



# Foreword

THE HONOURABLE KENNETH MUTT KC<sup>1</sup> (THE DOG)

## A Sad Case

For readers of Mike Comer's previous eight books – or, more accurately, the same book regorged eight times: now nine – it is with sorrow that I report that my father Spot the Dog has expired and his spirit levitated to the great kennel in the sky. If you have dodged Mr Comer's previous rants, my father's name will mean nothing to you. That is a pity, because he was a good dog, wrote brilliant forewords to Mr Comer's falderalish books and was the canine referred to by auditors when exculpating that they were watchdogs and not bloodhounds every time they failed to spot skuldoggery, which was pretty often. In fact, Spot was a poodle, so it is not surprising that auditors bonded with him. I am a bit of a crossbreed; part poodle (obviously) but more Rottweiler with a tad of Alsatian, husky, Dalmatian, spaniel and pit bull terrier thrown in.

## Corruption is Wicked

Spot kept Mr Comer – more or less – on track and talked him out of publishing some of his more extreme views. I apologise that I don't have the same influence on the geriatric, pipe-smoking, politically scandalous ex-guru. He has got it into his head that corruption is wicked; that it is kicked off at the highest political and academic levels and that commercial bribery is a reaction. He has little confidence in the enforcement of anti-bribery laws and the fixation on overseas bribery while much worse corruption takes place under British noses but is ignored.

## Cutting Out the Doggerel

On his death dog basket my father promised me the ex-guru would never again put pen to paper or, in his case, hairy fingers to a tobacco-stained keyboard and that I would be safe. But it seems that the old man has become so maddened over the Bribery Act, political, media and academic corruption that he's struggled onto his Zimmer, bought himself the latest version of Dragon NaturallySpeaking voice recognition software and is now dictating 100,000 words a day – albeit mostly incomprehensible, especially since he had his new National Health teeth fitted. So, in his favour – and there is not much of that

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1 Kennel Club.

around – you can put any typos in this book down to his new gnashers, which are far too small and keep falling out.

Another ameliorating<sup>2</sup> factor on the ex-guru's bluster comes from Tim Stephens, who is vaguely sensible in human terms. How on earth Mr Comer ever convinced Tim to associate his name with his is a mystery. The same is true of the long-suffering Mike Williams, whose cartoons are the highlight of the book, and Gower, which has yet again been conned into publishing something that is so far removed from good taste that it makes me think that bribes have been paid. The only counterfactual is that the ex-guru is so tight, that it is against his nature to pay for anything, even to get his books published. So, for once, I don't know.

## Keeping it Short

I will keep this Foreword short. My father always told me this: 'always keep it short, Kenneth Mutt', he said and 'if you can do it in one bite, do it'. I was never exactly sure what he meant, but in doggy circles I am known for concision, lack of foreplay and premature termination. For these reasons my friends say I could have Scottish blood in me and it is true that I do have gingerish, spiky, hair, don't wear underpants and flatulate a lot, especially after meals, when I get excited, watch football or see my hero Nicholas Peter William Clegg on TV. So that is all I have to say: well except for four things.

## Corruption and Bribery Are Not the Same

The first is that this book is about corruption, which is a far wider and worse wickedness than bribery. Bribery is largely a commercial phenomenon, whereas corruption is primarily the preserve of politicians, academics, the media and others ungainfully employed in a monoculture that is as keen to stop skulduggery as Dracula is to illegalise blood-sucking. This is why the new Act (of 2010) – which supposedly replaces those on corruption – is called the Bribery Act. It has been reframed to avoid dealing with the stratospheric corruption discussed in Chapter XX.

The guileful change of framing tells you all you need to know: corruption and bribery are not the same thing and by cunningly avoiding the C-word politicians and fellow travellers can carry on as before but collect lots of lovely taxes from technical infringements that are only identified as crimes after prosecutorial discretion has been exercised. This is really cunning and allows betting on the race after it has been run.

Less than voluntary penalties from companies subject to prosecutorial discretion can then be remitted to China, India, Brazil and Russia, among others, to save our planet from global warming or, now it has been shown that for the past 14 years it has been cooling, to prevent climate change. No doubt when further evidence emerges that it is all a scam, we will be faced with the problem of climate stagnation or some other reframing. It doesn't matter what it's called, so long as the Milibands, Gores and Huhnes support it as a noble cause, much as they do with anti-bribery initiatives, and so long as it can be taxed.

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2 A great word for a dog: don't you think?

## Scandals to Come in the Carbon World

The ex-guru was the one of the first to recognise the corruptive nature of global warming and emissions abatement. This noble cause is awash with corruption to maximise free allocation of carbon credits and to falsify baseline emissions; and bribes to get offset projects in foreign lands, trading exchanges, OTC (over-the-counter) transactions, green investments and corporate social responsibility programmes. The only benefit is that the green initiative raises yet more taxes. But the Carbon World creates entirely new financial systems that are perfection for paying and concealing bribes. There is no such thing as Suspicious Activity Reporting (SAR) in the Carbon World and virtually no regulatory oversight. In fact it would be much easier if rules came in that compelled reporting of carbon transactions that were **not** suspicious. It really is that bad but no one seems to care or even think. All they say to me is 'It's global warming, innit? Saving the planet; know what I mean, John?'

The word 'innit' appears to be the justification for everything along with Human Rights, health and safety, equality, privacy or multiculturalism:<sup>3</sup> all noble causes that herd the UK towards the cliff's edge. True: innit?

## Not All Bribery is Equal

I suggested that the title of this book should be *The Corruption of Bribery*, which everyone except Gower and the Guru's wife thought was extremely clever and insightful. It exposes the fact that the word 'bribery' has been cynically perverted in the Act to imply that it is a replacement for previous legislation on 'corruption': which it is not. The Act makes a clear distinction between bribes paid and bribes received,<sup>4</sup> with the former being excoriated as much wickeder than the latter and therefore justifying the Section 7 corporate, essentially strict liability offence of failing to prevent bribery. This is dreadful spinning of the truth and another corruption of the word 'bribery', because Section 7 only relates to failure to prevent bribes being paid by corporates,<sup>5</sup> not to extortion or bribery generically.

## The Dreaded Section 7

Section 7 of the Bribery Act 2010 is the equivalent – in the world of unwanted teenage pregnancies – of holding a boy's parents absolutely, corporately liable for their son's wanton fornication while absolving the girl's mother and father of all responsibility. Bribery, like more fulfilling forms of sex, involves two or more people, but the Act is far more concerned with giving than receiving, or supply rather than demand: of active rather than passive. You should ask yourself why this is.<sup>6</sup>

3 I never voted for this: did you?

4 Although both are referred to as 'bribery'.

5 I was taught that using an adjective as a noun is bad form and akin to flatulating in church.

6 It is because it is a serious revenue earner for the Government and a less-than-transparent source of funding for the Serious Fraud Office, which pockets a third of all recoveries and penalties.

## Not All Animals Are Equal

The clever corruption of language – or, even more, reframing – results in governmental organisations, whose controls are so appalling that they are magnets for incoming bribery, not being held corporately liable unless the involvement of a senior manager can be proven, but even then absolution comes to the rescue under the Crown Body exclusion. It is one rule for corporates and another for officialdom, or as Kenneth Clarke,<sup>7</sup> the ex-Justice Secretary, ex-Anti-bribery Champion and Hush Puppy's shuffling advert explains it, the initiative is 'business-led'. You can always tell something is utter bunkum when politicians describe it as an 'initiative'.

'Business-led' means that politicians and government departments need to do nothing except collect the cash and condemn evil corporates who pay their wages and, of course, unlimited Parliamentary expenses. Also, since government departments are not 'relevant commercial organisations' they are absolved from Section 7 corporate liability even if they **pay** bribes ... and please don't tell me that local and state government officials don't pay bribes or share them with their colluders, because they do. Have you noticed that under the old Corruption Acts, once an advantage was shown to have been given to, or received by, an official, the burden of proving that it was not corrupt shifted to the parties involved? The new Act removes this in yet another Animal Farm scam.

British politicians struggled long and hard, late into mid-mornings, sometimes at their second, third or fourth heavily subsidised and fortified homes, in the houses of other men's wives or, more likely, civil partners, in bingo halls, steam baths and at the Pink Pussy Cat Lap Dancing Club,<sup>8</sup> to resolve the vile threat to parliamentary privilege which if removed by the new laws would make their prosecution for corruption much more likely.

After urgent agonising over some 20 years, Parliament decided not to decide but to defer the matter for further review: you guessed it, by yet another committee. And by cleverly framing the Act as 'bribery' they hoped no one would notice.

## Bribery of Luigi Foreigner

In justifying the extraterritoriality of the Act, the Ministry of Justice claims that the provisions relating to bribery of foreign public officials (FPOs) harmonises international and domestic laws. This, I'm sorry to say, is another corruption of both the word 'bribery' and the truth. Prosecution for facilitation payments made to a UK official requires proof that the payer's intention was to get the official to perform improperly, whereas for Ahmed or Luigi Foreigner, FPO, simply proving influence is enough. The obvious presumption is that British officials can be trusted with being influenced without being corrupted, while those to the east of Dover and south of Land's End can't. How bloody superior and patronising is that? And might I ask what happens when our tartan-wearing, caber-tossing colleagues gain independence and become FPOs?

Section 6 of the Bribery Act makes it an offence, punishable in the UK, to pay bribes to an FPO, yet it absolves the sneaky no-goods, who extort them, of all responsibility

<sup>7</sup> I have never liked him since I heard he wears Hush Puppies and is a Europhile.

<sup>8</sup> The significance of this club will become clear later.

because there is little chance they will be prosecuted in their home countries. If politicians really wanted to stop FPOs being corrupted they could start by extending Section 6 to the receipt of bribes: extradite FPOs to the UK and incarcerate them here or, more seriously still, force them to take on British citizenship, pay our taxes and put up with unending political and other skulduggery. What is also amazing – in most if not all of the regulatory actions by the Department of Justice (DOJ), Securities & Exchange Commission (SEC) and the Serious Fraud Office (SFO) against companies – is that the names of official and other bribe extorters are never mentioned. In the Siemens case there must have been hundreds of extorters. But who were they? Are most still in position to extort bribes from others? I suspect they are. So much for the fight against global corruption and due diligence.

Now for another thing! Payments to foreign political parties, opposition politicians or candidates are permissible under the Act. The conspicuous opportunity for evil corporates and aid agencies is, of course, to corrupt foreign politicians before they get into power. This is a really smart ploy because it encourages democratic change, which is clearly another noble cause except for those whose change is outwardly directed, have to bribe their way back in, or pass through revolving doors into meaningful employment. But the good news for them is that when they are in opposition they can be bunged without limit to help get back into power. Isn't that a neat little political circuit: jobs for the boys and democracy at its very best?

## The UK Leads the Way

The UK is the only country I can find that has extraterritorial laws to punish bribe payment and receipt in the overseas private sector. This supposedly gives UK firms a competitive advantage, although I must say I fail to follow the logic. UK politicians seem fixated on the view that if UK citizens self-flagellate and suffer enough – with draconian laws over such things as emission reduction, waste recycling, plastic bags, obesity, smoking, salt, sugar, alcohol, meat, fish, mushrooms, sunbeds, Polish potatoes and other noble cause initiatives – oinks of the world will be so inspired that they will follow suit and change their loathsome ways.

The informed opinion in the canine community is that this is crass stupidity. There is no way I am cutting back on my consumption of bones unless Chinese, Indian, Korean and Russian dogs do the same. And if they unilaterally cut back, that means more bones for me. That's how things are in real life, but politicians *bent* on noble causes don't want to understand this. The UK leads the way, they say, and it, matters not that it is over a cliff.

## The End Game

If British companies decide they just cannot cope with the Act and pull out of supposedly corrupt markets, the Chinese and companies from other countries which don't have draconian laws will be in there like legs up a lamp post. They will be able to charge whatever prices they like and bribe without limitation. They will also cement relationships that secure and monopolise strategic resources like oil, copper, tin and, of course, bones and cement. So, rather than help the long-suffering poor in Less Developed Countries,

the Bribery Act will make things far worse, as is already the case with overseas development aid, much of which is trousered by the same kleptocrats who extort bribes and rob their citizens blind.

I sometimes say that humans are destined for extinction through a mix of stupidity, apathy and noble causes but without the excuse of dinosaurs. They, at least, were hit by a meteorite. Now that's what you call an adequate defence.

## The Dangers of Perception

Preventing corruption demands paying attention to detail based on facts; not perception, anecdotes, crystal balls, phases of the moon or patterns of tea leaves in cups. Recommending silly controls that don't work just encourages box-ticking and jobsworths. Branding entire countries as corrupt is another nonsense which is self-fulfilling and much like advertising that 'Bribes'R'Us' setting an expectation that skulduggery is the norm, if not positively encouraged. I agree with Mr Comer that corruption takes place in discrete contexts and that generalisation is a bad thing. It results in guards being dropped only because a country is 'perceived' to be safe.

Unquestionably, the Act will raise lots of taxes disguised as penalties, deflect corporates' attention from the supposedly export-led financial recovery, let politicians and government agencies off the hook and create lots of non-productive jobs for civil servants, NGOs, lawyers, consultants and investigators,<sup>9</sup> all in pursuit of the noble cause.

The way the Act is to be enforced with 'civil disposals' and Deferred Prosecution Agreements – allowing crooks to pay their way out of trouble at a cost to honest competitors – subverts the criminal justice and economic systems. Where will it all stop? If the Yorkshire Ripper Version II were to make a self-disclosure and retain Price-Slaughterhouse-Coopers to investigate him on behalf of the police, would he be offered a 'civil disposal'?

So please do not fall for the spin that the Act will forestall or even reduce gross corruption. IT IS A STEALTH TAX on businesses and another Animal Farm initiative. That said, prevention of fraud, and incoming, outgoing, internal and competitive corruption is vital, so that economies can survive, companies flourish, and families have enough money to afford lots of juicy bones. To me, that's what corruption is all about; but for humans it could be even more important.

Finally, a humanoid that Mr Comer foolishly invited to review my Foreword asked me – with a sort of condescending smirk – 'If you are so clever how would you stop corruption?' The answer I gave was very simple: 'For a limited period, I would offer absolute immunity to every extorter who comes forward with evidence that convicts a coercer. When everything is done and dusted I would contrive a technical locution, apologise and then prosecute everyone'.

Yours aye  
Kenneth Mutt KC

PS I started this Foreword with some sad news and I close in the same vein. Tim Stephens died on 7 April 2012 and will be sadly missed. He was the sensible one.

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9 Bless!

PPS I have just realised that despite their extensive verbiage, the authors have forgotten to define two important terms. So I will try to do so.<sup>10</sup>

## COTTAGE INDUSTRY

This term was coined by Mike Koehler, known as the ‘FCPA Professor’ and one of Mr Comer’s heroes. In this book it refers to a collection of politicians, regulators, academics, researchers, lawyers, consultants, journalists and even investigators who make lots of money and exert excessive influence by terrifying others into believing that the anti-bribery laws are even more important than bones. A great deal of reciprocation – ‘scratch my back and I’ll scratch yours’ – takes place within the Cottage Industry.<sup>11</sup> This is not to suggest that there is anything dodgy going on, merely that companies should note when dealing with the Cottage Industry that the rule is: ‘Never ask a barber if you need a haircut’.

## ANIMAL FARM

This term – based on George Orwell’s excellent, but almost canine-free book – is used when a member of the Cottage Industry insists on someone else doing something he has no intention of doing himself. It is the equivalent of ‘do as I say, not as I do’ and there is a lot of it about.

## A LEGAL TERM

‘Civil Disposal’ is a term that is frequently used in cases involving corruption. It refers to the process where allegations of corruption are resolved by acceptance by the alleged bribe payer of a Civil Recover Order – under the Proceeds of Crime Act (POCA) – rather than a prosecution through the criminal courts. UK judges have generally not been in favour of civil disposals.

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10 E&OE.

11 It should be noted, however, that not all politicians, regulators, academics, etc., or even lawyers and investigators are in the Cottage Industry, nor is any impropriety alleged. However, ‘never ask a Barber if you need a haircut’.