

Unexplained wealth

The Cambridge Symposium on economic crime, now in its 36th successive year, has established itself as perhaps the leading international non-governmental forum for the analysis and discussion of issues related, in the broadest sense, to the prevention, interdiction and management of economically motivated crime and misconduct. It was originally conceived as a vehicle for bringing together those with an interest in the protection of their economies and economic actors from the threats of economic crime. Countries whether developed, developing or in transition all experience the consequences of economically motivated misconduct, albeit manifesting in rather different ways. While business vehicles have always been susceptible to misuse in the furtherance of fraud and other forms of misconduct, with the emphasis that is now placed on attacking the value incentive of acquisitive crime, through laws seeking to deprive criminals of their ill-gotten advantages, the risk to the financial and business sectors – in being inveigled willingly or otherwise into the reach of the criminal law, is so much greater. Indeed, as traditional law enforcement agencies and prosecutors have come to terms with the profound difficulties confronting them in securing convictions and have increasingly explored other avenues – such as intelligence led disruption and the utilisation of weapons across the legal and regulatory spectra, the risks for those who manage and invest in business become all the more acute and unpredictable. Indeed, purely in terms of legal consequence the threat of swinging financial penalties imposed on a financial intermediary for a failure of compliance, are likely to be far more real in most societies than bringing as Lord Justice Roskill once put it, “the perpetrators of serious fraud expeditiously and effectively to book!” In the result – in the world of today, whether we volunteer, we are all in some measure bound into the fight against economically relevant misconduct. Indeed, we all have a stake in the outcome.

Consequently, in recent years, the symposium has attracted participation from not only those involved in more traditional law enforcement, but politicians, judges, diplomats, regulators, officials in intelligence and security organisations, academics and those involved in business, particularly compliance, and those who advise them. The annual symposium has traditionally been hosted by Jesus College within the University of Cambridge, but is supported by a large number of academic, research and professional organisations throughout the world. It also enjoys the support of a number of key UK agencies such as the Serious Fraud Office, Crown Prosecution Service, National Crime Agency, Metropolitan Police and City of London Police. The blend of institutions and bodies that come together in this manner is unique and provides a platform that is sufficiently multi-disciplinary to properly address – at many levels the risks that face our economies and in particular financial institutions.

While the symposium attracted this year almost 2,000 participants from over 100 countries as it is organised on a non-profit making basis with only a proportion of paying delegates it is dependent on the generosity of sponsors. Indeed, notwithstanding the high level of interest in the financial institutions and within the compliance industry, it is surprising how unwilling these institutions are in practice to cover even the direct costs of those they send to Cambridge. This year, as in previous years – not withstanding all the well know banks and other financial institutions vying to present and exhibit their expertise, there were more registered paying delegates from Fiji than from the whole of the UK financial sector! It is difficult to reconcile this in the minds of many with the rhetoric from



“City” institutions and their commitment to shoring up the reputation of financial institutions and markets in the UK.

To many particularly from overseas, it comes as a surprise that after 36 years and perhaps as many as 40,000 experts having passed through the gates of Jesus College, there remains almost no financial support from any government or international organisation. This year facing significantly increased costs the organising committee welcomed the willingness of educational institutions in China in committing to assure the financial survival of this important vehicle for international collaboration and understanding. It is, however, worthy of note that in terms of financial commitment the emerging and developing economies in terms of both direct and indirect support make a disproportionate contribution – notwithstanding, the widely held view that many of the issues – especially of a regulatory character are really rather more pertinent to the first world!

In the pages of this journal, we have often bemoaned a similar lack of substantive interest and commitment within the academy. There was arguably more interest within the academy about the dangers to stability and development – caused by economically motivated misconduct, when the symposium was first launched than there is today. In terms of commitment of resources to such issues and thus, career opportunities for researchers let alone teachers, the situation today is dire in the vast majority of jurisdictions – including the UK. While there is in some universities a managerial interest in the financial opportunities that work in financial crime, risk and compliance are thought to attract, this has rarely manifested itself in anything at all meaningful. Proportionately, the same is true in the USA, notwithstanding a tradition of “intellectualising” many aspects of intervention against financially relevant crime. The business schools seem intellectually unwilling to recognise that the threats presented by criminals to businesses’ clients, operation and integrity – not to mention the consequences of such threats materialising in terms of legal and regulatory action are a very pressing risk for management that needs to be properly addressed. While this has been long recognised by the regulators – it does not seem to be convenient for the vast majority of business schools to take this on board in any meaningful way.

The 36th symposium took as its central theme unexplained wealth and asked the pertinent, but largely unaddressed issue of “whose business?” All aspects of the identification and rendering “accountable” in one way or another, of unexplained wealth was addressed by an array of experts ranging from analysts in financial intelligence units to governors of central banks. While philosophical and ethical issues were raised, particularly in the context of development and legitimacy, the emphasis was very much on the practical aspects. These included the efficacy of procedures within intelligence fostered by compliance, to identify suspect or merely unexplained wealth, the management of such and the legal and regulatory risks that those who handle it may face. While the new unexplained wealth orders available in the UK under the Criminal Finances Act 2017 were generally welcomed, the experience in those countries where similar powers already exist was not encouraging. The UK authorities sensibly recognise that the orders are at best a tool and notwithstanding some degree of sensationalism in the press, cannot be an end in themselves. They are not the equivalent to the provisions which exist in some jurisdictions, particularly of a civil law tradition, which allow legal intervention to redress unjust enrichment. On the other hand, their utility in reinforcing the armoury of weapons in the hands of revenue authorities was roundly applauded.

While the over-arching theme of the symposium and the majority of the 700 or so speakers focused on unexplained wealth as a topic, as in previous years, the symposium in nearly 100 workshops addressed a plethora of other issues associated with the control of economically motivated crime. Enterprise crimes and in particular trafficking received a

great deal of attention, but there were also specialist workshops run by the SFO, CPS and US prosecutors on prosecutorial and procedural issues. The Law Commission ran workshops on its current work in regard to AML and SARs. There was also a series of workshops on the role of intelligence in fighting crime and terrorism with a significant number of speakers from the military and security services. The implications for the rule of law – especially at an international level of strategies based on disruption rather than traditional enforcement were given emphasis particularly in the context of the use of technology.

Whistleblowers UK ran a parallel one-day programme during the symposium at which the vital role played by whistle-blowing in exposing wrongdoing in some of our most respected institutions was dramatically illustrated. The need for a much more joined-up approach – at a national level was emphasised as was the call for an “ombudsman”like office to better protect those who do come forward. Indeed, the issue of incentives for informants – along the lines of US experience and the role of private enforcement were also given a lot of attention. While such mechanisms have played a role in the USA, there is little evidence that outside the peculiarities of the US legal system they have worked as well. Similar discussions centred on plea bargaining and deferred prosecution agreements.

While much of the proceedings are held under the so-called “Chatham House Rule” there was a considerable media presence from many countries. The organisers have always taken the view that the media has a very special role to play in so many aspects of the prevention and control of economic crime, and there were several specialist workshops on the roles of the press in exposing and addressing these problems. The increasingly important role of compliance was also given great emphasis with a whole day being devoted to best practice within compliance in addressing the multifaceted risks presented by economic crime and the way in which we deal with it. In particular, in the context of compliance, but also governance systems, the responsibility on senior management to properly address and manage risk was highlighted – as was the legal and regulatory consequences of not doing so adequately and competently.

The increasing significance of China not just in economic terms, but as a player on the world stage has been recognised for many years in the symposium. This year in addition to a senior delegation from the Supreme People’s Procuratorate there were over 80 participants from China. Last year with the support of China, the organisers held a conference, within the symposium, on the need to protect and promote integrity in the context of China’s “One belt, one Road” initiative. This year a second conference was held looking at the possible threats to this major programme.

The *Journal of Financial Crime* and the *Journal of Money Laundering Control* are the official journals of the symposium and a number of articles based on the programme will in due course be published. The symposium organisers strive not only to promote by way of better mutual understanding greater and more efficient co-operation but also to stimulate discussion and study of the many and diverse aspects to the issues that each year are given prominence in Cambridge. The journals play a significant and vital role in this.

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