

<b>Institution:</b> Queen Mary University of London (QMUL)
<b>Unit of Assessment:</b> Law (C20)
<b>Title of case study:</b> Reforming the British law of Bribery
<p><b>1. Summary of the impact</b> (indicative maximum 100 words)</p> <p>Professor Alldridge's research rethinking the theoretical underpinnings of the law of bribery has had a direct influence on the recent reforms of the British law of bribery. With the coming into force of the Human Rights Act 1998 and the OECD's Paris Convention on the Bribery of Foreign Public Officials in 1999, the UK government was required to reform the law of bribery. A Bill was drawn up in 2003, based on a report from the Law Commission, which included a defence of consent (this allowed defendant employers to argue that they could not be prosecuted for bribing foreign customers, where the bribery had been effected by one of their employees and the defendant employer had consented to this). The Commission saw bribery not as anti-competitive behavior, but a crime against loyalty, a conception that turned upon the existence of prior duties (to act impartially, in good faith and to be in a position of trust). Through his membership of the Law Commission Bribery Advisory Group, Alldridge was able to show in 2008 that some of these duties could only be found in contracts. As such, they could also be altered by contract, and where this occurred, it would create a defence of the consent of the principal. As a result of Alldridge's research and related membership of the Advisory group, the 2009 Bill was amended, and the Act passed in 2010 did not allow such a defence. The UK now has a reformed law of bribery, which complies with the OECD convention and has been put on rational foundations.</p>
<p><b>2. Underpinning research</b> (indicative maximum 500 words)</p> <p>The underpinning research is Alldridge's work on the law of bribery and financial crime. The research has taken the form of a publication in a peer-reviewed journal, <i>Criminal Law Review</i> [1]. This publication developed and extended earlier research reported in another peer-reviewed journal article prior to Alldridge's employment at Queen Mary from 2003 [2]. The <i>Criminal Law Review</i> paper [1], which provides the underpinning research for the impact discussed in section 4, went through a rigorous peer-review process prior to publication.</p> <p>In this work, Alldridge challenges the view that bribery is an offence against the relationship between principal and agent. According to this view, a person (the agent) – often a lower official in a company – offends by breaching the duty of loyalty they owe to their employer (the principal), who receives a smaller price, or a worse deal, for the goods they have to sell as a result of the corrupt activity of their agent. Alldridge argues that this approach to the offence should be rejected. He points out that while in criminal law, the consent of the victim is usually a complete defence to a criminal charge, applied to bribery, this leads to an anomaly – if an employer consents to their agents accepting a bribe, then there is a defence to any charge of bribery. This is unsatisfactory, since the real victims of the bribery may be other competitors in the market, who have not consented to the bribery. In Alldridge's view, bribery should be seen as an offence against the market, not against the principal. It is the corruption of a market, not the corruption of a relationship. Furthermore, Alldridge's research shows that some of the duties envisaged by the Law Commission could only be found in contracts, usually contracts of employment. Since they were set out in contracts, they could be altered by contracts, and where this occurred, it would create a defence of the consent of the principal.</p>
<p><b>3. References to the research</b> (indicative maximum of six references)</p> <p>The primary piece of underpinning research is reported in: [1] P. Alldridge (2008) 'Reforming Bribery: Law Commission Consultation Paper' (2008) <i>Criminal Law Review</i>, 9: 671-81.</p> <p>This publication built on earlier research by Alldridge reported in, but not claimed as underpinning research for the impact described in Section 4:</p>

[2] P. Alldrige (2000) 'Reforming the Criminal Law of Corruption' *Criminal Law Forum*, 11: 287-322.

#### 4. Details of the impact (indicative maximum 750 words)

The impact derived from Alldrige's research relates to his work with the Law Commission Bribery Advisory Group from 2007 and the subsequent advice on the draft Bribery Bill in 2009 and the Bribery Act in 2010. This impact arose from earlier advisory work on the draft Corruption Bill in 2003 and evidence given to the OECD delegation on bribery in international business transactions, which are outside the REF impact assessment period but which provide contextual background to the later impact achieved. As a result of Alldrige's involvement in this legal formation, the UK now has a reformed law of bribery, which is compliant with the requirements of the OECD convention.

##### **Earlier contextual advice and evidence on corruption and bribery (2003-2008)**

In 2003, the government introduced a draft Corruption Bill (Jan 2003, Cm 5777), for consideration by a Joint Parliamentary Committee. This draft Bill itself was based on the Law Commission's 1998 report, and contained a defence of consent, premised on the view that the principal-agent nexus stood at the heart of bribery law. The procedure around bills is designed to enable a parliamentary committee to consider a range of possible solutions to a problem, and so the Committee (chaired by Lord Slynn of Hadley) appointed Alldrige (who took a different view of the law, reflected in his published work) as specialist adviser. Alldrige wrote many of the questions put by the Committee to witnesses before it, including all those put to Lord Falconer (the Lord Chancellor) and Lord Goldsmith (the Attorney General). The Report from the Joint Committee on the Draft Corruption Bill also contained an annex written by Professor Alldrige setting out his views: 'Annex 4: Note by Peter Alldrige, specialist adviser, on locating the harm in bribery and corruption – an alternative approach' ([www.publications.parliament.uk/pa/jt200203/jtselect/jtcorr/157/157.pdf](http://www.publications.parliament.uk/pa/jt200203/jtselect/jtcorr/157/157.pdf)).

Related to this activity, in 2004 and 2008 the Working Group on Bribery in International Business Transaction of the OECD conducted site visits to the UK. Such visits are the primary means by which the 'soft law' obligations set out in the Convention are enforced (OECD Convention Article 12). The purpose of the visit was to encourage the UK government to enact legislation on bribery. The OECD's visits were motivated by its increasing concern that the UK government was not complying with its obligations under the Convention. As part of this process, the delegation interviewed witnesses, including academic experts. Alldrige gave evidence to this delegation in 2004 and 2008. In its 2008 report, the Working Group cited the view of panelists consulted (including Alldrige) that the consent of a principal should not constitute a defence in bribery cases, and noted (para 39) that: "principal consent at a minimum interferes with the investigation and prosecution of foreign bribery cases in practice." ([www.oecd.org/dataoecd/23/20/41515077.pdf](http://www.oecd.org/dataoecd/23/20/41515077.pdf))

##### **Membership of the Law Commission Bribery Advisory Group and alteration of consent defence principle**

Assembled from March 2007, Alldrige was a member of the Law Commission Bribery Advisory Group, in which he continued to put his view forward to the British civil service. Alldrige's interventions were crucial in altering the British government's position on the consent defence. In a consultation paper produced in 2007, the Law Commission adhered to its previous position that bribery is a crime against loyalty and not the market (Law Commission Consultation Paper No 185, Reforming Bribery (LCCP 185, 2007)). It set out an answer to the position expounded by Alldrige (in Annex 4 to the Report from the Joint Committee on the Draft Corruption Bill) in an appendix (Appendix D – 'The Harm in Bribery – Individual or Market-Based?' pp. 264-279). The Commission felt that bribery should not be conceived as anti-competitive behaviour (which was sufficiently prevented by other offences). Instead, it recommended a version of the bribery offence that turned upon the existence, among other things, of prior duties (to act impartially, to act in good faith or to be in a position of trust). During the consultation period, which ran until March 2008, Alldrige gave a paper to a conference at the Home Office (later published [1]), which pointed out the flaws in this approach. He showed that some of the duties envisaged by the Law Commission could only be found in contracts, usually contracts of employment. Since they were set out in contracts, they could be altered by contracts, and where this occurred, it would create a defence of the consent of

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the principal. Alldridge showed that bribery laws all over the world are directed to protect competition.

As a result of this paper, the Law Commission changed its view. It produced a further report in 2008 (Law Commission 313, *Reforming Bribery*), which refers to Alldridge's 2008 paper published in *Criminal Law Review* (2008) [1] and accepted that the argument made was "a very important objection" (para 3.91). It also made substantial changes to the proposal in the Consultation Paper. In particular, the Commission accepted (finally, but not expressly) that bribery is a crime directed against anti-competitive behaviour and replaced the idea of 'duty' with one of reasonable expectation, thereby avoiding the problem to which Alldridge had drawn attention.

**Advice on the draft Bribery Bill (2009)**

In 2009, the Government introduced a draft Bribery Bill along the lines proposed by the Law Commission. Alldridge was again appointed specialist adviser to the Committee, this time chaired by Viscount Colville. He contributed to questions and the debate in the Committee and to a report, which was much more clearly focused upon ensuring compliance to the OECD Convention. The Committee reported in July 2009 (29 July 2009 HL 115 HC 430 I and II). It endorsed the Bill, which was vastly improved compared to the 2003 Bill. Thanks were given to Alldridge for his contribution. In 2010, the Bribery Act was passed, and came into force in April 2011.

Allridge's work had a wide reach during the process of reform. Firstly, his work had an impact on the parliamentary process, where he acted as a specialist advisor to two Joint Committees on Draft Bills on corruption and bribery, one of which took place during the REF2014 period. Secondly, he had an impact on the Law Commission, which drew up the legislation, shaping key aspects of the legislation. Thirdly, both prior to and during the REF2014 period, he had an impact on the Organisation of Economic Co-operation and Development's Working Group on Bribery in International Business Transactions, which sought to ensure that the United Kingdom complied with its obligations under the Paris Convention on the Bribery of Foreign Public Officials. Fourthly, beyond such official bodies, Allridge's research has influenced public understanding of bribery in international business transactions. He explained and analysed this issue during the period of reform in numerous interviews with news and broadcast media (including the *New York Times*, the BBC and CNN), and at seminars and symposia open to non-academic audiences. The outcome of this research – the legislation itself – has had a reach not merely to the United Kingdom, but to all business transactions worldwide.

**5. Sources to corroborate the impact** (indicative maximum of 10 references)**Contextual impact:**

Allridge's contribution to the Joint Committee on the Draft Corruption Bill 2003 was acknowledged by Lord Slynn of Hadley in the House of Lords (HL Debates 16 Jul 2004, col.1555)

Allridge's evidence to the OECD working group is attested to in OECD Site visit 2004.

**REF2014 impact:**

Allridge's research publication and its arguments is referred to in Law Commission (2008) 313, *Reforming Bribery*, para.3.91; see [lawcommission.justice.gov.uk/docs/cp185\\_Reforming\\_Bribery\\_report.pdf](http://lawcommission.justice.gov.uk/docs/cp185_Reforming_Bribery_report.pdf).

Allridge's work as specialist advisor to the Joint Committee on the Draft Bribery Bill 2009 is evidenced in: [www.publications.parliament.uk/pa/jt200809/jtselect/jtbribe/115/11504.htm](http://www.publications.parliament.uk/pa/jt200809/jtselect/jtbribe/115/11504.htm).

Allridge's media interviews include *New York Times* 2 October 2009 (BAE faces corruption charges); CNN broadcasts 28 October 2010; BBC Law in Action broadcast March 2010.