Doing good business: Challenges of corruption and accountability

Tuesday 10 May, 9:00 – 10:30 am, House of Commons

Hosted by:
The All-Party Parliamentary Group on Anti-Corruption
The All-Party Parliamentary Group of the Rule of Law
Traidcraft
Amnesty International
CAFOD
The CORE Coalition

Chair, Catherine McKinnell (MP Newcastle North, Chair of APPG on Anti-Corruption)

The Chair referred to the context of the London Anti-Corruption Summit on 12 May and the extent to which this provides an extraordinary and rare opportunity to make advances against all forms of corruption. Given the public profile of the Panama Papers leak, issues of tax avoidance, evasion and transparency are likely to dominate the agenda. However, it is also an opportunity to look at corporate practice and business accountability.

The Chair referred to two studies, the EY Global Fraud Survey and the PWC Global Economic Crime Survey. Both of these provide evidence of the continuing problems posed around the world by money laundering, fraud and tax evasion.

Current laws do not offer the right tools for prosecution, and are therefore an ineffective deterrent to these kinds of behaviours.

It is important that the UK does not continue being seen as a haven for corrupt money, and it is hugely welcome that the Prime Minister is bringing forward a Section 7 style offence for tax evasion.²

PRESENTATIONS

Rt Hon Sir Eric Pickles MP for Brentwood and Ongar and UK Government Anti-Corruption Champion.

Sir Eric said that over the coming week there will be radical announcements regarding the UK’s anti-corruption efforts to coincide with the Anti-Corruption Summit, and that these

2 Refers to Section 7 of the Bribery Act 2010, which allows ‘failure to prevent’ bribery as a grounds for prosecution.
should please many of the campaigners in the room. The UK is viewed as a home of clean business and financing – it is important that we take steps to protect this. The Prime Minister is determined to lead change in this area, and that attitude is mirrored globally. France and Japan are among countries that are focussed on the anti-corruption agenda. The global mood is that corruption has flourished for too long – this is unacceptable since corruption is not simply an economic crime: it wrecks lives and threatens national security.

Kleptocrats like to put their ill-gotten gains in the UK, and we must ensure that we do not work hand-in-glove with these people, and that the UK does not offer a safe, comfortable environment for criminality and money-laundering. That means no backsliding: kleptocrats must not be able to dump their ill-gotten gains and see out their twilight years in London.

There is a real drive towards ensuring openness and transparency in contracting and procurement. This information should be published online and in machine-readable format. The UK have already shown leadership in this, making transparency a key theme of their G8 presidency in 2013.

Three things that the government is doing:

- Pushing for a register of beneficial ownership to be made public
- Bringing in ‘failure to prevent’ legislation to tackle tax evasion
- Establishing a £10 million fund to address tax fraud and ensure authorities are adequately resourced

He wants to ensure that the word ‘kleptocrat’ falls out of use.

David Green CB QC (Director of the Serious Fraud Office)

David Green made the case for the reform of the UK’s corporate criminal liability laws. To prosecute a company at present requires the fulfilment of an ‘identification principle’ – that is, that any prosecutor must identify an individual who was the ‘controlling mind’ behind a crime and therefore can be prosecuted as complicit in any criminality. This is often impracticable in large multi-national companies with complicated structures of accountability; it may be somewhat easier in SMEs.

This status quo has been blown open by Section 7 of the Bribery Act, which instead looks to prosecute company directors for the ‘failure to prevent’ bribery through a lack of appropriate counter-measures.

That economic crimes such as fraud, false accounting and money laundering are still beholden to the identification principle is problematic. This leads to a situation in which it is in the best interests of senior executives to avoid operational knowledge. Also, it is plainly illogical to have different legal approaches for fraud and bribery.

Indeed, our inability to prosecute companies is amply demonstrated by the Libor trial. The individual was employed in the UK by two banks, but since the UK courts couldn’t prove the complicity of senior managers they avoided being prosecuted. The USA prosecutors took the lead and the US Treasury ended up collecting the $700 million fines.

David Green therefore proposed the introduction of a new offence: the failure to prevent economic or financial crime. This would improve corporate conduct and lead to overall

3 [http://www.bdo.co.uk/services/tax/business-edge-2016/beneficial-ownership-register-opens-on-6-april-2016](http://www.bdo.co.uk/services/tax/business-edge-2016/beneficial-ownership-register-opens-on-6-april-2016)
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benefit for the economy. Arguments against this often centre on the regulatory burden that it might place upon businesses. However, if business practices were refreshed in response to the Bribery Act there should be no need for a further refresh since the correct procedures should already be in place.

Liz May, Head of Policy and Advocacy, Traidcraft

Liz May introduced Traidcraft, a medium-sized UK plc with a turnover of £11m and experience of trading fairly with producers from over 30 countries. The various voluntary initiatives that Traidcraft has signed up to (including the ETI and responsible purchasing initiatives) have had mixed success, and there is a persistent minority of companies based in the UK that continue to be implicated in serious harms in the developing world. This makes it more difficult for companies that do the right thing to compete, and creates an uneven playing field.

Ideally companies would be prosecuted in the countries where the harms occur, but this is not always possible.

UK criminal law is deficient, owing to the identification principle and to inability to hold companies in the UK to account for decisions that create harms in other countries.

Traidcraft’s two proposals for action:

1. Develop a ‘section 7-style’ offence that would cover serious crimes that a company can benefit from and which it could reasonably be expected to take steps to prevent
2. Update the corporate manslaughter act so that deaths which occur in other parts of the world would be covered

These two single changes would go a long way to prevent situations like the collapse of the Rana Plaza garment factory in Bangladesh. The latest Edelman survey found just 35% of those in low income brackets say they trust companies to do the right thing and when asked what companies could do to restore trust the top two answers were pay taxes and ‘behave responsibly’.

QUESTIONS AND ANSWERS

• Sir Edward Garnier MP expressed concerns about the achievability of a failure to prevent non-economic crime and the damage of over-promising and under-delivering. There is a potential difficulty where companies contract overseas and therefore the chain of accountability is broken.
• Dominic Grieve QC MP, Chair of the All-Party Parliamentary Group on the Rule of Law, noted the difficulty of gathering evidence of harms overseas and some issues with extraterritoriality.

Liz May pointed out that that Corporate Manslaughter Act covers contractors and sub-contractors so Traidcraft’s proposals are not beyond what has been done before and also

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4 The Business and Human Rights Resource Centre show 303 allegations against 127 UK-linked companies 2004-2014
that, as the management ‘failure to prevent’ happens in the UK, the evidence needed to prove it, is also in the UK.

- Damian Collins MP asked what the Government were planning to do about corruption in sports, an area where watchdogs and anti-corruption bodies are chronically underfunded, especially in contrast to the bodies that they are intended to monitor.

Sir Eric said that corruption in sport will be the subject of a session at the Anticorruption Conference.

- Nick van Benschoten (PwC) said that his studies have found that, whilst 90-92% of companies globally have some sort of ‘Code of Conduct’ these are often imperfectly applied. So the problem is one of implementation, and this allows economic crime to increase.

- Lord Hodgson of Astley Abbotts noted the possible effect of a new act on SMEs and registered concern that any regulation would have a ‘chilling’ effect on the willingness of SMEs to trade abroad since it’s not always simple to guarantee the behaviour of an overseas agent.

Liz May responded by recognising that Traidcraft has had to comply with the Bribery Act by putting proportionate safeguards in place. She did not think such requirements were excessively onerous given the importance of contributing to the fight against bribery.

David Green said that, as an enforcer, it was easier to prosecute small businesses as they often have a simpler structure that makes it easier to identify the ‘controlling mind’. By contrast, larger businesses may have boards and sub-boards. Therefore, the status quo actually disadvantages SMEs. He also said that if a business cannot guarantee that their overseas agent isn’t bribing then it should not be conducting that business.

Sir Eric agreed, saying that by limiting the improper conduct of larger companies the situation will be made easier for small companies.

- Lucy Graham of Amnesty International pointed out that the Trafigura case (the 2006 incident of dumping toxic waste in the ocean off Ivory Coast) was orchestrated from the UK. She observed that, in addition to the gaps in legislation, there was a problem with adequately resourcing existing enforcement agencies.

- Nicole Piche of the APPG on Human Rights said that she was pro-greater transparency and asked about the difficulty of introducing transparency in the arms/defence industries.

- Baroness O’Neill asked about whether a new act might create perverse incentives through which companies would be more likely to would move towards greater use of contracting arrangements.

- The Rt Reverend Michael Doe asked how aggressive tax avoidance has to be before we prosecute it.

- Simon Kirkland (Christian Aid) asked Eric Pickles about the UK’s plans to publish a register of beneficial ownership covering overseas territories.

- Lord Wallace registered concerns surrounding extraterritorial jurisdiction, and whether it would be necessary to work with Luxembourg and Switzerland to ensure that anti-tax evasion efforts were coordinated.

Sir Eric said that business is global, and regulation should reflect that.
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- Ed Long from Arachnys (a technology company specialising in compliance software) asked about whether there was any need for action on an EU level.
- David Chivers QC (Erskine Chambers) asked about the responsibility of company directors. Could they be made subject to disqualification if found to have failed to introduce adequate procedures to prevent the paying of bribes? He suggested that this could be done relatively simply.
- Danielle Reece-Greenhalgh (Corker Binning) mentioned a potential problem in Government proposals on tax evasion – that of dual criminality, whereby overseas tax evasion needs to be a crime in whichever overseas territory it occurs as well as in the UK.
- Louise Delahunty (Cooley) compared the UK to the USA and asked why the UK’s prosecution bodies were relatively under-resourced, noting the need to complement promises made at a summit with suitable levels of resource.

Sir Eric replied that the USA should consider reforming the lax tax laws of Delaware and Nevada. David Green said that blockbuster funding model meant that resourcing the SFO was not problematic. He also agreed that there was a need to focus upon the role of directors.