

Managing an extreme corporate crisis: lessons from Rolls Royce

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Up until early January 2020, Rolls-Royce's \$800 million deferred prosecution agreement (DPA) was the most significant penalty a UK regulator had ever given any corporation in connection with foreign bribery.

The Serious Fraud Office's (SFO) enquiry began back in 2012, initially based on allegations of bribes later revealed to have been paid in China, India, Indonesia, Thailand, Russia, Nigeria and Malaysia.

In 2017 Rolls-Royce agreed to pay £497 million to the SFO, \$26 million to Brazilian regulators, and \$170 million to the US Department of Justice.

Rob Webb was general counsel of Rolls-Royce during this time. He sat down with MoloLamken partner Steven Molo at IFLR's European In-house Counsel Summit in February to discuss the lessons he learnt.



Steven Molo: How did you end up at Rolls-Royce?

Rob Webb: I was a barrister for a long time and had specialised in aviation - I worked with Richard Branson as he was establishing Virgin Atlantic and had got involved in some fairly feisty stuff against British Airways (BA) on allegations of stealing clients and all sorts of things over the years. Then on my 50th birthday I got a call from the CEO of BA and I thought: well, this is an exit. I can leave all my mistakes behind me and start a completely new life. So I took it.

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Firstly, it's important to note that the airline industry is run for entertainment - not profit - which is something you must bear in mind in all your dealings with it. When I first started, we had a big price-fixing case with four executives in the dock. Then we had the Concord crash, which did some damage but surprisingly, not as much as SARS. SARS did a lot of damage. And then we had 9/11, which took our share price down by about half. We all bought options at the lower price then worked hard to get

it back to where it was before - which it eventually did. Then in 2008 it fell again, so again, we all bought our options. There were a lot of managers who made this type of money twice - in the Osamas and the Obamas - and if you caught both waves, typically you left BA and bought a nice big house in Surrey.

After a call from the new CEO of Rolls-Royce - who had a feeling something was wrong and wanted me to investigate - I left BA. I feel quite strongly that it's important to change roles every decade or so if you can. It's much more fun.

I feel now is the time to stress that it was the aero engine part of the business, not the cars - because people always ask me if I have a Rolls-Royce and it's actually very annoying, because I don't.

SM: So, the problems had obviously started before you arrived but it later emerged that the misconduct had occurred over three decades, across seven countries and three business lines. How difficult was it for you to draw those facts out during the course of the investigation?

I was lucky in that I had worked as a barrister for 25 years and at BA for 10, where I dealt with all sorts of price manipulation cases. I came to it as a lawyer: I'm paid by Rolls, but I'm a servant of the court. There was also a bit more pressure on me because I have many friends in the Court of Appeal who would have missed no opportunity to catch me out.

In a sense I don't think you need to know much of the law, nor be particularly honest or brave. You just have to keep asking the question: what are the facts? What actually happened? Don't tell me what you wish the facts were, or that everybody does it. And I don't care about your opinion on whether it mattered or not. What are the facts?

Once people realise that you're simply in pursuit of the facts, then they tend to come out of the woodwork. And a lot of corporate criminals don't realise they're committing a crime, because they've been wandering around the swamp for so long that the swamp has become the norm. For example: you're the new country manager for Mongolia. You've never been to Asia before. On your first day you're told that the company has always paid five percent of its profits in support of the national football team. You authorise the payment - and don't realise your mistake until much later, by which point it's too late. That is a mistake made in training. If you don't train people properly, you're letting them down. You can't put people in a vulnerable position like that without training them first.

Unfortunately, this means that in many big, legacy organisations of almost any type, there tends to be an intellectual confusion between the law of the land and company practice.

SM: Some say that in certain places it's virtually impossible to do business without paying bribes. How do you wrench away that embedded belief?

RW: I think it is possible to do business anywhere without paying a bribe. The simple answer is that if it isn't possible, then you can't do business there. It's basically saying 'we've only got a business because we lie, cheat and steal' - really?

It does not help a developing country that is trying to rid itself of these practices to take the frankly colonial view that it's just what happens there. The FCPA [US Foreign Corrupt Practices Act] has had a positive effect on the bribery market. The fact is you simply cannot say yes in one place and no in another.

SM: You were in a good position whereby the CEO was new and had asked you to investigate - sometimes it's not that easy - but what kind of interaction does the general counsel have with the board in cases like this?

RW: Firstly, my view is that a general counsel should never be a member of the board, period. He or she should be at that table, but among them, not of them. I learnt that working for Virgin, when we sued all of BA's executives *and* non-executives - including the general counsel, who I think was left wondering whether he should have taken his own advice. It's much easier to say, 'I've found something and I think you guys are in trouble' than 'I've found something and I think we're all in trouble'.

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SM: Rolls-Royce didn't actually self-report but did cooperate extensively. Did you ever wonder if that level of cooperation was a mistake?

RW: We didn't self-report, but we cooperated sufficiently that in the SFO's final analysis were treated as if we had.

I take a structural view here - we're all very lucky to live under the rule of law, with the freedom to operate as we do. And the law isn't à la carte; you can't take the healthcare, traffic laws and police, but not the competition regulator.

If you take that view, then the prosecutor is just as on your side as you are. Then it's not 'us versus them' - it's in everyone's interest to get the facts straight and receive a proportionate response. I also generally operate on the reasonable simple maxim that I'm not prepared to go to prison for someone else's crime.

SM: I often see general counsel wanting to be in the room at all times and sometimes wonder if that's not the best idea. As general counsel did you engage with the prosecutor, or did you allow your outside counsel to take care of that?

RW: Frankly, after 10 years as a QC, I was quite tired of always being in the room. I also think there's a benefit to have somebody involved in the negotiation who isn't in the room - this starts at school when children say, 'I'll have to ask my mum first'. I think it's a helpful negotiation tactic.

SM: And how would you assess the coordination of the Department of Justice - which often wants to play a big role - with the SFO and other jurisdictions, not least of which included Brazil? Was there infighting?



RW: American regulators are hugely professional, competent and thorough. They know what they're doing. I didn't see any instances of them horning in on the SFO, though some may have been tempted.

The payments were very clearly allocated on a proportionate basis according to the wrongdoing in various geographical bases. I had the sense that they cooperated very closely on that.

SM: Do you have any big-picture lessons for anyone else going through a similar process?

RW: Number one is that you are always a servant of the court. You have two contracts - one with the court and your conscience, and the other with the company that pays you. And the court comes first. In the end the authorities will be fair, as long as you're not a prat.

Secondly, you have to be prepared to walk. I've always refused a company car, not because it's not a Rolls-Royce but because the day I get fired I'd like to get in my car and drive home. I've heard too many horror

stories about having to give back your keys and get on the bus. That's an unnecessary risk to take in my view - especially if your office is at Heathrow.

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