APPENDIX A

This summary of facts forms part of the judgment

Count 1

1. This concerns a conspiracy to corrupt between 1 January 1989 and 31 December 1998 in relation to Rolls-Royce Trent 700 engines for six Airbus 330 aircraft and concerns senior employees of Rolls-Royce who agreed to pay US $2.25 million and provide a Rolls-Royce Silver Spirit car to an intermediary or company controlled by that intermediary ("the company"). There is an inference that this intermediary acted as an agent of the office of the President of Indonesia, and that this money was a reward for showing favour to Rolls-Royce, in respect of a contract for Trent 700 engines.

2. In 1989, Rolls-Royce senior employees discussed developing relationships with figures in positions of influence to advance Rolls-Royce sales in Indonesia, in particular with Garuda Indonesia, the national airline. An internal memo noted that the strategy should be to appoint commercial advisers that had close Palace connections; the importance of having influence and intelligence at all levels was stressed. A second intermediary was a former commander of the Indonesian Air Force, with whom Rolls-Royce had an agreement to provide services in that country.

3. Following a visit to Indonesia, Rolls-Royce opted to appoint the company which was 55% owned by one of the three close relatives of the Indonesian President, a person who themselves held no public office. A commercial adviser agreement signed in July 1989 provided for a commission of 5% on the price of new engines and spares. In return for recommending them, the regional intermediary would receive a commission of 2% of the value of business won via the company, in addition to commission received for having introduced the second intermediary.

4. The first payment to the company was made in August 1989, in respect of the anticipated (but not then signed) agreement for F100s, representing 25% of the total commission due. It was to be classed as an advance, to be recovered from other commissions due if the deal did not materialise. It was made by headquarters in order to secure the intermediary's commitment to the Trent 700 deal.

5. On 31 January 1991, a Rolls-Royce employee noted that Garuda's signature for this deal was "imminent (hopefully)". The employee recommended that Rolls-Royce pre-empt discussions with intermediaries, by sending letters "setting out a payment profile for each of them, based upon what we are expecting to receive". The A330 contract was signed on 2 April 1991.

6. Two payments totalling US $2,254,044 were paid to the company on 15 May 1991 and 13 June 1991. The individual concerned also received payments in kind; he asserted that he had also been promised a reward of a Rolls-Royce car if the A330 deal was won. The car was not part of the formal agreement but it was observed that Rolls-Royce was "going to have to deliver, and recover the costs as best we can". As a result, a Rolls-Royce Silver Spirit II was purchased and delivered.

7. By 14 February 1996, an internal Rolls-Royce memo sent to a Rolls-Royce senior employee observed that no engine deliveries had taken place, and noted the

commissions already paid. When, in March 1996, it was confirmed that Garuda would purchase only six A330s, Rolls-Royce needed to "revise [the] figures to reflect how the Trent Project intend to manage this deal". The original anticipated commission payments for the company were US $4,474,000.

8. In February 1997, Rolls-Royce terminated its advisor agreement with the company, replacing it with two new agreements in respect of T700s, T800s, Dart and Tay engines. The six A330 aircraft with installed Rolls-Royce engines were delivered between 1996 and 1998. In addition to the 1991 payments, two payments totalling US $779,784 were paid in 1997 to the managing director of the company, in respect of the Rolls-Royce engines for the A330s.

9. Substantial sums were involved and the gross profit from contracts infected by this conspiracy amounted to £30,330,000.

Count 2

10. This concerns a conspiracy to corrupt between 1 June 1991 and 30 June 1992 in relation to the first order of Rolls-Royce Trent 800 engines. Rolls-Royce agreed to pay about US $18.8 million to the regional intermediary and another intermediary. A proportion of these monies was intended for individuals who were agents of the State of Thailand, and employees of Thai Airways. In particular, the agents of both principals were expected to act in Rolls-Royce's favour, with respect to a purchase by Thai Airways of T800 engines.

11. In June 1991, Thai Airways placed an order of six Boeing 777 aircraft, which was later raised to eight. Rolls-Royce, in turn, sold Trent 800 engines to Thai Airways for those aeroplanes. At the same time as the sale was made, Rolls-Royce arranged for increasing sums of money to be provided to its intermediaries. It is inferred that a proportion of those monies was then passed on by the intermediaries to influence the purchasing decision. The regional intermediary was told by Rolls-Royce that up to US $1 million per aircraft was "available for dispersal" in connection with the Thai order although in July 1991, an internal memorandum noted that the 'demand' was for US $8 million i.e. US $1.33 million per aircraft which Rolls-Royce then paid to intermediary 3. The employee who drafted the memorandum commented that a single copy of the memorandum would be retained, and recommended that other copies should be destroyed.

12. In relation to the contracts described in this and the following two counts, when monies were promised or paid to this intermediary, a side letter amended the agreement with Rolls-Royce and described the sums of US $1.33 million per aircraft as a "Success Fee". The document made no reference to any third parties who were to be paid.

13. In August 1991, a further memorandum recorded that "Additional requests from the territory", which included an amount sought of "US$1M payable within seven working days of the execution of an irrevocable contract to purchase Trent engines." A manuscript amendment to a document indicates that this was to be paid to this same intermediary (intermediary 3). A Rolls-Royce senior employee approved the commission arrangements.

14. By October 1991, there were discussions between Rolls-Royce and the regional intermediary as to when payments would be made. Alongside the large fixed sums being paid to this intermediary, there was also a separate percentage commission. A payment structure for that portion of the commission was approved by a Rolls-Royce employee, whereby intermediary 3 received 50% of the commission as a first payment, rather than 25%, as was first anticipated, in order to "maintain local enthusiasm for further business".

15. On 14 November 1991, Rolls-Royce won the contract to supply engines for the six aircraft. The commission payments were made during early December 1991, and into February 1992. Thus, by the end of February 1992, a total of US $4.75 million had been paid to the intermediary, two instalments of which (amounting to US $4.3 million) were authorised at the point of payment by a Rolls-Royce senior employee. Thereafter, in March 1992, an expanded order for eight aircraft was approved by the Government.

16. In March 1992, an internal memo sent to two Rolls-Royce senior employees noted that US $4.75 million remained to be paid to the intermediary and approval was sought, on the basis that "a prompt payment could have an influence on the thinking of [a senior officer of Thai Airways]". The next day, a further memo was sent to the same senior employees, noting that the promise of payment to the intermediary was per aircraft so that it was necessary to authorise the payment of a further US $2.66 million to reflect the expanded order. The final two payments of US $4.75 million and US $2.66 million were made shortly thereafter.

17. During April 1992, Rolls-Royce authorised the payment of a further US $100,000 to intermediary 3 so that the intermediary could pay "disappointed recipients" who had received some payment, but had expected more from the percentage commission. It was then on 15 May 1992 that the contract between Rolls-Royce and Thai Airways was formally amended, raising the order for the number of aircraft and associated engines.

18. On 18 June 1992, a letter to the intermediary 3, also marked as hand delivered to the regional intermediary, documented the large "success fee" payments which had now been made. However, between 22 June 1992 and 26 June 1992, complaints were received from the Regional Intermediary that his contacts felt "short changed" on the spare engines sold to Thai Airways alongside the installed engines, leading to anxiety that a senior military officer in the Royal Thai Air Force has threatened to resign and that Rolls-Royce could "ill afford to lose his support in Thailand".

19. As a consequence, a further side letter to the intermediary's agreement was written which offered to pay further commission, referring to the "special efforts" made on the sale of Rolls-Royce Trent engines to power eight (8) Boeing 777 aircraft and the associated spare engines to Thai lnternational. It provided for immediate payment of US $1.33 million, and a further US $1.33 million payment, contingent on a second sale to Thai of engines for an additional seven B777 aircraft. The day after the side letter was agreed, a Rolls-Royce senior employee authorised, and paid, US $1.33 million to intermediary 3. I shall return to the gross profit having considered the other two conspiracies involving Thai Airways and these intermediaries.

Count 3

20. This count concerns a conspiracy to corrupt between 1 March 1992 and 31 March 1997 in relation to the second order of Rolls-Royce Trent 800 engines. Rolls-Royce agreed to pay US $10.38 million to its intermediaries it being inferred that a proportion was intended for employees of Thai Airways who were expected to act in favour of Rolls-Royce and influence the purchase of its T800 engines to be fitted into what was a second acquisition of six B777 aircraft.

21. In March 1992, when a second order by Thai Airways was first anticipated, a Rolls-Royce employee agreed a "success fee" of 135 million Thai Baht (then approximately US $5.29 million) with the intermediary 3, should Thai order further B777s with T800 engines. This was formalised in a side letter to the intermediary's agreement. At that time, however, the order did not proceed.

22. Two years later, on 20 May 1994, Rolls-Royce paid US $500,000 to the intermediary 3 although the deal had not then been concluded. In April 1995, with the order still not finalised, a further side letter was sent by Rolls-Royce to the intermediary 3, increasing the 1992 offer to a payment of US $1 million per aircraft (for each of the six aircraft envisaged). There were changes proposed to the intermediary's percentage commission and it also specified that the US $500,000 payment was an advance on the percentage commission. The intermediary then wrote to Rolls-Royce to explain that this was incorrect on the basis that this was an expense for lobbying a senior officer of Thai Airways and was not "an advance money at all."

23. In July 1995, a further Side Letter was drawn up, confirming that the US $500,000 payment would be treated as ex gratia, and would not be deducted from the commission. The intermediary also complained about the level of commission, it being noted in an internal memo that the payment terms for the percentage commission "would not meet his commitments". The regional intermediary was told that he needed to manage his "nominees" better and a letter was sent by a Rolls-Royce employee to the intermediary 3 stressing that it was important that Rolls-Royce knew where such funds are being placed, "albeit that such information is best handled verbally." The regional intermediary was told that the level would be reviewed but that it was necessary to know how Intermediary 3 "intends to allocate these monies" and evidence was required to make the case. In the event, the commission was subsequently raised from 1% to 2%.

24. On 30 October 1995, an internal memo asked whether the fixed sums of US $1 million per aircraft should be made payable within seven days of the order by Thai Airways, rather than within 30 days as agreed. The memo commented that the senior officer of Thai Airways was waiting to issue the 'order' to Boeing but before doing so wanted evidence from Rolls-Royce that, through the intermediary, he was going to receive funds within 7 days. A week later, by side letter, payment was agreed within seven days of order confirmation. Internal correspondence, from 8 February 1996, records the agreement to make payment of US $1 million in advance, despite the order not yet being confirmed. Payment was authorised that day and, following that, the Board of Thai Airways approved the T800 engine for six B777 aircraft although, at this stage, approval by the Government of Thailand was still to be secured.

25. In April 1996, a Rolls-Royce senior employee, and two Rolls-Royce employees, were made aware of the need to pay the additional US $1.33 million promised to the intermediary in June 1992, at the conclusion of the first order of engines. This sum

was later reduced to US $1.14 million, as the number of aircraft and engines being purchased by Thai had itself reduced. In May 1996, an internal memo referred to the US $1.14 million payment being made to an employee of Thai Airways: "… who has allocated it to the political helpers he has used" it being understood "why it is euphemistically referred to as the Power(plant) Group."

26. In November 1996, an internal Rolls-Royce memo noted that the same employee of Thai Airways had asked a Rolls-Royce senior employee to "release" US $1 million of the US $5 million, which remained to be paid to the intermediary. The memo recommended that payment be made now so that it could be used to 'manage the political process'. Three Rolls-Royce senior employees agreed to this. The second advance of US $1 million was again paid to the intermediary.

27. In January 1997, an internal memo sent to two Rolls-Royce senior employees noted that the order by Thai awaited ratification by the Government of Thailand, and that part of the concession package associated with this contract involved the payment of US$7.14M contingent upon Government approval of the purchase. These funds would be passed through Rolls-Royce's commercial adviser who would take responsibility for the 'in-country' distribution. The memo also advised of press reports which had suggested that the Thai Government might prefer leased aircraft to a purchase, and that Rolls-Royce were therefore exposed to a risk of having paid out US $2 million, without having secured the order, albeit repayment of those monies had been guaranteed by the two intermediaries.

28. In February 1997, a meeting of Rolls-Royce's Contracts Review Sub Committee was held, at which three senior employees were present, who had been involved in agreeing the second advance of US $1 million. The committee approved a report, which asserted that no payments to agents across Rolls-Royce's business divisions during the previous 12 months were "non-compliant with (relevant) laws and regulations". Included, as a significant part of that report, were the first and second orders of T800 engines by Thai Airways, and details of the sums paid to Intermediary 3 and the Regional Intermediary. The report was sent on to Rolls-Royce's external auditors.

29. Finally, in March 1997, an internal memo to two Rolls-Royce senior employees confirmed that the Government of Thailand had approved the second order placed by Thai. This would release payments from Rolls-Royce of US $5.14 million to the intermediary. There were also smaller payments to that intermediary and to the regional intermediary, described as their percentage based commissions. These payments were collectively referred to as "marketing expenses".

30. The figure of US $5.14 million, paid, at this stage, to Intermediary 3, reflected the initial offer of US $1 million per aircraft, for six aircraft, or US $6 million. Subtracted from this were the two advances of US $1 million. The balance of US $4 million was then supplemented by the 'rediscovered' payment of US $1.33 million, which had been reduced to US $1.14 million. The payments were subsequently made. Payments of percentage commissions continued to be made to both the intermediary and the regional intermediary, with the timing of those payments linked to aircraft deliveries. Each was paid around US $1.37 million. I shall deal with the gross profit from this conspiracy having considered the next count.

Count 4

31. This is the third count in relation to the Thai Airways; it concerns a third order of Trent 800 engines and a conspiracy to corrupt between 1 April 2004 and 28 February 2005. Rolls-Royce agreed to pay almost US $7.2 million to its intermediaries a proportion of which was intended for agents of the State of Thailand or employees of Thai Airways who were expected to act in favour of Rolls-Royce and influence the third purchase of T800 engines.

32. A third order of B777 aircraft by Thai had been under discussion as early as 1996 (thus flowing on in time from Count 3) but the order did not materialise until late 2004. As to the relationships, an internal Rolls-Royce email, from April 2004, notes that the regional intermediary had rejected commission terms proposed by Rolls-Royce on the B777 order, and had indicated that he would talk to a Rolls-Royce senior employee. He was requesting an additional 4% commission, or approximately US $500,000 per aircraft which would raise overall commissions on this contract to 8%, breaching a recently imposed internal limit as to the levels of intermediary commission.

33. In May 2004, a proposal for a new commission structure was made by way of response. It provided for less commission than that and made a proportion of the commission conditional on Rolls-Royce securing a Total Care Agreement ("TCA") with Thai Airways. TCA was Rolls-Royce's maintenance product, providing for engine repair costs to be spread across a long-term service contract, based on the number of hours flown. Selling such agreements was a priority for Rolls-Royce. The same letter noted that the regional intermediary might wish for some commitments to be made with the intermediary involved. At a meeting the following month, that proposal was rejected and the regional intermediary was told that Rolls-Royce could not change its position. An internal briefing note was addressed to a senior employee of Rolls-Royce.

34. In mid-July 2004, a letter was written to the regional intermediary recording that Rolls-Royce's offer on commissions was final but a further letter from August 2004 records that discussion as to commission levels was ongoing between the regional intermediary and employees (and a senior employee) of Rolls-Royce. Meanwhile, on 28 July 2004, the Board of Thai Airways decided to purchase the six B777s, and two further Airbus A340 ("A340") aircraft. They selected Rolls-Royce engines for the B777s, while the A340 was a 'sole-source' aircraft, which only took Rolls-Royce's Trent 500 ("T500") engines.

35. At the end of September 2004, the Board of Thai confirmed further details of its order: five spare engines for its A340/T500 fleet, and two spare engines for the B777/T800 fleet.

36. On 13 October 2004, a memo to the same Rolls-Royce senior employee proposed, in respect of T800 engine sales, paying 4% to the intermediary and 2% to the regional intermediary. Two days later, a further memo dealt with concerns raised by the senior employee as to the regional intermediary's expectations and clarified that the agreed proposal represented 6% in total on T800 engine sales for the two intermediaries to share, as well as additional commissions were a TCA to be secured. The senior

employee asked that a different Rolls-Royce senior employee communicate with the regional intermediary.

37. By side letter dated 22 October 2004, Rolls-Royce agreed to make payments to the intermediary of 2% commission on seven spare T500 engines although there was no contemporaneous sale of seven such engines. A year earlier, there had been a sale of two spare engines of the T500 model and a month prior to this letter, Thai Airways had taken a decision to purchase five further spare engines. The commission was nonetheless expressed as relating to seven spare engines. At this time, these commissions were described as payable in two parts.

38. The commissions for the intermediary in relation to the T800 engines were initially to be spread over 7 to 10 months, with payment made in three stages. Two of those stages were around one to two months after the expected date of approval of the engine order by the Government of Thailand, with the balance to follow around six months later.

39. Following a meeting on or before 11 November 2004, the regional intermediary was described as being frustrated at the time taken to approve the commission arrangements commenting that he had had to use his friendship with a Rolls-Royce senior employee to ensure the arrangements were approved. Both the regional intermediary and intermediary 3 requested that the T800 and T500 spare engines commission be paid "up front". To do so required internal approval from a Rolls-Royce senior employee which led to a letter to the intermediary, with a proposal to pay three quarters of his commission on 7 January 2005, contingent on Government approval, and the remaining quarter on the delivery of the aircraft. A similar letter made the whole of the 2% T500 spare engine commission also payable by the same date.

40. An internal Rolls-Royce email, dated 19 November 2004, recorded that a meeting had taken place with the intermediary, the regional intermediary and a member of the Thai Government, described as "very good" with "very positive feedback … on track for Cabinet 23rd Nov". The email went on to discuss commission payments. Meanwhile, both intermediaries had rejected Rolls-Royce's proposed phasing of payments, and insisted that they needed all of the intermediary's "4% on Government approval, i.e. Dec 04". The regional intermediary was recorded as having threatened to raise this issue of the timing of payments with the Rolls-Royce senior employee. Later that day, a further internal email records: "Do we think all of the 4% [in relation to the intermediary] flows through to....? I assume not all of it does."

41. On 22 November 2004, a further letter was sent to the intermediary, offering to pay all but 12.5% of the commission on 7 January 2005 although the following day when the Cabinet of the Government of Thailand was scheduled to meet, a final letter offered to pay the full T800 commission on 7 January 2005, in both cases again assuming Government approval had been given.

42. On 4 December 2004, an internal Rolls-Royce email stated that the order by Thai was approved but the intermediary was seeking payment of half of the T800 commission, by 17 December 2004. The email concluded with a warning that, on 18 December, the intermediaries were having dinner with the deputy minister of the Thai Government whom they had met and that the regional intermediary may "suddenly" decide to

support the intermediary's request. Two employees of Rolls-Royce agreed that the company should not move further.

43. On 20 December 2004, an updated advisor agreement was signed by the intermediary 3 who sent back pro-forma invoices for the payments Rolls-Royce were due to make. On 4 January 2005, Rolls-Royce made payment of US $3,797,718 to the intermediary: it was authorised by a Rolls-Royce senior employee and described as being for the contract signature for T800 engines to be installed into six B777 aircraft, and two spare T800 engines. On the same date, Rolls-Royce also paid US $1,497,339, described internally as an "Additional 2% for sale of seven [sic] spare T500s to Thai". A corresponding payment of US $474,715, described as relating to the sale of installed and spare T800 engines, was made to the regional intermediary one month later, with subsequent payments bringing the total to US $1,898,860.

44. Thus, between the two intermediaries, a total of US $7,193,917 was paid in connection with the T800 engines, and T500 spare engines order. Thereafter, on 17 January 2005, the formal contract for the five T500 spare engines was concluded with Thai Airways. The T800 engine contract was concluded on 15 June 2006.

45. I have deliberately set out the facts behind the three conspiracies relating to Thai Airways encompassed by Counts 2, 3 and 4 because they represent a continuing course of conduct between 1991 and 2005, generating in total by far and away the largest contracts. They involved corruption at a high level with vast payments being made to intermediaries and the clear inference that others were being paid as well. Senior employees of Rolls-Royce were clearly implicated. The gross profit from these contracts amounted to no less than £118,150,000.

Count 5*:*

46. This count concerns false accounting (between 24 March 2005 and 30 September 2009) by the creation with a view to gain of documents required for an accounting purpose (contracts, agreements and side letters) which were misleading in a material particular in that they stated that the amounts payable under those documents were referable solely to the services set out. At the heart of the count is the fact that, during this period, the use of intermediaries in connection with Indian Government defence contracts was increasingly restricted by the Indian authorities and the terms of a number of Rolls-Royce defence contracts contained undertakings that intermediaries had not been used. Breach of the undertaking entitled the Indian authorities to cancel agreements, and prevent bidding for future contracts.

47. Notwithstanding these undertakings and the developing procurement rules, Rolls-Royce continued to use one of its key intermediaries in relation to relevant defence contracts. Contractual documents were therefore created in respect of the payments due from Rolls-Royce to that intermediary recording the payments as being due for general consultancy services, rather than as commissions in respect of those relevant defence contracts. The contractual documents, therefore, did not correctly record the real reasons for these payments.

48. Providing a little more detail, it was in January 1989 that the Indian Ministry of Finance issued a circular on 'Indian Agents of Foreign Suppliers', applicable to "all civil purchases of imported stores by all Government Departments and public sector

enterprises under [government control]". The circular noted that, whilst the Government did not encourage the use of intermediaries, where it was necessary, registration of intermediaries was required, together with disclosure of all arrangements, including commissions.

49. In or around October 1995, Rolls-Royce was informed of an Indian Government requirement that it sign an undertaking to pay no fees or commission in respect of a contract with the Indian Navy. In November 2001, the Indian Ministry of Defence ("MOD") issued instructions, supplemental to the 1989 circular. These stated that the MOD saw "advantages" in using "authorised" intermediaries, subject to various restrictions. These restrictions included full disclosure, intermediary registration, authorisation/accreditation by the MOD, and scales of commission payable as per MOD guidelines.

50. On 1 September 2006, the MOD's Defence Procurement Manual 2006 brought into force a requirement for all of its foreign suppliers to sign a standard "Pre-Contract Integrity Pact" for supplies worth over INR 1 billion (about US $25 million). The Integrity Pact also contained undertakings that the bidder:

> "6.5 ... has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the Buyer or any of its functionaries, whether officially or unofficially to the award of the contract to the Bidder, nor has any amount been paid, promised or intended to be paid to any such individual, firm or company in respect of any such intercession, facilitation or recommendation.
>
> 6.6 … shall disclose any payments he has made, is committed to or intends to make to officials of the Buyer or their family members, agents, brokers or any other intermediaries in connection with the contract and the details of services agreed upon for such payments."

51. A bidder's violation of the pact entitled the buyer, *inter alia*, to cancel "all or any other contracts with the bidder", debar the bidder from future Indian Government contracts for a minimum five year term, and recover all sums paid in violation of the pact to "any middleman or agent or broker with a view to securing the contract".

From 2003, Rolls-Royce changed its contractual arrangements with its relevant intermediary by contracting with a variety of different commonly owned intermediary companies or individuals; and arranging commercial consultancy agreements which purported to pay fixed fees for the provision of general consultancy services across a number of territories (Asia, Middle East, Russia, Ukraine, Mexico and China). None described payment of a percentage commission fee linked to orders placed with Rolls-Royce by Indian military authorities. In fact, payments made were not referable mainly, or at all, to those general services and the terms of the agreements did not record the real reasons for the payments.

52. It is not necessary to provide full details of the way in which contracts were negotiated which utilised this device to avoid compliance with the procurement rules. On 26 March 2004 a licence agreement was entered into between Hindustan Aeronautics Ltd ("**HAL**") and a joint venture (Rolls-Royce and a French company) giving HAL licence to manufacture, assemble and repair joint venture engines for a fee of £7.5 million. This was a precondition to a larger contract, by which Rolls-Royce supplied Adour engines for BAE Systems Hawk aircraft, sold to the Indian Government. This contract was signed (by BAE Systems) in 2004, with a value to Rolls-Royce of £122 million. The licence agreement contained an undertaking almost identical to what was to become clause 6.5 of the Integrity Pact, with similar consequences for breach.

53. In or around April 2005, a senior Rolls-Royce employee was told that four commercial consultancy agreements were to be used to pay the intermediary £1 million in respect of the licence agreement. Another senior employee had, by 24 March 2005, already signed 'Proposed Appointment' forms authorising the agreements. The approval of a more senior Rolls-Royce employee would be needed, because the level of commission proposed exceeded a threshold imposed by internal Rolls-Royce policy.

54. It is sufficient to record that the position was fully explained to the senior employee involved in discussions surrounding this transaction. The nature of the assistance provided by the intermediary, the extent to which the maximum licence fee initially considered by the Indian government had been increased and the verbal agreements to pay the £1 million to the intermediary were identified. The Marketing Services employee also stated that he wanted to discuss possible ways for Rolls-Royce Defence Aerospace to deliver its commitment to the intermediary, while complying with the applicable legislation.

55. In the event, from July 2005 onwards, all four of the new consultancy agreements were signed by Rolls-Royce. All described fixed fees payable for general services. Two of the agreements were new agreements with companies of the intermediary, describing general services in relation to the potential Rolls-Royce market in Russia, and Ukraine, respectively. The other two agreements were side letters to existing agreements, which similarly did not reveal any link on their face to the earlier contract, for which they had been set up to pay the intermediary. The side letters described additional work related to potential Rolls-Royce 'Regional Service Centres' to support the maintenance of Rolls-Royce products. None of the Rolls-Royce proposal forms, or subsequent agreements, revealed any link on their face to the licence agreement.

56. On or around 1 September 2005, £1 million was paid to the intermediary's four companies. Within Rolls-Royce's accounting system, none of the payments were categorised as 'Adviser Remuneration', or settled to a specific project. Rather, they were settled to 'Non Project', as "DEF (Aero) NP – Admin", and "Sales Related Non R&D".

57. The second matter which falls to be considered came after September 2006 when the MOD's standard Integrity Pact clause came into force. In 2007, a Pegasus Long Term Agreement 1 ("LTA1"), between Rolls-Royce and the Indian MOD, dated 1 October 2002, concerning the Indian Navy's Sea Harrier aircrafts' Pegasus engines, was

extended, through Pegasus Long Term Agreement 2 ("LTA2"). Under LTA2, Rolls-Royce would supply relevant parts for a further five years. The contract was dated 19 February 2007, with a value of £43 million.

58. This was the first occasion on which Rolls-Royce was required to sign the Integrity Pact and employees of Rolls-Royce were aware that, following press reports, there would be insistence on total compliance with the new rules and Integrity Pact by the Indian authorities, and no procurements of any size were advancing (including LTA2). A Rolls-Royce employee signed the Integrity Pact and the contract containing similar terms to clause 6.5 of the Integrity Pact. In the event, the LTA2 'Business Evaluation Form' of June 2006 recorded commission as 0%, but also recorded a figure of 13% under 'Other' sales related costs.

59. In early 2007, Defence put forward a proposal that Rolls-Royce establish a warehousing/distribution facility in the United Arab Emirates ("UAE") for certain Defence products traded in India. By July 2007, the proposed arrangement (named Project Jasper) involved a 10-year arrangement with a Dubai-registered company linked to the Indian intermediary, which had, by then, already been used by way of a consultancy agreement in respect of payments for the adviser list, further explained in Count 6. The proposal described payment by Rolls-Royce to the Dubai company of a service fee, based upon the throughput of the goods traded. The fee would be a maximum of 10%. A project assessment, formally to launch the project, was approved in July 2007.

60. The project was finally approved both by Defence and Rolls-Royce headquarters in July 2008 and, on 20 July 2008, a Rolls-Royce employee signed a 'Justification for a Single Source Purchase' document so that a tender process for this work was not undertaken. Effective from 1 November 2008, a supply agreement for the warehouse arrangement was signed which specified an overall service fee of 9% of the value of the shipped parts, plus a single payment of £170,000 to cover initial investment costs. The agreement set out total base prices per month, up to the end of 2010. These totalled £8.76 million. Whilst the project assessment set out a business case for setting up a warehouse facility in Dubai, the contract gave no indication of any additional, or ancillary purpose beyond the warehousing arrangement, namely that it also provided a means of remunerating the Indian intermediary for assistance provided on MOD contracts, including the LTA2 contract.

61. Apart from one test-run supply of parts in January 2010, the warehouse never became fully operational, and no other parts were shipped through it. Regular amounts due under the contract were paid to the Dubai company from February 2009, until September 2009 (the advance fee and the monthly payments due for November 2008, until June 2009). These payments totalled £3.32 million.

62. Within Rolls-Royce's accounting system, none of the payments were categorised as 'Adviser Remuneration', or settled to a specific project. They were recorded under a 'Dubai Warehouse Purchase Order', as non-project "Sales Related Non R&D" costs. The final invoice Rolls-Royce paid was for June 2009. Further invoices were submitted, but no further payments were made after 1 September 2009. By the summer of that year, there were discussions within Rolls-Royce about the appropriateness of its connections with the intermediary and the commercial validity of the warehouse.

63. The criminality disclosed by this count relates to the way in which failure to comply with the requirements of the Indian procurement processes was hidden in relation to a number of contracts and the steps taken to do so, rather than to bribery or corruption. The relevant proportion of the revenue arising from these affected contracts amounted to £7,890,000.

Count 6

64. This further allegation of conspiracy to corrupt is not related to the negotiation of contracts but, rather, between January 2006 and August 2007 an agreement to make corrupt payments to a tax inspector as an inducement to recover a May 2002 list of Rolls-Royce's advisers which, in January 2006, had been removed by a tax inspector from the offices of Rolls-Royce in Delhi during a tax survey. It led to a request the following month, directed to an employee of Rolls-Royce who had attended the Delhi tax office, that the inspector be supplied with names and addresses of the advisers listed, the amount of money paid to them and the purpose of their engagement with Rolls-Royce.

65. In the event, Rolls-Royce paid its intermediary in India (whose company was listed a number of times) to retrieve the list and prevent further investigations. There is an inference that this involved payment to a tax inspector. These payments to the intermediary were also made through contractual documentation, which also did not correctly record the real reason for the payments and, thus, these documents legitimately also feature in the preceding count.

66. The list was resolved in this way. On or around 24 February 2006, there followed debate within Rolls-Royce, about how to address matters. A Rolls-Royce employee reported that the implication of having Rolls-Royce's position subjected to vigorous, and possibly public hostile scrutiny, was unattractive. Rolls-Royce employees liaised with the intermediary about the list of advisers and what should be done. A handwritten note, dated 1 March 2006, reveals that a senior employee was involved in a discussion that the document should be retrieved, the regional offices purged with an employee of Marketing Services managing the advisers; there is also reference to the legal and contractual position. There is also a separate reference to another employee approving a 'mechanism' including a commercial consultancy agreement for the intermediary's company "up to £500k, but hopefully £200k".

67. On the same day, a Rolls-Royce employee explained that recent events had focused on the need to review internal confidentiality, in respect of intermediary agreements. He directed those concerned to review all files to ensure that they contained no correspondence relating to such agreements (old or current), no copies of such agreements, no references or notes to any commission commitments or consultancy payments, and that all original intermediary agreements should be held at headquarters in London by the Director of Marketing Services.

68. On about 7 March 2006, a Marketing Services employee expressed concern that, whilst he had no evidence of illegal payments by intermediaries or any other illegal activity by Rolls-Royce employees, there would be possible consequences in the event that the Indian tax authorities were to pass the adviser list to the Indian MOD. The employee stated that it was likely that there would be an investigation by India's Central Bureau of Investigation ("CBI"), due to the references in the adviser list to

commercial advisers and consultants for defence business and the commission levels mentioned.

69. The same employee was also concerned that, for some customer contracts secured with the assistance of advisers on the list, it appeared that the Rolls-Royce company concerned may have breached the terms of the relevant contracts (prior to 16 May 2002 and after), and applicable Indian Defence Procurement Rules, either by appointing an adviser or consultant for defence business, or by failing to disclose such an appointment. He was therefore concerned that it could be damaging to Rolls-Royce's position in any investigation, if it were to be found that any such breach had occurred, and that the outcome could be that any Rolls-Royce company was debarred from contracting with any Indian government agency for five years, or more.

70. By 8 March 2006, another Rolls-Royce employee indicated that a 'nil return' response was being prepared to the tax inspector's requests. The employee stated that this would almost certainly precipitate formal reaction, which might include possible parallel investigation by the MOD, a more detailed tax search of Rolls-Royce's offices (potentially accompanied by police presence and searches of individuals' homes), and media attention.

71. On 15 March 2006, at Rolls-Royce, a senior employee confirmed to another senior employee who had approved the mechanism for payment, that he had told the Marketing Services employee that, while Rolls-Royce could accept no legal or fiscal liability for the intermediary's action, they were however grateful, and should look to see if mutually beneficial future business, through which Rolls-Royce could give tangible form to that gratitude, could be found. A proposal for one of the new Defence commercial consultancy agreements, through which the intermediary was to be paid, was approved on the same day.

72. By 20 March 2006, two new commercial consultancy agreements through which Rolls-Royce in London was to make some of its payment to its intermediary had received senior employee approval. Hence, a decision in London that Rolls-Royce would pay the intermediary to retrieve the adviser list had been made by 20 March 2006, at the latest. Whilst it has not been established that a payment was made to a tax inspector, or any other official, there is an inference that this decision was made in the expectation that the list could only be retrieved, and the attendant investigations prevented, if a payment was made to a third party. By 27 April 2006, it was reported to senior Rolls-Royce employees that the tax issues in India had been satisfactorily resolved.

73. By 11 May 2006, seven new contracts had been signed. It is accepted that these contracts were the mechanism by which Roll-Royce made payments to the intermediary in connection with the adviser list. Three of the new contracts were side letters to existing commercial consultancy agreements. The remaining four were new such agreements describing fixed fees, payable for general services in relation to a number of territories. None of the proposal forms, side letters or agreements revealed any link to the adviser list issue.

74. By late May 2006, another commercial consultancy agreement, paying an additional £500,000 to an affiliate of the intermediary had also been signed. This similarly purported to be for general services. It is accepted that this payment also related to the

adviser list issue. Thus, between April 2006 and August 2007, £1.85 million was paid by Rolls-Royce to entities related to this intermediary. Within Rolls-Royce's accounting system, some payments were set up as 'non-project Sales Related non R&D costs'. Other payments were settled to a cost centre within 'Commercial and Administrative Costs', that is, not linked to sales.

75. On 2 June 2010, there was a meeting between two Rolls-Royce employees and the intermediary, at which Rolls-Royce terminated the relationship. At the meeting, the intermediary mentioned the help that he had given to Rolls-Royce in resolving the tax difficulty in the Rolls-Royce India office some four years earlier, that he had paid out a lot more than received from Rolls-Royce to resolve the matter, and that had he not done so, some Rolls-Royce employees, including one based in India, would have gone to jail, and Rolls-Royce would have been closed out of the Indian market for 25 years. Whether that is an accurate assessment is not for me to judge but the agreement to corrupt was clearly of real significance and is particularly important because it demonstrates the extent to which Rolls-Royce were prepared to descend to criminality of this type. It was, of course, only intended to be protective of the position of Rolls-Royce and no profit of any sort was realised.

Count 7

76. This count reverts to the crime of conspiracy to corrupt between 1 January 2008 and 31 December 2009 and relates to a contract, won by Rolls-Royce in 2008, to supply the Russian state-owned company Gazprom with gas compression equipment. This contract formed part of a liquefied natural gas project called the Portovaya project. Rolls-Royce Energy [Systems, Inc., 'RRESI'] has been included on the indictment as the relevant Rolls-Royce entity for this project because although the contracting entities were different subsidiary companies, RRESI was supplying, manufacturing and selling equipment for the project. Rolls-Royce also accepts that a senior employee of Rolls-Royce plc was working on behalf of RRESI and its business on this project, and, at a functional level, sufficiently senior to bind RRESI (the "senior RRESI employee").

77. There had been contacts between individuals in the Russian state owned company Gazprom before the Portovaya project and, in particular, with a particular official ("the Gazprom official") whose son, in October 2006, had been recommended by a Rolls-Royce employee as one of the potential candidates for an Energy sales position in Rolls-Royce's Moscow office. Over the course of the Portovaya tender, the Gazprom official requested payment in exchange for influence over the project in RRESI's favour. The senior RRESI employee then worked with other Rolls-Royce employees to provide a Russian intermediary with commission and it is inferred that a proportion would be designated for payment to the Gazprom official.

78. From June 2008, RRESI also worked with the intermediary and another intermediary on Portovaya, the tendering process for the project having commenced in January 2008. Thus, there were meetings on 5-6 June 2008, the RRESI senior employee and other Rolls-Royce employees arranged for 'somewhat confidential' meetings in Moscow 'relative to Advisors', and on 16 June 2008, the RRESI senior employee emailed the personal address of a representative of one of the intermediaries, suggesting a commission of 2% on the contract value for the equipment. Towards the

end of that month, agreement was reached to that effect in relation to both intermediaries although the commission for the second was later reduced to 1.5%.

79. According to records provided by Rolls-Royce, the commission to the two intermediaries amounted to approximately £8 million. Discussions with, and about, the intermediaries, were deliberately kept to a small circle within Rolls-Royce by the Rolls-Royce senior employee and other Rolls-Royce employees. On 27 June 2008, Rolls-Royce was selected as the recommended winner of Portovaya. News that Rolls-Royce was selected as the recommended winner was disseminated, internally, from a Rolls-Royce employee, following two discussions he had with Gazprom officials on 27 June 2008. The senior RRESI employee sought clarification on this internal communication directly from Intermediary 5, who responded saying that his "friend" told him the same.

80. Following a meeting on 7 July 2008 between a Rolls-Royce employee and the Gazprom official, it was reported to the RRESI senior employee, and another Rolls-Royce employee that the Gazprom official asserted that:

> "We applied a lot of efforts to ensure you get the deal on Portovaya. How shall we "be strengthening our relations"? Will it be consultancy or what? I assume it is along the lines of what you discussed with [representative of the one of the intermediaries]."

81. A few hours later, a further e mail to the RRESI senior employee and a further Rolls-Royce employee reported that he had asked the Gazprom official whom should be contacted "for this activity" and was told that it would initially be him but that another person would be nominated. Rolls-Royce employees were clearly sensitive about such discussions appearing on email and, following another similar message, an email was sent making it clear that the writer "[did] not want to see any of this stuff appearing in an email in future". Having said that, however, that the Gazprom official had an important role in securing the tender for Rolls-Royce is shown by another email, in which Rolls-Royce employees described him as having been "instrumental" in selecting the RRESI equipment for Portovaya. It can thus be inferred that RRESI agreed with the intermediary to provide funds for the payment of the Gazprom official.

82. The Portovaya contract, itself, was signed on 19 December 2008. The contracts for the two intermediaries were signed approximately six months later, in June and July 2009, effective from 30 June 2008. At the time of the award being made to Rolls-Royce, there was no formal contract in place with either intermediary, and the appropriate due diligence on them had not been completed. The fact of the delay in finalising the contracts with the intermediaries came to light in 2009, when Rolls-Royce directed an internal review of the contract arrangements. The gross profit from this contract amounted to £36.8 million.

Count 8

83. The remaining counts on the proposed indictment all concern offences of failure to prevent bribery contrary to s. 7(1) of the Bribery Act 2010 which is established if a person associated with the relevant organisation bribes another intending to obtain or

retain business for the organisation or to obtain or retain an advantage in the conduct of such business. Critically, a senior employee (or controlling mind) is not implicated with the result that the predicate offence of bribery cannot be established. That is not to say that Rolls-Royce (in this case) is liable strictly for its employees because s. 7(2) provides the organisation with a defence if it had in place adequate procedures designed to prevent persons associated with it from undertaking the bribery. Given the circumstances, it is not surprising that the Director of the SFO has concluded (and it is not challenged) that Rolls-Royce would not be able to avail itself of this defence. Indeed, these counts underline what can only be described as a culture which permitted bribery in different countries throughout the world.

84. This particular count relates to the period 1 July 2011 (i.e. when the offence under the Bribery Act 2010 came into force) to 31 July 2013 and concerns the failure to prevent bribery concerning an open competitive tender for a long-term service agreement ("LTSA"), on Samarinda Island in Indonesia.

85. As early as 2007, Rolls-Royce employees engaged an intermediary to act in relation to this tender and certain Rolls-Royce employees, through that intermediary, agreed to pay commission to a member of a competitor consortium, so as to ensure that it submitted an uncompetitive bid. In addition, it is inferred that, in agreement with Rolls-Royce employees, the intermediary arranged to pay money directly to individuals working for the state-owned customer, PLN. As a result of this arrangement, Rolls-Royce won the project and the intermediary received regular commission payments for the duration of the LTSA although the count relates only to those payments which were made after 1 July 2011.

86. The history of the relationship goes back to the 1990s, when Rolls-Royce sold two generator set packages to an Indonesian state-owned power company, PLN and, in 2000, secured a seven-year maintenance contract for the project. As that maintenance contract came to an end, PLN needed an LTSA for the maintenance of the installation and decided to open a limited tender process for bids. On 16 October 2006, a director of the intermediary informed Rolls-Royce that the decision to have an open tender, as opposed to not having a tender, was "due to recent situation in PLN regarding corruption watch", which meant that PLN wanted to avoid direct negotiations.

87. The Statement of Facts details the discussions within Rolls-Royce and with the intermediary as to the possible approaches to this decision but the upshot was a letter to the President of the competitor company offering, if Rolls-Royce were successful in its bid, to share 2% of the total value of the contract (by way of agreement between their commercial adviser and another company of which he was also the President). In the event, the competitor bid was US $1 million higher than that of Rolls-Royce. It is inferred that the director of the intermediary also anticipated payments to PLN as well as the payment to the President of the competitor company (not least because in November 2007, he chased for payment of his commission "due to my commitment to PLN and [the President]". In the event, the intermediary received payment in two currencies and in two bank accounts, referring at one stage to the "PLN portion".

88. Pursuant to a commercial adviser's agreement dated 2008, Rolls-Royce continued to pay the intermediary commission in respect of the LTSA but the payment arrangement was not subjected to the appropriate scrutiny, according to Rolls-Royce's evolving compliance procedures. In January 2012, internal enquiries regarding

payments to the intermediary started to be made, with the Energy Compliance Officer becoming involved. In March 2013, confirmation was sought that the intermediary 7 was not in breach of any contract or applicable law. Despite such confirmation never being provided, and despite the apparent knowledge of some Rolls-Royce employees that the intermediary was acting corruptly on Rolls-Royce's behalf, Rolls-Royce continued to make ongoing, regular commission payments to the intermediary until July 2013. It also appears that the intermediary continued to make payments to the President of the Indonesian company, and, it is inferred, to PLN. The relevant gross profit amounted to £2,860,000.

Count 9

89. This count concerns the failure to prevent bribery of Nigerian public officials between 1 July 2011 (being the commencement date for the Bribery Act 2010) and 31 May 2013. Once again, the history precedes the commencement of the legislation: it was between 2009 and 2013 that Rolls-Royce employees engaged a Nigerian company ("the Nigerian Company") in relation to projects in Nigeria. Over that period, Rolls-Royce failed to prevent the payment of bribes by the Nigerian Company to Nigerian public officials, which served to obtain commercial advantage for Rolls-Royce on two tenders in Nigeria: these were the Adanga project and the Egina project. Rolls-Royce eventually withdrew from the Adanga tender, due to the product being unsuitable. On the Egina project, Rolls-Royce was on course to win the tender, but withdrew from the project prior to signing a contract, after concerns were raised internally about the receipt of confidential competitor information.

90. Adanga concerned the sale, by Rolls-Royce, of two gas compression engines to Addax, an international oil and gas exploration company. National Petroleum Investment Management Services ("NAPIMS"), a public entity responsible for supervising the Nigerian government's investment in the oil and gas sector, oversaw the bidding process. Egina was an offshore oil field project operated by Total Upstreams Projects Nigeria ("TUPNI"), among others. TUPNI was responsible for bid evaluation, and the submission of recommendations to NAPIMS.

91. Rolls-Royce (which had dealt with the Nigerian Company on previous contracts) worked with it between 2009 and 2010 on Adanga and between 2009 and 2013 on two bids relating to Egina: the supply of gas turbine generators and a related LTSA ("the PG Tender"); and the supply of gas turbine compressors and a related LTSA ("the C Tender"). The Nigerian Company had a number of directors, three of whom were related. A fourth member of this family was not formally a director, but was intimately involved in the business, while also being employed by NAPIMS. The Nigerian Company and Rolls-Royce enjoyed close relationships with other members of NAPIMS staff.

92. On 19 March 2012, the Nigerian Company entered into a Distributorship Agreement with Rolls-Royce which permitted it to charge a mark-up on Rolls-Royce products, at a rate to be agreed on a case by case basis for new unit products and certain other product categories, or up to a certain limit for other products. On at least one occasion, the Nigerian Company's staff internally acknowledged the need to account in their mark-up for "any additional costs associated with politics etc", which, it is inferred, meant improper payments to Nigerian public officials.

93. Rolls-Royce made additional payments of around US $760,000 to the Nigerian Company, apparently for expenses, such as office space, and drivers. In at least one instance, a Rolls-Royce employee raised the possibility of the Nigerian Company overcharging Rolls-Royce for those expense categories including for rental of property where Rolls-Royce were paying three times the market rate.

94. During 2009 to 2011, a number of payments were made by the Nigerian Company to officials in the NAPIMS approval processes for Nigerian energy contracts. These officials included NAPIMS officials working on Rolls-Royce projects, including the Adanga and Egina projects. These payments were often listed as 'PR' in the internal financial documents of the Nigerian Company. The improper nature and purpose of those payments is clear from Nigerian Company internal emails.

95. In return for such payments, Rolls-Royce employees received confidential information about the bidding processes on Adanga and Egina, and influence over the requirements of the customer in the tendering process. An example, in February 2012, during the currency of the indictment, is that Rolls-Royce staff then obtained a table of pricing comparisons on Egina. This was used to inform discussions within Rolls-Royce about Egina, which went to the top of Rolls-Royce's Energy division. In April 2012, a letter from TUPNI to NAPIMS was disclosed which was asking NAPIMS to reconsider its previous recommendation to award Egina to GE.

96. As a result of receiving confidential competitor intelligence, Rolls-Royce employees made amendments to Rolls-Royce's bid on Egina. Following discussion of the amended bids in clarification meetings held in February 2012, TUPNI reversed its recommendation for the C Tender, by recommending Rolls-Royce, instead of GE. Both the C Tender and the PG Tender were awarded to Rolls-Royce on 28 December 2012.

97. Rolls-Royce staff had direct and indirect contact with NAPIMS officials through the Nigerian Company and Rolls-Royce employees made specific requests for guidance or information from the Nigerian Company and its contacts to inform or assist its strategy.

98. Rolls-Royce did undertake some compliance in relation to the Nigerian Company. It was ineffective, and failed to detect the corrupt nature of the relationship between the Nigerian Company and NAPIMS. Thus, in March 2011, Rolls-Royce employees became aware of concerns, expressed in the Nigerian press, about the misappropriation of funds by government officials on the Delta State project involving Rolls-Royce equipment. On 1 April 2011, due diligence checks were conducted on the Nigerian Company by Rolls-Royce's third party due diligence provider, Altegrity Kroll. The Altegrity report that was produced highlighted a number of risks in relation to the Nigerian Company, including taking advantage of political connections to former and current government officials; concerns about allegations of corruption surrounding the Delta State Project and about the role of the family of the NAPIMS's employee who was related to the directors of the Nigerian Company, given their political connections.

99. In light of the obvious concerns presented, in April 2011, Rolls-Royce conducted a meeting with the Nigerian Company to discuss the Nigerian Company's compliance with anti-corruption laws. A further due diligence report was obtained from another

external due diligence provider, Stirling Assynt, on 6 May 2011. The Stirling Assynt report questioned how the Nigerian Company had been able to procure contracts prior to its incorporation in 2008, but suggested that "this company is more acceptable as agents of foreign companies than others in the country", suggesting that the Nigerian Company was "a suitable partner for you".

100. In addition to these due diligence issues, concerns were also raised internally by Rolls-Royce employees. They included that the Nigerian Company had potential Nigerian government family connections, concerns about the Nigerian Company's relationships with a lower level NAPIMS official, and reports of Nigerian Company employees suggesting that they had made improper payments, and/or were willing to do so.

101. In January 2012, the Higher Risk Committee of Rolls-Royce met to consider the Nigerian Company. They had before them the two due diligence reports, and the outcome of the due diligence meeting. It is clear that the material considered at that meeting was insufficient because the concerns raised by various Rolls-Royce employees were not discussed. Further, neither due diligence report before the committee made any mention of the role played in both NAPIMS and the Nigerian Company by family member employed by NAPIMS. In fact, the due diligence meeting was not independent. It had been conducted with Rolls-Royce employees who had been responsible for the relationship with the Nigerian Company.

102. Notwithstanding the issues raised by Rolls-Royce employees, on 9 March 2012, the Nigerian Company was approved by Rolls-Royce, shortly before the signing of the Distributorship Agreement. A year later, as a consequence of a due diligence review by Rolls-Royce of the Energy business, an employee was prompted to alert Compliance to certain irregularities on the Egina project, the description of which confirms that the information provided by the Nigerian Company to Rolls-Royce staff in February 2012 led to Rolls-Royce making changes to its pricing for the C Tender. In May 2013, as a result of these concerns being raised Rolls-Royce withdrew from the Egina tender process.

Count 10

103. Count 10 is a further allegation of failure to prevent bribery between 1 July 2011 (when, I repeat, the Bribery Act 2010 came into force) and 31 March 2012 which is based on the inference that Rolls-Royce failed to prevent its intermediary from bribing employees of the national airline, Garuda International, in respect of contracts for Total Care, and T700 engines for A330 aircraft to be supplied to Garuda. Despite some Rolls-Royce employees being aware of evidence that the intermediary was acting corruptly on Rolls-Royce's behalf, Rolls-Royce failed to sever its relationship with him until March 2012, having already made two commission payments, totalling in excess of $1 million that month.

104. Following the resignation of the Indonesian President, Rolls-Royce understood that companies with associations with the previous regime were "likely to come under scrutiny by the authorities". There was a need to "screen off relationships that are a liability", namely the relationship with the intermediary referred to in Count 1. However, on 23 February 1999, Rolls-Royce entered into two commercial adviser agreements with a new intermediary who, throughout the relevant period, had been

the managing director of the first intermediary's company. The regional intermediary felt strongly that Rolls-Royce should continue its relationship with him "in some form". The agreements were made with a company of which the new intermediary was president: this relationship continued until 2012.

105. Following the appointment of the new intermediary, Rolls-Royce did not secure any major business with Garuda until October 2008, when the two companies signed a TCA in respect of A330 Trent 700 engines. In the lead up to the TCA deal, the intermediary had identified several senior Garuda employees who were favourable towards Rolls-Royce. They held a range of senior positions, including at Board level, and across various Garuda departments. From mid-2007, these were key decision-makers on the TCA deal, and Rolls-Royce personnel recognised the need to "start lobbying", "support" and "strike quickly" through the intermediary.

106. Between 2008 and 2011, Rolls-Royce dealt with this intermediary through his companies which entered into advisory agreements on a commission basis, there being no real doubt as to the ultimate disposition of at least some of the commission that he was receiving. On 7 March 2009, a Rolls-Royce employee and the intermediary 8 met in Indonesia when the latter requested an additional US $500,000 commission in respect of the recently signed TCA. The RR employee proposed paying this sum via commission on an expected lease of four aircraft by Garuda. Intermediary 8 warned the employee that:

> 'I have to take care of these People the same way as the previous Tca meaning proportionately based on new Tca Contract I have to disburse some funds up front to them as well'.

107. Although the US $500,000 was ultimately not paid, the intermediary paid out US $200,000 from a company account controlled by the intermediary in Singapore. On 23 July 2010, when TCAs had been signed by Garuda for eight new leased aircraft, US $293,910 was paid to the intermediary by Rolls-Royce.

108. Thereafter, on 1 October 2010, Rolls-Royce's Compliance department categorised Intermediary 8/Intermediary 8 Company C as 'High Risk', contrary to the 'Moderate' assessment given by the Civil business unit. The factor which tipped the balance was that one of the intermediary's companies was registered in Singapore, but provided services in Indonesia.

109. On 11 October 2010, US $100,000 was transferred, from an intermediary company account to an account of another company owned by the intermediary held in Singapore, with instructions to transfer it to an account in the name of a senior Garuda employee. A further US $10,000 was paid to the same account on 14 October 2010.

110. In December 2010, a Rolls-Royce employee met the intermediary at The Dorchester hotel in London, the purpose was said to be to carry out an independent check on his probity. By this time, Rolls-Royce's new ABC Global Intermediaries Policy was in effect. The employee produced a draft report of the meeting, which was sent to another Rolls-Royce employee for comment. By the time it was issued to two other employees, it had been modified, obscuring a reference to the "pull forward" of commission.

111. A Rolls-Royce senior employee, and two Rolls-Royce employees met on 7 January 2011 to review the intermediary's CAA, in accordance with Rolls-Royce's new Global Intermediaries Policy, which dictated that approval from a higher level was now required for the renewal of High Risk intermediaries. The two Rolls-Royce employees had known about the "unethical" request for US $500,000 in 2009, but not raised any concerns. One of the two employees sought to provide further justification for the TCA commission structure.

112. The two employees approved renewal of the agreement, as did the Rolls-Royce senior employee "subject of course to the outcome of the high risk assessment process". A due diligence report on the intermediary and one of his companies was produced by an independent risk consultancy, dated 17 February 2011. This revealed the intermediary's connection to the former Indonesian President. It was recommended that Rolls-Royce visit the intermediary in Indonesia.

113. On 22 February 2011, a Rolls-Royce Legal and Compliance employee was warned that, if the intermediary's services were not retained, the TCA deal might fall through so, on 2 March 2011, that employee above, a Compliance colleague and a Rolls-Royce employee attended a meeting in Indonesia. The intermediary denied making payments to senior Garuda employees following which, he was reclassified as 'Low Risk', and, on 18 March 2011, was granted a new CAA.

114. On 30 April 2011, US $250,000 was paid from the intermediary's company account in Singapore. On 5 May 2011, Rolls-Royce paid that company US $463,561 in commission for the 2008 TCA in respect of A330 T700 engines and two weeks later, US $462,379 was paid out of the account.

115. In January 2012, the intermediary submitted two invoices: one for further commission for one of his companies for the 2008 TCA; and one for commission for another company on the supply of an engine for a seventh A330 delivered in November 2011. The amounts were confirmed as US $397,384.73, and US $617,536.90, respectively. On 9 February 2012, a business case was signed for the reappointment of the intermediary for a further two years, but only a one year CAA was signed.

116. On 22 February 2012, a Rolls-Royce Compliance employee, contrary to the wishes of another employee, insisted that, before contract renewal, the company be submitted to the Higher Risk process again.

117. On 29 February 2012, the SFO made a telephone enquiry of Rolls-Royce, asking if it could provide further information concerning the subject of online allegations of corruption, made by a former employee of Rolls-Royce. A Rolls-Royce employee then emailed employees, attaching the 2008 email and 2009 memo on the topic. Rolls-Royce Compliance was provided with an internal Rolls-Royce memo from 2009 on the subject of the former employees' allegations.

118. On 2 March 2012, an updated due diligence report on the intermediary's second company was provided by a subsidiary of the independent risk consultancy. It included various updates to the previous report of 17 February 2011. The additions included further details of links to the original intermediary and to Garuda employees.

119. On 5 March 2012, a Compliance employee, after encountering opposition to the need for additional clearance, wrote further, referring to the fact that the SFO was asking questions so that Rolls-Royce needed to be able to justify what they had done to satisfy themselves that the intermediary's company was an appropriate business partner despite the allegations. The information within the company had to be 'corralled in one spot and considered in total'.

120. On 10 March 2012, a Rolls-Royce employee confirmed that he had signed the intermediary's outstanding invoices, and payment was to follow that week.

121. On 13 March 2012, the Compliance employee updated a Rolls-Royce employee by email, including on the online allegations, and stated that: "this clearly puts [the intermediary] in the frame". They were concerned that the full picture had not been compiled in one place and considered by the Committee before approval and raised their own concerns as to the intermediary's lack of independent premises, facilities or staff, and the business justification for the amounts paid. Rolls-Royce Compliance continued to gather more information surrounding the intermediary and his various companies, including a list of payments made by Rolls-Royce, and payments which were outstanding, which it received on 14 March 2012. On the following day, Rolls-Royce agreed a 'stand down' letter to the intermediary's second company, requesting that it cease activity on behalf of Rolls-Royce as of 17 March 2012, and explaining that ongoing due diligence would have to be completed before the contract could be renewed.

122. Payments in settlement of invoices from both of the intermediary's companies were made on 16 March 2012: US $397,000, and US $617,000, respectively.

123. In what is described as 'belated recognition' of the position, on 25 April 2012, the Compliance employee informed a Rolls-Royce employee that: "we do need to stop all payments to [this intermediary] until we can work through our current review". The intermediary was not reappointed, and no further payments were made to him but between 11 June 2012 and 23 May 2014, payments were made from an account held by the intermediary to accounts for the benefit of two Garuda officials. The total gross profit arising from this intermediary's activities after July 2011 was £13,960,000.

Count 11

124. This count concerns failure to prevent bribery between 1 July 2011 and 31 August 2013 when Rolls-Royce failed to prevent its employees from providing a US $5 million cash credit to China Eastern Airlines ("CES"), at the request of a board member, in return for his showing favour to Rolls-Royce in the purchase of T700 engines for A330 aircraft, and an associated TCA. Some, or all of the funds were intended to be used by CES to pay for a two-week Master of Business Administration ("MBA") course at Columbia University in New York, which was to be attended by various CES employees and which including four-star hotel accommodation and lavish extra-curricular leisure activities.

125. The background is comparatively straightforward but is worth providing in detail as, with the following count, it identifies the approach by Rolls-Royce to these issues without any intermediary involvement. Thus, in August 2010, Rolls-Royce was

negotiating the sale of T700 engines for 16 A330 aircraft to CES (a majority state-owned Chinese airline). On 18 August 2010, three Rolls-Royce employees met a CES board member in Shanghai, who requested that Rolls-Royce make a financial contribution towards a training programme for senior managers, which the CES board member wished to roll out at a premier business school. It appears that there was also a request for Rolls-Royce to make a payment into a Pilots' Healthcare Centre ("PHC") fund which was understood to be "a pet-project" of the board member, and would "close the deal".

126. The matter was discussed with various Rolls-Royce employees. A decision was made that Rolls-Royce would accede to the CES board member's request. As a result, on 20 August 2010, a Rolls-Royce employee communicated with a senior employee of CES, indicating Rolls-Royce would contribute US $3 million to a fund for high level business school training for CES employees, and US $2 million towards the construction of a healthcare centre for CES.

127. On 20 August 2010, a letter of intent for the 16 A330 deal was signed.

128. In September 2011, details emerged of a MBA course, developed by Columbia Business School ("Columbia") and CES, which included a programme of events to be paid for by Rolls-Royce out of the US $3 million MBA fund. There were indications that this was to include Rolls-Royce paying for hotel accommodation and multiple social events.

129. Members of Rolls-Royce Compliance and Legal were made aware of the MBA fund and raised concerns, noting that Rolls-Royce did not provide such training, or have any facilities or offices in New York. These concerns led to a law firm being instructed to advise on liability under the US Foreign Corrupt Practices Act 1977 ("FCPA"). The law firm advised that the payment of expenses incurred by Chinese Government officials undertaking the MBA course could risk potential FCPA violations.

130. It was acknowledged by employees within Rolls-Royce that CES would be unhappy if Rolls-Royce did not meet its commitments. It was suggested, therefore, that the credit could be converted to cash, via a side letter, for CES to spend as it wished. The Compliance employee stressed that this would serve only to increase the ABC risk.

131. Rolls-Royce employees sought further advice on 31 October 2011, in respect of four suggested solutions to mitigate the risk carried by the PHC fund. A Compliance employee noted that none of the solutions would eliminate the risk. The healthcare centre fund, which was higher risk than the MBA fund, was "so far afield as to be difficult to justify".

132. In November 2011, Rolls-Royce and CES signed an agreement which, inter alia, provided a $3m fund for training, subject to the scope and administration of the fund to be set out in a separate agreement and to be subject to applicable law, and a $2m fund for the PHC. The first aircraft was due to be delivered to CES on 10 November 2011.

133. Compliance employees then met a Rolls-Royce employee on 17 November 2011 to discuss the way forward. The plan was to "determine the approach with CES if we

were to ask them to administer the credit themselves", and, in relation to healthcare centre fund, "to come up with a way we a [sic] mechanism which may allow us better control of this risk".

134. On 2 December 2011, Rolls-Royce sought further external legal advice regarding the MBA fund. No mention was made of the healthcare centre fund, or the fact that Rolls-Royce had recently signed an agreement. The law firm advised that the lowest risk option was for Rolls-Royce not to proceed as planned. Additionally, the law firm cautioned against providing the same benefit, dollar-for-dollar, by a different method or through a disguised discount.

135. The law firm noted letting the customer determine how the funds should be spent, and/or providing the funds directly to the customer to use would be lacking in control or visibility. They emphasised the above advice was based on the assumption that the proposed transaction remains in negotiation, and all associated documents remain in draft form.

136. On 20 January 2012, a Rolls-Royce employee emailed Columbia, stating that, for "legal and commercial reasons", Rolls-Royce wished to provide a "sponsorship fund" to cover the development and delivery of the MBA course content, accommodation in a four-star hotel, lunch and refreshments on campus, transport to campus, and interpretation.

137. However, when the draft programme of events was received, it revealed numerous lavish social activities, which appear to have been arranged privately between Columbia and CES. A Chinese travel agency was to be paid US $100,000 for "evening venues, meals and transportation".

138. This raised immediate concerns from Rolls-Royce's Compliance employee on 25 January 2012 warning others to "stop and take stock immediately". The entertainment and leisure activities could not be justified. It was noted that there was only 7 day of training over a 14-day period.

139. On 1 February 2012, a Rolls-Royce employee sent a letter to CES setting out the limitations of Rolls-Royce's sponsorship of the MBA training course, and noting that this would be formalised via a supplementary agreement. The response from CES was negative. A Rolls-Royce employee was "asked (summoned?!) to Shanghai on Monday to discuss".

140. Rolls-Royce therefore reverted to looking for other routes to satisfy CES. On 6 February 2012, after meeting a senior CES employee, a Rolls-Royce employee reported that "CES feel strongly that if credits are paid to them it is down to their discretion to use them within the bounds of their audit processes". The Rolls-Royce employee made a number of suggestions so as to avoid a "massive relationship death spiral" with CES, including turning the PHC fund into a spare equipment credit, and paying cash, either to CES, or to Columbia in respect of the MBA fund.

141. The Compliance employee responded that:

> " … the problem with the proposal re: cash is that now we are giving them cash. The whole "it is the customer's money"

> argument goes out the window the second the money hits our bank account! The options are 1. We don't take their money in the first place; or 2. We can only pay for limited expenses (as outlined), I am sorry this has become such as [sic] customer relationship issue, but the question has to be asked how the customer came to have these expectations and why the expectations were not better managed."

142. Rolls-Royce ultimately decided to offer the option of CES taking the credit in cash, having been considered the least preferable option by Rolls-Royce Legal.

143. As a result, on 8 March 2012, a new agreement was signed. The MBA and healthcare funds were deleted and replaced with a fixed "non-escalating spare parts" credit to the value of US $5 million, payable in four instalments, between February 2012 and August 2013.

144. On 7 February 2012, an internal Rolls-Royce email explained that the US $5 million cash structure for CES had been approved by Rolls-Royce Finance, and would hopefully address concerns as it would more than cover the Columbia course in March 2012. The following day, an internal email to the Compliance employee noted that the Civil business unit would pay a credit by bank transfer to the spare equipment fund. This was likely to be to the same bank account Rolls-Royce paid CES for everything else. The Compliance employee approved this, not knowing until 2013 that the credit had been paid in cash.

145. As noted in an internal Rolls-Royce email, dated 7 February 2012, efforts were then made to "disassociate ourselves completely from the Columbia training course – ask CES to contract direct with CES [sic] and take no part in the course itself". On 9 February 2012, a Rolls-Royce Legal employee wrote that:

> "I recommend that we make the structure look as much like the existing spare equipment credit, i.e. with the option of a general credit note, application towards a/c purchase price or cash. I recognise the expectation is that they will take cash but it gives more apparent flexibility. The principles are intended to be exactly as per the existing credits."

146. The CBS course was due to start on 12 March 2012. Following the event, on 4 April 2012, a senior director of Columbia noted in an email to a Rolls-Royce employee that the "entire package – Columbia, New York City, business meetings, touring, shopping – everything seemed very well received". The gross profit from the contract for the purchase of T700 engines for A330 aircraft, and an associated TCA was £31,100,000.

Count 12

147. The final count relates to failure to prevent bribery between 1 July 2011 and 31 November 2013 when Rolls-Royce failed to prevent its employees from providing an Air Asia Group ("AAG") executive ("the AAG executive") with credits worth US $3.2 million to be used to pay for the maintenance of a private jet, despite those employees believing that, in consequence, the AAG executive intended to perform a

relevant function improperly. This financial advantage was given at the request of the AAG executive, in return for his showing favour towards Rolls-Royce in the purchase of products and services, provided by Rolls-Royce and its subsidiaries, including TCA services to be supplied to Air Asia X ("AAX"), a subsidiary of AAG.

148. In August 2011, a senior employee of AAX ("the AAX senior employee") contacted Rolls-Royce employees, seeking information about Rolls-Royce's engine maintenance programme, the Corporate Care service, which was managed by Rolls-Royce Deutschland. The enquiry was in respect of a private jet, which the AAG executive was planning to purchase. Rolls-Royce Deutschland provided a quote for the jet, which included an entry into service fee of approximately US$3 million. The maximum discount Rolls-Royce Deutschland could provide was 15%, or US $450,000.

149. In November 2011, a Rolls-Royce senior employee met the AAG executive, and reported to other Rolls-Royce employees that the AAG executive was 'very offended' because of the CorporateCare rate he had been offered on the jet he had just bought. The senior Rolls-Royce employee instructed another Rolls-Royce employee to deal with the issue in a manner compliant with ABC policy and noted that AAX and other companies connected to the AAG executive were sources of potential further business for Rolls-Royce.

150. The Statement of Facts details the discussions within Rolls-Royce as to the issues to which this gave rise, but the upshot was that in April 2012, Rolls-Royce employees, at the encouragement of a senior employee, began to discuss a "solution", which involved funds being transferred directly to AAX. When the AAG executive made a further request for "help", this "solution" was explained to him by the Rolls-Royce senior employee. The AAG executive's response was: "Okay understand. Maybe a discount to x who passes it on." That response received no reply or objection from employees at Rolls-Royce. Instead, it was forwarded to more junior employees.

151. During June 2012, a Rolls-Royce employee met the AAX senior employee. The Rolls-Royce employee relayed to colleagues that there was lack of clarity on the contracting parties for the corporate jet and that if AirAsia acted as a manager to the individuals, it would 'certainly help' on a number of aspects. On 8 August 2012, the same employee reported to the Rolls-Royce senior employee, and others, that the AAX senior employee was reporting that the AAG executive wanted a 50% buy-in fee discount as a "special deal", and was "furious" at the entry fee. The senior Rolls-Royce employee stated his support for meeting these requests within any larger deal with AAX. On 17 August, it was further reported to the Rolls-Royce senior employee, and others, that the AAG executive was seeking to make the corporate jet deal "invisible" with its "value covered within additional A330 TCA charges" for AAX.

152. Rolls-Royce employees developed a proposal to provide US $2 million of credits to AAX which AAX could decide to spend how it wished. It would be for AAX to declare to its shareholders if those funds were used to maintain the private jet.

153. On 2 October 2012, this proposal, but without all the relevant background, was put to Rolls-Royce Compliance. The proposal noted that the use of credits would incentivise

AAX to "firm further business" with Rolls-Royce. Approval was received from Rolls-Royce Compliance and Rolls-Royce Legal.

154. However, the shape of the anticipated commercial deal changed, prolonging discussions between Rolls-Royce and AAX, as well as the parallel discussions between Rolls-Royce and the AAX senior employee. By March 2013, a larger aircraft purchase was under consideration, and the level of discount offered by Rolls-Royce to the AAG executive for his jet's maintenance had increased to US $3.5 million.

155. The Rolls-Royce employee who communicated this to the AAX senior employee also pursued other issues of prompt payment of debts by AAX, to which the AAX senior employee reacted strongly, requesting the removal of the Rolls-Royce employee from the account, which did, in fact, occur for a period of about two months. Before his removal, however,, the Rolls-Royce employee emailed one of his seniors to report that the AAX senior employee "wants a cash settlement that is off the record and not visible to the AAX group". A cash settlement was not ABC compliant, he said, and he would "rather not be on the account", as this was "unethical and most likely illegal".

156. By May 2013, a final commercial deal between Rolls-Royce and AAX was nearing its conclusion:

157. Rolls-Royce employees had continued to discuss the matter of the jet with the AAX senior employee, and a proposal had been approved within Rolls-Royce to issue four credits to AAX, amounting to US $3,252,000. The value of those credits could then be applied by AAX to the cost of the jet entering Rolls-Royce's CorporateCare programme.

158. Rolls-Royce employees believed that the relevance of the jet to the issuing of those credits was most likely to be concealed from AAX executives by the AAX senior employee. Even the contractual document, which would formalise the grant of credits by Rolls-Royce to AAX, was initially not discussed by the AAX senior employee in front of other AAX senior employees.

159. The Rolls-Royce employee, now back on the account, explained matters to his superior, and received a limited reply suggesting further discussion. Thereafter, however, Rolls-Royce Compliance again agreed to the use of credits on the basis that the relevant documents were delivered to AAX "in the normal manner". Around the same date, the Rolls-Royce senior employee, who had passed on the requests from the AAG executive, resigned from Rolls-Royce, for reasons unrelated to this contract. However, this did not lead to any change in approach from the remaining employees.

160. By June 2013, a script was drafted for a senior Rolls-Royce employee to explain to the AAX senior employee that the contractual documents referring to the credits would have to be sent to the "normal distribution list", including employees.

161. On 8 July 2013, three contractual documents were signed by Rolls-Royce and AAX. This included the agreement, which referred to the US $3.2 million of credits. None of the three documents made reference to the anticipated use against the private jet. Whilst the documents had been seen by persons within AAX, other than the AAX senior employee, the purpose of the credits had become merely discoverable and was

not clear or transparent to anyone other than the AAX senior employee and the Rolls-Royce employees.

162. It was expected within Rolls-Royce that the value of the credit notes issued by Rolls-Royce would be applied to a company, which was the vehicle through which the AAG executive and other private individuals owned the jet. And so it was. By the end of November 2013, those credits had been transferred by the AAX senior employee to this company. They were then redeemed with the Rolls-Royce Civil business unit, which then transferred the funds to RRD to cover the cost of the AAG executive's jet entering the CorporateCare programme. The gross profit to Rolls-Royce arising from the purchase of products and services, provided by Rolls-Royce and its subsidiaries, including TCA services to be supplied to Air Asia X was £17,080,000.