “wide-ranging discussions [in Cabinet] in which, it is understood, some ministers exhibited an eagerness to express their views on the wisdom of instituting criminal proceedings” (Edwards p. 323).

Sir Hartley prepared a memorandum to the Cabinet setting out his concerns:

“Cabinet discussion of these matters [prosecution decisions]... may be as embarrassing for my colleagues as indeed it is for me. For whilst my colleagues are scrupulously careful to remind me that they do not share any responsibility for the decision which is constitutionally placed upon me they do not fail to make clear what they consider my decision should be!”(Edwards, p. 321)

It was because Ministers were improperly expressing their views on prosecution decisions that Sir Hartley Shawcross’s statement was drafted and consulted upon:

“This carefully phrased exposition of the proper approach to be followed by the Attorney General, when faced with a situation in which questions of national or international public policy may surround the exercise of his prosecutorial discretion, was the result of a major collaborative effort that serves to further underline the major importance which has been accorded to Shawcross’s statement in the intervening years. For, as the files in the Law Officers’ Department reveal, the Attorney General went to infinite pains to ensure, as he put it ‘that the integrity of the office should be very fully maintained since its position is, I am afraid, often widely misunderstood’.”(Edwards, p. 319-320).

The effect of the Shawcross statement of principle is that Government Ministers may not express their view as to what the prosecutor’s decision should be. Their role is confined to the provision of information as to the effect of a prosecution on the public interest:

“What is not permissible and would be treated as constitutionally improper is the expression by the Prime Minister, another minister or the government of their individual or collective view on the question whether or not the Attorney General should prosecute. The same position must surely apply to the solicitation of such views by the Attorney General or anyone acting on his behalf (Edwards, p. 323).

See: John Edwards, *The Attorney General, Politics and the Public Interest*, Sweet & Maxwell, London, 1984.

⁸ Draft Bribery Bill, Explanatory Notes, paragraph 30.

⁹ “Commentaries on the OECD Convention on Combating Bribery”, 21 November 1997, paragraph 3, http://www.oecd.org/document/1/0,3343,en_2649_34859_20482129_1_1_1_1,00.html

¹⁰ Serious Fraud Office, written response to the Law Commission’s consultation on anti-bribery legislation, quoted in para 75, OECD Working Group on Bribery, *United Kingdom: Phase 2bis, Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions*, 16 October 2008, <http://www.oecd.org/dataoecd/23/20/41515077.pdf>.

¹¹ After para 92, page 25, OECD Working Group on Bribery, *United Kingdom: Phase 2bis, Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions*, 16 October 2008, <http://www.oecd.org/dataoecd/23/20/41515077.pdf>.

¹² Para 78, OECD Working Group on Bribery, *United Kingdom: Phase 2bis, Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions*, 16 October 2008, <http://www.oecd.org/dataoecd/23/20/41515077.pdf>.