

Speech: Solicitor General's speech at Cambridge Symposium on Economic Crime

It is a pleasure to have the opportunity to speak to you today, on the first morning of what is remarkably the 35th Cambridge Symposium on Economic Crime.

Firstly I thank Professor Barry Rider for his invitation and his ongoing efforts in making the symposium happen each year, and the organisers and sponsors for their support for this event.

This is an important event in bringing together people from all disciplines in promoting understanding and addressing the challenges of economic crime faced across the world.

I last spoke at the Symposium two years ago and it is clear that the nature and scale of economic crime has continued to change in that time and with that the responsibility of addressing economic crime has fallen further and wider than ever before.

I am pleased to see that the programme for this event looks to address many of the new challenges we are facing.

As Solicitor General, I am one of the Law Officers for England and Wales, part of our function includes superintending the Crown Prosecution Service and Serious Fraud Office and I also work with colleagues across government in the fight against economic crime and corruption. Addressing this threat is a government priority, so I am very pleased to be here again, to talk about the threat and how we are dealing with it.

This year's Symposium addresses the question 'Preventing and Controlling Economic Crime in the modern world – whose responsibility and are they really up to it?' It is an important question that we constantly need to be asking ourselves and addressing it will make our response even more effective. The fact is that addressing economic crime is no single body or person's sole responsibility. A joined-up and coordinated response to the threat across the private and public sectors and the criminal justice system, as ever, is the only way to ensure we are 'up to the job'.

I want to start by saying a little bit about the threat faced today from economic crime, and how the UK Government, working together with our international partners, is addressing it.

As we all know, the damage caused by economic crime and corruption affects everyone in society. It threatens prosperity and the rule of law and public confidence in our ability to uphold these values. It threatens the reputation of each nation it affects. It threatens the continuance of welcome international inward investment. In short, it threatens the economic future for all of us.

It encompasses a wide range of unlawful activity and its impact has a broad

reach, for example, by reducing the value of investments and pension funds, or increasing the prices people pay for goods. It crosses over into other serious crime such as organised crime and terrorism.

The corollary of a vigorous free market economy is an equally vigorous system of enforcement and the punishment of those guilty of wrong doing.

Today, developments in the way we do business, digital technology and globalisation mean that economic crime is as much a threat as ever.

That said, we are making progress in our response to economic crime and I want to celebrate the recent successes we have had.

The investigation and prosecution of economic crime and related asset recovery is as important as it ever was as a tool for deterrence and justice, which in turn forms part of control and prevention. This is not possible without the cooperation of prosecutors, law enforcement and others across the UK and internationally.

Since I last spoke here, we have seen significant prosecutions in relation to economic crime from both the CPS and SF0.

The CPS is dealing with new challenges due to significant changes in its case profile which has seen an increase of fraud and forgery cases by around 31% since 2011, from 14,177 in 2010/2011 to 18,684 in 2016/2017, much of which involves digital technology. It has responded to the threat, maintaining a conviction rate of 86% and above throughout that period.

In 2016-2017 the CPS Specialist Fraud Division prosecuted 6,283 cases and secured 5,452 convictions. Of these convictions, 5,082 were the result of guilty pleas reflecting the quality of the cases that we are bringing to prosecution – this of course is a joint effort between investigators, prosecutors and wider.

The SF0 continues to deal with some of the most high profile cases in this field. They have opened 12 new investigations in 2016-17 and brought charges against 25 companies. 17 defendants were convicted in seven cases, giving a conviction rate by defendant of 89%.

Looking at the cases that are being dealt with, the recent conviction in relation to HBOS by CPS involving £234m; the first prosecutions for rate rigging offences relating to LIBOR by SF0; convictions for offences involving bribery of foreign officials by both, as recognised in this year's OECD report; and most recently SF0 charges brought against Barclays PLC and four individuals, have all been important in demonstrating that economic crime will be responded to with the seriousness it requires.

On asset recovery, we continue to seek to improve our response. The desire to ensure that crime doesn't pay is something that we should all be committed to.

In 2016-17 the CPS recovered £80.1 million from proceeds of crime. CPS are piloting a 'one-stop-shop' approach to asset recovery, from which early

indications show good progress. The levels of access to, and support given by, proceeds of crime specialists to prosecutors means that the full range of provisions contained in the Serious Crime Act are being fully utilised, maximising asset recovery and simplifying enforcement.

The SFO also continue to invest in recovering the proceeds of crime and obtained financial orders, including standalone compensation orders, totalling £25.3m, with payments received totalling £20.1m.

Asset recovery continues to be a challenge that we must focus on. As new threats from serious and organised crime develop and emerge, the principle of ensuring that crime doesn't pay (or go on to fund other crime) remains critical.

We have also seen evidence of the value of Deferred Prosecution Agreements as an effective tool in our armoury with high profile agreements put in place by the SFO with Rolls Royce amongst others.

So what are we doing differently and how has our response adapted to meet new challenges? Importantly, where do we need to adapt further – because there is always more that can be done.

The introduction of Deferred Prosecution Agreements has been a welcome tool for prosecutors. DPAs had just been introduced when I last spoke here and now we are seeing them in action with the conclusion of the first four DPAs by the SFO, a significant development for the UK. These included:

- the landmark first DPA with Standard Bank, where the counterparty, Standard Bank Plc, was ordered to pay financial orders of US\$25.2m and has paid the Government of Tanzania a further \$7m in compensation;
- a second Deferred Prosecution Agreement (the company cannot be named due to reporting restrictions) was concluded last year and as a result the company in question will pay financial orders of £6.5m to the UK. The company was the subject of indictments including conspiracy to corrupt, bribe and failure to prevent bribery; and
- you will all be aware of the DPA with Rolls Royce. This was the largest single case ever taken on by the SFO, involving some 70 SFO staff and 30 million documents. The conduct spans three decades and took place across seven jurisdictions. The SFO conducted its investigation with trusted partners around the globe. The UK part of the resolution amounted to over half a billion pounds and represents the highest ever enforcement action against a company in the UK for criminal conduct.

As well as a tool for prosecutors, DPAs help encourage the private sector to work more closely with the criminal justice service. They avoid long and costly trials.

A DPA can also help to avoid repeat offending through the implementation of monitoring requirements and anti-corruption compliance measures on a company.

From the company's point of view, a DPA affords more predictability by offering a shorter and less costly proceeding. Further still, the

implementation of a compliance program could limit a company's exposure to criminal risk. I will go on to talk about the importance of compliance measures.

As recent case results show, we can now see the impact of another tool recently introduced: the Failure to Prevent offence under section 7 of the Bribery Act.

Through the Bribery Act 2010, the UK has introduced some of the world's strictest legislation on bribery, making it a criminal offence for a company to fail to prevent a bribe being paid. The Act's extra-territorial reach allows the UK to tackle corruption beyond its borders to play its full role in the global fight against corruption. In no small part due to this Act, the UK is recognised as one of four active enforcers of the OECD's Anti-Bribery Convention.

3 of the successful DPAs mentioned have included Failure to Prevent offences on their indictment as well as one guilty plea to the offence in the case of Sweett Group. So we can see the teeth of this offence.

The current 'failure to prevent' bribery legislation has put companies of all sizes on a level playing field where in the past, the reliance on the identification doctrine may have made it easier to prosecute smaller companies, than to prosecute larger, more complex ones.

The identification doctrine that currently exists for other economic crime has made it difficult to attribute criminal liability to large corporations where one cannot demonstrate the 'controlling mind' of the individuals involved. This has meant that it has not always been possible to bring corporate bodies to justice for the criminal acts of those who act on their behalf and for their benefit.

It is also worth noting that the weaknesses in our current law result in other jurisdictions holding British companies to account when ours has not, as in the LIBOR case. This has clear implications for the reputation of our justice system.

Our current system of limited corporate liability incentivises a company's board to distance itself from the company's operations. In this way, it operates in precisely the opposite way to the Bribery Act 2010, one of whose underlying policy rationales was to secure a change in corporate culture by ensuring boards set an appropriate tone from the top.

The threat of conviction is greater under 'failure to prevent' and as a result, companies might be more likely to not just enter into DPAs but also, crucially, to take the actions necessary to discourage such offending within the organisation in the first place.

In recognition of these arguments and following the success under the Bribery Act, the Government consulted on draft legislation and guidance for the new criminal offence of corporate failure to prevent the criminal facilitation of tax evasion. Following that consultation, a criminal offence for corporations

who fail to stop their staff facilitating tax evasion – both in the UK and overseas – was introduced under the Criminal Finances Act.

In addition, the Government completed its call for evidence on corporate criminal liability as part of our consideration as to whether we should further extend failure to prevent beyond bribery to other economic crime, such as money laundering, false accounting and fraud. We are now considering the evidence submitted as part of that call for evidence.

The introduction of the Criminal Finances Act, once fully implemented, will present additional opportunities to significantly improve our response to economic crime.

The Act, which received Royal Assent on 27 April 2017, gives law enforcement agencies, and partners, enhanced capabilities and greater powers to recover the proceeds of crime, tackle money laundering, tax evasion and corruption, and combat the financing of terrorism.

Measures included in the Act expected to be phased in from Autumn 2017 include:

- the creation of Unexplained Wealth Orders, which will mean those suspected of corruption or other serious crime will be required to explain the sources of their wealth, helping to facilitate the recovery of illicit wealth and stopping criminals using the UK as a safe haven for the proceeds of international corruption;
- the previously mentioned new criminal offences for corporations who fail to stop their staff facilitating tax evasion, this will hold corporations to account for their employees' actions, ensuring robust global compliance regimes; and
- enhanced seizure and forfeiture powers, allowing for the seizure of monies in bank accounts, or where criminals store their profits within other items of value, sending a clear message that we will not stand by and allow the UK to be used as a place to launder criminals dirty money.

As part of measures to implement the act, we have just concluded a 4-week consultation on the Codes of Practice that will help law enforcement officers confiscate valuable items and other assets acquired using the proceeds of crime. The Codes will include updated guidance on the exercise of investigation powers POCA to include new and extended powers relating to unexplained wealth orders and disclosure orders; and updated guidance for prosecutors on investigation powers, including who can apply for orders, time limits in conducting searches and the seizure of materials.

In efforts to improve partnerships with businesses, changes are being made to the Suspicious Activity Report – or SARs – regime, allowing regulated companies like banks to provide critical intelligence to our law enforcement agencies.

The Act therefore recognises that responsibility for preventing and controlling economic crime goes wider than the criminal justice service. And we have already seen progress made in the way in which the criminal justice

sector interacts with the private sector as an acknowledgment of this.

Joint working between the private sector and criminal justice service has improved through the establishment of initiatives such as the Joint Fraud Taskforce, set up last year by the Home Secretary, which brings together banks, government and law enforcement agencies into a new, innovative partnership working collectively to tackle fraud.

The Taskforce has had a number of successes, including the closure and heightened monitoring of thousands of bank accounts linked to fraud; and the arrest of prolific criminals with many more located as a result of a nationwide campaign. This initiative was recently praised in the National Audit Office's report into Online Fraud.

This Taskforce builds on the concept of the Joint Money Laundering Intelligence Taskforce formed in 2015, which has also proved its worth.

The JMLIT has been set-up in partnership with the financial sector to combat high end money laundering and has been developed with partners in government, the British Bankers Association, law enforcement and more than 40 major UK and international banks under the leadership of the 'Financial Sector Forum'. There have been significant successes in supporting law enforcement operations.

The role of regulators and supervisors is also important to the prevention of economic crime. The threat of money laundering continues to be significant; research shows that serious and organised crime costs the UK at least £24bn a year – this is a global issue as well – the IMF has estimated that money laundering globally represents between 2% and 5% of GDP. This demonstrates the increasing links that we are now seeing between economic and organised crime.

We are looking at ways to combat this and the Treasury has announced plans to create an oversight body to oversee professional body anti-money laundering supervisors. This is the latest step to crackdown on money laundering and terrorist financing, working in partnership with the private sector to tackle these threats and raise standards across the supervisory regime, ensuring supervisors and law enforcement work together more effectively to help identify and tackle criminals.

Compliance is an important tool in the prevention of economic crime and this goes further than the financial sector. Fraud against the public sector continues to be an important issue and you will have seen the impact of the recent cyber-attack on the NHS. Many of the cases that the CPS deals with relate to fraud within the public sector, demonstrating that this is still very much a part of economic crime. Ensuring that we have the protections in place to protect our public services is important and an issue that I know is felt around the world as indicated in Transparency International's corruption index. There is more to be done here.

More widely, companies have responded internally and are making efforts to address the threat, evident by their increased focus on regulatory

compliance.

The introduction of the Bribery Act's 'failure to prevent' offence has also prompted companies to review their compliance systems and cooperate even more with law enforcement. The use of DPAs, as I have mentioned, is also an important tool in promoting and enforcing good governance and compliance. Many often overlook the compliance conditions attached to DPAs. In Standard Bank plc this included "At its own expense, commissioning and submitting to an independent review of its existing internal anti-bribery and corruption controls, policies and procedures regarding compliance with the Bribery Act 2010 and other applicable anti-corruption laws". This is an important tool for prevention.

To fully address the threat requires continued effort not only from regulators and in-house compliance, but also a change in corporate culture. Often, employees might not even realise that they are colluding in unlawful acts, examples need to be set and education provided from the top down to prevent further abuses. This is something that we must work together to achieve.

And we are getting there, corporates are becoming more aware and there has been an increase in self-reporting by corporates to the SFO since DPAs were introduced. But of course there is always more that can be done.

The challenge is so great that it cannot be tackled by the regulators or the criminal justice service alone or in isolation from the rest of the world.

On an international scale, we have seen commitment to tackling economic crime and corruption through the Anti-Corruption Summit hosted in London in 2016.

The Summit resulted in the publication of the first ever Leaders' declaration against corruption; a communiqué setting out agreements that are common across all countries; and a set of national statements setting out what individual countries are doing to tackle corruption. This included a commitment to implement measures to expose corruption, including through the launch of a public central register of company beneficial ownership information for all companies incorporated in the UK. The UK's Register of People with Significant Control went live in June last year.

Progress is being made further afield. Last year, the UK concluded bilateral arrangements with the Crown Dependencies and six Overseas Territories with financial centres on the exchange of beneficial ownership information. Under the arrangements, UK law enforcement and tax authorities will have near real-time access to information on the beneficial owners of corporate and legal entities incorporated in these jurisdictions. These arrangements will deter criminals from hiding behind anonymous "shell" companies, and will make a significant contribution to the ability of law enforcement authorities to investigate bribery and corruption, money laundering and tax evasion and other forms of serious and organised crime.

In addition, the Crown Dependencies and the Overseas Territories have committed to the development of a global system for the systematic exchange

of beneficial ownership information. This initiative – launched by the UK, Germany, France, Italy and Spain – now has over 50 jurisdictions committed to it, with a mandate from the G20 for the OECD to work on its development. Under the initiative, countries would exchange with each other, on a periodic basis, all the information on the beneficial ownership of companies, trusts and other entities and arrangements set up in their jurisdictions. This access to wider beneficial ownership information will be a ground-breaking change in unravelling the complex cross-border chains used to hide wealth by criminals.

The Summit has also instigated a cross-government anti-corruption strategy for the UK, currently being developed, which will set out our long-term vision for tackling corruption. This will sit alongside the Government's existing Serious and Organised Crime Strategy which also looks to address economic crime and asset recovery.

At the London Summit 22 countries committed to introduce new asset recovery legislation, and the UK, through the Criminal Finances Act, has done just that.

Enforcement action in foreign bribery or international corruption cases also creates an opportunity to provide redress. The UK, through the SFO, CPS and NCA, has developed general principles which aim to ensure that overseas victims of serious economic crime, including bribery and corruption, are able to benefit from enforcement action of any kind and ensure such compensation payments are not subject to further corruption. Victims could include overseas governments, public bodies and individuals.

All of this demonstrates the UK's excellent relationships with partners across the globe in dealing with corruption and economic crime. And I am pleased to see so many international representatives taking part in this event. We continue to focus on improving both response and cooperation, nationally and internationally – one cannot be done effectively without the other.

As part of the international response, CPS deploy a network of Asset Recovery Advisors and Specialist Prosecutors overseas who work with other agencies to address the threat at source.

This work will be bolstered by the new International Anti-Corruption Coordination Centre, which helps police and prosecutors work together across borders to identify and prosecute the corrupt and to seize their assets.

The UK has also committed to work with others to establish a Global Forum for Asset Recovery. The Forum demonstrates our continued commitment to asset recovery and will bring together governments and law enforcement agencies to recover stolen assets.

The forum is an important part of strengthening global co-operation, between the countries that have had assets stolen and the countries where those assets are hidden. It will help ensure law enforcement on both sides drive forward vital work to return illicit funds. We will co-host the inaugural

meeting of the Global Forum with the United States in December.

So, you can see that there is much work underway and many of you here will be involved in that work. And although I am confident we are responding and adapting to the threat in many ways, it is by no means diminishing and the impact on its victims remains substantial.

It is only through a joined-up, coordinated response based on mutual cooperation between criminal justice partners and the private sector, across the UK and internationally, that we can ensure that we tackle economic crime at all levels.

It is all of our roles to do this and the recent developments that I have outlined show that we are responding to the threat in the right way. And by continually assessing our response we have demonstrated the commitment needed to ensure that when it comes to economic crime, we are up to the challenge.