



30 OCTOBER 2018

BRIBERY AND CORRUPTION IN THE CITY

HHJ NICHOLAS COOKE QC

This lecture is a personal one. The views expressed in it are my own alone, not that of the judiciary or of any other organisation, to which I may have, or may belong.

Let me place it in context. Sir Thomas Gresham, as a result of whose generosity and vision this lecture is able to be given, died 439 years ago. He had the welfare and the education of the City after his death at the forefront of his mind. He could scarcely have imagined, however, the importance of the City in terms of the life of the Nation in 2018. Because of that importance, but also for the welfare of the City itself, a careful consideration of the causes and consequences of bribery and corruption in the City is much needed. So is an attempt to identify the potential remedies for the problems that exist. This lecture is not another exercise in “banker bashing” or something similar. The vast majority of those who work in and for the City are entirely honest and hard working. I remind my audience that Ignacio Echeverria, posthumously awarded the George Medal this month for his bravery in confronting the London Bridge terrorists was employed by HSBC in its anti-money laundering department. That the perception of the City and those who work there is different to the reality is not unique to the City but is common to other areas significantly impacted by a criminal minority. The economic and wider effects on estates and town centres of well publicised criminal activity are well documented. As is the case with those problematic areas, to dismiss bribery and corruption in the City as purely a matter of perception would be foolish. The damage done by the minority is too serious and the risk of a deterioration too great.

The present Lord Mayor, Sir Charles Bowman, in my respectful view with rare insight, took restoring trust in business as the theme of his Mayoralty, stating at its outset: “I will be challenging business to raise its game – better business trusted by society. All too often business is scored poorly when the public is asked about its role in society. I will look to develop a progressive and lasting legacy to help the City tackle this issue over the coming years.”

It is imperative that the importance of this issue is not allowed to be downgraded with the end of the present Mayoralty. This lecture is intended to make such contribution as I can to preventing that.

This lecture also has a personal context as well as an historical and present-day City context. When I first began to study law, sadly over 45 years ago, an article in the Law Quarterly Review (then as now the journal of choice for the more cerebral lawyer – of which I wanted to be one) was required reading for undergraduates. It was entitled “Pericles and the Plumber” and its author was Professor William Twining, Q.C., whose inaugural lecture at Queen’s University Belfast, delivered on the 18th of January 1967, was that article’s first incarnation. That article contrasted two images of “the lawyer”, the lofty one of Pericles, the lawgiver, the enlightened policy-maker, the wise judge, and the image of the lawyer as a plumber, a no-nonsense down-to-earth technician. I was young. I wanted to be the former. Over recent years, the criminal judiciary has moved more and more towards the latter with an ever-increasing pile of specimen directions, sentencing guidelines and so on. But there are problems with that, chief among them in my assessment being the separation of a trial or appeal judge’s function from the subjective application of society’s ethics, upon his or her personal responsibility, to the human issues before him or her. With the route to the solution so clearly mapped by others, the scope for thinking practically about causes, consequences and solutions is reduced. This lecture provides an outlet for such thoughts.



The themes of this lecture are derived from evidence I heard at the Central Criminal Court. Former judges do not express personal opinions about cases that they tried, and I shall not do that. What I shall refer to is evidence which I heard which started me thinking, in the present context, about bribery and corruption in the City.

First, I tried a case in which a defendant was convicted of sexually assaulting female workers in a City office. The evidence set out a background of conspicuous consumption of alcohol and food and the easy generation of vast profits. The case was widely reported and the damage to the image of the City – or perhaps the confirmation in the minds of many of what the City was like was obvious.

Second, I tried a case in which a defendant was convicted, whilst working for a lending institution, of taking a covert payment – in a sum which “ordinary people” can only dream of – to ensure that loan applications were dealt with favourably. In justifying his actions, the defendant stressed that he had no intention of, and did not secure favourable treatment for the application concerned. He just took the opportunity, in a corrupt world, to take what was available. In any event, he told the court, it was like paying the postman to get your post first in the country where he grew up. Postmen are poorly paid and need a supplement to their income, and everyone gets their letters in the end. When I sentenced this defendant upon his conviction I said that he had lost his moral compass. Depressingly, one commentator said that the surprising thing was that a judge should think that a banker had ever had a moral compass. Further confirmation, I am afraid of the low opinion of the City and its bankers which is so commonly held.

Third, I tried a case in which a defendant was accused of being a party to a tit-for-tat postcode gang murder. In the event he was found not guilty by the jury. He was aged 19 and had he been found guilty he would have faced a sentence of imprisonment for life with a minimum term to be served of around 20 to 25 years. Contrary to popular belief, there is no remission off such minimum terms. He had lived his whole life on the estate where the postcode gang with which he was associated was based. He was asked what attracted him to gang culture. He told the court – money, fast high-end cars, attractive women, designer clothes, the music and the prospect of becoming a rap star. A preoccupation with materialism overwhelming the reality of death and the drug trade which permeate gang culture. The unworthy thought crossed my mind that apart from the type of music he might have considered the City.

These cases and others caused me to think about the connection between the importance or lack of importance of ethics in our society and subcultures (and the City is just as much a subculture or collection of subcultures as the postcode gangs – Glyndebourne or drill music doesn't matter).

Being a judge at the Central Criminal Court gave me a grandstand view of some of the awful consequences of what is wrong with society, but little if any scope to address the causes. Talking to you this evening is a small effort in that direction, at least to the extent of prompting some discussion and thought about those causes.

Being a judge at the Central Criminal Court also, more happily, meant that I was – something for which I shall always be grateful – introduced to the institutions of the City. And it meant that I paid more attention to its profile in the media. Some of that shocked me, and judges at the Central Criminal Court, certainly this one, don't shock easily.

It was widely reported in 2015 that, since the 2008 financial crisis, 20 global banks had paid \$235 billion in fines. All those banks had and have a presence in the City. To give an idea of the scale of those penalties in total, one must think of the size of the annual economy of Portugal. The total fines imposed by the Financial Conduct Authority in 2017: £229,515,303; 2016: £22,216,446; 2015: £905,219,078, and 2014: £1,471,431,800. To put those figures in a domestic context, the City's neighbour, the Borough of Tower Hamlets (to whose members and officers I was recently able to speak about knife crime) spends about £361,900,000 on public services a year, almost half being spent on vulnerable people.

The Prudential Regulation Authority has, of course, also been imposing large fines. Of course, not all these fines were imposed for “corruption”, even in its widest sense, although some were. Ignoring the rules for profit is



however further grist to the mill in terms of perception and helps create the image of a sector which behaves as it pleases. Fines seldom assist rehabilitation and often become regarded as simply a tax on the business. The history of fining prostitutes adequately illustrates that – no ethics, no reputation, who cares about a fine, it only dents the profits a bit, charge more.

One banking story caught my eye. One bank, with a presence in the City, settled proceedings brought against it under the U.S. Foreign Corrupt Practices Act by paying \$264 million in 2016. The bank had been found to have designed a scheme to hire otherwise unqualified Chinese candidates for prestigious investment jobs solely because they were introduced by officials who could give the bank business. The bank concerned even had a “hires v. revenue spreadsheet” to keep an eye on the success of the scheme. The scheme ran over 7 years.

When I read about this, I was using my spare time – what little there was – to try to encourage social mobility as a way of attacking the causes of crime. My own experience as a barrister, Q.C. and a judge persuades me that social mobility and an understanding of the nature of its benefits is a key factor in reducing crime and particularly violent crime. This month, the first study of its kind, undertaken by the University of Manchester and the University of Aarhus, using a research base of 45,000 persons published in the *Lancet* (Public Health) supported the proposition that the chance of children going on to be convicted of violence is almost halved if their family moves from the poorest 20% of society to the next 20% bracket up. As a judge I was against repetition, but I should repeat that - halved. Returning to the story which I mentioned as catching my eye I was more than a little discouraged by it. How pathetic were my small efforts? Why, I thought, is there such unethical behaviour? What can be done about it? Why were such wealthy institutions behaving so badly? Was it always like this?

It is important to remember that there was no golden age. Bribery and corruption have always been present in society and in the City. Some periods have been better, some worse.

A popular story in Medieval times, when more basic trades dominated the life of the City, concerned a baker whose premises caught fire. The baker prayed for help and was told to exhibit all the business's measures. That was done, and a rain cloud miraculously appeared and put out the fire. One of the crowd commented, “Truly, this was a miracle”. Another (perhaps an ancestor of the commentator who found a banker with a moral compass inconceivable) replied, “Yes, a baker with a full set of honest measures”.

The 19th Century had its fair share of banking scandals, for example the unconnected collapses of the Royal British Bank and the Tipperary Bank in 1856, both with Members of Parliament heavily involved. The alleged architect of the Tipperary Bank fraud, James Sadleir fled the country successfully, was expelled from the House of Commons and lived in Switzerland until 1881. He died when shot during a robbery in Zurich. An idea of the stir caused by the collapse of the Royal British Bank can be gleaned from the fact that the then Prince of Wales attended the first day of the trial, sitting next to the Lord Chief Justice, Lord Campbell who presided (As King Edward VII the Prince of Wales was to open the re-built Central Criminal Court which we all know in 1907).

In terms of “there is nothing new under the sun”, I should spend a moment on the collapse of the Glasgow City Bank in 1878. An examination after its closure showed net liabilities of over £6m (about £5 billion today), as well as extensive loans on poor security and over speculative investments. Incorrect reports of gold holdings had been made to the authorities, balance sheets and profit and loss statements had been falsified, and the share price held up by secret purchases of the bank's own stock. So successful was the deception that on the bank's last business day its £100 shares were selling at £236. The directors were arrested and tried in January 1879. All were found guilty and sentenced to terms of imprisonment between eight and eighteen months. Many businesses failed as a result and shareholders were called to make good the bank's losses. The claim of one shareholder who sought to improve his position by arguing that he had become a shareholder through the fraud of the bank's agents was appealed unsuccessfully to the House of Lords (*Houldsworth's Case* (1880) 5 App. Cas. 317).

Turning to more modern times, let me say a few words about Clarence Hatry. I recently entertained a visiting group of City businessmen at the Central Criminal Court and, as I usually did, told them some of its history, with a concentration upon its history of relevance to them. To my surprise, none of them had heard of Clarence Hatry – the prototype of his class of massive fraudster. He had managed to emerge from three bankruptcies successfully



richer. By 1929, his group of companies, General Securities Ltd and others, was vast. However, the Stock Exchange Committee caught him borrowing \$1 million (about \$14,420,000 today) on worthless paper. His business empire collapsed, and he ended up at the Central Criminal Court being sentenced to 14 years' imprisonment (2 with hard labour – in these less humane times that meant the first two weeks sleeping on bare boards and cracking rocks, then sewing mail bags). In happier days he had enjoyed his yacht, racing stable and swimming pools. His health failed, and he was released early after 9 years. He was 47 when he was sentenced by Mr. Justice Avory - a judge with a reputation for severity. Mr Justice Avory was born in 1851, very much a product of what Dr Ian Cawood (in his research into public service ethics and corruption in the Victorian era) has described as a collective, institutional sense of altruism and personal self-denial that proved remarkably tenacious in the culture of British public life until the 1980's. Mr Justice Avory's father, Henry Avory was the clerk of the Central Criminal Court. He would have remembered, and I do not doubt despised the culture of patronage, "jobbery", speculation and related vices which predated the arrival of a more meritocratic public ethos.

Surprisingly, but perhaps making a minor contribution to ethical education, Clarence Hatry's story made an appearance in issue 940 of the once popular children's educational comic 'Look and Learn' on the 26th of January 1980, by which time I suspect the popularity of that publication was waning. The story was presented in an old-fashioned, moralistic way, concluding: "Many thought the punishment too severe. But, like a shop assistant who borrows from the till, they (Clarence Hatry and his co-defendants) had gambled – and they had lost." From that edition of "Look and Learn" to "Grand Theft Auto" (One of the most controversial crime-based video games) took seventeen years, it was launched in 1997. To date it has sold over 250 million units.

The post-war era had its fair share of bribery and corruption – Emil Savundra, sentenced at the Central Criminal Court in 1968 to eight years' imprisonment by HHJ Alan King-Hamilton Q.C., John Poulson, sentenced in 1974 to seven years' imprisonment at Leeds Crown Court and so on and on, right up to date. (Although tried in Leeds, John Poulson had a City connection, Cannon Street Station is one of the corrupt architects buildings - he paid the British Rail Estates and Rating Surveyor Graham Tunbridge (sentenced to 15 months imprisonment suspended and a £4,000 fine) £25 a week for his help with contracts and gave him a cheque for £200 and an £80 suit shortly before the Cannon Street Station contract was signed. No blue plaque recording that bit of City history.

Interestingly, HHJ King-Hamilton Q.C. said of Emil Savundra: "What a man! How could one not admire his spirit?" and in his memoirs included him as a guest at his imaginary dinner party, along with Cleopatra and Dame Edith Evans. My predecessor as an additional judge at the Old Bailey's remark flags up another problem with dealing with bribery and corruption in the City, unlike at least most other criminals its perpetrators can excite a degree of admiration, if from HHJ King-Hamilton Q.C., then from anyone.

So – no golden age of probity in business and the City, I'm afraid. There are however signs that bribery and corruption are increasing, not of course only in the City (or connected with the City, perhaps a more appropriate definition in a globalised and cyberspace criminal environment. Statistics relating to levels of crime are notoriously unreliable. However, it is not possible to dispute the growth of the City as a centre of money laundering and off shore tax evasion over the last few decades. Nor is it possible to argue that cybercrime is not increasing. All the available material points in those directions. That state of affairs is likely, at least in part, to be a product of the truism pointed out by Theodore Roosevelt, "A man who has never gone to school may steal from a freight car; but if he has a university education, he may steal the whole railroad." My thesis is that one necessary way to counter the damage to the financial sector consequent upon its criminal parasites is the promotion of a code of ethics as world class as its profitability. That will not be achieved by accident.

So – what causes bribery and corruption? The answer is, of course, as with all acquisitive offending, greed, unrestrained greed. We are all, potentially, prey to greed. What restrains us is lack of opportunity – not a problem in the City, fear of consequences – a weak restraint in general terms in my experience as a barrister, Q.C. and judge (most wrongdoers do not spend long thinking about being caught) and a code of ethics to which we meaningfully subscribe. It is that last restraint which is the reason why I feel confident that the overwhelming majority of those listening to this lecture are not serious criminals. But what if the code of ethics crumbles and slips away, what then? Traditionally, ethical codes have been linked to religion and a metaphysical sanction. In a multicultural and increasingly secular society can an alternative be found to traditional ethical foundations? Is the increase in bribery



and corruption in the City symptomatic of the erosion of a common ethical code? The fact that there never was a golden age is not anything like proof that a common ethical code did not operate as an effective restraint on bribery and corruption. The fact that a type of conduct is openly condemned by the clear majority does do something to check its spread. There is some benefit to society from hypocrisy. As Rochefoucauld said, “Hypocrisy is the tribute vice pays to virtue”. Given a choice between a measure of hypocrisy and open amorality, I’d opt for hypocrisy every time.

The great religions are united in their condemnation of bribery and corruption. By way of example, Sikhism specifies three duties and five vices. The second duty (Kit Karna) is to earn an honest living. The second vice is covetousness and greed. Islam is full of references to the evil of bribery and corruption. A Hadith of Abdullah ibn ‘Amr is, “The curse of Allah is upon the one who offers a bribe and the one who takes it”.

I could go on and on. The Jewish philosopher Maimonides said, “Lose with truth and right rather than gain with falsehood and wrong” and it was no accident that Jesus Christ was betrayed through a bribe.

The reference to Sikhism provides a clue to the effectiveness of the ethical codes of the great religions – simplicity. Sikhism’s Three duties, Five Pillars of Islam, the Ten Commandments and, at the heart of Christianity, “A new commandment I give unto you, that ye love one another . . .” (John, Chapter 13, verse 34). The language of scripture tends, of course to trump that of the professional handbook. I have conceded that there is hypocrisy – sometimes on a grand scale, but the fact remains that the ethical codes of the great religions have been the best providers of a guide to how to live that we have had. Their simplicity has been an asset.

Legislators are not good at simplicity, but simplicity is an essential attribute for an ethical code – and the existence of a commonly acknowledged ethical code is the most effective restraint against bribery and corruption.

I am concerned that a progressive breakdown in the existence of a common ethical code is dangerous generally, but also in relation to the life and success of the City. High standards in business are neither achieved by accident or unimportant. There will always be those who will breach those standards. That is unavoidable. What is important is that the standards survive and are respected and observed. That the virtually universal view, not just the view of a judge who can be dismissed as sanctimonious, is that there is no place for bribery and corruption in the City is key. Nor should corruption be too narrowly defined. If one wishes to improve the perception of business and the City the target needs to be offending against the spirit and not just the letter. What can be done to improve the position? An increased emphasis on ethics in business with respect to the education for and continuing education of all those who work in the City would be a good start. Such education needs to be attractively delivered and not optional. The future of the City is too important for such a core area to be an option. I set out earlier the enormous amounts of the fines that have been imposed by the Financial Conduct Authority. Two points need to be made in relation to that. First – look at how much money might wish to be saved by those subjected to such fines (unless the offenders are died in the wool recidivists who don’t want to stop) by improving their behaviour, which can only be achieved by education. Second – fines are a very poor sentencing tool judged against the recognised objectives of sentencing. Fines do not involve focused rehabilitation, their deterrent effect on very profitable businesses is limited and they do not convince the public that the punishment fits the crime. Alternatives need to be considered in addition to the partial deprivation of profit.

It frustrates me to think of so much money being lost to business in the City when those fines might be avoided, and that money instead be available to be used in a socially responsible way. Imagine the good that could be done if even a fraction of that money were able to be devoted to the prevention of crime, for example postcode gang violence in areas so near to the City. Imagine the wasted talent that could be rescued by the diversion of that money into education. Imagine the benefit to the image of the City if there was a real change in these ways. None of this is, I believe, impossible.

One of the problems which was identified very early in the development of corporate capitalism in what was a religious age was the creation, in the form of the limited liability company of a non-human legal personality. Baron Thurlow, the Lord Chancellor from 1778 to 1783 and 1783 to 1792, put the point in this way: “Corporations have neither bodies to be punished, nor souls to be condemned; they therefore do as they like.” Perhaps what has



happened in relation to the present extent bribery and corruption in the City is that the soulless nature of the corporation (in the sense that Baron Thurlow used the word, not of course the City Corporation) has, with increasing secularisation, rubbed off on its officers and employees.

How else can the extent of the problem with money laundering in the City be explained? Can someone with a conscience, let alone a soul, launder the profits of the corrupt oligarch, dictator and their families? Legislation can achieve something in terms of dealing with such a problem, but it is a real commitment to do what is right that is likely to be much more effective.

This lecture is not an advert for religion (although it has been necessary to spend time on religion to explain observable changes and what the future may hold) but it is a plea for what I otherwise fear could become a rising tide of bribery and corruption with the capacity to damage the City irreparably to be met with a new devotion to an ethical way of doing business.

There is still time to underpin the way the City does its business with a strong, simple and universal ethical code. A failure to do so is likely to lead to its reputation falling irreversibly.

A final thought. What about artificial intelligence? Artificial intelligence is moving ever more quickly into the work of the City. How will artificial intelligence be taught to behave ethically? Can that even be done? I hope you all care. I believe that if Sir Thomas Gresham and Baron Thurlow could come back to life they would.

© HHJ Nicholas Cooke QC, 2018