House of Lords Debate : The Bribery Act

Speech by Lord Gold

4 February 2021

The Select Committee Report which we are considering today stated that the Bribery Act "is an excellent piece of legislation which creates offences that are clear and all-embracing". I agree and, in doing so, declare my position as a member of the Select Committee.

The new section 7 offence of corporate failure to prevent bribery was innovative and has been most successful, not because there has been a plethora of prosecutions but rather because it has made CEOs and Boards undertake their own review of their businesses to satisfy themselves that they comply with the new legislation.

The immediate reaction from businessmen when the Bribery Bill was enacted was that British companies would find it harder to compete internationally. There was a particular concern that facilitation payments were being outlawed and there was a fear, clearly unfounded, that the new S7 offence would be onerous.

It was particularly interesting to the Select Committee that no witness giving evidence suggested that there should be any relaxation of the prohibition on facilitation payments.

Recognising the success of the Section 7 "failure to prevent" model, the Select Committee recommended that the Government should consider whether this should be adopted in other areas, notably to prevent economic crime. This issue is now being considered by the Law Commission.

May I ask my Noble friend, the Minister to confirm that the Government will keep under review the possibility of extending the Section 7 style offence to this and, possibly, other areas.

In practice, as the Select Committee found, there is little sign that the Bribery Act has prejudiced UK business. If anything, it has resulted in companies improving their governance and compliance. Indeed, by not using third party agents (which has been a cause of problems for many international businesses), companies have been better able to compete internationally as they have developed closer direct relationships with their customers instead of relying on middlemen to be the link.

Another area where the Bribery Act has been successful is in cutting corporate hospitality. The Committee wondered whether the pendulum had swung too far and many companies were shying away from giving any hospitality to their customers even though, properly administered, corporate hospitality can be a necessary and legitimate part of doing business.

The Ministry of Justice Guidelines on what is permissible are clear and although the Committee suggested that the Government should consider adding further examples of what might constitute acceptable corporate hospitality, the Government declined to do so. The Government explained that the Guidelines were drafted "in a deliberately high-level, non-prescriptive way to encourage organisations to examine their own internal systems and procedures" and it identified other sources for guidance, notably Transparency International.

I rather agree with this. Frankly, common sense should largely dictate what is permissible. A modestly priced working lunch or dinner is clearly on the right side of the line. An airplane being delivered to a customer carrying a Rolls-Royce car as a sweetener gift, is not. Over time I am sure that companies will find the right balance.

The Select Committee reviewed deferred prosecution agreements which, as the report states, "have had a major influence on some of the largest recent cases of corporate corruption, allowing them to be settled without the companies being convicted of the offences". This is terribly important because the existence of a conviction may well mean that companies are debarred from undertaking certain business, notably government contracts, in all parts of the world. This would put companies at risk of closedown with ensuing unemployment of their staff.

The Committee recognised the need for careful judicial oversight of DPAs and identified two key conditions for a DPA. First, whether the company self-reported and, second, whether it then co-operated with the criminal prosecution.

A further essential requirement is that the company embraces compliance and governance and demonstrates that it is committed to clean business in the future and, as required by Section 7, will put in place processes and rules which will reduce the risk of this reoccurring.

This commitment has to come from the very top of the company, fully supported by the Board, demonstrating by their actions, not just words, that non-compliant business is unacceptable.

Over the last 10 years I have worked closely with a number of major international businesses that have agreed a DPA and in the run up to securing this have completely overhauled their compliance regime. I have been heartened by the approach adopted by each of these companies and, in every case, I believe that the business has been strengthened by the measures adopted.

Finally, it is of concern that where DPAs have been agreed there have been so few successful prosecutions against individuals responsible for the criminal act. Whilst strongly supporting DPAs, the Committee reiterated the importance of prosecuting the "culpable individuals." May I ask my Noble friend, the Minister to let us know whether the government has any plans to address this issue and, if so, what they are?