

The 4th ICAC Symposium

**Richard Alderman, Director, Serious Fraud
Office**

15 December 2009

Chief Executive, Chief Justice, Commissioner for the Independent Commission against Corruption, fellow delegates and friends. It is a great privilege today to be asked to come and address this prestigious conference. It is very apt indeed that this conference should be held in Hong Kong. The Independent Commission against Corruption has demonstrated for many years a world wide reputation for effectiveness in dealing with corruption issues. The approach that it has adopted in using a combination of methods including education and prevention as well as investigation and prosecution is a model from which I have learned much. The level of public support that the Commission has earned through its work is testimony to its integrity and effectiveness.

Let me also thank OLAF for being co-sponsors of this conference. We in the SFO have a close relationship with OLAF and our colleagues there. There are issues and challenges we face together and I very much value the partnership we have.

All of us here at this conference share deep concerns about the impact of corruption on societies particularly those that are among the poorest in the world. We share a common horror when we see the results of corruption. We see inadequate infrastructure leading to avoidable deaths and injuries. We hear about parents having to make a choice between feeding their families and paying for the drugs that should be available freely but have been diverted elsewhere through corruption. We see inadequate health provision with families suffering the consequences of this. We see honest and decent people in these societies suffering from the activities of the few

which have the effect of destroying what they most care about. We see the impact on civil society and the rule of law in a society where corruption flourishes leading to the danger that these countries become failed states. And we see the impact of corruption on the environment and the irreversible changes taking place. These concerns were eloquently expressed in the inspiring words of Eric Holder recently in Doha on the occasion of the sixth Global Forum on combating corruption.

All of this I believe makes us very resistant when people who I believe should know better try to tell us that corruption is a victimless crime. Commentators sometimes maintain that everybody does this and so what is the problem. They sometimes try and tell us that corruption is the culture in some countries and we must respect that culture. I do not agree with this and I know that nobody here today would have any sympathy with those views.

The fact that we can make a very real impact on the lives of the poorest in society was brought home very clearly to me in my first days as Director of the Serious Fraud Office. I received a letter from a young teacher in a country in Africa thanking me for the work our people had done to stop corruption in her country. Her words moved me deeply. They are at the heart of my personal aim of ensuring that my organisation does all that it can to bring wrong-doers to justice and to make the lives of their victims better. By being here at this conference today, we are sending out a very important message to those wrong-doers – we are united in fighting corruption. I believe as well that Anti-Corruption Day last week gave us all the opportunity to demonstrate our personal commitment in this struggle.

We are all heavily involved in the battle against corruption. I worry though about how much there remains to do whether at an international or national level. For example,

look at some of the findings in the recent Global Corruption Report by Transparency International. One of the findings was that 80% of executives were not aware of their anti-corruption responsibilities. Another was that although 90% of corporates had an anti-corruption code, fewer than half of those corporates actually did anything to monitor them.

I find it difficult to understand how executives in the modern world could possibly have no knowledge or awareness of anti-corruption. What does that say about the culture and sustainability of the business organisation? And indeed whether it is an attractive place in which to work. People want to work in organisations that have moral standards and a commitment to ethics. A corporate's image is inevitably and rightly tarnished when it is seen to be involved in corrupt activities. As individuals we do not want to live in a society where corruption

flourishes: why therefore do we consider that it is acceptable for others to live in such a society?

The time has gone when corporates could regard this as a non-issue. That is not the perception of society and we have certainly seen cases in our jurisdiction where corporates have been very badly wrong footed (sometimes in respect of environmental issues) where they have not kept pace with developments in public thinking. I have to say that in those circumstances I believe that it is society that has been proved to be right; the corporate comes over as being caught unaware by modern ethical standards. And I have to say as well that I believe that there are many individuals in those corporates who share those modern ethical standards.

I have the statistic from TI very much in mind when I look at other surveys. For example, a survey from Kroll recently showed that the risk of regulatory and prosecutorial action

in respect of anti-corruption was moving up the corporate agenda and was becoming more significant. My response to that is about time too, but there is much more for corporates to do. I want to see a modern ethical anti-corruption culture in our corporate sector and I want to see it as a vital part in the corporate's overall commitment to ethical business. I want to see a gold standard. And I want to see an anti-corruption culture that is based on genuinely held values and not simply compliance with the strict letter of the law. For me this distinction was summed up by one of our eighteenth century political philosophers who said:

“It is not what a lawyer tells me I may do but what humanity, reason and justice tell me I ought to do”.

Let me turn now to what we have been doing in our jurisdiction in the UK. I hope that you will find this of particular interest because the UK has been heavily

criticised over very many years now for its perceived lack of vigour in dealing with corruption cases. I believe that that perception is changing although I frankly acknowledge that there is still much for us to do in the UK. Let me tell you therefore what we have been doing and how we have drawn on the strong lead set by our colleagues here in the Independent Commission against Corruption and our colleagues in US law enforcement in the Department of Justice who have set such an example to us all in their work concerning the Foreign Corrupt Practices Act.

The approach that we have adopted in the UK comprises a number of elements. These have been brought together in a statement by our ministerial anti-corruption champion and Minister of Justice, Jack Straw. He said at a conference –

“A strong legal architecture is necessary in tackling corruption, but in and of itself is not sufficient.

Ultimately, our aim must be to bring about behavioural change within businesses themselves, creating corporate cultures in which no form of corruption is tolerated”.

Let us look at those various elements because they are all important. First, the legal architecture. Our current law in the UK relating to bribery is very out of date. It has been the subject of much criticism by the OECD and rightly so. Our law on corruption dates back over 100 years to the very beginnings of the 20th Century. I do not believe that the provisions have stood the test of time. They are not appropriate for the modern globalised economy. There are cases that we would like to take that are not within the terms of the legislation. A more modern approach is needed.

This more modern approach will also address what is needed to make a corporate criminally liable in our jurisdiction. Our current law is very restrictive. We have to look for what is called the controlling mind of the corporate. It is only if the controlling mind of the corporate is involved in the bribery that there is liability at the corporate level. This means looking for very senior members of the corporate. The question I have is how much sense that makes in dealing with modern, very large global corporations. Too often I feel commentators do not appreciate the very high hurdle we have to overcome in the UK before a corporate entity can be found guilty of a crime.

The UK Government gave a commitment to reform the law and earlier this year consulted on draft legislation. The government has responded to comments on the draft and has now published a bill that is being taken through our Parliament now. I am very hopeful that this legislation will

be enacted and that it will come into force during the course of the next year. It will apply to corruption that takes place after it comes into force. The SFO will have the lead role in my jurisdiction in enforcing the new law in cases of overseas corruption.

There are two aspects of the legislation that are of particular interest to me. The first is the new offence at the corporate level of failing to prevent bribery. The defence to that is that there were adequate procedures to prevent the bribery. I believe that this is a much better and more modern approach than the previous legislation and that it will enable us to be much more effective in tackling corruption at the corporate level.

One of the issues we have now is that corporate advisers are asking what are adequate procedures. They are asking for guidance. We have given some guidance already and there is guidance available as well from the

OECD and other organisations. I am sure that there will be more as the Bribery Bill goes through our Parliament.

What I emphasise to corporates and advisers though is that we are not looking at this as a box ticking exercise.

The culture needs to be set from the top. Members of the corporate need to know that the corporate is committed to ethical standards of business and that executives at the most senior levels are role models for ethical business conduct.

The other provision in the Bribery Bill is one that will give me jurisdiction in respect of foreign corporates with some UK business presence where those corporates are involved in bribery anywhere in the world. This creates a level playing field and ensures that ethical corporates in the UK will not be disadvantaged by the activities of those elsewhere who seek to derive a competitive advantage through corruption. I personally believe this to be very important because it will enable us to support our ethical

corporates. These will be very difficult cases and I anticipate that they will be cases we deal with by way of coordinated action with our international partners.

I know that some foreign corporates are worried about the impact of being brought within a new UK Bribery Act. My response is that there is no need to be worried if the corporate is committed to business ethics and has a visible anti-corruption culture. If though they use corruption as a way of taking business from ethical corporates then I believe that they deserve and will get no sympathy.

Another approach to the criticisms made against us has been vigorous enforcement action. Let me give you some examples. We prosecuted a major UK bridge building company recently that had been involved in corruption in Ghana and Jamaica. The company pleaded guilty and were sentenced in September. It was the first corporate

conviction for bribery we have achieved and a major landmark in our jurisdiction.

We have also reached civil settlements against two other corporates, Balfour Beatty (for financial irregularities in an offshore subsidiary) and AMEC. Something that I noticed about these cases was the public and media reaction to the announcements. The corporates came out of this very well. They were seen as having behaved very responsibly in bringing the issue to us and in taking steps through culture change, monitoring and restitution to ensure that it did not happen again. This demonstrates to my mind that behaving ethically is good business in the modern corporate world.

We are encouraging more corporates to come and talk to us about bribery that they uncover and we have set out the ground rules for this engagement. These are contained in our guide for practitioners. I am very pleased

to say that this publication (which you can read on our website) has been very much welcomed. There is a lot of interest in it. A number of very well respected practitioners in the UK and abroad have commented favourably on it. We are planning to publish updated guidance when as I hope and expect the UK Bribery Bill is enacted. I am currently considering the comments we have received on our guide and I am sure that many of these will feature in the updated version.

We have also been taking action at the individual level. I have found it very interesting to see the way that my colleagues in the US emphasise the accountability of individuals. There is a very strong emphasis in the US on resolving issues at the corporate level and then prosecuting the individuals concerned. I have very great sympathy with this and believe that this is what is needed. I want people in corporates to know that if they become involved in bribery they can be investigated and

prosecuted whether in the UK or another jurisdiction and that it is not just a corporate or regulatory issue. We have to get through to senior people in corporates for example that this matters to them personally and that they themselves could end up by standing in front of a judge and jury or being extradited to another jurisdiction. For example, we are looking at their personal exposure to our very tough money laundering legislation if they do not disclose corruption to us and the corporate continues to benefit from money received following contracts obtained through corruption.

We have some examples of what we are doing here at the individual level. We have two cases, Mabey & Johnson and AMEC, where we are continuing to look at the role of the individuals concerned. We also have one where we have commenced proceedings against a senior individual in a corporate. This involved the former vice-president of De Puy International a UK subsidiary of the major US

corporate Johnson & Johnson. The individual is being prosecuted for his alleged role in paying bribes to Greek health care officials to buy medical devices. There has been extensive press coverage in our jurisdiction and the individual concerned has been sent to stand trial.

There have been two other prosecutions of individuals as well following investigations by our colleagues in the police. These prosecutions concerned the misuse of development grants in various countries. The individuals have been convicted.

We also have one case where we are assisting our US colleagues with the extradition of a UK lawyer who was allegedly involved in helping clients with corruption.

All of this has taken place over the last 12 months. It shows the vigour with which we are tackling corruption and the success that we are having. I believe it shows

very clearly our determination to prosecute those involved where necessary.

Another aspect of our approach is the education agenda. We continue to stress at the highest levels in corporates the need for a genuine anti-corruption culture as part of a commitment to business ethics. We stress, as I have already said, that this is not about filling in forms and ticking boxes but that it is about the lead that is set from the very top of an organisation. People in an organisation will be very quick to pick up whether key executives right at the top actually care about anti-corruption in the same way that they will know whether for example executives really care about the health and safety of employees. Those key executives are responsible for the culture of the organisation and are responsible for demonstrating their personal commitment to the anti-corruption culture. I have to say that I have met senior executives in a number of corporates who fully embody that and represent to me a

gold standard in what is needed. Equally there are some who do not. They need to rise to the gold standard and the SFO is ready to help them with this journey.

But let me say that although we have done a considerable amount of work at the level of large corporates, there remains much to be done particularly for smaller and medium sized enterprises. Engagement with them is more difficult and will usually require the help of intermediaries. We also need to recognise that the resources and capability needed and available in a large corporate will simply not be there in smaller organisations. There are very great pressures on these organisations and I am sure that they are likely to need help. It is only if they are actively seeking to use corruption as a business practice that we need to move from help to vigorous enforcement action to stop them.

Our engagement with corporates has led to discussions about the difficulties of facilitation payments. We have been asked if we would give guidance on the circumstances in which we would take no action in respect of these. Clearly the chances of the SFO prosecuting a small one-off facilitation payment are remote. On the other hand this can quickly become a settled business practice. Work on the international level shows the damage to societies where these payments flourish. And I am aware of the strong lead set by ethical corporates in ensuring that they have zero tolerance for these payments. I believe that this is the right ethical approach but I do not under-estimate the difficulties in getting to that culture and ensuring that it happens.

There is considerable interest in finding the right solution to the problem of facilitation payments. I believe it is something that needs to be addressed internationally. I am very interested therefore in the work being carried out

by the OECD and the report issued on 26 November this year.

And so I believe that in the UK we are making a considerable impact as a result of the changes that we are making and the vigorous enforcement action we are taking. I see increasing recognition as well of the contribution the SFO is making. For example, we have had an external review recently conducted by three very eminent outsiders who consulted many of our stakeholders at senior levels. All were positive about the changes in the SFO.

I told you earlier that I was deeply moved by the letter I received from the teacher in a country in Africa. A key priority for me in my early months as Director of the SFO was to enhance our anti-corruption work and I take a great deal of personal satisfaction from the fact that, within a few months of taking up post, I had increased our anti-corruption resources by 50%. We have also recruited a

new head of anti-corruption, with a distinguished reputation in this area of work nationally and internationally. He injected new pace into our existing cases and we have since had the many notable achievements I have mentioned. Just as importantly we have also passed on our skills and knowledge to colleagues in other jurisdictions. For example, working with OLAF, we helped colleagues in Uganda achieve their first conviction for corruption. Organisations often talk only too glibly about 'sharing best practice' and 'sharing knowledge'. This example demonstrates to me how 'management speak' can turn into real action and change people's lives for the better.

But there remains very much still to do. The key to this has always seemed to me to be working with our colleagues internationally – as our experience of working in Uganda shows. There is a very real community of those dealing with anti-corruption in all of the various jurisdictions in the

world. I certainly find a lot of help and support (as well as well merited and constructive criticism) for what we do. The support is very real. It is an acknowledgement that this area is very difficult but that it is one of the key challenges that faces us in modern society. It is something that involves us all, that involves our sharing experiences and in working together on issues and cases. The fact that we do so sends out the clearest possible message to those involved in corruption in whatever jurisdiction that the authorities of the very numerous countries represented here in this prestigious conference are totally resolved to work together in order to be able to address this crucial question and to help us produce a better world.

Let me conclude with the words of the very distinguished Commissioner for the Independent Commission against Corruption here in Hong Kong the Honourable Dr Timothy Tong. Some words from him sum up what this is about. He has said:

“The ultimate success against corruption, however, hinges on the public maintaining high ethical standards in all dealings, showing zero tolerance for corruption, and reporting it whenever it occurs”.

Thank you very much for listening to me. It is a privilege to be here and I look forward to the discussions and presentations over the next few days.