

## The Russell Hotel, London, February 2011

*The conference was held under the Chatham House Rule which means that participants may use and repeat what was said but they may not attribute anything by name or company. For this reason, this full report will not be publically available, but a summary will be on the EBEF website: [www.ebef.eu](http://www.ebef.eu).*

*This report has been prepared by Nicole Dando, Head of Projects, IBE, with thanks to Sabrina Basran, IBE, as well as all the rapporteurs who provided their notes. Comments or corrections may be sent to: [n.dando@ibe.org.uk](mailto:n.dando@ibe.org.uk)*

### Thursday 24<sup>th</sup> February

#### 1. Welcome and introductions

The conference was opened by introductions from the four organising groups:

Philippa Foster Back (Director IBE)  
Keith Darcy (ECOА)  
Yvan Biefnot (Director CEA/CED)  
Luc Van Liedekerke (ex-President EBEN)

**Philippa Foster Back** welcomed the delegates and described the format changes for this year's EBEF. Firstly, the plenary sessions for feedback from the breakout groups have been replaced by *Open Topic Arenas*. The breakout topics will be continued around flipcharts in the plenary room so that any delegate can join in - plus 4 "free" flipcharts can be used by delegates to start a new topic.

Secondly, there are 3 optional simultaneous sessions on Day 2.

Philippa thanked the sponsors: Serco for the previous evening welcome party and BP for the dinner.

**Keith Darcy, ECOА** provided a context for this year's conference. He began by reminding us of the aftershocks financial crisis and attempts to address issues of excess in the financial markets as well as issues of governance (investors say on board pay, restrictions on golden parachutes). The Dodd Frank bill for example begins in April 2011 and whistleblower bounties will begin. The FCPA has prosecuted more in the last 2 years than the last 20 years. Keith mentioned OECD good practice guidance, Doha anti-corruption peer assessments, and the increase in transparency- e.g. Wikileaks threatens to release private corporate information, and new media has impacted on events in North Africa.

**Yvan Biefnot, CEA-CED** referred to the crisis in economic and political arenas, but pointed out the efforts that are being made to improve these situations. Business ethics is a never-ending battle and it is hoped that EBEF makes everyone more armed and motivated to make these improvements.

**Luc Van Liederkerke, EBEN** pointed out that the number of EBEF participants this year is exciting. One of the most predictable outcomes of crisis is more regulation which, although solving some problems, creates uncertainty. We await the re-balancing. How can we strengthen our businesses so that regulation becomes an unnecessary thing?

## 2. Plenary 1: Values- Tone from the top

Introduced and moderated by: Philippa Foster Back, Director of the Institute of Business Ethics.

Speaker: **Sir John Parker**, Chairman of National Grid plc and Anglo American plc.

*Below are some notes outlining the main points made during the presentation.*

- Corporate leadership and values.
- Lessons from his experience of corporate leadership.
- How to be an effective leader.
- Sir John quoted Disraeli: *change is constant*. He felt that few companies embraced that but businesses need to adapt to changes in customer demand, regulation etc. Sometimes revolutionary action is needed by leaders to save a company from crisis situations.
- *"I learnt that deeds are more important than words. Leaders must take ownership. It is a privileged to be given the opportunity to lead and you must lead with integrity and communicate clearly the expectations and goals you want everyone to aim for".* Leaders need to understand the difference between being liked and being respected and what can and can't be influenced. They must leave their ego at home as few companies will benefit from arrogance. The role of leader is of constant discovery of your own capabilities and the potential of those around you. *"As you have to lead even when the right course of action is not clear, my lesson is to never lie awake as you can't solve anything in the night and you need to be fit tomorrow to solve the problems."*
- Setting the tone at the top is critical in the boardroom. It creates the drum beat for the other members but also all the company stands for. That is the leadership challenge for a chairman - building quality boards of mutual respect, open challenge and transparency. None of us are as smart as all of us. Leaders need to seek out constant improvement – leaving things better than you found them. Sir John said that: *"The opportunity of a lifetime must be seized during the lifetime of the opportunity"*.
- Key to effective leadership is the ability to:
  - communicate effectively the board's strategy
  - inspire and build up their team to believe in the plan and to give guidance when needed
  - empower people with well-defined responsibilities
  - be consistent in behaviour and live out the values.

## Discussion – a selection of the questions and comments

*Q: What do you believe is the biggest ethical risk to business at the moment?*

*A: You have to confront ethical challenges one-by-one, day-by-day with consistency. Need to inculcate that into your management. One way that I did this was to remove the layers and layers between the managers and the boardroom. The ethics officer cannot change anything without having the right leaders in the boardroom.*

*Q: How will greater governance requirements and rules impact on how business works?*

A: Over time it is important to develop your culture so that your organisation acts responsibly. It can take years – you cannot achieve it over night by a piece of legislation. Quality comes from how you organise your people - you cannot legislate for good behaviour into a company. The high expectations are set by the drum beat of the board and I do not want to wait for or rely on a law like the Bribery Act to get responsibility into my businesses.

*Q: How can you nurture leadership skills, or are you born with them?*

A: So many people do not recognise their potential, and many companies don't identify the needs and talents of their people adequately to allow this to happen. Where people have the best technical skills but not the best commercial skills – they can be learnt – especially from great people around you.

*Q: Is it possible to know what is the right thing to do when facing an ethical dilemma?*

A: If you have strong, well spelled-out principles and expectations and a clear business framework, you don't have to interpret fine print in the law regarding what is right. When in doubt, an interrogation of the issues will lead you to the right decision. It is a complex world but you need to have a clear set of principles so that your people, wherever you are, know what to do. You may have to stop doing business in a country, but that is rare.

*Q: Can you comment on the remuneration structures and pay issues?*

A: I do believe in paying for the best talent and rewarding for high performance if you need it. You have to avoid excess. That is what society is concerned about – a bonus of \$9million for example is poking society in the eye.

*Q: Example of a board walking the talk?*

A: 1) We took the board members to see a new town that we had built to support a new mine. On the way, we passed a horrific shanty town which showed us how we had made a difference.

2) I visited the flooded mines in Queensland. The company arranged for a town of 300 to be evacuated for two weeks when they predicted that it might be flooded. It was an amazing operation that the local managers took upon themselves to make happen.

*Q: How can Ethics Officers advise their boards on being ethical leaders?*

Clear steerage from the top so that they do not have massive interpretation. Documents need to be unambiguous.

*Q: Business is going badly because of the financial crisis, and its shareholders want you to sack 10% of your people. How do you feel if you have spent years establishing an ethical culture?*

A: Committing to telling the truth with your stakeholders means you win trust as a leader. You must always act in the interest of the majority of the people. If you fail to act, the consequences will be worse, so you have a responsibility to act. Being upfront and communicating clearly is the key. People within organisations often see it coming first.

*Q: What does performance mean? Compliance with making the numbers or adherence to standards? How do you bring that into performance management?*

A: A third of bonuses come from "personal contracts" for some of my top people. This will include social programmes, Health and Safety and relations with stakeholders – it is an agenda alongside good operating and financial performance. At National Grid, there are personal targets for the top 70 people below the board for example. There is no perfect system for remuneration.

*Q: How can Ethics Officers deal with a non-responsible board?*

A: Acting through the non-execs is usually best: talk to the chair of the Audit Committee (a non-executive).

### **3. Breakout sessions 1**

Three sessions of 6 simultaneous breakout groups followed over the course of the conference. EBEF regulars will know that the idea of these sessions is for participants to share highs, lows, and lessons learnt, rather than to give a platform to “experts”. The rapporteur’s notes for each group are below.

#### **1.1 Can paying facilitation payments be eradicated? If yes, how?**

**Introduced by: Barbara Kuryk, BP**  
**Moderated by: Simon Webley, IBE**

#### **1.2 How to encourage and maintain a speak up/open culture - including international aspects**

**Introduced by: Joan Dubinsky, United Nations**  
**Moderated by: Luc van Liedekerke, EBEN**

#### **1.3 How do ethics and compliance add value to a business? - enhancing the business case**

**Introduced by: Pedro Montoya, EADS**  
**Moderated by: Patrick du Besset, CEA**

#### **1.4 Using ethics “ambassadors” effectively**

**Introduced by: Sharon Zealey, The Coca-Cola Company**  
**Moderated by: Keith Darcy, ECOA**

#### **1.5 The use of non-financial criteria in executive remuneration**

**Introduced by: Mike Nightingale, British American Tobacco**  
**Moderated by: Dr Nicole Dando, IBE**

#### **1.6 Corporate input into making MBA business ethics content relevant: A case study**

**Introduced by: Sandra Lau, Flowserve**  
**Moderated by: Maria Sonin, ECOA**

## 4. Breakout sessions 2

### 2.1 Ethical due diligence in recruitment- how to do it

**Introduced by: Wendy Harrison, Shell**  
**Moderated by: Simon Webley, IBE**

### 2.2 Using novel methods in business ethics training

**Introduced by: Lyn Cameron, Cisco**  
**Moderated by: Keith Darcy, ECOA**

### 2.3 Issues in HR's relations with business ethics and how to work effectively with your HR function, including diversity on the board

**Introduced by: Bernard Claude, Total**  
**Moderated by: Yvan Biefnot, CEA**

### 2.4 Doing business in China and India – handling cross-cultural ethical issues

**Introduced by: Jean-Daniel Lainé, Alstom**  
**Moderated by: Patrick du Besset, CEA**

### 2.5 How to handle claims against senior executives: Influence of the ethics officer over senior executives/reporting relationships

**Introduced by: Paul-Olivier Gibert, AG2R La Mondiale**  
**Moderated by: Luc van Liederkerke, EBEN**

### 2.6 Does the language you use matter in effective communication and embedding an ethics programme?

**Introduced by: David Harris, BAE Systems**  
**Moderated by: Dr Nicole Dando, IBE**

## 5. Optional sessions

### **1. Director for a day: An interactive ethics training tool**

Introduced by: Barney Rosenberg, Meggitt Group

### **2. Business ethics: The board of directors' role**

Report of a survey, introduced by: Ron Berenbeim, The Conference Board

### **3: Individual networking**

*Dinner was held at the Grand Connaught Rooms following a tour of the Freemasons' Hall - headquarters of the United Grand Lodge of England. Dinner was kindly made possible by this year's EBEF sponsors, BP.*

Friday 25<sup>th</sup> February

## 5. Breakout sessions 3

### 3.1 Using social networking/media to promote an organisation's ethical standards (opportunities and risks)

**Introduced by: Jay Mumford, Accenture**  
**Moderated by: Maria Sonin, ECOA**

### 3.2 Integrating human rights issues into an ethics programme

**Introduced by: Marie Menant, GDF Suez**  
**Moderated by: Yvan Biefnot, CEA**

### 3.3 Responding to and accommodating religious practices in the workplace

**Introduced by: Mohammed Kala, National Grid**  
**Moderated by: Simon Webley, IBE**

### 3.4 Use of bonuses and incentives to encourage ethical behaviour/remuneration policies

**Introduced by: Dan Ostergaard, formerly Novartis**  
**Moderated by: Philippa Foster Back, IBE**

### 3.5 Should mandatory board ethics committees become the norm? What are the benefits?

**Introduced by: Patrick Donovan, Airbus**  
**Moderated by: Keith Darcy, ECOA**

### 3.6 The benefits of setting up industry wide or sector global principals

**Introduced by: Stephane d'Aura, Thales**  
**Moderated by: Patrick du Besset, CEA**

## 6. Plenary 2: The role of ethical principles in preventing corruption: the UK Bribery Act and adequate procedures

Introduced and moderated by: **Philippa Foster Back**, Institute of Business Ethics.

Speakers: **Sam Eastwood**, Norton Rose  
**Richard Alderman**, Serious Fraud Office  
**Tom Perkin**, Legal Affairs Director, Hewlett Packard  
**Prof. Joseph Wieland**, Scientific Director, Centre for Business Ethics,  
German Network of Business Ethics (DNWE/EBEN)

*Below are some notes outlining the main points made during the presentations.*

### **Sam Eastwood (SE), Norton Rose**

*Main message:* The world of anti-corruption enforcement is fast changing: for example, regime change will bring out government dealings. The Bribery Act (BA) is part of that dynamic. It will be the high water mark in terms of international legislation for now but this will soon change. The UK commentary around adequate procedures has been valuable, the exaggerated bits around gifts and hospitality being the exception.

*Context:* There is a context of legislation in other countries: for example, due controls has been a debate in Spain. The UK was already moving things on before the Act. The UK is number 2 in the Trace Global Enforcement index now.

The Act came into place because of extreme pressure from the international community, especially peer scrutiny from the OECD.

*Timing of the Act:* Enacted in April 2010, it will come into effect probably in July 2011. The delay has enabled the corporate community to engage with what it means for them and this is an essential adjustment. We are now waiting for guidance on the corporate criminal offenses. Further guidance will come, for example, on prosecutorial discretion. This guidance will inform how corporations can adapt for the Act's provisions. A proportional response based on risk is required.

*Key Points of the Act:* Offence of corporate failure to prevent bribery. You may not eradicate it, but you must establish and demonstrate sincere efforts to deal with the issue. If you do not, there will be strict liability even if there was no authorisation for the behaviour. Facilitation payments (FPs) are small bribes, but they are still a bribe. How will the prosecutors exercise their discretion? Having a few cases of FP will probably not be prosecuted, but **not** addressing a recurring problem would be an issue.

It covers any employee or any associated person committing bribery on behalf of the company. So corporations need to look at all the people they are engaging to act on their behalf. Corporate officers will need to be self-policing and enforcing the bribery act.

Jurisdiction is important. If you carry out business in the UK, even though the Act applies to you wherever you are operating.

Penalties – unlimited fines, imprisonment up to 10 years. The serious financial, reputational and time cost of becoming involved in an investigation should also be considered.

### **Richard Alderman (RA), Serious Fraud Office**

How businesses treat their stakeholders – these topics occupy a much more prominent role at senior level than ever before. Companies may not have all the answers to difficult issues, but it is important to embark on the journey. It's good for business.

The SFO has seen examples of companies that have lost sight of an ethical approach to business and the vulnerabilities that this leads to. We have been talking to corporates about their exposure as a result of corruption in other countries, and the need for zero tolerance. We have been pushing at an open door. Companies have made me aware of the lengths they were taking to stamp out corruption.

The new offenses of the Bribery Act (BA) build on this in a helpful way. It will not bring UK business to a halt as reported in the press. Are they saying that their business is impossible unless they pay bribes? Others are saying that the UK needs the Act and that it is good for business and good for the UK's reputation.

The government does need to provide guidance and there has been consultation on it.

The BA reinforces ethical behaviour and supports those corporates adopting high ethical standards. It will help the victims of corruption: generally, the poorest ordinary citizens of a country but also the employees of companies that fail because of misconduct. Companies that contribute to this should be publicly exposed.

The anxieties are misplaced. Hospitality rules are needed but questionable occurrences do happen, and these need to be sorted out. The SFO is, of course, not interested in exceptional extra bottles of wine. I am sympathetic to corporates not being clear about the requirements. We are listening to them, and we can provide helpful advice.

### **Tom Perkins (TP), Hewlett Packard**

HP is a US-headquartered corporation, so we are heavily influenced by the FCPA. We do not fear the Bribery Act (BA) as we have robust standards of business conduct that apply around the world. What are the differences between the FCPA and BA? It is a question of having the right guidance, especially around the definition of associated persons: we have 150,000 of these. Other issues for us are:

Facilitation payments: we have very explicitly prohibited these so hopefully the BA will not affect us and we will have nothing that is systemic.

Commercial bribery: We do not have specific policies on commercial bribery – only public sector bribery, but we do have a lot of controls and standards, for example, use of assets or misuse of funds generally. On the public sector side, our staff that deal with them have to self-certify and gifts and hospitality are scrutinised. We also carry out due diligence on our business intermediaries. They are difficult and expensive processes to implement. To what standard we will be held to on the commercial side? An open question.

Entertainment: 50 USDollar limit, wherever you are, in the public sphere. Commercial sphere anything over 100 USDollars requires approval. We look for conflicts of interest – are our processes adequate? Regarding promotional expenses, for example, trade shows, we pay the expenses of our staff, but we check that it is not entertainment based.

Associated persons: we have complex worldwide distribution network. We are rolling out a qualification criteria for all current and future resellers to assess for risk – done by a third party. Initially targeting 30k USD higher risk associates. How far is the liability from the BA going to extend down our associates?

### **Prof Joseph Weiland (JW), Director German Centre for Business Ethics**

1. There is no EU level initiative, so we should welcome the UK initiative as an invitation to have the discussion. The Bribery Act (BA) tries to solve the national jurisdiction issue with its extra-territorial reach, but it will not be a solution. We will see a tension between different legal and regulatory systems. For example, the whistleblower systems are very different in different countries. E.g. the Frank Dodd's Act can encourage employees to externally report instead of internally. What will we do if China now comes up with its

own equivalent of FCPA or BA. How could we handle all these? We need this discussion across nation states.

2. In the BA, there is no explicit role for ethical principles preventing corruption. The tone from the top is mentioned, but the written tone and public tone can be different from the real internal one. How will real tone be assessed? How will the effectiveness of a compliance programme be assessed? How will culture be assessed and the relationship between these cultural things and adequate procedures be shown? How will an individual prosecutor have the experience in this business ethics field?

4. Key questions exist regarding the effectiveness of a compliance management system. Is it well designed? Is it implemented? Is it fit for purpose in terms of being preventative? There is no worldwide standard for measuring this. We need this standard on a global level. I am not happy to see the answer to this in the hands of an individual prosecutor.

5. Corruption is a crime, but it is also a business model in some cases. Preventing it does not just mean adequate procedures: you have to change your business model.

### **Discussion – a selection of the questions and comments**

*Q to RA: Anyone who criticises the BA is not pro-bribery. How to deal with section 6 - the fact that legitimate corporate hospitality was being criminalised but will not necessarily be prosecuted?*

A: When the bill was going through Parliament, too much emphasis was placed on prosecutorial discretion. General counsels have pointed out to me the reality of doing business, and the board does not want to be told that something is illegal, but they will not be prosecuted. We have sought to clarify the linkage between payments and influence. Something that is proportional is not an offence.

*Q to RA: If we are a Belgium company, and we have subsidiaries in UK and in other countries, how can the SFO understand the adequacy of my procedures in Belgium and how can you investigate in Belgium?*

A by RA: we are interested in how the UK may have lost out because a non-UK company has paid bribes. The investigation will be difficult, but there will be cooperation with authorities in other countries and international authorities. The burden will be on the company to prove that they have adequate procedures and not on the SFO to prove they haven't.

*Q to RA: How does a company with rigorous procedures in the public sector roll those out to be adequate with respect to the private sector?*

A by RA: I am interested in knowing what they are doing in both. It is not clear to me why there needs to be any great difference between the two. We will seek to understand this.

*Q to RA: For adequate procedures, are you looking at the business unit level or the corporate level?*

A by RA: We will look at wherever the lax process has contributed to the problem and also whether a strong corporate system has been devolved. We would want the high standards to apply in all jurisdictions.

*Q to RA: What if the company is listed in the UK but has no activity here?*

A by RA: Clarity will come. The listing alone will probably not bring you under the Act, but if it is not the BA that gets you, another law in another country will get you, or other businesses will not want to do business with you if you are known to be non-compliant.

*Q to RA: A sign of a strong programme is that people are speaking up, and companies are encouraged to be open about how issues have been dealt with. Will this be taken into account?*

A by RA: If a company claims that it has a marvellous speak-up policy, but no one is using it, that will probably not look good or be an indicator that it is working.

*Q to RA: How can you ensure that the emphasis on the protection for UK companies is balanced against the need to target unethical UK companies?*

A by RA: Ultimately, we are subject to the courts, and they will tell me when I have got it wrong, and we will take note of that in developing our policies in the future. In the UK, we have rigorous judicial review which will allow companies to challenge the SFO if they consider that we have got something wrong.

## 7. Plenary 3: The evolving liability of the ethics officer – a case study from Germany

Introduced and moderated by: **Keith Darcy**, Ethics and Compliance Officer's Association.

Speakers: **Kate Brearley**, Head of Employment, Stephenson Harwood  
**Hans Van Lent**, Zone Compliance Officer, Siemens

*Below are some notes outlining the main points made during the presentations.*

### **Kate Brearley, Stephenson Harwood**

Setting the scene, the German federal supreme court decision was that an individual had assisted fraud by failing to act, that is, not what they had done but what they had not done. W was employed by the Berlin public street cleaning service as head of Internal Audit and Legal. The organisation levied charges on residents. W discovered an error that meant a 23million euro overcharge on Berlin citizens. W made his superior, G, aware of this, and G decided that they shouldn't correct the error. W did nothing, and this resulted in his conviction.

The courts considered: What was W's role in this? What did his employment contract say?

He had an obligation to protect his employer but he also had a duty to prevent damage to third parties. The court said he had a requirement to actively prevent fraud as a compliance officer. The job title is not relevant but the role in the organisation is. He should have gone to the board with this matter.

Issues: Are you logically aligning role and best practice? Where does the dominant obligation lie? The compliance officer is usually the first port of call for a disclosure. If the CO is the whistleblower themselves, where can they go?

Companies need to think ahead of what will happen should something go wrong. Can there be indemnity provisions, or protection procedures for whistleblowers, or legal privilege?

### **Hans Van Lent, Siemens**

Siemens agrees with the decision in the above court case. It considered that its own compliance officers have the appropriate tools and adequate responsibilities to allow them to act in a situation like this.

"However, the outcome of the court case leads me to a personal position on it. From 2006, I was selected from the business to ensure that our processes were correct to protect the company and the employees because I was inside the processes and knew

them as an engineer. The case suggests that compliance should better be external to a process and be there to also protect the external stakeholders. This is how it was in Siemens in 2010.

But now Siemens is moving its Compliance Officers (COs) back into the system and recruiting COs from the inside again so that they are more effective. This creates a tension with the independence that the court case is requiring. Another tension lies in what I am and I am not responsible for. My contract hasn't changed.

The compliance person needs to keep themselves out of trouble. Should the employee trust that its company has actually got the right systems, tools, and people in place so that you, the employee, is not at risk? How can Siemens be sure that everything is in place that is needed?

Finally, what is the definition of compliance? Which employees are responsible for compliance? Is HR also a compliance person by definition? Who defines it? Can the company call everyone a compliance person so that the liability lies with the employee rather than the company?

**Discussion – a selection of the questions and comments**

*Q: If a CO goes to the Board and the Board does nothing, have they discharged their duties?*

A: Yes, but the advice would probably be to still raise it externally if the board did not act.

*Q: Would a CEO be deemed responsible if they did not choose a good Ethics Officer?*

A: The CEO needs to show that they have considered the right things. Wilful blindness is not a defence.

*Q: What can the liability be for voluntary Ethics Ambassadors?*

A: It depend what is in their contract regarding their responsibilities

*Q: If 'W' had resigned, would they still be considered as liable?*

A: Probably yes as they had they had knowledge. To avoid prosecution, any one in W's situation would have to prove that they were not empowered to raise the concern or do anything.

Comment: There is a tension in our role between building trust among employees and the obligation to act.

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**The 2012 conference will be held in Paris 22<sup>nd</sup>-24<sup>th</sup> February. Please check the Ebef website for details: [www.ebef.eu](http://www.ebef.eu)**

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