

Keynote speech to the European Business Ethics Forum  
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**Anti-Corruption policies and zero tolerance**

**Mark Pyman**

Chairman, Ladies and Gentlemen,

Thank you for inviting me to speak at your forum. It is wonderful to be among such a large, professional business ethics gathering. I hope very much that my address to you will do what it says on the Programme - share good ideas and successful practices regarding anti-corruption and bribery policies.

I would like to start by telling a personal story. In early 1990, I was working for Shell International in London. I had just been appointed to be the next Chief Financial Officer of one of Shell's oil exploration and production companies in West Africa.

On a personal level, I was very uncomfortable about this. I even wondered what I had done wrong to deserve such a difficult posting. I knew of the region's reputation for corruption. I knew vaguely of Shell's reputation for zero tolerance against corruption but had had very limited practical exposure. What scared me was a very personal fear: I knew that Shell's main levers to enforce its anti-corruption policy were the Chief Executive and the Finance Director. In particular, if corruption is uncovered at a Shell company, then the first internal person asked to explain what happened - and probably to take the blame - is the Finance Director. There were many stories circulating within the Shell finance function, of former CFOs who had been asked to leave or who had been transferred to dismal dead-end jobs. Not because they had personally been corrupt, but simply because they were not able to detect or prevent some corruption event from happening, and were being held accountable.

What was more, I had been asking around my senior colleagues: What exactly do I do when I encounter corruption? Will I recognise it? What do I need to do with my colleagues on the Board of Directors and with the staff? Everyone gave me the same answer: well, you'll recognise it when you see it, and you will work out for yourself what you need to do. Is that unhelpful, or what!

To find some enlightenment, I registered myself on one of Shell's courses for Finance Directors, hoping that through this I would become better prepared. This two-week long course had one four-hour session devoted to Shell's Business Principles and to business ethics. It was mostly rather commonplace, but there was one riveting workshop. The facilitator asked for a confidential session without feedback to the Shell hierarchy. He then asked each of us to tell a story from recent Shell experience, in which we had been confronted by a corruption or ethics problem, and to say how we had reacted. The revelations were astonishing to me. We had everything from extortion threats on the transportation of lubricants in Costa Rica, to Presidential corruption, to corrupt tax officials in Taiwan, even to Shell Chief Executives encouraging their Finance Directors to bend the rules. It was the honesty of this workshop that has stayed with me. Several people admitted to failing to control the corruption. Others had never revealed their problem to anyone before, for fear it would incriminate them, or make them look weak and incompetent.

Thus, I had two lessons in zero tolerance. The first lesson was the good one. Shell had preached zero tolerance for so long that it had truly become part of the organisation's culture. There were 'war stories', good knowledge about the fates of erring Chief Executives and Finance Directors, a clear sense of accountability by the top officers of the company, and so on.

The second lesson was the not so good one. It is one thing to embed the compliance machinery – the policies, the programmes, the reporting requirements, the sanctions – and to have this become part of the culture. But this is not much help to the senior executives who are the ones likely to confront the larger corruption demands. What will really help them is to hear from their peers inside their company of the problems that they face, the strategies they adopt to try to refuse demands, or indeed how they just pay up. Such conversations are hard to have, because both you and the company fear the potential incriminations of such sensitive revelations. This was a weakness in the Shell programme, and it wasn't much different five years ago when I left.

At the risk of pushing this story too far, there was a sequel. Within a few months, the Chief Executive and I found ourselves facing a range of probable corruption issues. Let me give you some of them:

- A Government request to divert some of our government royalty payments to a new bank account. This was an official request, but we did not recognise the bank account being proposed
- A high-level request that the equity of one of the national partners be split into two portions, with the second one going to an unrecognised entity outside the country

- Price fixing collusion between the contractors bidding for large construction contracts
- Probable under-statement of the price of our oil cargoes by one of our partners, thus reducing royalty and tax payments, probably in secret agreement with some of the government officials
- Indications that a previous Shell leadership team had agreed to construct a building for a senior government official that had no obvious business rationale
- A Government appointed Board director made clear that either we pay her and she supports us, or don't pay her and she will oppose us.

The good news was that we managed to resolve most of these successfully, without becoming complicit. The bad news was something I didn't realise until years later. It was this: The Chief Executive and I both automatically assumed that it was up to the two of us to sort out the issues. We were in charge, we had to fix it. In a way this was good: we clearly felt empowered, with the authority to do whatever was necessary to resolve the problems. But, for the organisation, it is bad news. Little knowledge was gained in central office about the problems. There was no follow up of whoever had constructed this building illegally. There was no feedback into improving Shell Group training schemes. There was no sharing with other senior executives around the world. Zero tolerance risked turning in to zero learning by the organisation. We were not a learning organisation.

I am a great believer that an appetite for *good conversations* is what differentiates good companies from great ones. Through conversations you learn, you spread culture, you get better at what you do. Policies, programmes and top leadership are essential, but they are not sufficient. Practices have to be discussed, socialised and shared. I recommend that you look at your own Programmes through this lens of 'good conversations'. If you are interested, there is quite a lot of research developing on this subject, though not yet in the business ethics field. See, for example, Patricia Shaw, "Changing conversations in organisations". She has worked with many organisations, including BP.

Let me now turn to talk more generally about anti-bribery policies and zero tolerance.

I work with Transparency International. Most of you will know of TI, as we call it. This is a wonderful organisation. It is independent, not for profit, a thoroughly professional organisation focused on developing constructive solutions to bribery issues. It was started 15 years ago by World Bank lending officers for East Africa, who were so frustrated at the Bank's loans being siphoned away

corruptly that they quit, to try to address the problem directly. They caught a wave of enthusiasm for improved governance worldwide, and the organisation now has 97 Chapters around the world.

Many of you will be familiar with the Corruption Perception Index, one of TI's headline products. There is a similar index that shows bribe frequency by industry sector. The usual 'top three' sectors for bribery are oil, infrastructure and defence.

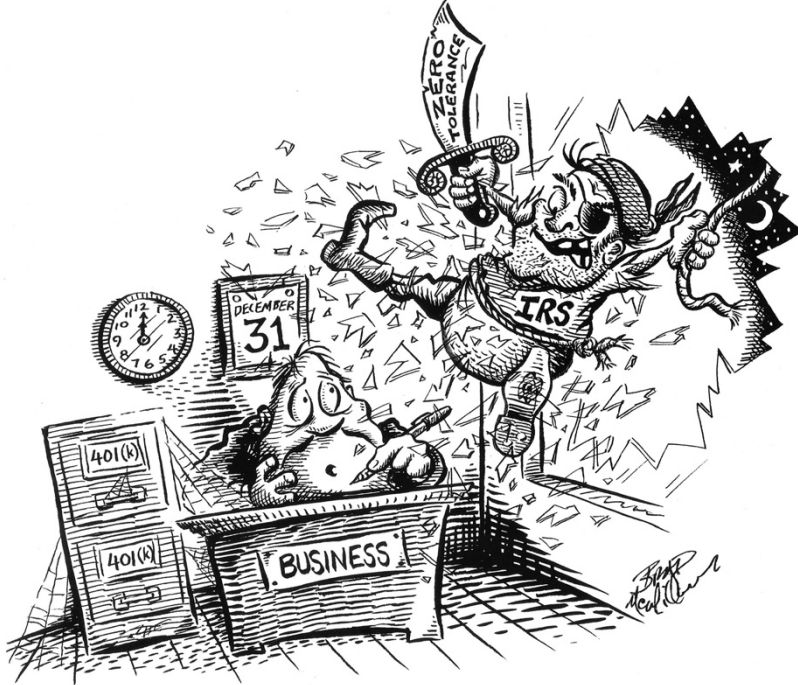
TI has five global priorities. Enhancing anti-corruption standards in the Private Sector has been one of those global priorities since it's founding. TI develops this work by engaging with companies individually, by engaging with companies across a sector, and by developing coalitions between companies, government and public sector, and civil society, in order to get wide support.

The 'Business Principles for Countering Bribery', or BPCB for short, is one such example. TI has worked with a multi-stakeholder group - companies, unions and NGOs – who also now form the steering committee. The two basic principles are easily stated: Prohibition of bribery, and you must be implementing a Programme. There is a version for small businesses coming out later this month in the UK.

There is now a wide range of implementation tools: a detailed TI Guidance document, a six-step implementation process, a self assessment tool and a high-level check list. A process for providing external assurance is currently under development with the 'Big Four' auditing companies. There is also sector guidance, and a tool that sets out scenarios and guidance on how to respond to corrupt requests. All this material is used by many companies and is freely available for you to use. If you don't know of them, I recommend them to you: they are good.

But let me come back to my subject of zero tolerance. The question I was asked for this speech was 'Is a zero-tolerance policy possible in practice?' The answer to that, at least for companies, is easy: Yes. It is the only answer that allows you to be quite clear to your staff, colleagues, customers and governments on where you stand.

The more interesting question, which I expect will be the subject of many of your sessions today, is what you need for your 'yes' answer to be credible.



Does it have to be the aggressive unyielding sort of zero tolerance that you can get from some organisations? Some tax authorities come to mind, as the cartoon illustrates!

A zero-tolerance policy will have little impact unless it is credible. Staff have an acute ear for hypocrisy – both

junior and senior staff have to see it as sincere. Governments have to believe that you are serious: they too will know if it is just window dressing. If you are moving to a zero-tolerance policy for the first time, there is a whole set of things to consider, from legal challenge through to policy in all the difficult areas, like facilitation payments

Let me make an analogy, which I find helpful, to safety. Thirty years ago, most companies proclaimed that the safety of their employees was paramount. Most senior company executives genuinely believed this to be true.

Before I worked at Shell, I had a quite different career, working in a specialist safety consultancy, analysing accidents and safety performance. We were working at the forefront of safety in the installation design and operation of hazardous plants. I can assure you that those corporate beliefs, sincerely expressed though they were, were almost all completely wrong. People were well intentioned, but there were no proper policies, no serious implementation programmes, no sanctions to speak of, no decent reporting. Not until all these things came into place did executives realise the extent to which they had relied on wishful thinking. Now, thirty years later, everyone has an HSE programme; there is extensive reporting and external assurance. Safety understanding and prevention has moved to a quite different level. Anti-bribery needs similarly to move to the next credibility level of zero tolerance.

Let me touch on three specifics of zero tolerance.

First, I believe that one of the real tests of good business ethics leadership, is to carry out investigations when wrongdoing is suspected or alleged. This carries risk, as it gives ammunition to the authorities. There are also differences between the US and non-US legal environment. However, more than almost anything else it shows the willingness of senior management to take the pain, of some penalty and bad publicity, in order to ensure that the allegation is cleared up and seen publicly to be cleared up.

Second, one of the tougher areas of zero tolerance is around facilitation payments. These are ubiquitous in many countries, and it can be hard, especially for smaller companies, not to pay them. This can be really hard in practice: think of the typical example of an employee at the airport who is being refused admission to the country at mid-night by an obstreperous official. The TI position, after extensive discussion inside TI and with many companies, is unambiguous: they are illegal and should not be paid. A plan has to be made, with a clear completion date, for phasing out the use of facilitation payments. You list the types of payments made, prioritise them in each country, then work to eliminate them one by one over the period of the Programme. A good example of a sector code with zero tolerance is the International Federation of Inspection Agencies that requires its members to conform to the IFIA Integrity Code and report annually with an annual audit.

Third, the annual reporting of bribery and corruption incidents, for example in annual reports or corporate reports, is in its infancy. Only a few companies do it. My old company, Shell, was one of the first, publishing the number of incidents reported around the world, and the number of staff dismissed for corruption related incidents. I believe that there is huge scope to demonstrate better practice in this area. One of my last tasks at Shell was to carry out a review of the Shell Group's policy and practice in this area of bribery reporting. This work made me realise just how much better Shell could be. For example, if you analyse the statistics of staff dismissed, you get a lot of insight from the seniority profile. The reality is that most staff who are dismissed are junior staff, and the senior ones resign or are quietly moved elsewhere. So, a breakdown of who was dismissed, why, and in what context would be a good step forward. We also noted that the tougher the country, the fewer the number of incidents that were reported. This just could not be. Such situations warrant further follow up; for example, by making operating unit CEOs more aware, and by additional – supportive – review by those receiving the assurance returns centrally.

Finally, let me turn to talk about anti-corruption policies in the specific sector where I am currently working defence. TI has a large Programme in this sector, working collaboratively with international defence companies, reform-minded Defence Ministries, and trans-national defence and security organisations like NATO. Now in our fourth year, we have a team that includes former senior military officers, procurement experts and anti-corruption experts.

Defence has a bad report card. There is all the historical corruption, all sorts of problems with secrecy, collusion within exporting governments, and complexities like high levels of technology. But it's an area where integrity and good business conduct really matter. A corrupt national defence organisation is a menace - to its citizens, to its neighbours and, increasingly, to the world.

The good news is that the business climate has been rapidly changing over the past ten years. Many defence companies, particularly US ones, have excellent compliance programmes. Any European defence company, wanting access to the US market, has to show it has a good compliance programme: the standard is often higher than in their home country. The Dept of Justice in the US is currently making stronger and stronger statements of what it expects from companies and is not afraid to prosecute non US companies: Statoil in Iran was one such example. Some of the historical integrity weaknesses of defence sales, for example the use of confidential consultants and agents, are changing for the better.

The bad news is that the scandals just don't stop! This is as true of the US as anywhere else. Think of the recent Boeing tanker leasing scandal, where the Boeing Finance Director – of all people - was the source of the problem, or of framework contracts in Iraq. Another pointer is the extraordinarily low level of competition for defence contracts. A recent study that we did showed that on average only 50% of defence contracts were competed across a wide range of countries. And a number of defence companies are still giving only lip service to anti-bribery policies. They proclaim zero tolerance, but staff at several of them tells me that this is not true: the company gives a different message when sales are at risk.

On the purchasing side, the requests for bribes still go on in many countries. In addition, the procurement department of the purchasing government usually has severe skill shortages and is thereby incompetent. There are, of course, a goodly number of governments who are not yet ready to engage in international discussion to raise standards.

But there are positive signs of a new willingness. First, companies are doing what we believe to be an essential step: they are collaborating to raise standards. There is now a defence industry initiative to establish anti-bribery principles and standards across all European defence companies. TI is helping and facilitating wherever it seems appropriate, and we hope that the initiative will soon become global. Second, there is lots of interest among governments of some sort of code or programme that gives confidence of a real commitment to refusing bribery.

Third, our TI defence team has been engaged with several governments in providing civil oversight of major procurements. We use military experts and procurement experts to raise the bar on the big complex tenders, so that it is harder to fix a contract so that you know in advance which bidder will win. Many governments express interest in this idea and TI has been working with several of them, for example Colombia, Croatia, Poland, South Korea. Let me give you another example: one government was interested to know how the bidding companies viewed the Defence Ministry as major purchaser. So we set up a review, analysing who won the last three years of contracts, and soliciting views from the bidders – both winners and losers - on what happened.

Ladies and gentlemen, I hope my remarks to you today stimulate discussion and renewed enthusiasm for your work. I do believe that business ethics are truly now becoming an integral part of doing business, and that a big step forward is going to happen in the next ten years. Look at what Google has to say. If I Google in 'Zero Tolerance' I get 14 million hits. If I Google in 'Zero Tolerance' and 'Corruption' together I get 218,000. I know 218,000 is a lot less than 14 million, but I bet you it is 217,000 more than we would have had ten years ago!

Ladies and gentlemen, thank you again for having me to speak with you. I will be pleased to answer any questions or to follow up with discussions over tea and coffee.

Mark Pyman  
+44 7768 773 252