

BETWEEN:

REGINA

- v -

MABEY AND JOHNSON LIMITED

PROSECUTION OPENING NOTE

Note: This statement is provided for the assistance of the Court and the parties. While it substantially sets out the Crown's case, it is not, nor does it purport to be, a full and exhaustive pleading of that case.

I. INTRODUCTION

1. Mabey and Johnson Limited ("M&J" or "the Company") is a privately-owned, family-run company, founded in 1923 by the Mabey family and incorporated in 1943. One of the original directors was a Mr Bevil Mabey who remained a director of the Company until December 2007.
2. M&J is an engineering company whose principal business over the last 35 years has consisted of supplying bridging equipment in over one hundred countries, largely in the developing world. In general, the bridges supplied consist of standardised and interchangeable components which can be easily transported after manufacture in the United Kingdom. Similarly, erection on site is a relatively simple engineering process. On its website M&J proclaims that it manufactures "quick, simple, reliable bridges" and goes on to assert "our modular steel panel bridge systems provide a means of helping communities and markets connect reliably and safely".

3. Over the years - according to its website - M&J has become the “world leader” in its field. Current turnover is around £50 million. During the indictment period turnover was on average £56 million.¹ In the year to 30 September 2008, pre-tax loss (before exceptional provisions) was c.£2 million. The Company employs around 240 people, 210 of whom are based in the UK. Its manufacturing site is at Lydney in Gloucestershire, where 160 people are employed in creating around 20,000 tonnes of bridging components annually. The Mabey family has reportedly accumulated over £200 million pounds as a result of their ownership and management of the Mabey Group, including M&J.
4. M&J’s overseas clients consist principally of government departments and highways authorities. Its contracts with foreign governments have often been underwritten by the United Kingdom's Export Credits Guarantee Department ("ECGD") which is a statutory body whose role is to benefit the UK economy by helping exporters of UK goods and services win business and UK firms to invest overseas by providing guarantees, insurance and reinsurance against loss. The Jamaica and Ghana contracts which are the subject of this indictment were in fact supported by the Export Credit Guarantee Department (“ECGD”).

II: SUMMARY OF ALLEGATIONS AGAINST M&J

5. In order to establish and secure its business abroad, M&J appointed agents to act on its behalf in the various countries where it was seeking to win contracts to build bridges.
6. It is accepted by M&J for the purposes of sentencing that the payment of commissions to agents was a routine aspect of the Company’s business, authorised at director level. These payments were structured into the Company’s commercial processes and were factored into contract pricing. Commission fees paid to local agents or middlemen ranged from contract to contract and by jurisdiction. However, historically, it was not atypical for agents to be paid between 5-15% by M&J, although M&J maintain the average was about 8%.

¹ Based on statutory accounts for the years 1992/1993 to 2001/2002.

7. In Jamaica and Ghana M&J knew that its agents were involved in corrupt relationships with public officials with influence over M&J's affairs in those jurisdictions. M&J accept that they agreed with their agents to pay bribes directly to public servants in those jurisdictions. Those bribes were deducted from the overall commission due to the agents.
8. It is not asserted by the SFO, in this case and generally, that all payments to agents are illegitimate or that all agents act corruptly. Agents, in some jurisdictions are both necessary and play a useful marketing and other legitimate function to the exporter. However it is equally beyond reasonable argument that unless properly monitored and controlled, the employment of local agents and payment of commissions is a corruption "red flag" exposing the company to risk. What it may provide is a convenient smokescreen to deny corporate or individual knowledge of arrangements conducted overseas. This was the reality of business practices of this era.
9. In both Jamaica and Ghana M&J's agents were involved in corruption in those jurisdictions. Their corruption was known to M&J and the SFO suggests, though it is not accepted by M&J, that this would have been part of the rationale of their appointment. The direct bribes were deducted from the overall commission to be paid to the agent with respect to Jamaica and the majority were deducted from the agent's commission for Ghana. In short it is the SFO's case that the Company therefore employed known bribers as agents for commercial gain from the outset.
10. The SFO's contention, based on inference from all the available facts, is that those agents were appointed to facilitate corruption. The SFO believes this was known to the directing minds of M&J. However this is not accepted by the Company. Nevertheless in the light of the scope of what is admitted by the Company and what is before the Court, namely bribes of more than £1 million on contracts valued in the region of £60-70 million, it is the Director's view that this difference is not so substantial that it should require resolution by calling evidence. After all where there are direct payments to public servants, it does not make much difference, for

the liability of the Company, if there were additional payments through the agents to facilitate corruption. In some respects it may well be seen as aggravating where modestly paid public servants are corrupted for relatively small amounts in proportion to the commercial gain for the company concerned.

11. In Jamaica M&J's agent was paid 12.5% of the Jamaica 1 contract price. As will be explained later, this was a headline figure as the Jamaica 1 contract was a Joint Venture with Kier International Limited.
12. For budgeting purposes in relation to the Priority Bridge Programme II in Ghana, M&J created a notional fund of £750,000 called the "Ghana Development Fund" ("GDF") against which direct payments to public officials were made. In total from the GDF and associated accounts, between December 1994 and 18 August 1999, £470,792.60 were paid in bribes.
13. In a lot of cases monies, represented on M&J's commission cards, would be deducted from the agents' commission to be paid direct to the public servant. M&J authorised these requests at director level and payments were processed both to UK and overseas bank accounts.
14. Although the appointment of agents to assist an exporter in obtaining overseas contracts is commonplace and legitimate, payments to agents also carry an accepted and obvious corruption risk.
15. The Company does not accept that there was a corrupt intent in the appointment of and subsequent commission payments to the agents in Jamaica and Ghana. However it is accepted by M&J that in Jamaica and Ghana and in the countries referred to below (where corruption has also been identified as a result of internal investigations conducted on behalf of the Company) that in paying agents large commissions there was a risk that unknown proportions of those payments might be passed on to public servants as bribes. It also follows in countries with a similar risk of corruption where M&J operated, such a system must have given rise to an identical risk.

16. Although, historically, M&J's corrupt business practices appear to have been carried on in a number of the countries in which it operated, for reasons which will become clear the Company is indicted for its dealings in Jamaica, Ghana, and - in a separate and distinct matter - Iraq. In addition the company has disclosed four further jurisdictions in which corruption occurred, Madagascar, Angola, Mozambique and Bangladesh, the relevance of which is described further later in this Opening Note.
17. A number of individuals, are the subjects of investigation with regard to the corrupt business practices of M&J. Those investigations may be protracted. Currently, however, the position appears to be that if any proceedings are to be commenced against individuals associated with the Company, they will be contested, despite the fact that the Company is pleading guilty to allegations which are largely evidenced by the Company's own documents.
18. Given that the case against the Company could not have been brought before the Court as expeditiously as it has been without the co-operation of and admissions by the Company. Any long criminal investigation into the business affairs of a company can have a damaging effect on it. The SFO are of the view that it is appropriate to prosecute the Company before the completion of the investigations into the conduct of the individuals.
19. As will be described below, this is a Company that has replaced its board and is changing and continues to review its business practices. It is, to a notable extent, no longer the company that committed these crimes. Therefore mindful of both the SFO's domestic and international obligations, the SFO wishes to conduct its duties in a way that does not unnecessarily damage the Company's ability to trade. Of course, that objective can only be fully discharged, as in this case, where the Company fully and properly co-operates with the prosecuting authority.
20. In this context it should be noted that the policy of the SFO under the present Director, further referred to below and Appendix 1, is that boards of companies should be encouraged to approach the SFO and make a full disclosure of fraud or corruption they have discovered together with proposals about the changes and

monitoring needed in the future to re-assure the public that the behaviour of those companies meet the highest ethical standards. If companies do this then the SFO is prepared to discuss with them the pleas or other resolution that the SFO considers to be in the public interest.

III: BACKGROUND TO THE REFERRAL AND INVESTIGATION OF CORRUPTION ALLEGATIONS RELATING TO M&J

21. The referral of alleged breach of sanctions legislation is dealt with at section X of this document. However, additionally during the last decade there has been some speculation in the media and elsewhere concerning alleged corruption in relation to M&J's business practices abroad.
22. The Metropolitan Police and latterly, the SFO, have sought to progress those investigations, but, they could not be successfully progressed.
23. On 11 January 2007 M&J commenced proceedings in the Chancery Division against certain former employees and its agent in Jamaica. One of the Defendants in these proceedings was Jonathan Danos. Amongst his other duties, Mr. Danos had been responsible for negotiating commissions payable to M&J's agent in Jamaica.
24. In short, M&J claimed that Mr. Danos had acted in breach of his contract of employment and his fiduciary duty by agreeing to pay an inflated commission figure to the Jamaican agent in order that he and the agent could secretly profit at M&J's expense, and then direct those secret profits to their own commercial purposes. What was involved was a "kickback" arrangement, by which Mr. Danos and his co-Defendants not only unjustly enriched themselves, but then 'invested' that enrichment in commercial schemes of their own.
25. In his draft amended defence and counterclaim Mr. Danos asserted it was "common practice" for M&J to pay government officials in order to secure contracts. In terms, he further asserted that there was a bribery culture within M&J which was sanctioned by certain directors. Given the nature of the evidence with respect to the

six jurisdictions referred to below which corroborates these particular assertions on the part of Mr. Danos, the SFO agrees.

26. On 9 January 2008, Herbert Smith LLP, solicitors for M&J, received from the Mr. Danos's draft amended defence and counterclaim. Although it did not contain a signed statement of truth by Mr Danos those acting for Mr. Danos made it clear in correspondence that it had been settled on his instructions. Subsequently, a decision was taken by certain directors (including Director B, Director A and Director C, who were directors of M&J at the time) to voluntarily report issues to the SFO. As a consequence, on 11 February 2008, Herbert Smith LLP approached the SFO to provide details of the evidence that the Company had been or may have been engaging in corrupt practices. Documents relating to an internal investigation undertaken by Herbert Smith LLP were provided to the SFO. Importantly and in the spirit of exemplary and proper co-operation, the Company provided copies of privileged notes of internal interviews of certain directors and employees, conducted during the internal investigation. As an aside, the SFO regards this approach, namely conducting an internal investigation which is then fully disclosed to the SFO as meriting specific commendation. In cases where this is not the practice of the suspect company, the SFO will not regard the co-operation as a model of corporate transparency.
27. Thereafter a process of disclosure took place by which M&J through its solicitors progressively disclosed to the SFO Company documents which evidenced instances of corruption in Jamaica, Ghana and other jurisdictions.
28. Accordingly the SFO commenced an investigation into the affairs of M&J, its directors, executives, agents and other employees.
29. It is appropriate at this point to acknowledge the considerable level of co-operation which M&J, through its solicitors, has afforded the SFO, enabling the investigation into the affairs of M&J to be expedited. Indeed, the level of co-operation, coupled with the Company's readiness to admit its guilt, is one of the factors which persuades the Director of the SFO that it is appropriate for the case against the

Company to be proceeded with and disposed of before allied investigations against individuals are concluded.

30. The SFO also recognises that since the commencement of the investigation M&J has taken certain remediation steps. The SFO has been informed that five former directors have stepped down as directors and ceased to be employees. They have been retained as consultants to assist M&J in its co-operation with the SFO. The SFO has been told that further training has been provided at both Board level and to sales managers and commercial staff. It has also introduced new ethical procedures and agreed to the appointment of an external monitor.

IV: M&J's OWNERSHIP STRUCTURE

31. M&J is one of a group of companies owned by the Mabey family. The majority shareholder of the Mabey Group is Mabey Family Trustees Ltd., which owns the majority of the shares in Mabey Holdings Ltd., which in turn owns Mabey Engineering (Holdings) Ltd., a subsidiary of which is M&J.

32. As of 3 September 2008, David Mabey was the Company Secretary and one of six Mabey family members who were directors of Mabey Family Trustees Ltd. Although his five sisters were board members, David Mabey, and his father, Bevil Mabey, were the only family members who had taken an executive role in the management and activities of the group of companies, prior to their resignation.

33. Mabey Holdings Ltd. was incorporated in 1985. The Company's authorised share capital comprises 550,000 ordinary shares and 2,000,000 preference shares. Both types of share have a nominal value of £1.

34. Mabey Engineering (Holdings) Ltd has 30,000,000 issued shares, all of which are owned by Mabey Holdings Ltd. Mabey Engineering (Holdings) Ltd also owns the entirety of the share capital of M&J – 4,000,000 shares. David Mabey resigned as one of the three directors of Mabey Engineering (Holdings Ltd) on 2 July 2008, and he resigned as a director of M&J and of Mabey Holdings Ltd on the same day. David Mabey no longer has any executive role in the MHL group of companies.

35. The reality of the ownership structure of M&J is that the Mabey family in general, and David Mabey in particular, have at all material times been in exclusive control of the affairs of M&J. Whilst directors within the Mabey group could be appointed or removed at the behest of the shareholders, those same shareholders were David Mabey and his family.

V: DEVELOPMENTS IN THE CONDUCT OF M&J's OVERSEAS BUSINESS

36. In 2002 the Company - evidently aware of the ramifications of sections 108 and 109 of the Anti-Terrorism, Crime, and Security Act 2001 – introduced new anti-corruption policies and procedures for the conduct of its business.

37. In May 2002 a “Group Gifts and Hospitality Policy” was distributed. Director A, sent out two memoranda on 14 and 22 May 2002, defining the Company gifts and hospitality policy. The Company also created an Export Committee to oversee the appointment, remuneration, and conduct of its representatives in foreign jurisdictions, as well as writing and publishing a policy set out in its Business Ethics and Conduct Policy Manual (“BECPM”), which was circulated amongst its relevant employees.

VI: THE WIDER CONTEXT OF THE CASE AGAINST M&J

38. There are indicators, however, for asserting that the policies and measures described above did not wholly bring about an immediate cessation of potentially corrupt or unethical practices overseas by individual persons connected with M&J and its business. Since the voluntary disclosure in February 2008, M&J, through its new management, have undertaken a review for the purpose of maintaining ethical standards within the Company.

39. For the reasons developed at paragraphs 16 and 20 above, and further explained below, the SFO is content to accept pleas of guilty from the Company to the conduct alleged in this indictment.

40. The indictment contains allegations pre-dating the coming into force of sections 108 and 109 of the Anti-Terrorism, Crime, and Security Act 2001. The issue of

jurisdiction has been considered by the SFO and M&J's legal advisers and it is their respectful view that there is no jurisdictional bar to the prosecution of the indictment before the Court.

41. The Director of the SFO wishes to emphasise that by accepting the proposed pleas, the SFO does not fetter itself in any way from investigating (and, if appropriate, prosecuting) undeclared allegations of corruption against the Company if these are discovered at a later stage. The SFO is also continuing with investigations concerning a number of the individuals allegedly involved in corruption. Prosecutions will be considered in due course if the tests in the Code for Crown Prosecutors are satisfied. However given the admission of the Company of the widespread historical corrupt practices within the indictment in relation to its business affairs in a number of jurisdictions (see below), the SFO accepts that having taken this feature into account in the sentencing of the Company, further undisclosed criminality within the indictment period will not be the subject of prosecution against the Company. For the avoidance of doubt, this is not the position taken by the Director of the Serious Fraud Office in relation to ongoing investigations against individuals.
42. The policy of the SFO with regard to companies which 'self-refer' themselves to the SFO for offences which can be described as - at least, relatively - historic, as in this case, is to apply a proportionate approach to investigation and prosecution, both so as to acknowledge endeavours at remediation, and to encourage other companies which have a history of improper conduct to come forward and "clear the slate".
43. Hence, in the light of the agreement of M&J to institute a system of independent monitoring (see Appendix 1) of its overseas business activities and transactions on the same model as that envisaged in the United States of America under the Foreign Corrupt Practices Act 1977, as well as certain steps it has already taken to remove certain directors it views as "involved" in the corrupt practices, and further improvements to procedures as outlined at paragraphs 19 and 20 above, the SFO is respectfully of the view that the public interest is not best served - as against the Company only - by what might well be long-drawn out litigation over remaining unproven allegations of corrupt practices.

44. Accordingly, the Director of the SFO is minded to accept the pleas proffered on the part of M&J, without prejudice to its ongoing and unfettered investigations of corrupt practices - on the part of individuals associated in various capacities with M&J.

VII: THE JAMAICA CONTRACTS

(i) Relevant personnel

45. The relevant Ministry responsible for bridge contracts has undergone changes of name over time. In 1989 the department was known as the Ministry of Construction (Works). In 1996 the department became known as the Ministry of Local Government and Works and in 1998, it became the Ministry of Transport and Works (“the Ministry”) and retains that name today.

46. In 2001, the National Works Agency was established. This is an executive agency working under the control of the Ministry.

47. Joseph Uriah Hibbert was born on 20 July 1948 He served as a Jamaican government official until October 2000.

48. Mr. Hibbert joined the Ministry on 10 July 1972 as an engineer. By 1989 he had risen to the position of Chief Engineer and in November 1993 he was promoted to Chief Technical Director of the Ministry. He left the Jamaican Civil Service on 28 October 2000.

49. During his tenure he held delegated powers to act on behalf of the Permanent Secretary of the Ministry, including entering into binding financial commitments, and where there was a vacancy in that position, he could lawfully act as the Permanent Secretary. In short he held a very important and influential position in regard to his principals affairs and respectively, M&J’s affairs.

50. At all relevant times when Mr. Hibbert was in receipt of money from M&J he was bound by the relevant Public Service Staff Orders. He was not entitled to receive the money M&J paid him in respect of the exercise of his duties.
51. Subsequently Mr. Hibbert entered national politics. In 2002 he became a Member of the Jamaican Parliament as a Jamaican Labour Party member. When the Jamaican Labour Party were returned to government in the general election of 2007, Mr. Hibbert was appointed as Minister of State in the Ministry of Transport and Works. He remains in that position today.
52. As an official he occupied a position of influence in regard to the award of contracts relating to Jamaica's transport infrastructure. Indeed it might be said that his appointment as Minister of State is testament to the influence he wielded in his capacity as an official.
53. What is plain beyond peradventure is that M&J paid Mr. Hibbert so that he would exercise his influence corruptly on behalf of M&J. M&J paid him directly from agreed commission payments earmarked for their Jamaican agent £100,134.62 between 20 November 1993 and 30 October 2001.
54. In fact the direct bribes evidenced in M&J's schedules year on year from 1993 onwards would have approximated something in the order of his annual salary each year.
55. Deryck A. Gibson is a director and chairman of Deryck A. Gibson Ltd. ("DAG Ltd.") which was incorporated in 1965, having originally traded as Deryck A. Gibson Commission Agent. He is a former vice-president of the Jamaican Chamber of Commerce and holds himself out to have been in business for over 50 years and to be "a well-known and well respected figure by the private and public sector leaders in Jamaica." Mr Gibson acted as M&J's agent in Jamaica.
56. M&J paid commission of 12.5% of the contract price for a contract which was called Jamaica 1 (see below). M&J subtracted the direct payments to Hibbert from Gibson's 12.5% commission. It is accepted by M&J that Mr Gibson was involved

in corrupt activity with M&J within the indictment period and that Mr Gibson was in a corrupt relationship with Mr Hibbert. When appointing and permitting Mr Gibson to continue as an agent acting for M&J prior to 2002, M&J knew that there was a risk that Mr Gibson might pass further commission money to Hibbert.

57. Initially, Mr Gibson's commission was paid into accounts in his name. Later, however, Director E, agreed that payments could be made to an offshore vehicle, Montego Bay Enterprises Inc. for the payment of commissions to Mr Gibson. These payments were made to a Bahamas account with Barclays PLC in the name of Leadenhall Bank and Trust Company Ltd. These payments carry the reference "Montego Bay" on an M&J commission card.

58. Manager C was said to "have had the ear" of both Bevil Mabey and Director B, and was capable of overriding decisions made by other board members. In terms of global geography, Manager C's duties were primarily concentrated in the Caribbean and Latin America, although he also had some dealings with countries in Africa and elsewhere.

(ii) M&J Jamaica Contracts

59. M&J have obtained contracts for the supply of flyovers and modular pre-fabricated bridges and associated technical services to the Jamaican Government.

60. M&J have conducted business with the Jamaican Government from approximately 1993 and work is ongoing in respect of a current contract.

61. Though M&J's records are, because of the passage of time, sketchy in relation to the earliest of its contracts in Jamaica, there appear to have been a number of precursor contracts to a larger Priority Flyover Programme in Kingston, (the "Jamaica 1" contract).

62. Following Jamaica 1, there has been a subsequent, distinct, Jamaican project for rural bridges (the "Jamaica 2" project). Only "Jamaica 1" and its precursors are relevant to these, instant, proceedings.

63. M&J entered into a contract referenced "OX93/081" with the Ministry of Construction in 1993-1994 valued at £291,000. There were then two further contracts in 1997 referenced as "0282R" and "0298R" with values of £547,000 and £60,000 respectively.
64. These early contracts were for the supply of various spans of modular pre-fabricated bridging and spare parts for such bridging. The bridging equipment supplied under these "supply only" contracts would have been sited and used by the Jamaican Ministry of Construction at their discretion. M&J's business developed during the 1990's, so that in addition to this type of "supply only" contract of bridging equipment, M&J was able to complete larger projects for the supply and installation of more complex, flyover type, bridges, such as those provided on Jamaica 1.
65. On 17 February 1999 M&J and Kier International Ltd ("Kier"), a British based construction firm, entered into a Joint Venture, in order to facilitate both the construction and civil engineering aspects of what became known as Jamaica 1.
66. The Joint Venture ("JV") was conducted through an unincorporated vehicle called the Kier/Mabey (Kingston) Joint Venture. M&J and Kier agreed that overall revenue and profits from the JV in respect of Jamaica I would be divided 57% and 43% respectively. Under the terms of the JV a sponsor would have primary responsibility for representing the JV. Kier was nominated to act as the sponsor. There was a supervisory board of the JV comprising both Kier and M&J executives.
67. The project effectively began as an unsolicited approach to the Ministry by M&J. In December 1998 M&J made presentations to the Jamaican Ministry of Transport and Works for bridge projects in the Kingston area including: Three Mile Roundabout; Sandy Gully Bridge; Hagley Park Road/Maxfield Avenue and Half Way Tree Rd.
68. In January 1999 Mr Hibbert wrote back to the JV care of Deryck Gibson and asked M&J/Kier to make a bid. There was no competitive tendering exercise.

69. As the project developed the locations changed from the original plans and in the end the proposal related to flyover bridges at Three Mile Roundabout; Sandy Gully Bridge on Constant Spring Rd, Kingston and Montego River/NorthGully Bridge on Howard Cooke Boulevard in Montego Bay
70. Kier were responsible for the erection of the bridges and work of a general civil engineering nature. M&J provided the steelwork.
71. This was the only JV between Kier and M&J in Jamaica although there were other proposals over time for work, for example, in Hunts Bay and certain rural bridges.
72. The contract for Jamaica 1 was signed during December 1999. The contract was entered into by the Ministry of Transport and Works on behalf of the Government of Jamaica and Kier/Mabey (Kingston) Joint Venture. The contract was signed on behalf of both M&J and Kier International Limited. Its value was £13.9 million.
73. The Jamaica I contract was covered by a guarantee from ECGD.
74. A change order varying the scope of the contract was sent under cover of letter dated 19 May 2000 by the Estimating Director of Kier International Limited.
75. In the final contract the total value increased to £14,900,000. This price was broken down into the cost of the specific bridging projects and an employer contingency fund of nearly £1 million. The purpose of the employer contingency fund was to meet costs relating to third party works, land purchase compensation and other incidental costs arising during the building project.
76. Within the JV costs commissions were 12.5%. M&J were responsible for commission arrangements. In fact although the commission costs were 12.5% of the total contract price/revenue, M&J bore all of the costs from their proportion of revenue received, approximately £8 million, which represented 57% of the total revenue under Jamaica 1. Therefore in reality M&J paid more than 20% of received revenue in commission costs.

77. The SFO has investigated the relationship between Kier and M&J in respect of this contract. For the reasons given above, and all the evidence currently available to the SFO, there is no evidence that Kier were privy to these corrupt practices. Kier have co-operated with the SFO's investigations.
78. Moreover, it appears that Manager C was able to secure from the Jamaican government an agreement to pay the ECGD premium on top of the contract price, when in fact M&J had already factored some of this cost into the overall contract price. In his memorandum to Director B of 30 June 2000, Manager C comments:
- “I am pleased to confirm that we have now received from the Jamaican Government £1,212,420 for the ECGD premium that has been paid in full. Please note that this was included in our offer but nonetheless we have managed to get them to pay this, which increases our profit on the contract by that amount.”
79. As the overall contract price was approximately £15 million, this represented an additional uplift on this contract for M&J and Kier. Prior to this memorandum, it appears that, of the £1,212,420, the Jamaican Government had already agreed to pay a contribution of £726,000 towards the premium amount, with M&J and Kier paying the remaining amount of £486,420. It is not clear why the Jamaican Government paid the full amount of the premium. M&J were evidently content to treat it as a windfall.
80. This windfall was again split between M&J and Kier according to the proportions of the JV agreement. As you will hear, M&J agree that their share of this sum should be properly paid back to the Jamaican Government.
81. The Jamaica 1 contract was won by M&J and Kier. M&J had behaved corruptly. They had already corrupted an important person of influence over these matters, Mr. Hibbert.
82. Mr Hibbert received relatively modest advance payments in his own name both in cash and through bank accounts here in the UK. In addition, M&J made a payment to Mr Hibbert's niece, a Faith Jadusingh, of £3,000. There was a payment to cover

the UK based funeral expenses for Mr Hibbert's mother. Additionally, Mr. Hibbert received monies via his National Commercial Bank account in Jamaica.

83. M&J had corrupted Mr Hibbert from the time they first conducted business in Jamaica back in 1993. Payments began at around the same time as he was promoted to his position as Chief Technical Director in November 1993. M&J continued to cultivate this relationship by bribing him in relation to the subsequent contracts in 1997. M&J made payments to Mr. Hibbert intending to influence him to act corruptly in relation to those subsequent contracts and Jamaica 1. In short they had bought Mr. Hibbert and in making payments to secure Jamaica 1 were doing so, believing that they would have a corrupt effect.
84. Monies were paid on a number of occasions from 1993 by way of "Advance Commission", and other such devices. Mr Gibson was connected with some of these payments, as was Manager C. The payments illustrate the malign and corrupt approach of both Mr. Hibbert and M&J: the request for payment and the willingness to pay speak of an assurance on both sides that their "relationship" would eventually bear significant fruit.
85. In particular payments were made to Mr Hibbert in 1998 when M&J and Kier were planning the project that Mr Hibbert later approved in January 1999.
86. By 1 July 1998 M&J, Kier and another British construction company⁴ had begun meetings discussing the prospect of work in Jamaica which ultimately became the Jamaica 1 project. The Minutes of the Consortium Progress Meeting was attended by Director E, Manager C and another representative for M&J and the Estimating Director of Kier.
87. The minutes note that some preparatory work had been done in drafting some outline plans for the various flyovers and that it was proposed that,

⁴ WS Atkins

“This material could then be presented to Joe Hibbert (MoW – Chief Technical Director) during his visit to UK in July – Manager C to arrange meeting”

88. An action point was left for Manager C,

“ Manager C to arrange meeting with Joe Hibbert before he returns to Jamaica (but after next consortium meeting).”

89. The next consortium meeting was arranged for 15 July 1998 at 2.00pm at M&J’s offices in Twyford.

90. There is an Export Agents Commission Card in the name of Joe Hibbert which shows a cash payment of £10,000 being made on 7th July 1998.

91. This payment is supported by a memo of the same date from Manager C to Director B,

“re: Joe Hibbert – Jamaica

As you are aware Mr Hibbert is presently visiting the UK with two other colleagues. He has requested £10,000 cash to be deducted from commission due to him. Recent commission statement is enclosed.

Please could you initial this memo as authorisation for the payment to be made.”

92. The payment is authorised by Director B as requested by Manager C. Director B then in turn requests Director E to amend Joe Hibbert’s commission card accordingly. In a separate short letter, Manager C confirmed he received the £10,000 cash sum on Joe Hibbert’s behalf.

93. A further cash payment of £10,000 for Joe Hibbert during his visit to the UK was requested for Director B’s authorisation by the Office Manager.

94. Evidently Joe Hibbert was still in the UK by the 23 July 1998. In a memo dated 22 July 1998 the Office Manager stated,

“Please find attached the commission statement for J Hibbert for Jamaica which indicates a total of £15,449.62. As you are aware Mr J Hibbert is visiting the UK at the moment and he has requested via Manager C that he would like payment of commissions due as follows:

The sum of £10,000 to be made available in cash (tomorrow 23/7/98)

The remainder to be transferred to his account in Birmingham.”

95. These payments were made by M&J. In fact Director B and Director C authorised the cash payment and countersign an instruction to their bankers that,

“In confirmation of instructions from the Office Manager we will require the sum of £10,000 in cash (£20 notes) to be provided Thursday 23 July 1998 at 1100 hours.”

96. This cash payment was made in person on the date of Joe Hibbert’s attendance at M&J’s factory at Twyford on 23 July 1998. A further payment of £5449.62 was paid on the same date to Joe Hibbert’s Birmingham account.

97. All the payments prior to, up to and including the signing of the Jamaica 1 contract, and following the contract’s delivery are recorded on an “Export Agents Commission Card” kept at M&J’s Head Office. By the time of the last payment, the Card had been re-named “Montego Bay” as opposed to “Joe Hibbert”. Montego Bay was a company which M&J understood was owned or controlled by Mr Gibson.

(iii) The role of M&J’s directors and management in securing Jamaica 1

98. As with many of M&J's contracts, including Jamaica Phase 1, commission was paid to a sales agent, and was integral to contract pricing. While commissions were capable of being paid at agreed stages of a contract, a typical contract for the supply

of bridging equipment provided for payment of commission to be made *pro rata* to revenues received.

99. The majority of the payments made to Mr. Hibbert in his various accounts in various jurisdictions were authorised by Director B. On a memorandum dated 2 June 1999, Director B adds in relation to a payment to Mr. Hibbert of US\$3,000 “This will be the last one in advance.” Whether by way of advance or otherwise, one particular payment followed the receipt of a memorandum from Manager C dated 30 June 2000 announcing that “Joe Hibbert, Technical Director of Ministry of Works, Jamaica is due to arrive in the UK in July”. The sums sought were £5000 to be paid into Mr. Hibbert’s Birmingham (UK) account, and £2500 to be paid to DAG Ltd to cover Mr. Hibbert's travel expenses. One earlier payment, of £10,000, was made on 23 July 1998 to Mr. Hibbert while he was visiting the United Kingdom, and, apparently at Mr. Hibbert’s request, consisted entirely of £20 notes. The M&J letter of instruction to its bankers, Barclays Bank Plc regarding this payment was signed by Director B.
100. Director C signed the approvals of the majority of payments to Mr. Hibbert relating to the two 1997 contracts, but apparently did not authorise any payments relating to Jamaica 1.
101. Director A signed approvals for payments in respect of both the 1997 contracts and Jamaica 1.
102. Director E authorised the entity Montego Bay Enterprises as the entity to which Mr Gibson's commissions could be paid, as referred to at paragraph 57 above. His status in the Company can be measured by the fact that on one document authorising a payment of \$20,000 to Montego Bay Enterprises, Director B writes “subject to Director E approval”. Director E then went on to sign the document approving the payment. His signature also appears on a number of approvals of payments to Mr. Hibbert and he met Mr Hibbert at least once in the UK when he visited M&J’s offices.

103. Manager C wrote memoranda to Director B (and to the Office Manager - see below) from 1996 onwards requesting payments be made to Mr. Hibbert, or DAG Ltd. on Mr. Hibbert's behalf. In some cases reasons are given, such as funeral expenses for Mr. Hibbert's mother (document dated 1 November 1998), or travel expenses.
104. The Office Manager, who has provided a witness statement to the SFO, has been employed by M&J for a considerable period of time in various capacities. The Office Manager was responsible for making sure that M&J were paid for the products and services the Company provided to its customers. Within that role he was responsible for transmitting "commission" payments when instructed to do so by those in authority above him. He provides important evidence for the prosecution in this case. That evidence shows that in relation to Jamaica, typically - though not exclusively - Manager C transmitted requests to M&J for payments to be made either to Mr. Hibbert or others, those requests were authorised by Director B and another signatory, and the Office Manager then implemented the instructions for payment. The Office Manager maintained and updated the "commission cards" for all of M&J's overseas agents.
105. Other incidental payments were sought and paid - for example on 18 December 2000 Manager C wrote to Director B to the effect that M&J had been "approached" and invited to pay Deryk A. Gibson a contribution of US\$10,000 for "local party funds".
106. It is plain and apparent that the payments to a public official in the position of Mr Hibbert, often for expressed reasons which could have no conceivable legitimate commercial purpose, are nothing other than bribes, which bribes were paid to persuade Mr. Hibbert to use his influence in Jamaican government circles to secure the Jamaica 1 contract for M&J. M&J accept that these payments were made with a corrupt intent to so persuade Mr. Hibbert to act in a manner inconsistent with his duties as a public servant of the Jamaican Government.

VIII: THE GHANA CONTRACTS

107. M&J has conducted business with government departments in Ghana over a number of decades. From the mid 1980's until approximately 1996, M&J's interests in Ghana were represented by Kwame Ofori. During the early 1990's Kwame Ofori acted as M&J's agent in Ghana. He controlled a Ghanaian bridge building company, and apparently had influence within the ruling circles of the then ruling party in the Ghanaian government - the National Democratic Congress ("NDC").
108. To promote its business transactions with government departments of Ghana, M&J paid commissions to its agent or agents in relation to the business it won in Ghana. It is accepted by M&J that through the creation of the GDF (the notional fund created by M&J known as the "Ghana Development Fund"), its executives facilitated corruption on behalf of M&J and that its executives were in (or sought to create) a corrupt relationship with a variety of decision making Ghanaian public officials with responsibilities affecting M&J's affairs. These funds were purportedly for the development of M&J business in Ghana but, in truth and reality, were capable of and were understood to be capable of, being used for corrupt purposes.
109. When appointing and permitting its agents in Ghana to act on its behalf or for it, M&J knew that there was a risk that unknown proportions of the agents' commission totalling £750,000 might be used for corrupt purposes.
110. The budget representing the GDF was managed by Director D, an executive who later became a director of M&J. Whilst Director D had responsibility for different territories during his career, in particular he had responsibility for Ghana. Consequently during the material period, the affairs of M&J in Ghana were heavily influenced by his direction and control.
111. On 3 April 1996 Mr. Ofori and a relative attended a meeting at Twyford with the Office Manager. It appears that Director B and other Directors made their excuses for not attending. The Office Manager' note of the meeting records that Mr Ofori did not have control over the "total 15% commission". Mr Ofori complained that he had problems as he did not believe Director D had distributed 5% to the "relevant

personnel" or "local personalities". The note records Mr Ofori saying that had he been involved in the payment of the total amount of the 15% commission the present difficulties would not have existed and said that this aspect had been dealt with ably by him in the past.

112. On 14 March 1996 Mr. Ofori had sent a fax on "Danielli Mabey Ltd" headed notepaper (a Ghanaian company which was wholly unrelated to M&J and which is understood to have been owned by Kwame Ofori). The fax was marked for the attention of Mrs Margaret Ofori in Accra and appears to have been then passed to M&J. The fax detailed how it was that "the situation in Ghana has been deteriorating gradually ever since Director D came in to Ghana." There can be little doubt that the contents of the fax had become known at Twyford before Mr. Ofori visited M&J's Head Office. This is because Director D had himself sent a "confidential memo" dated 25 March 1996 direct to Director B rebutting Mr. Ofori's assertions, and detailing how it was that he had had a meeting recently with the only person who "can guarantee M&J's position in this market": Kwame Peprah. Mr. Peprah was at that time the acting Minister of Finance and the Chairman of the NDC Finance Committee.

113. In fact Director D had been introduced to Mr. Peprah through Baba Kamara (aka I. B. Ibrahim), who was the NDC Treasurer, and 'political overseer' for the Ministry for Roads and Highways.

114. The role of Baba Kamara and his value as an agent to M&J is made clear in a document authored by a M&J executive, probably prior to July 1996, and sent to Director A; Director B; Director C and Director E. The document is entitled "Ghana" "Review of existing Agent and introduction of alternative Agent". Concerning the value of the proposed new agent,

"Kamara Ltd is a small Ghanaian contractor owned by Baba Kamara. He is the NCE (sic) Treasurer and also the political overseer for the Ministry of Roads and Highways. He is a member of the all powerful NDC Finance Committee which includes Kwame Peprah (Minister of Finance and Minister of Mines and Energy), Obed Asamoah (Justice Minister and Foreign Minister) and Mrs

Rawlings amongst others....[he] has considerable influence over Ato Quarshie, the Minister for Roads, the Deputy Minister and other top ranking civil servants and has been working with us since June 1994. This has been demonstrated over the allocation of the extra Stg 1.3 mil for the Tano bridge and the Stg 4.5 mil allocation for the Priority Bridge Programme.”⁵

115. Additionally, Mr. Kamara’s wife was secretary to the then President of Ghana - the former Flight Lieutenant ‘Jerry’ Rawlings, who had originally achieved power by means of a military coup in 1981. Unsurprisingly, a person in the position of influence of Mr. Kamara was an attractive prospect to M&J as agent for their business in Ghana, and the SFO contend, that M&J knew and intended that commission paid to Mr. Kamara would be deployed as and when required to corruptly promote M&J’s commercial interests. The SFO believe that because he had demonstrated his effectiveness to attract business corruptly, he was appointed by M&J. This is not accepted by M&J.

116. Allied to the decision to use Mr. Kamara as their agent from some time early in 1996, M&J had plainly also decided to “sideline” Mr. Ofori, and to impose more direct control over the payments made to “local personalities” by Director D supervising and control from 1994 and the creation of the notional GDF.

117. As will become apparent, whereas in Jamaica corrupt payments were directed towards a specific individual, payments allocated against the GDF were more general and numerous government ministers and officials were potentially in line for a bribe. Each such payment required the authorisation of two M&J directors.

118. Payments allocated against the GDF did not relate specifically to stages of contracts in progress. The SFO says that they were obviously made with the intention of securing and maintaining those contracts when it was deemed prudent to do so. It is accepted by M&J that in creating and making payments from this fund corrupt payments would be made to public officials in order to affect the decision making process in favour of M&J. Thus payments were made for a variety of

⁵ MJN01 000131000056-7

purported purposes to a variety of ministers and officials. Some of those purposes were self-evidently unrelated to M&J's legitimate business such that the payments can best - and, indeed, only - be described as bribes. Not only were the bribes overt, so too was the means of collection on the part of the Ghanaian ministers and officials, most of whom had UK bank accounts. Some, indeed, visited the UK in order to collect their payments in sterling.

119. During the 1990's M&J entered into three principal contracts with the Ghanaian Ministry of Roads and Highways ("MRH") for the provision of bridges: Priority Bridge Programme Number 1, worth £14.5 million, was agreed in 1994; Priority Bridge Programme Number 2, worth around £8 million, was agreed in 1996; and the Feeder Roads Project, worth £3.5 million, was agreed in 1998.

120. Throughout the relevant period, and until the general election in 2000, the NDC formed the Government of Ghana and many of the GDF payments were directed to its members. Thus the then Minister at the MRH, Dr. Ato Quarshie, received a cheque when he visited London in July 1995 in the sum of £55,000 for "contract consultancy". The cheque was drawn on M&J's Clydesdale Bank account at the Victoria branch in Buckingham Palace Road, and signed by Director A, and another M&J director at that time. Director A also faxed the bank instructions to enable Dr. Quarshie to cash the cheque.

121. The payment to Dr. Quarshie and the following payments are but examples of a wider-ranging series of bribes to various ministers and officials, which will be set out in a schedule. Even relatively junior officials were the willing recipients of bribes. In 1996 Saddique Boniface was the ECGD desk officer in the Ministry of Finance (he was recently until the change of government a highly placed politician within the Ghanaian administration). He had a bank account at the National Westminster Bank in Rickmansworth. On 29 February 1996 Saddique Boniface received a transfer of £10,000 from M&J to an account at Barclays Bank Plc in Watford. On 29 October 1996 the same account received a transfer of £13,970 from M&J. On or about 29 October 1996 Amadu Seidu, the Deputy Minister at the MRH, received £5000 in his Woolwich account held in St. Peter Port, Guernsey and Dr. George Yankey the Director of Legal and International Affairs at the Ministry of

Finance, received £10,000 in his Midland Bank account in Hill Street, London W1; and Edward Lord Attivor, the ex minister at the MRH, also received £10,000 in his London bank account. This was the same branch of the Clydesdale Bank which was used by M&J. Authorisation from M&J directors for each of these transfers was requested by Director D. Amadu Seidu received a further £5,000 on 7 March 1997, the same date on which Saddique Bonniface received a further £2,500. The latter two transfers were authorised by Director B.

122. Mr. Bonniface's son was a student at Exeter University, where, on or about 26 March 1998, he received a cheque from M&J in the sum of £500. Although this is a relatively small sum it is indicative of the nature of the corruption M&J was then practising: it is a payment which could have no conceivable legitimate commercial purpose.

123. M&J's payments to Dr. Yankey were not confined to the payment on or about 24 October 1996, since his Hill Street account received £5,000 on 26 August 1998 from M&J. Dr. Yankey was subsequently convicted in Ghana of conspiring to wilfully cause losses to the state and served a prison sentence, along with Kwame Pevrah. Their convictions cannot be directly related to payments from M&J, but reflect the culture of government corruption at the time, a culture with which M&J was only too willing to engage.

124. From December 1994 to 18 August 1999, M&J used the GDF and associated accounts to pay bribes directly to named Ghanaian public officials totalling £470,792.60.

125. None of the payments set out above, obviously, could be said to have anything remotely resembling a legitimate commercial purpose. Thus M&J was able to engage in wholly corrupt business practices without any effective level of external scrutiny being applied. Plainly, those who governed and directed the affairs of M&J were responsible for arranging and authorising payments which, no matter they were eagerly sought and accepted, were considered vital in securing M&J's business in a developing nation – at the expense of those least able to avoid the

expenditure that is inevitably involved in the making of corrupt payments: the people of Ghana.

IX: M&J's INTERNAL INVESTIGATIONS

126. The counts on the indictment are in one sense specimen counts. They fully reflect the defendant Company's criminality in the two jurisdictions concerned. However, during the course of the investigation thus far, indicators have emerged to the effect that corruption has been practised in other jurisdictions.

127. The Company's solicitors Herbert Smith LLP, have been instructed by M&J's present board to instigate an internal investigation into suspected corruption practised by M&J under its previous directorial and managerial regime.

128. Their investigations are ongoing. Before they have been completed, what was initially revealed by the Company's investigations has caused the Company to come forward and make disclosures to the SFO.

129. Of necessity the investigations have been limited to a review of Company documentation and interviews of current Company employees. It follows that the internal investigations are incapable of inquiring into foreign bank accounts, the activities of foreign agents and the like – which are matters which would ordinarily be the subject of MLA requests.

130. These investigations have revealed other corruption indicators. Some of these might not necessarily be provable cases of corruption in this jurisdiction or at all. The SFO is not in a position as of this date to determine with certainty whether charges could be brought in all or the majority of cases.

131. M&J accepts that in order to establish and secure its business abroad, it appointed agents to act on its behalf in the various countries where it was seeking to win contracts to supply bridges. Commission fees paid to local agents ranged from contract to contract and by jurisdiction. In a number of jurisdictions; Jamaica, Ghana, Mozambique, Bangladesh, Madagascar and Angola M&J did not pay all

those commission fees to its agents but in some cases it also used some of the funds set aside for commission to make direct payments to public officials. Those officials were either responsible for or involved in the allocation of contracts to build bridges.

Angola

132. During the 1990's M&J entered into a number of contracts with the Angolan Government for the provision of bridging and associated services through which it derived sales revenue worth in total approximately £6m.
133. In a summary document prepared by a M&J employee it records that there have been contracts and revenue in every year from 1991 to 1998 totalling £6,145,000. The document records that the product sold was the C200 EW with “a few Hydromasters” and that in 1997-8 the contracts were supported with Swedrelief (funding provided by a Swedish Government aid body that is involved with U.N. projects).
134. A Mr Antonio Gois was an official at the Angolan State owned entity, Empresa Nacional des Pontes (National Bridges Company), and appears, at the relevant time, to have been the direct contact for M&J along with another public official, Joao Fucungo, also from the same department. Both Mr Gois and Mr Fucungo appear to have held the position of Director of the Empresa Nacional Des Pontes. Details as to the exact dates of their Directorships and their specific roles in the department are not available.
135. In relation to Angola, in the 1990's M&J had an Export Agent's Commission Card in the name of a company called Servicios Bella. Details in relation to the incorporation (including country of incorporation), directors, and ownership of this company are not available. At that time it was believed generally by M&J that Servicios Bella was owned by or was for the benefit of Mr Gois. Payments made to Servicios Bella were made to a French bank account.
136. Manager C was the M&J employee with the primary responsibility for sales in Angola. His position in M&J has already been set out at para 58 above (in relation to Jamaica).

Manager C requested M&J to remit commissions due under Angolan contracts to Servicios Bella's account at the Banque Transatlantique in Paris.

137. Details of the payments made to the French bank account of Servicios Bella are set out in the table below:

Date	Amount in US \$	GBP equivalent (where known)
23.11.1993	298,373.22	
15.12.1993	348,816.81	
28.04.1994	30,000.00	
09.12.1994	44,664.62	29,003.00
09.02.1995	50,000.00	32,239.94
11.03.1995	67,246.51	42,029.07
10.04.1996	119,225.25	77,925.00
30.08.1996	171,795.22	112,400.69
08.05.1997	49,663.60	31,039.75
05.08.1997	27,593.41	17,257.12
10.11.1998	50,073.58	31,295.99
Total	1,257,452.22	

138. In relation to Angola, requests for authorisation of payments originated from Manager C specifying that the amounts should be deducted from the commission account. In some cases, requests were made by Manager C based on demands that he claimed were made by Mr Gois.

139. During 1993 calendars, diaries and other promotional gifts worth £3,124.80 and US \$2,208.51 were paid for in the UK by M&J and appear to have been provided for the

benefit of Mr Gois. In a faxed handwritten letter dated 24 November 1993 from Manager C to the Office Manager; a Director of M&J and others he states:

“Please go ahead + purchase the two Land Rover for Gois from 2nd C payment invoice from Hull, Blyth with this fax. Try + establish if Land Rover are imed avail + advise me E.T.A.”

140. Two Land Rover Defenders costing in total £28,646 were then purchased in the UK during 1993 and shipped to Angola for Mr Gois' benefit. In 1994, further promotional gifts worth £974 were paid for by M&J in the UK.

141. In one fax to Director E dated 1 February 1995 Manager C writes:

“Further to our telecon I have been chased by G on several occasions for a transfer of 50k U.S. as an advance for C for U.N. order. As this is a firm U.N. order I recommend we comply with his request immediately. He will not accept downgrading his C from 15 to 12.5 as 15 was the amount 1st agreed. As we are talking about a further 5 m U.S. package I’m not inclined to argue. Pls advise what info you have on a fund the Angolan’s are negotiating with European Development Fund”

142. On 3 February 1995 further clarifying information was provided in a memo to Director A concerning outstanding Angola orders which included a completed order for Hydromaster units for which payment had been received in full from the Angolan government and a pending order for various C200 bridges for the U.N.’s agency, the World Food Programme. The memo attached a copy of the abovementioned fax from Manager C.

143. The US \$ 50,000 payment was made to Servicios Bella and authorised by Director A and Director B.

144. On 22 February 1995, Director A authorised a M&J employee visiting Angola to take US\$ 3000 cash for “local expenses”. These monies were paid to Mr Gois on 27 February 1995.
145. In addition, \$13,000 was paid to an account at Citibank in Berkeley Square to a company called Unimedia Ltd in June 1997. This appears to have been a bribe for Mr Gois' benefit.
146. Cash bribes totalling US \$13,000 were made to the public official Mr Fucungo in 1993 and 1994. It is not clear where these bribes were made. A payment of US\$ 10,000 was requested for medical treatment for Mr Fucungo’s wife in South Africa.
147. The SFO has been informed by M&J that not all of the documentation relating to payment approvals is available. However, Director A appears to have been involved in the approval of a number of the payments in 1993 and 1994. Subsequently, Director B was also involved in approving a number of the subsequent payments to Servicios Bella.

Madagascar

148. M&J have supplied bridges to Madagascar since 1972. In early 2001 M&J won a contract with the Madagascan Government worth approximately £1.1m to supply 11 bridges. This was a World Bank financed project.
149. Manager A had responsibility for sales in Madagascar during 2000-2001 when the contract with the Madagascan Government was being negotiated. M&J’s local Sales representative had responsibility for a number of French speaking African countries and he reported to Manager A who in turn reported to Director A and Director B. In a M&J memorandum dated 17 July 2000, anticipating the business eventually won by M&J, the local Sales representative states,

“As explained to Director A during his visit to France, we have alternatives to HFF and we think it might be time to consider these seriously. A tender from the World

Bank has just been issued. It is supposed that the specifications have been written as much as possible in our favour (though we have not seen them yet). We think it is the proper thing for a visit to clarify the relationships with our final client, Ministry of Public Works and to start the change in our local representation.”

150. Henri Fraise Fils & Cie Ocean Indien Ltd ("HFF") was the company that acted as M&J's agent (the local representation referred to above) in Madagascar during the relevant period. Initially HFF sought a commission of 17% of the contract value. The principal of HFF was Ralph Fraise. However, M&J considered the level of commission to be too high for the nature of the contract. During discussions regarding the commission HFF disclosed that the commission being proposed was set at this level since it would need to pay from the commission it received 6% of the contract value to Mr Jean Emile Tsaranasy as a bribe.

151. Mr. Tsaranasy was the Madagascan Minister for Public Works (or Ministere des Travaux Publics) at the relevant time and was the direct contact for M&J in relation to the £1.1m bridging contract. In the light of these discussions M&J decided that it would seek to negotiate directly with Mr Tsaranasy to try to reduce the amount of the bribe that would be paid to him. In the final event, HFF was paid approximately 11% of the contract price.

152. After entering into direct negotiations with Mr Tsaranasy it was agreed that he would receive a payment of approximately 2.83% of the contract value. M&J's Export Agent's Commission Card for Madagascar records the following payments that appear to have been made to Mr Tsaranasy in the total sum of £33,250.00. These payments were bribes.

153. Details of payments to Mr Tsaranasy are set out in the table below:

Date	Amount in
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	GBP
11.07.2001	£ 3,650
22.08.2001	£ 7,200
30.08.2001	£ 3,650
30.08.2001	£ 7,200
06.02.2002	£ 6,160
06.02.2002	£ 5,390
Total	£ 33,250

154. The bribes were made either by cash being given to Mr Tsaranasy or his representatives in Paris or by M&J making bank transfers to Mr Tsaranasy's Swiss bank account, the Banco del Gottardo in Geneva over a period from August 2001 until early February 2002. On 12 July 2001 Mr Tsaranasy picked up 39,098.07 FF (£3650) in a bank in Paris and signed for the money.

155. M&J also paid a bribe to Mr Zina Andrianarivelo-Razafy when he served as the Madagascan Ambassador to the United States, the World Bank and the International Monetary Fund in 2001. Mr Andrianarivelo is currently the Permanent Representative of Madagascar to the United Nations.

156. A M&J note, dated 24 November 1998, from the Manager B to Director A, Director B and Manager A states:

“For your information Zina Andrianarivelo from Fraise has been appointed the Madagascan Ambassador to the USA and will take up his position in Washington from the 1 January 1999.”

157. In a memorandum from Manager A to Director B dated 7 February 2001, he states,

“We have now been notified of the order ... E00424. The full FOB value will be £1,131,123...For his assistance we wish to pay Zina Andrianarivelo \$10,000 (allowed in figures) of which \$5000 to be paid now and the balance in due course.”

158. In a further memorandum from M&J's local Sales representative to Manager A dated 7 February 2001 the same payment is referred to and is explained:

"Zina in Washington played an important role in the allocation of funds from the World Bank to Madagascar for bridges. He also helped at some difficult stages in the negotiations [sic]; finally he will be helpfull [sic] in the future as well to introduce us in Washington. I propose to reserve for him an envelope [sic] of \$5000 on the first job (7 bridges) and an additional \$5000 if we actually get the additional 4 bridges."

159. Subsequently, after receiving a request directly from Mr Andrianarivelo-Razafy on 23 February 2001 a sum of \$5000 was paid into his account at Credit Lyonnais in France on 23 February 2001.

160. The SFO has been informed by M&J that not all of the payment authorisation forms can be located. However, requests for payments to Mr Tsaranasy were generally made by Manager A and Director B was involved in the approval of the payments made to Mr Tsaranasy.

Mozambique

161. During the 1990s M&J entered in to a number of contracts with Government departments in Mozambique . M&J received sales revenues from contracts in Mozambique worth approximately £6 million during the relevant period (1995-1999).

162. A written report to the Directors of M&J of a visit to Mozambique in November 1995 refers to a number of projects, in particular in Zambesia, at various stages of completion.

163. Mr Amerigo Fortuna was the Deputy Director of the Mozambique Ministry of Foreign Affairs and Co-operation and was involved in the selection of eligible recipients of project grants. Carlos Fragoso was the national director of the National Directorate of Roads and Bridges (DNEP) in Mozambique. Subsequently Carlos Fragoso appears to have been chairman of the National Roads Administration (ANE) in Mozambique.
164. It appears that M&J met with Mr Fortuna and Mr Fragoso and, *inter alia*, discussed the extension of a contract for spare parts in Mozambique. This was a contract which involved Crown Agent backing and the involvement of Japanese financing arrangements. It is reported that,
- “Met Dr. Fortuna who is involved to some extent in the selection of eligible recipients of NPG, who confirmed that there probably will be \$ 8 m of NPG available in 1996, and DNEP will be eligible for a further \$ 2 m (max \$ 5 m per customer)...Mr Fragoso confirmed he will apply for further \$ 2 m for Bridge Spares in Feb/Mar 1996.”
165. M&J retained an Export Agent's Commission Card for Mozambique which covers the period 23 August 1997 to 10 April 2000 in the name of "C Fragoso". M&J's commission card records that it made a number of payments to Mr Fragoso between 14 October 1997 and 10 April 2000 in the total sum of £286,978.54..
166. M&J also retained an Export Agent's Commission Card for Mozambique which covers the period 23 February 1996 to 23 January 1998 in the name of "Fortuna". This Commission Card records a number of payments made to CKY Partnership, V&M Tooling (Pty) Ltd and V&M Import and Export Agents (Pty) Ltd between the above dates in the total sum of £42,475.88.
167. It is possible that these were companies with which Mr Fortuna is connected. However, it is not possible to confirm this connection; the SFO has been told by M&J that it does not have any further information available about these companies; nor is it now known, because records are no longer available, where these companies received payment.

168. Another name appearing on M&J's Export Agent's Commission Cards for Mozambique was a Mr Notece. Mr. Notece was an engineer employed by the DNEP who it appears had some involvement with M&J's work in Mozambique. Mr Notece's name appears on an unnamed Commission Card in relation to a payment of US\$5,000 made in Mozambique in October 1999.

169. Manager A was responsible for M&J sales in Mozambique. In a memo to Director B dated 1 October 1999 he states,

“There are three recipients of commission and I believe it important that I can take USD 5,000 on my imminent trip to Mozambique...”

170. M&J no longer has all the documentary records relating to its work in Mozambique however it appears that this payment was made to Mr Notece and that in total Mr Notece was paid \$25,000 in Mozambique.

171. Insofar as the payments to Mr Fragoso are concerned, these appear to have been made by bank transfer to his Swiss bank account. M&J's records show that Director B would have met both Mr Fragoso and Mr Notece during a visit to Mozambique in March 1996. Insofar as the payments made to Mr Notece are concerned, it appears that these were cash payments whereby Mr Notece received the cash in Mozambique.

Bangladesh

172. M&J conducted business in Bangladesh between 1982 and 2001. Between 1997 and 2001 M&J received sales revenue from contracts in Bangladesh worth approximately £20 million. Dates that these contracts were executed and their value are not available. In part the requirement for these bridge contracts was in response to devastating flooding in Bangladesh in 1998.

173. Bangladesh is a country which has a reputation for widespread corruption and did so during the period concerned. M&J made corrupt payments in connection with one of the contracts obtained in this jurisdiction.

174. In a M&J document concerning sales planning and development, believed to have been authored by Director D, he states,

“High Marketing costs.

Our success has been based upon: Development of close personal relationships with key personnel in the Roads and Highways Department, the Ministry of Communications, the Planning Ministry and the Ministry of Finance. The use of the “white man’s handshake” is extensive in building trust and confidence before any contract is concluded in Bangladesh.

The drive and contacts of our agent. Our new agent has very strong contacts within the Ministry of Communications. He has also worked hard at developing relations within the other relevant Ministries where he was not known.”

175. M&J entered into a contract on 29 June 1999 with the Ministry of Communications (acting through the Roads and Highways Department) for emergency bridging under the Emergency Flood Rehabilitation Programme (the "MOC Contract"). M&J's records indicate that it received sales revenue of approximately £15 million in relation to the MOC Contract.

176. This was a contract for the supply of 25,000 rft of Bailey Bridges; “launching kits”; tool kits and emergency floating bridges. This was a contract that was underwritten by the ECGD.

177. C. M. Nizamuddin (also known as Bulbul), was M&J’s local agent in Bangladesh from at least 1998 until some time in 2002. M&J's Export Agent's Commission Card in the name of "C. M. Nizamuddin" records that approximately £2.4 million in commission payments in connection with the MOC Contract was paid during 1999 and 2000 through accounts in various names.

178. Transfers were also made in relation to Bangladesh which are recorded in a separate M&J Commission Card entitled Asia Development Fund. Director D appears to have made cash payments in Bangladesh and claimed these as expenses to be deducted from the Asia Development Fund. On trips in April and May 1999, Director D made a payment of £320, referenced as "TSC approval" and a payment of £640 referenced "Purchase committee member". On a trip in June 1999, Director D made two further payments of £1300 each to engineers.
179. From 1997 to 2004 Khandaker Rahman was a Chief Engineer employed by the Roads and Highways Department (RHD) in Bangladesh. He was employed in a number of different capacities during this period. He had a role in procuring or approving contracts for bridges in Bangladesh. In his CV, held on file by M&J, he states that between 1982-1986 he was a member /secretary and in 1997-1999 he was a permanent member of the Roads and Highways Committee on Procurement (RHD COP). He stated that, in respect of his involvement in the RHD COP his responsibilities included:
- “To scrutinize, evaluate and recommend the procurement of all civil & mechanical works/consultancy and supply works of Roads & Highways Department. The construction of all Roads & Bridges have been dealt with and the recommendations of the awards were made.”
180. Khandoker Azad is Khandaker Rahman's son. There is evidence to suggest that payments were made to accounts in Khandoker Azad's name for Khandaker Rahman's benefit. M&J retained an Export Agent's Commission Card in Khandoker Azad's name. Certain payments were also recorded on the commission card of C M Nizamuddin in the name of Khandoker Azad. The available Commission Cards record payments totalling £240,000; however these Commission Cards record multiple payments on the same day and not all bank transfer documents are available, therefore there may be some duplication of payments.
181. Director D requested that a number of payments be made by M&J to Khandaker Rahman and/or Khandoker Azad.

182. On 4 October 2000 Director D requested that Director B authorise cash in the sum of £25,000 to be made available for Khandaker Rahman. The arrangement was that Khandaker Rahman would go with the Office Manager to M&J's local branch of Barclays in Reading to collect the cash. A letter signed by Director B was sent to Barclays' Reading branch on 9 October 2000 requesting £25,000 in £50 notes to be made available for collection on 12 October 2000. The cash collection is entered on Bulbul's Commission Card for 12 October 2000.
183. In addition to the cash payment referred to above, Director D also requested payments to Khandaker Rahman to be paid to bank accounts in the name of Khandaker Abdullah Al Azad. Payments were made to bank accounts at Barclays Bank, Jersey; Barclays Bank, Richmond; National Westminster Bank, Richmond; and Standard Chartered Bank, Jersey. Khandaker Azad's Commission Card also records two cash payments of US\$5000 made at Twyford on 8 May and 6 October 2000. Additionally Director D claimed £500 (to be deducted from Khandaker Azad's commission card) as part of his expenses for a business trip that took in Bangladesh in late November – early December 2000.
184. Not all documentation relating to payment approvals is available. However, Director B and Director D appear to have been involved in the approval of a number of the payments.
185. The total value of the direct payments in these four jurisdictions are in the region of £700,000 and the value of the contracts which were obtained by M&J in those jurisdictions at the time of those payments was in the region of £22.5 million.

CONCLUSION

186. The Court should note that in the relevant period of the indictment M&J's annual turnover would have averaged about £56 million and these investigations do not purport to cover all the contracts M&J entered into during the relevant period.

Realistically in terms of time and cost, it is accepted it cannot and need not investigate all contracts.

187. The SFO is of the view that it is appropriate to prosecute the Company based on its admissions before completion of the Company's investigations and the SFO's investigations into the conduct of the individuals. Pending that outcome, it is not the SFO's case that the instances of corruption disclosed to date by the Company are the totality of the corrupt activity.
188. For the purposes of illustrating the pervasive historical picture, the Company accepts and admits that in four other jurisdictions - Angola, Bangladesh, Madagascar, and Mozambique - corrupt payments were made direct to elected or appointed public officials.
189. Deep consideration has been given by the Director of the SFO into continuing further and lengthy investigations into M&J's affairs. Those investigations may or may not reveal further sustainable criminal charges. But in the light of the admissions today and the other features of remediation that will be explained to this Court the Director of the SFO has taken the view, in the public interest, that the Company should be sentenced now and on this basis.
190. What is clear from the evidence disclosed, and accepted by the Company in relation to the six jurisdictions put before the Court today, is that there was a practice of corrupt activity within the Company before 2002.
191. The counts on the indictment are illustrative of practices that also occurred in the other named jurisdictions. They cannot be seen as isolated offences. The consequences of the Company's recognition of this fact is that in considering the proper sentence, that the Court can take into account that the Company engaged in more widespread corrupt activity in the four other jurisdictions details of which are set out above.
192. Furthermore, as is explained elsewhere, the SFO have sought where appropriate to have regard to the model for corporate regulation adopted by the Department of Justice in the United States of America under the Foreign Corrupt Practices Act 1977. That model

contemplates corporate remediation as an important factor in considering the propriety and proportionality of lengthy investigations into companies that are willing to come forward, engage co-operatively with the Prosecuting authorities and admit their guilt.

193. Accordingly, given that the Company has engaged and is continuing to engage in efforts at remediation, and can face only a financial penalty, it is felt that further investigation of offending corporate behaviour would not be an appropriate use of resources nor be in the public interest given how this case is being presented for sentencing.
194. The SFO has decided not to name certain directors, executives and employees of M&J at this stage because they may face trial in English Courts. The fact of the naming of certain directors, executives, employees of M&J and any others should not be taken by this court, the public and press as determinative of guilt of any of the persons named in this Opening Note. In the interests of fairness to those who are under investigation, no settled view concerning the culpability of individuals whether named here or not has been made.
195. The corrupt payments made benefited the recipients directly, and in all likelihood will have benefitted the shareholders of M&J indirectly, in that they profited from business they might not otherwise have obtained.
196. The corruption, came at the cost of those least able to afford it: the peoples of the countries in which M&J operated.

X: IRAQ: 'OIL FOR FOOD'

197. A separate Opening Note is being prepared in respect of the Iraq "Oil For Food matter.

APPENDIX 1

The following matters are intended to assist the Court. They are a non-exhaustive list of the factors which the Director of the SFO takes into account when considering whether to investigate and prosecute allegations of overseas corruption by United Kingdom based companies and individuals.

1. The case of M&J is the first prosecution undertaken by the SFO's dedicated Anti Corruption Domain.
2. The present Director of the SFO has made clear his position in the public domain and to the UK business community that companies can and should refer themselves to the SFO where it appears they have previously engaged in corrupt practices overseas.
3. The SFO is committed to the interests of the victims of overseas corporate corruption. Overseas corruption is not a "victimless crime". As the present case demonstrates only too well, the victims are all or any of the proper interests of the governments of the countries where such practices are carried out, the integrity of their civil services and public officials, and - more generally - the peoples of those countries, particularly the poorer and poorest sectors of those populations.
4. The United Kingdom has ratified the OECD Convention of 1999 prohibiting overseas corrupt practices. As a result, it enacted sections 108 and 109 of the Anti-Terrorism, Crime and Security Act 2001. Furthermore, at the G8 summit at Gleneagles in July 2005, the United Kingdom re-affirmed its commitment to the eradication of overseas corruption, as did the world's other leading industrialised nations. By virtue of the multilateral approach to the problem, it can be seen that United Kingdom companies are not disadvantaged in their endeavours to compete for overseas business. Equally, it is the view both of the United Kingdom government and the Director of the SFO (amongst others) that corrupt practices overseas distort proper competition and are wasteful and damaging to the economies of, in particular, developing nations.
5. Where companies which have been engaged in corrupt practices refer themselves to the SFO, the Director will consider the option of imposing a monitoring system to ensure

absolute compliance with UK law in particular and ethical standards in general. Although UK law does not, at present, provide for monitoring as a means of remediation, the Director will, where appropriate, seek to follow the model provided by the United States of America's Foreign Corrupt Practices Act 1977. In particular, the Director of the SFO will have regard to whether the instances of corrupt practices by a self-referring company are relatively historic, and what the company itself has done to remedy its past conduct, including whether the company remains in the same ownership and/or whether the board of directors and the management remain the same as those responsible for instigating and supervising corrupt practices.

6. The Director of the SFO does not necessarily regard monitoring as an alternative to prosecution; nevertheless he acknowledges that a company's agreement to being monitored may constitute significant mitigation in cases which are prosecuted.
7. The Director of the SFO will consider where the public interest lies in deciding what approach to take in dealing with a company in these circumstances. There will be cases where the public interest is very firmly in favour of prosecution. There will be others where alternatives to prosecution (which still impose significant penalties on the company) will be appropriate. The Director has also made it clear that any resolution will ultimately be subject to public scrutiny.
8. The Director of the SFO has also explained publicly that any resolution relating to any company is entirely without prejudice to any investigation and prosecution of those individuals who took part in unlawful activity. There are circumstances in which the public interest will be in favour of investigation and prosecution of those individuals, notwithstanding that the company is dealt with by way of an alternative or alternatives to prosecution.

