

“Business Ethics or WoolfWash?”

presentation by
Sarah Sexton
The Corner House¹
at

A Just End?

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I was asked to give a few comments on the Woolf Report. This is a report of the Woolf Committee entitled: *Ethical business conduct in BAE Systems plc – the way forward*.² The Committee was set up on 15 June 2007 to review BAE’s *current* and *future* business policies and practices. It was headed by Lord Woolf, who is a lawyer – and not just any lawyer: he was the Lord Chief Justice of England and Wales from 2000-2005, the country’s second-highest judge at the time. The Committee was set up on the initiative of BAE Systems, the UK’s largest arms manufacturer, which also paid for it.³ The Committee is usually described as an Independent Committee.⁴

The Woolf Committee report was released on 6 May 2008 – one day before BAE’s Annual General Meeting. In recent years, the company’s AGMs have been beset by difficult questions about corruption allegations.

The report contains 23 recommendations aimed at ensuring that BAE operates with “world class ethical business practices”. The company has undertaken to implement these recommendations in full (although, as I learnt at BAE’s AGM, not until 1 January 2009 after the global ethical policy has been through “test marketing” in the different countries and markets in which BAE operates.)

Some highlights of the Woolf Report include recommendations that BAE:

- publish and implement a global code of ethical business conduct;
- strengthen its anti-bribery measures;
- provide regular, independent external audits of business conduct.

¹ <http://www.thecornerhouse.org.uk>

² http://217.69.43.26/woolf/Woolf_report_2008.pdf

³ BAE Systems spent £1.7 million on the Woolf Committee.

⁴ The Woolf Report, summary, supporting documents, Committee biographies, Terms of Reference and press releases were made available at: <http://www.woolfcommittee.com/>. One year later, however, this web address redirected to another site: <http://ir.baesystems.com/investors/woolf/>

This all sounds excellent. I confess, however, to being wary from the outset of the Committee and its Report. My wariness stems from previous work on the use of public relations in business⁵ and the use of ethics in public debate.

The underlying purpose of corporate public relations or PR has changed little since it was first developed in the United States at the end of the 19th century – to establish and maintain a “favourable business climate”. According to the authors of what is considered *the* authoritative PR textbook:

“[Corporate] PR is a means by which businesses seek to improve their ability to do business. Effective public relations smooths and enhances a company’s operations and eases and increases its sales. It enables a business to better anticipate and adapt to societal demands and trends. It is a means by which businesses improve their operating environments.”⁶

In the early 1920s, PR practitioners were more candid: they themselves called corporate public relations “corporate propaganda”.

As for ethics, such a positive and well-meaning term, I’ve learnt that it is used in many public debates to narrow and limit what is discussed while bestowing a good reputation in the process. When the US chemical company Monsanto launched a PR campaign in the UK on the benefits of GM (genetically modified) food about ten years ago, it emphasised the ethics of feeding the world’s starving people. This prompted a member of the public to write a letter to a national newspaper concluding: “when they start talking ethics, you know they’ve got something to hide”.

So it is with these two lenses of wariness about PR and talk about ethics that I look not so much at the content of the Woolf Report but rather at how and why it has been used.

At BAE’s AGM on 7 May 2008, BAE Chair Dick Olver, commenting on the Woolf Report, stressed that BAE would become an industry leader in business ethics; it would set the standard for global business in general, not just the defence industry. “We will set the pace for ethical business behaviour”, he said. One has to admire his determination and optimism given that BAE is at least 15 years behind the times if it has only now discovered corporate social responsibility (CSR). After all, in Aesop’s fable, the tortoise did in the end beat the hare.

But perhaps acknowledging that BAE has set out in the CSR race a little late, Mr Olver also stated that:

⁵ Judith Richter, “Engineering of Consent: Uncovering Corporate PR Strategies”, *Corner House Briefing 6*, March 1998, <http://www.thecornerhouse.org.uk/item.shtml?x=51961#fn008>

⁶ Otis W. Baskin and Craig E. Aronoff, *Public Relations: The Profession and the Practice*, (second edition), Wm. C. Brown Publishers, Dubuque, Iowa, 1988, p.28, cited in Judith Richter, “Engineering of Consent: Uncovering Corporate PR Strategies”, *Corner House Briefing 6*, March 1998, <http://www.thecornerhouse.org.uk/item.shtml?x=51961#fn008>

“Any company has to decide on its priorities, no company can do everything. In corporate social responsibility, we decided that ethics and safety were the two places for this company – which is doing manufacturing – to start and have priority.”

Does this suggest that “ethics” has been narrowed down solely to the ethics and safety of the company’s manufacturing processes? Given that BAE is an arms company that manufactures and sells weapons, my initial reaction to this statement was that, from a public relations perspective, BAE had been badly advised to start its CSR journey with ethics and safety. Questions from the floor at the AGM posed what seemed to me, and others, to be obvious contradictions:

“Given BAE’s new-found interest in ethics, does the board have a policy on what it considers ethical weaponry and how does it then make its decisions?”

Dick Olver’s response to this question was that the board looks at its strategies, its skills and the requirements of its customers in deciding on what weapons to manufacture He also said that implementing the Woolf Report’s 23 recommendations was going to be challenging. Given his response to this question, I can only agree.

Another question from the floor queried how BAE ensured the safety of its products given that they are designed to kill people. At this point, I realised: never mind ethics, safety is clearly going to be far more challenging.

Ethics and safety aside, however, the Woolf Report does in fact make some sense when it is construed as “disaster management”, a key PR strategy. I first encountered this term after the oil tanker Exxon Valdez ran aground in Alaska in 1989; the devastating oil spill has been ranked as one of the worst human-caused environmental disasters to occur at sea. Disaster management means that a company does not deny its involvement in a catastrophe, but rather the reverse: it apologises immediately, promises to look into the disaster, and to make sure that it never happens again. The result is that both the public and state authorities, despite the magnitude of the disaster and corporate responsibility for it, look far more favourably and leniently on the company.

Lord Woolf’s comments in a press release announcing his report suggest to me such disaster management:

“In my view it is of great importance that the Chairman and Chief Executive have acknowledged to this Committee that the Company did not in the past pay sufficient attention to ethical standards and avoid activities which had the potential to give rise to reputational damage . . .

“The Company [will] . . . take all practicable steps to ensure that the circumstances that gave rise to allegations of past misconduct do not re-occur in the future.”⁷

Of course, the Woolf Committee expressly did not look at allegations of BAE’s *past* misconduct, which gave rise not only to allegations of bribery but also to official investigations by law enforcement authorities in the UK, US and Switzerland of these allegations.⁸ It was the stopping in December 2006 of the UK’s Serious Fraud Office’s investigation into alleged bribery in BAE’s arms deals with Saudi Arabia that gave rise to the judicial review brought by Campaign Against Arms Trade and The Corner House.⁹ The Woolf Report quotes from a couple of paragraphs in the High Court judgment handed down in this judicial review in April 2008, including the sentence:

“It would be unfair to BAE to assume that there was a realistic possibility, let alone a probability, of proving that it was guilty of a criminal offence.”¹⁰

This sentence is a reminder that, in the UK legal system, one is innocent until proven guilty. But the Woolf Report uses it to assert that:

“There may be reasons to doubt whether the allegations . . . could be proved to be true.”¹¹

⁷ “Lord Woolf’s Committee publishes ‘Ethical Business Conduct in BAE Systems plc – The way forward’”, press release, 6 May 2008, (Contact The Corner House for a copy as no longer on Woolf Committee website). The press release suggested contacting Rory Godson of Powerscourt Media for more information (among others). Powerscourt Media describes itself as “a strategic communications consultancy” offering crisis management among other services: <http://www.powerscourtmedia.com/index.html>.

Its website states that:

“Powerscourt provided strategic counsel and ideas generation to BAE Systems, the world’s third largest defence company, from 2005 until 2008. Separately, we advised the Woolf Committee, the independent committee set up by the Board of BAE to study and publicly report upon the Company’s ethical processes and practices.”
http://www.powerscourtmedia.com/clients/bae_systems.html

⁸ –On 23 January 2007, the UK Solicitor General confirmed that the Serious Fraud Office was investigating BAE Systems’ dealings in six countries: Chile, Czech Republic, Qatar, Romania, South Africa and Tanzania.
<http://www.controlbae.org/background/sfo.php>

–David Leigh and Rob Evans, “Swiss launch BAE inquiry over alleged money laundering”, *The Guardian*, 14 May 2007,
<http://www.guardian.co.uk/world/2007/may/14/bae.armstrade>

–Nick Bevens, “US launches BAE corruption investigation”, *The Scotsman*, 27 June 2007,
<http://business.scotsman.com/baesystems/US-launches-BAE-corruption-investigation.3299220.jp>

⁹ For a timeline of this legal challenge, background and links to key legal and background documents, see: <http://www.controlbae.org/jr/>

¹⁰ <http://www.controlbae.org/background/JR-Judgement.pdf>, para.47

Phrases such as “proved to be true” refer obliquely to the way in which the UK’s bribery and corruption legislation is worded. Lord Woolf went further in an interview on BBC Radio 4’s flagship current affairs programme, *Today*, to state that the Serious Fraud Office was “actually not able to prove anything and their enquiries were brought to a halt”.¹² Leaving aside the fact that proof would be for a prosecution to decide, not an investigation, witness statements and evidence from the judicial review all make clear that the Serious Fraud Office’s inquiry was halted because of threats from Saudi Arabia and not because of any lack of evidence or proof.

BAE Chair Dick Olver, talking on the *Today* programme the following day, claimed that the High Court judges had said “that as far as they could tell there was indeed no evidence to say that this [the alleged illegal bribe] was anything other than a legal commission.”¹³ This is not true: the judges did not say this. More importantly, the judges in the judicial review weren’t considering whether BAE bribed in Saudi Arabia or not. They were looking only at whether it was lawful for the Serious Fraud Office to have dropped its investigation into the bribery allegations or not – and concluded it wasn’t lawful.

Olver went on to cite these two sentences from the High Court judgment and the Woolf Report repeatedly during the company’s AGM – and to extrapolate from them to state not only that there was no case for BAE to answer and that any prosecution would therefore be doomed to failure, but also that there was no evidence. There is “no substance to the case”, he asserted.

These assertions by Lord Woolf and Dick Olver are both examples of overstepping the mark, possibly without their realising it, or of believing that a sentence or a statement means what *you* want it to mean.

Given that evidence released during The Corner House/CAAT judicial review includes letters from BAE to the Ministry of Defence and the Attorney General urging that the UK’s Serious Fraud Office investigation into BAE’s Saudi arms deals be stopped on commercial and diplomatic grounds and arguing that the continued investigation would jeopardise the multibillion-pound sale of Typhoon aircraft,¹⁴ I can only concur with another questioner from the floor at BAE’s AGM, who asked:

“If there is no case to answer, why did BAE go to such trouble to stop the Serious Fraud Office investigation?”

¹¹ http://217.69.43.26/woolf/Woolf_report_2008.pdf, page 8.

¹² BBC Radio 4 *Today*, 6 May 2008, 8.10 am, http://www.bbc.co.uk/radio4/today/listenagain/listenagain_20080506.shtml, at 5.30 minutes following.

¹³ BBC Radio 4 *Today*, 7 May 2008, 7.50 am, http://www.bbc.co.uk/radio4/today/listenagain/listenagain_20080507.shtml

¹⁴ Letters, memos, notes and emails sent from November 2005 to December 2006 from and/or to BAE Systems, Allen & Overy (BAE solicitors), the Attorney General's office and the Serious Fraud Office, <http://www.thecornerhouse.org.uk/pdf/document/SecondRedactDocsRW4.pdf>.

In addition to signalling an intention to catch up in the corporate social responsibility race and to countering perceived reputational damage caused by Serious Fraud Office investigations, the Woolf Report seems to have two other potential uses:

- persuading institutional investors to buy or hold their shares in BAE; and
- drawing attention away from an investigation by the US Department of Justice.

Share holding is linked to Corporate Social Responsibility (CSR); one measure of CSR's success in recent years is that many potential investors now look to see whether a company has a CSR policy or equivalent before buying its shares. Does BAE now have an ethical policy? Yes. Does BAE have a safety policy? Yes. Does BAE have a gender and diversity policy? Yes. If the boxes are ticked, BAE could pass basic tests as to whether it's an ethical company or not. It would not surprise me if BAE, along with other arms companies that adopt ethical codes of conduct, are now included in socially responsible investment, ethical investment or green investment portfolios.

Some months after the UK's investigation into BAE's alleged bribery in its Saudi Arabian contracts was stopped, BAE won a new deal from Saudi Arabia for 72 Eurofighter Typhoon warplanes, called the Al Salam contract. A London-based financial analyst at ABN Amro Holding (a large Dutch bank) has been reported as saying:

“The big thing is that the [Woolf] committee gave a clean bill of health to the Salam contract . . . The company is hitting this issue hard.”¹⁵

So is or isn't BAE an ethical corporate company after 1 January 2009? Are its claims and promises to be ethical in future true or false? In answer, I refer to the work of a Corner House colleague of mine, Larry Lohmann, who has been supporting a 10-year struggle by villagers in southern Thailand to defend their land and livelihoods from a large natural gas development project, which is financed by a consortium of foreign banks, led by the UK-based Barclays Capital.

Barclays has been a leader in forming the Equator Principles, the CSR standard for banks.¹⁶ There has been a catalogue of human rights and environmental abuses in the

¹⁵ “BAE Advised to Strengthen Measures to Prevent Bribery” (Update4) By Steve Rothwell, Bloomberg, <http://www.bloomberg.com/apps/news?pid=20601085&sid=aU38E.1VjudE&refer=europe>

¹⁶ The Equator Principles are a set of standards and guidelines to address environmental and social risks in development project finance globally. Since they were drafted and launched by a small number of banks in 2003 (revised in July 2006), more than 60 banks and investors have become signatories, which means they have committed themselves not to finance projects that do not follow the Principles. The Principles are derived from the social and environmental safeguard policies of the World Bank Group. Although their adoption is voluntary and there is little or no monitoring of violations, the Equator Principles have become a de facto standard for banks and financial investors for major development projects around the world. <http://www.equator-principles.com/faq.shtml>

project area in Thailand, yet “to dwell on the falsity of such claims [e.g. that Barclays takes action against human rights violations caused by its operations] is to miss their deeper political function,” writes Lohmann. Whether Barclays is or is not in *actual* compliance with the Equator Principles is not relevant to their task of seducing business, governmental and middle-class audiences in the West.

“In 2007, *Fortune* magazine awarded Barclays the No. 2 spot in its annual ratings of the 100 largest global corporations on their social and environmental responsibility largely on the ground that the bank had said it was committed to the Equator Principles, ‘which discourage lending to infrastructure projects which displace communities or disrupt ecosystems’.”

Concludes Lohmann, “verification was irrelevant”.¹⁷

As for the US investigation of BAE: In June 2007, BAE acknowledged that the US Department of Justice had decided to investigate the company’s compliance with US anti-corruption laws in its Saudi arms deals – in particular, to look into whether it bribed Saudi Arabian officials to win arms contracts. *The Guardian* points out that:

“In the US, companies under investigation hoping for lenient treatment frequently commission rigorous outside investigation by firms of *independent lawyers*, and dismiss senior individuals found at fault.” (emphasis added)

Although the Woolf Committee did not look at BAE’s past conduct, it was headed by a senior lawyer and judge and is described as independent. These aspects led some commentators to describe the Woolf Report as an attempt to strengthen the company’s bargaining power if the US investigation does proceed to a prosecution. In the US, companies with ethical policies are more likely to be offered a plea bargain before prosecution gets underway. *The Guardian* continues:

“BAE needs a clean sheet in the US, where it is making more sales and considering appointing an American chief executive.”¹⁸

The Independent concurs:

“So what explains this sudden scramble by BAE for the moral high ground? The truth is that this all has rather more to do with commerce than morality. Lord Woolf’s report is little more than ethical window-dressing. It was

¹⁷ Larry Lohmann, “Gas, Waqf and Barclays Capital: A Decade of Resistance in Southern Thailand”, a commentary for *Race & Class*, vol. 50, no. 2, October-December 2008, <http://www.thecornerhouse.org.uk/pdf/document/Waqf.pdf>.

¹⁸ Sadie Gray, David Leigh and Rob Evans, “BAE paid too little heed to ethics, says report”, *The Guardian*, 6 May 2008, <http://www.guardian.co.uk/business/2008/may/06/baesystemsbusiness.armstrade>

commissioned last year to deflect a parallel US Department of Justice inquiry into the company's affairs.”¹⁹

When the Woolf Report was issued on 6 May 2008, The Corner House issued a short statement:

“The Woolf Committee report is an interesting academic exercise in corporate ethics.

“To address the allegations of bribery that have prompted criminal investigations in the UK, USA and Switzerland, however, BAE should have saved its £1.7 million spent on the Woolf Committee and adopted instead accepted best practice: namely, to employ a law firm as an independent investigator to go through all its internal emails and documents in order to make adequate disclosure to the law enforcement authorities.

“If BAE is serious about breaking from the past, it needs to show that it is fully cooperating with all the current investigations by law enforcement officers in the UK, US and Switzerland.

“Neither BAE's existing or future ethical policies will have any credibility or public confidence unless the company addresses allegations of past malpractice and unethical practice and cooperates fully with law enforcement authorities. In recent years, it has deployed behind-the-scenes lobbying and its PR machinery to undermine bona fide and independent investigations.

“BAE's proclaimed ethical principles of honesty and openness mean little without a full accounting for how the company came to be mired in the bribery allegations in the first place, and without full answers to the many questions that the allegations have raised.”

Did the Woolf Committee's report convince the US authorities that it could go easy on its investigation? It would seem not. The Department of Justice investigation is still ongoing.

On 12 May 2008, six days after the Woolf Report was issued, US officials issued a subpoena (an order to give evidence) to BAE's chief executive, Mike Turner, on his arrival in the United States at Houston, Texas, and to a BAE non-executive director, Sir Nigel Rudd, who is chair of the British airports operator, BAA, and who joined the BAE board only in September 2006. Both were released after being questioned and after documents and personal electronic equipment including laptops and Blackberries had been examined. David Gourevitch, a defence attorney specialising in “white collar” crime, explained that the British public was not necessarily used to executives being aggressively pursued and questioned, but that US prosecutors were less likely to make a distinction between alleged “white collar” criminals and “real” criminals in the tactics they employ, including aggressive questioning.

¹⁹ Leading article: “Running out of excuses”, *The Independent*, 8 May 2008, <http://www.independent.co.uk/opinion/leading-articles/leading-article-running-out-of-excuses-822746.html>

“It sounds like the DoJ [Department of Justice] investigators are not getting what they hoped for as quickly as they hoped for, and are pursuing information through other avenues. A stop [into the US] by executives is a perfect way to do that.”²⁰

Alexandra Wrage, president of Trace International, a non-profit group that specialises in anti-bribery cases, agreed that “[f]or the DoJ to have behaved like this, for them to have issued subpoenas in a US airport – this probably wouldn’t have happened if a company was co-operating fully.” She added:

“The vast majority of companies co-operate with the Government, which makes detentions and subpoenas unnecessary. Typically, a company would sit opposite the DoJ and there’d be a dialogue. It can be very civilised.”²¹

In late May 2008, US officials issued another subpoena to a third BAE executive, Alan Garwood, as he changed planes in Miami. Garwood was seconded to the Ministry of Defence from BAE in 2002, where until last year, he led a team of 600 civil servants at the Defence Export Service Organisation²² and worked on the Al Salam deal to sell Eurofighter Typhoons to Saudi Arabia. An unspecified number of subpoenas have also been served on BAE Systems’ employees in the United States.

I conclude with some extracts from a flyer promoting an industry conference taking place in London in September 2008 on “Best practices for preventing corruption and bribery”, which I believe confirms my wariness about the Woolf Report and its uses:

“A day rarely goes by without a corporate corruption story hitting the headlines. Instilling a compliance programme across your organisation that addresses ethical behaviour and mitigates the risk of allegations of corruption and bribery is crucial. Not only to *prevent your organisation being involved in the next big news story*, but to *satisfy shareholders* that you have done everything possible to *protect your corporate brand* and *protect share value* should a scandal hit.” (emphasis in original)²³

This extract illustrates that a company is responsible first and foremost, and perhaps only, to its shareholders, and that the aim of a “compliance programme” is to “*mitigate the risk of allegations* of corruption and bribery”, not to make sure that bribery and corruption themselves, both criminal offences in the UK, do not occur.

²⁰ Quoted in Sylvia Pfeifer and Stephanie Kirchgaessner, “BAE executives held as US steps up arms deal probe”, *Financial Times*, 19 May 2008, http://www.ft.com/cms/s/0/1e2a74e0-253b-11dd-a14a-000077b07658.html?nlick_check=1

²¹ Suzy Jagger, “BAE accused of being uncooperative with US investigators”, *The Times*, 20 May 2008, http://business.timesonline.co.uk/tol/business/industry_sectors/engineering/article3964882.ece

²² For more information, see: <http://www.caat.org.uk/publications/government/desobriefing0106.php>

²³ <http://www.iqpc.com/ShowEvent.aspx?id=96142>, accessed 17 June 2008.

The extract echoes the Woolf Report's objective in recommending policies and practices to BAE: to reduce the risk of *allegations* being made in future and to make sure that the company's reputation is not damaged – again, not to reduce the risk of bribery or corruption taking place. It also helps put in perspective Dick Olver's statement at BAE's 2008 AGM that the company would address its reputation more effectively in future and would do more to promote and defend its reputation because it had been damaged by recent allegations.

Another heading in the September conference brochure asks the reader what s/he will take away from attending the conference. One of the answers is:

“Successfully handle a US-style investigation into suspected FCPA [US anti-corruption legislation] breaches with real-life case studies from those with high-profile war stories including Monsanto Company and BAE Systems”²⁴

In addition, prospective conference attendees were told that they would learn how to “[u]tilise best practice from BAE Systems to successfully handle an intrusive investigation situation”.

At BAE's AGM, several reports were set out for shareholders to pick up in addition to the Woolf Report; these included BAE's annual report, its Corporate Responsibility Report and its tabulation of Frequently Asked Questions. In emphasising a point he was making, Chair Dick Olver waved the Corporate Responsibility Report at the audience, helpfully identifying and distinguishing it from the others by what I believe was an accurate description although one he may have later regretted: “the thin one”.

²⁴ <http://www.iqpc.com/ShowEvent.aspx?id=96142>, accessed 17 June 2008.