

White-Collar Crime

-The Irish Response

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Bust!

- Since the financial crisis sent the economy into a spiral there have been public cries for a system that can cope with white-collar crime.
- This would have fit with the pattern of how things have gone since the beginning of time:
- Booms and bubbles led to market collapses and crises, followed by the tightening of regulations and criminal prosecutions....

But, how have we fared?

- 4.5 years ago, in March 2011 – I gave a talk on these issues to the ACJRD.
- What has happened since?
- Look at developments.
- Look at examples of stagnation.

Developments

1. Some successful prosecutions*
2. Criminal Justice Act 2011*
3. Pre-trial conferences*
4. 15 jurors for certain cases/commencement of provisions on information for juries*
5. Whistleblower protection

*not enough/more to be done

More to be done...

- Delays/lengthy investigations.
- No system for incentivising cooperation from offenders (apart from sentencing).
- No resources for S.19s.
- No system of dealing with issues such as admissibility of evidence before jury sworn in.
- Lack of support for jurors.

Stagnation

1. Corporate Manslaughter.
2. Publication of Draft Scheme for Corruption Bill (June 2012).
3. Legislation dealing with third party disclosure.
4. Reliance on “complaint”.

5. Corporate Criminal Liability



“Maybe we could agree that the whole board was at the theatre – a kind of ‘corporate alibi’.”

6. Sentencing Companies

“There is no such thing as too big to jail. Some have used that phrase to describe the theory that certain financial institutions even if they engage in criminal conduct should be considered to be immune from prosecution due to their sheer size and their influence on the economy. That view is mistaken and it is a view that has been rejected by the DOJ. To be clear no individual or company not matter how large or how profitable is above the law.”

**- Former US Attorney General Eric Holder in
2014**

7. Resources

“In common with other public sector organisations this Office must operate in an environment of significantly reduced expenditure and staff numbers. At the same time we must continue to provide a prosecution service which is of the highest professional standard. Achieving this in the face of complex demands has become increasingly difficult.”

-DPP, 2013 Annual Report

“Tying the hands of our key enforcers”

- At a time when we need our key enforcers to be heavily resourced, the budgets of the Gardaí, CAB, the DPP and the ODCE were cut over recent years.

“The white-collar set- up in and around capabilities, resources, powers, constitutional interaction – I don't think in the round that it's working sufficiently well”.

-Matthew Elderfield speaking to PAC, June 2013

“If anything it is probably easier to get away with white-collar crime right now than it ever has been in the history of the State.”

-Remy Farrell SC, Irish Independent, June 2014

Does any of this matter?

- According to the UK's Financial Conduct Authority, white-collar crime is estimated to cost the global economy more than **\$2,000,000,000,000 every 365 days.**
- Estimated to cause losses in the UK alone of more than £40 billion a year.
- Cost/benefit analysis: investing in resources would be cost effective.

8. Review

- Multiple calls for same.
- Department of Justice White Paper on Crime (White-Collar Crime).
- LRC is conducting work in the area.
- Jessica De Grazia (SFO).

Do we need....

- A designate prosecutor for white-collar crime?
 - Heavily resourced;
 - Multi-disciplinary with experienced & trained personnel:-
 - Lawyers;
 - Forensic accountants;
 - Seconded Gardaí, CAB, Revenue, ODCE, CCPC.
- A remodelled criminal code removing lacunae & overlaps, which streamlines prosecutions?