

Commonwealth Conversation

*Promoting Economic Resilience through Commonwealth
Cooperation:*

Best Practice in preventing bribery

Meeting of UK-based High Commissioners

Report: April 2017



THE ROYAL COMMONWEALTH SOCIETY

About this Report

The Royal Commonwealth Society, in partnership with the Serious Fraud Office (SFO) in the UK, convened the latest in its series of anti-corruption roundtables on the 11th April 2017, kindly hosted at The Honourable Society of the Inner Temple. The guest speaker was Ben Morgan, Joint Head of Bribery and Corruption at the SFO.

Introduction

The Serious Fraud Office (SFO) investigates and prosecutes the topmost tier of serious and complex fraud and bribery. It is unique by acting as both an investigator and prosecutor allowing it to have access to all of the evidence. In this context bribery is to be understood as 'foreign commercial bribery' in essence bribery by companies with links to the UK carried out abroad. Therefore, the SFO's work is of importance to Commonwealth countries.

Damage caused by bribery

Mr. Morgan explained that it is now widely realised and accepted that that bribery distorts markets and trade, harms consumer interests, preserves economic inefficiency, takes money out of development and services, preserves kleptocracy, undermines democracy and harms the poorest most. He said the SFO often work closely with its sister agencies overseas and in the Commonwealth, in particular, of which he was grateful.

The SFO identifies high risk sectors for foreign bribery as large infrastructure projects, the extractive industries, engineering, the aerospace industry, and pharmaceuticals.

Kenya Example

Smith and Ouzman: a company that specialises in printing secure documents such as ballot papers, paid bribes to decision makers in Kenya. SFO secured the return of corrupt money to the Government of Kenya which was then was used to purchase a fleet of ambulances.

Tensions between prosperity and crime

Mr. Morgan sets out the ongoing tension between enforcing against serious economic crime on the one hand, and the swift pursuit of prosperity by any means necessary on the other. The argument goes that companies pay bribes to enable them to win business, to extend their market share, to employ more people - to pay more taxes, even. Moreover, a national infrastructure project undermined by corruption still allows a government to secure the investment and a public good like a road, bridge, or power station.

He makes clear that as superficially attractive as that argument at first seems, it is of course quite wrong. Honest commerce is a central component to a thriving and prosperous economy – at least, to one that stands any chance of lasting for a sustained period. The SFO acknowledges that prosperity is an important objective, but cannot be at any cost.

Brexit

There will be a period of new market opportunities for businesses as they look to open up trading relationships around the world and within the Commonwealth in particular. In the scramble to take advantage of the opportunities Brexit presents is the aim to do that in the responsible way. Therefore, we should not be in an environment of profit first; compliance second. Or indeed maybe even third, or fourth. The SFO's role in this will be to catch those who allow those standards to drop.

How the SFO can help

One of the ways the SFO can help Commonwealth countries is by repatriating the proceeds of overseas corruption to the victims of those offenses. It isn't straightforward and isn't possible in every case. There are general principles the SFO considers:

- a. The question of compensation or other court ordered payment mechanisms in all relevant cases;
- b. If compensation or other court ordered payment mechanisms are appropriate, it will seek to use them;
- c. In cases where it can't do that it will consider whether the enforcement action nonetheless presents an opportunity to make a payment to the victim in some other way; and
- d. It will proactively engage with affected countries where operational circumstances permit.

It has a number of mechanisms for doing so:

1. After a Criminal Conviction through a compensation order or confiscation order;
2. In a Deferred Prosecution Agreement. This is a voluntary alternative to adjudication in which a prosecutor agrees to grant amnesty in exchange for the defendant agreeing to fulfil certain requirements;
3. Civil proceedings by demonstrating possession of illegal benefits from which compensation may be paid; or

4. Voluntary reparations – rare but is possible.

Standard Bank in Tanzania example

A case involving Standard Bank, an English PLC and its sister Tanzanian company – StanBic. These banks jointly raised \$600m on behalf of the Tanzanian Government. An intermediary was introduced to the transaction by Stanbic officers. This intermediary was owned by present and former government officials who performed no identifiable function, yet received a 1% fee which amounted to \$6m. It later withdrew that fee in cash. This was done with the knowledge of a senior Stanbic officer. The funds were never traced after that. This meant that the Government of Tanzania received \$6m less than it should have done and also had to pay interest on the original amount which added a further \$1m to the losses.

The SFO was able to clearly identify and quantify the loss so a direct compensation order was made of \$7m. This sum was then returned to the state of Tanzania.

Expectation management

Mr. Morgan made clear that quantifying loss in a bribery and corruption case can be very difficult, so it will not happen every time. Complications include the situation where there is no evidence of:

- a sum deducted as in the Standard case, or
- inflated contract prices, or
- a substandard or unwanted product.

How you can help the SFO

What the SFO request is the support from Commonwealth countries when it is conducting its investigations, and these governments ongoing support when it is prosecuting. At times, the SFO receives little support. If the SFO could secure help right at the beginning it gives the SFO a better chance of winning the case and the potential of compensation payments.

Mr Morgan encouraged Commonwealth governments to help set up good quality information sharing protocols with the UK to ensure that the whole cycle of corruption is addressed. For the SFO the full cycle is the paying corporate entity, the knowing executives, the facilitating middlemen, and the bribe-requesting decision makers.