David Chaikin- Thank you for the introduction and thank you for the opportunity to come to the School of Business at the University of Sydney. It is a pleasure to be here.

I am glad that the title for this talk includes the words ‘A Practitioner’s Perspective’. I am not and never have been a legal scholar. I read a fair amount of academic legal research because it has always been a spur to my own thinking. I find it stimulating because it can be a source of ideas. It is not something though that I am capable of doing myself.

What I can offer you instead though is what it says in the title. For me many of the issues I shall be discussing were of direct personal concern. I had to make real decisions in
the real world very publically in the context of a legal system that had not encountered many of these issues before. I shall explain this during this talk. You may have views on how the sort of issues I shall describe would have been dealt with in this jurisdiction. Some of them I am sure have had to be thought about in the context of Project Wickenby and also the Securency case.

First though I had better set out some credentials so that you can see that I really was a practitioner.

For the four years from April 2008 to April 2012 I was the Director of the UK’s Serious Fraud Office. The SFO is a comparatively small office with about 300 people by the time I left. The budget in my time had been cut from A$80 million when I arrived to A$46 million when I left. This was a result of the very bad state of the UK public finances and the need for cutbacks. There have been more cutbacks since I left.

The 300 staff in the SFO include lawyers, accountants, investigators, digital forensic experts and support staff.

This small office was set up about 25 years ago to tackle the most serious cases of fraud. The unique model of the
SFO at that time was that lawyers would direct the investigation and that the SFO would therefore be responsible for both the investigation and prosecution of the case.

About 10 years ago the SFO was also given responsibility for cases involving offshore corruption particularly where UK corporations had been involved. There had been virtually no activity in this area for many years and the legal system was seriously defective. I shall explain this later.

We also worked with agencies in other countries and we had the privilege of working with the Australian authorities on the Securency case.

While dealing with my credentials let me also go back a few more years so that I can explain why I am also going to talk to you about tax crimes.

I had various jobs in the UK’s Inland Revenue before I joined the SFO. At one time I was the head of the team of prosecuting lawyers that dealt with all of the prosecutions by the Inland Revenue for tax crimes.
Following on from that I became the Director of the Revenue’s Special Compliance Office. That office was responsible for all of the criminal investigations relating to direct tax crimes as well as the most complex and specialised civil investigations. We worked with our friends in the Australian authorities on Project Wickenby.

For completeness let me add that I have also been the first Legal Director of the UK’s Asset Recovery Agency and helped to establish it.

During this talk I shall speak about the challenges that have faced practitioners dealing with international cases of corruption and tax crimes. You might want to consider whether any of these resonate with you here in Australia.

Let me start with the following issues concerning corruption-

- Is there the political will to deal with corruption both in the country where the corporation is located as well as in the country where the officials are alleged to have taken bribes?
• Is there modern legislation in place that criminalises corruption and that meets current international standards?
• Is there an effective enforcement agency that has the resources and skills that are needed for this type of work?
• Does that agency have the legal tools that are needed to do this work?

The answers that I shall give to those questions in the case of the UK will vary from yes to no to it remains to be seen.

The first question is all about political will. This is a big issue (perhaps the biggest).

Let me give the UK perspective first. If you judge political will by strong statements by Government ministers you can say that there is the political will in the UK to deal with corruption by corporations that are connected with the UK.

However if you ask people internationally if UK Governments have the necessary political will in this area
three issues are likely to dominate. Let me summarise them first and then discuss them in more detail.

The first issue is this. I went to a country in South East Asia and met senior judges to talk about the UK’s Bribery Act. They were very courteous and interested as you would expect. When I had finished the Chief Justice turned to me and said ‘That is very interesting Richard but tell us about the British Aerospace case.’

The second issue is that London is the place where much of the proceeds of corrupt activity can end up in one way or another. When I gave speeches in Russia about corruption for example, some in my Russian audiences were critical of the UK for the failure to extradite Russian citizens who had taken refuge in London and who kept their illicit wealth there.

The third issue concerns the UK’s responsibility for a number of tax havens. There are many who are critical of the way that the UK permits these tax havens to receive money from many dubious sources and offer secrecy.
Let us look first at what was troubling the Chief Justice about the British Aerospace or BAE case. He was concerned about the disparity as he saw it between the fine words in the Bribery Act and what happened in practice when UK interests were at stake. It is a legitimate question and the UK has not yet escaped from the fallout from this.

In the case of British Aerospace the SFO opened an investigation into the way in which multi billion pound contracts to supply weapons to Saudi Arabia had been obtained.

At first the investigation looked at hospitality offered to people on the Saudi side. It then broadened to look at the very large bribes allegedly paid by BAE to Saudi officials (including members of the Saudi Royal Family).

The investigation was controversial as you might expect. It was also very difficult. Indeed I have not come across a more difficult investigation in my career.

BAE denied bribery. They retained very expensive and very experienced lawyers to fight the SFO.
The dimension that caused this case to be so notorious was the political one. Politicians should not be involved in making decisions on cases. This should be left to the investigating and prosecuting authorities. It is very dangerous for politicians to become involved. This though is what happened here.

There was much Government concern about the BAE investigation. No problems about this. Governments are entitled to have views. However the Government then went further. The Prime Minister (Tony Blair) wrote a memo to the Attorney General (Lord Goldsmith) bringing certain issues to his attention.

The Prime Minister said that the Saudi Government was a key partner of the UK in what was then being called the war on terror. Tony Blair said that there was a real risk that the Saudi Government would withdraw cooperation on intelligence and security issues if the investigation continued.

This potentially meant that British lives on British streets would be lost because information about the terrorists
would not be passed on by the Saudis. The Prime Minister’s view was that the investigation should be brought to an end in the national interest.

This memo was considered by the Attorney General who passed it on to the SFO Director (Robert Wardle) with his own view that the investigation should be stopped.

Robert Wardle, the Director of the SFO had an unenviable task. He was being told that the investigation had to come to an end.

Robert is a man of great integrity. He took the view that as an independent office holder he could not be ordered by politicians to stop an investigation that he thought should continue. They could sack him but that was a different matter.

What Robert did was to assess the national interest concerns by reference to the relevant legal tests. It is permissible under the OECD Convention to take account of national security in deciding whether to investigate and prosecute a case. It is not permissible though to take
account of the national economic interest- in this context the impact on UK jobs.

Robert took advice from diplomats (including our Ambassador to Saudi Arabia) on whether the threat that the Saudis would withhold cooperation was a real one. Robert refused to accept this for some time. Eventually he was presented with such a compelling case that he decided that he had no option but to terminate the investigation.

The dropping of the case relating to Saudi caused a big uproar in the UK and internationally. It was challenged in the courts where the House of Lords held that Robert Wardle had no option but to stop the investigation.

This did not stop the controversy. There was much trouble with the OECD who were very critical of the decision.

Many people to this day remain deeply unhappy about the decision. Why? Because it is believed that the UK Government was more concerned about the impact on jobs in the UK if the investigation continued and the Saudis decided to pull out of the contract. The national security
issue, so people think, was a legally acceptable cover for the real reason that was not legally justifiable.

In other words the perception was and remains to some extent that the UK Government will talk tough about bribery until there is a risk that the UK’s economic interests will suffer.

Is this a fair perception? I certainly understand it although I believe that Robert Wardle acted properly here. We are unlikely to see a repeat in the same way of the BAE case but there will be other cases I am sure where the national economic interest is involved or, perhaps more significantly, where an investigation could uncover evidence that the UK Government was aware of the corrupt activities and allowed them to continue.

If we were to see such a case and the UK Government allowed the SFO to get to the end of this with a full investigation and prosecution even at the cost of major embarrassment to the UK Government and civil servants, then I think that the perceptions about the BAE case would finally be laid to rest and the UK Government would have conclusively shown the political will in this area.
Something as significant as this is likely to be needed to change the mindset of the distinguished Chief Justice who asked me that question about BAE.

Another aspect of political will is that people in the UK do not understand that many countries resent lectures from the UK about a tough approach on corruption while at the same time the UK is happy for the proceeds of corrupt activity to be invested in Central London property and through the financial sector in the City of London.

More recently this issue has come up again in connection with the UK’s responsibility for various tax havens such as the British Virgin Islands. I shall have more to say about this later.

London can be a safe haven for those involved in corruption and there is limited activity by the UK in freezing assets and returning them to their rightful owners.
The perception of many is that the UK wants to continue to attract this money (suitably disguised of course) because it is thought to be good for our economy.

Again I understand the perceptions here. I want to see much more action by the UK authorities.

It is a particular issue following the Arab Spring. There are estimates of vast amounts of money in London owned by the former regimes.

The UK and indeed the EU response to this has been very slow particularly compared to the response of Switzerland. Money has not been returned yet. I read the other day that a few officials have been asked to help the Egyptian authorities with their claims to restitution. While all help is to be welcomed this does not strike me as adequate.

Let me sum up on this question of political will. Does the UK have the political will to tackle corruption involving UK linked corporations in an effective way?
My answer is that it remains to be seen. We have to see a real case which will overcome the taint of the BAE case. People will then be convinced that the Government really means it. And we must see more effective action in returning assets to the people to whom they really belong.

Let me now turn to my next question. This is whether there is modern legislation in place to criminalise corruption that meets modern international standards. Here I can give an unqualified answer of yes and point to the Bribery Act.

The Act took a long time to reach the statute book. There was much opposition both from those who wanted a weaker approach so that UK business was not affected and those who wanted a tougher approach. There were a bewildering number of consultations, drafts and Parliamentary reviews. The OECD took a very close interest and pressed for action. Indeed I think that without this pressure we would not have seen a Bribery Act.

We do though now have a Bribery Act. I shall not go through the various provisions in detail but I want to highlight those provisions that are controversial. They
involve an entirely new approach to dealing with the corrupt activities of corporations.

One of the problems of proving corruption under the old law was that the prosecutor had to establish that the controlling mind was involved in the corruption. This meant looking at the most senior members of the corporation, usually at Board level or very near there.

This approach may have made sense a century ago. It may still make sense for very small corporations. It does not though make any sense for large globalised corporations.

The US approach is different. Under US law an employee of a corporation at whatever level can make the corporation criminally liable if he or she does an unlawful act believing that it is for the benefit of the corporation. This is a much easier test to satisfy.

The Bribery Act provides a new approach. A corporation will commit an offence if it fails to prevent bribery anywhere
in the world. The corporation has a defence if it had adequate procedures to prevent that bribery.

I do not have time to go into the details of the defence but briefly adequate procedures are -

- Proportionate
- Have top level commitment
- Risk assessment
- Due diligence
- Communication (including training)
- Monitoring and review.

The other controversial aspect of the offence is that it applies to foreign corporations that carry on any part of their business in the UK. Therefore an Australian corporation that carries on any part of its business in the UK is guilty of an offence under the Bribery Act if it did not have adequate procedures to prevent an act of bribery anywhere in the world.

There is much that could be said about what all of this means but I need to press on. It is sufficient to say that there is now excellent modern legislation in place in the UK.
This brings me to my next question. This is whether there is an effective enforcement mechanism for these cases in the UK. I can start on a positive note. The OECD and some NGOs regard the UK as one of a select group of countries that are active enforcers of anti-bribery legislation.

This is a great change from the position a few years ago when the UK was the subject of great international criticism for the failure to take any enforcement action. The change was brought about by the Bribery Act and the enforcement action taken in some very difficult cases by the SFO.

It would be tempting to say that the international consensus means that I can answer the question with an unqualified yes and move on. I shall not do this however because my answer, as with political will, is that it remains to be seen.

Let me explain. There is a complicated patchwork of organisations in the UK with some responsibility for this work. In the way of many bureaucracies they fight over territory and particularly in these difficult times over budgets.
There are also new players coming onto the scene who will be taking an interest in this area. I shall not weary you with a list of the initials under which these various organisations are known.

There are some encouraging signs. Our Department for International Development has provided extra funding for the police, the Serious and Organised Crime Agency and the Crown Prosecution Service to tackle corruption work.

The Home Office is also taking legislation through Parliament to set up a new National Crime Agency. The new NCA will want to take an interest in corruption.

What does this mean for the SFO? Well as I have said the SFO budget has been cut and will be cut further. The new Director has obtained a promise of special funding from the Treasury for particular cases. So far he has secured funding for Libor cases. It remains to be seen if the Treasury will provide funding for a major corruption case particularly if UK interests are involved.
I believe that we are approaching a critical stage in UK enforcement. There has so far been no enforcement of the Bribery Act by way of cases in court involving corporations.

The UK has to improve on this. The various agencies involved must work together in ways that I do not see happening at present. There is perhaps a parallel in this jurisdiction in the way that the various Government agencies work together on Project Wickenby. This will require strong political will once again.

It remains to be seen therefore over the next couple of years whether the UK has an effective enforcement mechanism for dealing with these cases. The UK's very pleasing rating of active enforcer of corruption legislation will be at risk if we do not see progress particularly under the Bribery Act.

This brings me to the question of whether enforcement agencies in the UK have the right tools for this type of work. This brings in some issues that are sometimes legal, sometimes practical and sometimes policy. For a practitioner who is trying to deal with these cases these issues are of great importance.
Let us look at some of these issues.

First how does the enforcement agency find out about cases? There are a number of ways. I want to focus on two—whistleblowers and self-reporting by corporations.

Everyone involved acknowledges the importance of a credible whistleblower. The help that they can give to the authorities is very significant. They can be difficult to deal with because they may not actually be right and they may also have their own personal agenda but an enforcement agency has to test this to see whether the information is accurate.

An issue in the UK is whether whistleblowers should be given a financial reward. I have been very sceptical about this because in my experience the best whistleblowers are not motivated by money. Furthermore UK juries are not happy about witnesses who have some financial interest in the outcome of the proceedings.
The UK has to rethink this however in the light of the US experience. The US encourages whistleblowers and gives them very large financial rewards sometimes amounting to hundreds of millions of US dollars. It is no surprise that whistleblowers are interested in this.

The recent Dodd Frank legislation in the US set up a system of rewards for whistleblowing in respect of the financial sector. It is particularly striking that the country outside the US that has produced most calls to the whistleblowing line has been the UK. Bearing in mind that we are talking about usually global financial institutions we are seeing the UK authorities being ignored with whistleblowers going to the US in the hope of a large reward.

The UK is considering whether rewards should be given. I think it inconceivable though that rewards on the US scale will be given by the UK authorities. I doubt if there would be public support for this especially in these austere economic conditions in the UK. And so we are still likely to be left with the question- how do we encourage whistleblowers to come in?
Another source is self-reporting by corporations. This happened to a very limited extent before I started in the SFO. I became interested in it as I discussed the US experience with US prosecutors.

Self-reporting is a very important way in which the US authorities learn about corporate offending in the area of corruption. In return for a self-report, the US authorities can enter into a deferred prosecution or even sometimes a non-prosecution agreement. There is a reduction in the fine payable in order to take account of the self-report.

The SFO in my time introduced a system of self-reporting that was informed both by the US experience and also the experience of the UK’s Inland Revenue in dealing with tax offences.

The essence of the SFO’s scheme was that, while no guarantees could be given, the SFO would be looking to enter into a civil settlement with a corporation that self-reported and showed full cooperation.
The SFO scheme was controversial particularly in law enforcement circles in the UK. Some thought that investigators and prosecutors should not be doing this. It did however produce a steady stream of work with the potential for more to follow when the Bribery Act came into force.

The scheme has not survived my departure from the SFO. The new Director takes the view that the scheme was wrong in principle and that he wants to prosecute wherever possible even if there has been a self-report and full cooperation. There has been some strong rhetoric about the SFO as a prosecuting agency.

This is all fine and clearly people are entitled to take different views. However the US authorities and respected international institutions such as the World Bank have all introduced self-reporting schemes. They regard this as one of the best ways of discovering cases in this very difficult area. The challenge for the SFO is to show that it can find alternative sources of information that can produce cases.

The next practical issue concerns the prosecution of corporations. Before I joined the SFO there was very little
of this work in the UK apart from health and safety prosecutions. In the first 25 years of its existence the SFO had taken on a few corporate cases and been unsuccessful in all but one.

This changed in my four years. We started to bring corporations before the criminal courts. And this started to draw out for the first time a number of considerations about corporate prosecutions that had not been thought about before and where there remains no consensus today.

What is the point for example of the prosecution of a corporation? The UK takes the view that corporations are legal persons that can be brought before the criminal courts. The US and some other countries take the same view. Countries however such as Germany take the view that a corporation is not a legal person and so it cannot be prosecuted. Those countries look through the corporation at the individuals as subjects of prosecution.

Now I am happy with treating corporations as legal persons who can be brought before the criminal courts. They need to be answerable for what they have done. Public opinion in the UK supports this.
The unanimity of public opinion breaks down though when the question turns to the penalty that can be imposed on a corporation. Suddenly people realise that the penalty will be felt by many innocent people who had nothing to do with the offending. A corporation may have to close down some part of its operation even after the guilty people have left. How fair is that? Shareholders (including pension funds) will suffer.

And what about corporations that are owned by the state or rather the taxpayer? A fine imposed on such a corporation will be funded by the taxpayer. We saw an interesting example of this in the UK. How fair is that?

And so we have no real consensus on this. This matters because prosecutors need public support for what they do.

This was a real issue when we were dealing with BAE over non Saudi allegations. There were plenty of media articles saying that the SFO was being unpatriotic in pursuing BAE. We were accused of destroying the jobs and livelihoods of many workers and their families and neighbourhoods and working for the benefit of foreign competitors of BAE.
This is likely to get worse if (and it is a big if) the judges in the UK start to impose large fines on corporations. In one case the judge was very critical of the SFO for agreeing a settlement in what he thought was a small amount of just under A$12 million. He said that this was far too small and that UK judges should impose fines on the US model.

I remain to be persuaded that UK judges have any appetite for doing this. The evidence so far in respect of corporate fines is that judges impose fines that are low. The Judge’s Sentencing Council has promised new guidelines but we are still waiting.

In passing I need to add that we have a different position when it comes to fines imposed by financial regulators. We have seen substantial fines imposed by the UK’s Financial Services Authority for the rigging of the Libor interest rate.

We therefore have in the UK a system under which higher fines are imposed for conduct that is the subject of a regulatory penalty than a criminal judge would impose for criminal activity. I do not believe that that can be right.
Another area where the UK legal system is deficient in these cases concerns negotiated global settlements with corporations.

This arises where authorities in different jurisdictions are both or all using legislation that can have extraterritorial effect and are pursuing the same corporation.

There can come a stage when the corporation decides that it wants to bring an end to the whole of this. These cases are enormously expensive and time consuming and usually the guilty people have already left the corporation. New management want to draw a line under the past, offer suitable restitution and culture change and move on. This is very reasonable in my view.

The question is how can this be done? The SFO did this in a couple of cases in my time and ran into strong public criticism from judges. The reason is this.

In order to reach a settlement the corporation will want to know how much it will need to pay to each authority. While
all settlements have to go to a judge in the US it is possible to calculate them pretty accurately because of the guidance available publicly and the body of precedent. Even then a judge can still reject the settlement but this is a risk the corporation has to take.

In the UK the judges have made it clear that the SFO cannot get involved in any of these discussions. They have stressed the traditional view that prosecutors cannot be involved in anything that relates to the penalty that the corporation has to pay. The SFO’s actions in agreeing a package subject to the approval of the court (in the way that the US authorities would do) was described by one senior judge as unconstitutional and wrong. He said it should never happen again.

All good stuff and there were plenty of media stories about the latest SFO incompetence but there is a serious issue here that judges have not yet come to terms with and which is very relevant to prosecutors in this area.

The problem is that corporations have choices. They are looking for as much certainty as possible when they take the decision to settle. The US system offers them the
maximum degree of certainty: the UK system offers them no certainty at all.

The rational choice for corporations is to bypass the SFO and reach agreement with the US authorities. It may involve paying more money but that is not likely to be an issue.

Agreement can be reached with the US authorities under their extraterritorial legislation on all aspects of the SFO investigation. The corporation can then tell the SFO that it relies on the double jeopardy principle in the UK so that the SFO can take no further action. I have seen this happen.

The result therefore of the traditional judicial position in this specialised area can be that the UK courts are cut out of corporate offending and that these cases at the corporate level are dealt with in the US. This is not something that would be welcome or indeed acceptable to the judges but it is a consequence of their rulings.

The Government is taking legislation through Parliament concerning deferred prosecutions. It is hoped that such a
system will provide more certainty to corporations. I do not have time to go into the details. Judges will play a key role and a great deal will turn on their approach to this.

One last practical issue because I am conscious of time and I want to move onto some tax issues. An issue that concerned me in my time was how to compensate the victims of corruption when those victims were the citizens of other countries.

If they were the victims of fraud, then they have a legal standing that the courts recognise. But what if we are talking about the citizens of an area that have suffered from poor infrastructure or damaging health care because goods and services they should have received have been diverted or contaminated as a result of corruption? UK law does not recognise that these victims have any standing.

We tried to overcome this. I shall not weary you with the technicalities. We achieved some results although we encountered judicial criticism on the way. We did not find a satisfactory solution although there were some things we could do.
We need to do better. It is wholly unacceptable for the developed country to benefit twice and the developing country to lose twice.

This happens because the developed country benefits from the contracts obtained improperly and then from the financial settlement. The developing country gets nothing. The solution is probably going to involve asking international institutions to play a role in this.

It is now time for me to move onto the next part of this morning’s talk. This concerns tax prosecutions with international elements.

There are many challenges for those dealing with tax prosecutions. The biggest challenges in terms of the tax involved are on the indirect side. The amounts involved in alcohol smuggling and missing trader fraud run into billions of pounds.

This morning though I want to talk about some recent developments concerning direct tax. There are some interesting parallels here with what is happening on Project
Wickenby. Indeed when I hear about some of the issues concerning Wickenby, they resonate with me because I have had similar issues in my time.

First though I want to talk about an issue that prosecutors have to be aware of. This concerns the jury. In our jurisdiction most if not all contested tax prosecutions go before a jury.

I myself have always been a great admirer of the jury system. Juries bring a very sensible approach and can cut through the complexities that clever lawyers bring to these cases. Juries are very good at being able to tell if someone is dishonest. The key part of the trial for the jury is when the defendant gives evidence.

Prosecutors in tax cases have always known that it can be tough to persuade a jury that a defendant is guilty of cheating on their taxes. Juries can be sympathetic to a defendant and can be hostile to the Revenue. They may have their own history with the Inland Revenue about which we know nothing.
A case that showed this for me very clearly involved a barrister who started out in practice. He found tax rather difficult and did not get round to filling in his tax return. He was equally busy at the end of the next tax year. This went on for about 20 years. He pleaded not guilty. The jury could not agree and so he was acquitted. This meant that some at least of that jury thought that he was innocent. This shows how difficult it can be to convict someone.

There are though some signs that juries are taking a more robust approach in these cases. Jurors will be conscious from their own lives that there are very great pressures on public finances and that taxes are high in the UK. They are likely to be less sympathetic to tax evaders these days because they know that the taxes that should have been paid by evaders have to be paid by other people, usually those who are much less wealthy.

As a former tax official I welcome this change. We always used to say that we wanted to see a movement in public opinion similar to the change over some 20 to 30 years concerning drunk driving. It was socially acceptable at the start of that period but by the end the public perception was very different. It may be that something similar is
happening in the UK these days concerning paying taxes as a result of the pressures of austerity.

Let me turn though to some developments concerning cases where money has been put offshore in what were thought to be safe tax havens. Here we have seen some extraordinary developments in recent years.

It used to be that tax evaders who put money into centres such as Liechtenstein or Switzerland were safe in the knowledge that the Inland Revenue could not track down their assets.

There was a lot of truth in that although it was never that simple. For example problems arose on the death of the tax evader or on a divorce. And you can never tell when someone is going to blow the whistle on these accounts.

We have seen this in respect of Switzerland and Liechtenstein. We also saw it about a month ago with another former no go area- the British Virgin Islands. A disc containing some very interesting information was
leaked to journalists. Tax officials will be taking a close interest in this.

The problem in earlier years was to find the Swiss or Liechtenstein or Channel Islands account. If you could not do that, there was no point in trying some fishing expedition in which you asked the Liechtenstein authorities if they have any accounts with which X was associated. It would be highly unlikely anyway that X’s association would be apparent on the documentation.

It was possible to get information from countries such as Switzerland but you had to be much more specific. You also had to be able to show that a crime under the general law had been committed.

Tax evasion was not a crime in jurisdictions such as Switzerland: it was regarded as a civil matter. You had to be able to establish fraud or forgery or some other general offence.

All of this could be very slow. Information provided between authorities on an intelligence basis can be fairly
quick. However the legal processes can be slow when you need to obtain evidence in a form that is admissible in your jurisdiction.

The other country naturally gives the alleged tax evader the opportunity to challenge the request for assistance and to litigate through the courts. This takes a lot of time. Project Wickenby I am sure has encountered these problems.

This is now changing as a result of the information that the UK’s Revenue has about accounts in foreign countries. Details of accounts in Liechtenstein were provided to Revenue authorities in a number of countries by a whistle-blower. This was an extraordinary turn of events.

The Revenue’s approach was interesting and controversial.

The Revenue is a tax gathering authority. This means that many cases where criminal offences have been committed are settled by the Revenue for the tax owing, interest and a large penalty.
The Revenue will seek to prosecute only in a small number of cases where it considers that a prosecution is needed in the public interest. An example would be where an individual has already been the subject of a full tax investigation and has signed a certificate of full disclosure of assets that omits the foreign account.

What the Revenue did was to set up a facility whereby those with Liechtenstein accounts could make a full disclosure of these accounts and pay the tax, interest and a graduated penalty.

This was controversial because there were many who considered that these cases should be the subject of prosecution. And there were those who thought that the penalties were too low for offences committed by people who were almost by definition wealthy people. There are reasonable arguments both ways on this.

The facility was adapted from time to time. So far 4,000 people have taken advantage of this facility. The Revenue expects to recover £3 billion by 2016.
This scheme has been taken as a model for discussions with other countries. We have a scheme relating to Switzerland. This is expected to bring in £5 billion. More recently there has been an agreement with the Isle of Man and the Channel Islands. £1 billion is expected from this.

So far 50K taxpayers have come forward to make disclosures. And £1 billion has been collected.

The UK is seeking to enter into further agreements of this nature and is working with other countries on achieving this.

What makes a country such as Switzerland or Liechtenstein give up something that has been so important to their business over the years? The answer has to be international pressure. We have seen from the UBS case in the United States the type of pressure that there can be.

We have also seen how countries do not want to be associated with the taint of being havens for illicit money.
Giving up this status has been difficult for these countries but has followed a hard headed and realistic appraisal of long term interests in the contemporary environment.

What does this mean for criminal cases? The Chancellor of the Exchequer wants to see the number of prosecutions increase by a factor of five. The Crown Prosecution Service has been given more money to prosecute tax crimes.

We have not yet seen any prosecutions though that relate to the accounts in Liechtenstein or Switzerland.

It is possible to speculate about when or whether we shall see such cases. A contested case is not going to be straightforward. It is not just a matter of showing the jury copies of the relevant accounts. The prosecutor must formally prove these. This sounds like technical legal stuff but it is very important in practice. It can involve the need to seek the assistance of foreign courts.

I know from my own experience that this can take years not least because as I have said the potential defendant has
the opportunity to challenge the international assistance requested.

And of course the identity of the individual who is behind the accounts may not be obvious and may be known only to a very few people. No amount of international assistance is going to overcome this particularly when legal privilege is involved.

A further practical issue that the prosecutor has to overcome is the technical one of linking the deposits in the foreign account with a taxable source of income in the UK.

In our jurisdiction tax is imposed on income from various sources such as profits from a trade. If there is no taxable source, then there is no charge to income tax. The prosecutor has to prove that the deposits were attributable to a trade or other source. Usually this should not be unduly difficult but ultimately juries may need to consider whether these were trade receipts.

There is also a very interesting and intriguing legal issue. Does it matter that the original information was obtained by
unlawful means? Material was stolen. Is this legally relevant? At least one prominent UK lawyer in this area has argued in an article that the material could not be used. I am sure the point will be argued in a prosecution.

It will be very interesting to see how this new area develops. It illustrates, as does my earlier example of corruption, the need for the legal system to develop solutions to the new challenges that those involved with criminal work bring to the courts. Our world does not stand still and neither should the courts.

Thank you for listening to me and thank you for the opportunity to be with you here this morning. I shall be very interested in any comments or questions.