Case No: U20170036

IN THE CROWN COURT AT SOUTHWARK
IN THE MATTER OF s. 45 OF THE CRIME AND COURTS ACT 2013

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 January 2017

Before :

THE PRESIDENT OF THE QUEEN'S BENCH DIVISION
(THE RT. HON. SIR BRIAN LEVESON)

- -

Between :

SERIOUS FRAUD OFFICE	**Applicant**
- and -	
ROLLS-ROYCE PLC	**Respondents**
ROLLS-ROYCE ENERGY SYSTEMS INC	

- -
- -

Sir Edward Garnier Q.C., Richard Whittam Q.C., Allison Clare, Christopher Foulkes, Saul Herman and **Jennifer Carter-Manning**
(instructed by the Serious Fraud Office) for the Applicant
David Perry Q.C. Miranda Hill and **Katherine Hardcastle** (instructed by **Slaughter and May, London**) for the Respondents

Hearing date: 17 January 2017

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

Sir Brian Leveson P :

Introduction

1. This is the third (and, by far, the largest) application for approval by the court of a deferred prosecution agreement ("DPA") reached between the Serious Fraud Office ("SFO") and two entities now ultimately owned by Rolls-Royce Holdings plc namely Rolls-Royce plc ("Rolls-Royce") and its Delaware incorporated subsidiary, Rolls-Royce Energy Systems Inc ("RRESI"). It covers the conduct of Rolls-Royce and RRESI in Nigeria, Indonesia and Russia along with the conduct of Rolls-Royce alone in Thailand, India, China and Malaysia.

2. Rolls-Royce Holdings plc (listed on the London Stock Exchange and forming part of the FTSE 100 index) is properly considered to be a company of central importance to the United Kingdom, with a reputation in the field of engineering second to none. On its website, it describes its activities in this way:

> "Rolls-Royce is a global company providing highly-efficient integrated power and propulsion solutions. Our power systems are predominantly used in aerospace, marine, energy and off-highway applications.
>
> We are one of the world's leading producers of aero engines for large civil aircraft and corporate jets. We are the second largest provider of defence aero engines in the world. Rolls-Royce is well established in the marine sector where we design vessels and integrate power systems. We have a growing presence in civil nuclear power, drawing on our skills and experience of over 50 years in powering nuclear submarines. Our MTU brand is world-renowned in high-speed diesel engines powering applications as diverse as rail locomotives and luxury yachts."

3. Rolls-Royce and its subsidiaries employ some 50,000 people, in more than 50 countries. This case concerns the conduct of its civil aerospace business which manufactures engines for the commercial large aircraft and corporate jet markets and generates approximately 50% of its revenue, defence aerospace business which manufactures engines for the military transport market and is the second largest provider of defence aero engine products and services in the world (generating approximately 20% of its revenue), and its former energy business concerned with the manufacture of gas turbines and compressors to power off-shore platforms, the transport of oil and gas through pipelines, and the generation of electricity which generates less than 10% of its revenue, part of which was conducted by RRESI.

4. Against that background, it can properly be described as devastating and of the very greatest gravity that the conduct of this institution should fall to be examined within the context of a criminal investigation and that the investigation (in very large part conducted and voluntarily revealed to the SFO by Rolls-Royce itself) should reveal the most serious breaches of the criminal law in the areas of bribery and corruption (some of which implicated senior management and, on the face of it, controlling minds of the company). It involves:

i) agreements to make corrupt payments to agents in connection with the sale of Trent aero engines for civil aircraft in Indonesia and Thailand between 1989 and 2006;

ii) concealment or obfuscation of the use of intermediaries involved in its defence business in India between 2005 and 2009 when the use of intermediaries was restricted;

iii) an agreement to make a corrupt payment in 2006/7 to recover a list of intermediaries that had been taken by a tax inspector from Rolls-Royce in India;

iv) an agreement to make corrupt payments to agents in connection with the supply of gas compression equipment in Russia between January 2008 and December 2009;

v) failing to prevent bribery by employees or intermediaries in conducting its energy business in Nigeria and Indonesia between the commencement of the Bribery Act 2010 and May 2013 and July 2013 respectively, with similar failures in relation to its civil business in Indonesia;

vi) failure to prevent the provision by Rolls-Royce employees of inducements which constitutes bribery in its civil business in China and Malaysia between the commencement of the Bribery Act 2010 and December 2013.

5. Further, in relation to the conduct of Rolls-Royce, there have been discussions between the SFO and the Department of Justice in the United States and discussions between the Department of Justice and the Brazilian Ministério Público Federal, to ensure a coordinated global resolution of the relevant conduct. Parallel to this DPA, it is intended that a similar type of agreement reached with the Department of Justice (which has been fully disclosed in these proceedings) and a settlement with the Brazilian authorities will be announced. The American agreement covers the conduct of Rolls-Royce's energy business (in Brazil, Kazakhstan and Thailand) and also addresses conduct relating to Rolls-Royce and RRESI arising from an investigation into its use of an intermediary called Unaoil.

Deferred Prosecution Agreements

6. Although the concept of a DPA has been fully explained in both judgments which follow the first two agreements (*SFO v Standard Bank plc* and *SFO v XYZ Ltd*), it is worth summarising the structure as prescribed by s. 45 and Schedule 17 of the Crime and Courts Act 2013 ("the 2013 Act"). In short, a DPA is potentially available for certain economic or financial offences to a body corporate, a partnership or an unincorporated association in respect of whom the only criminal sanction is financial: it does not cover (nor does it protect from prosecution) any individual. It provides a mechanism whereby, subject to the approval of the court, prosecution can be avoided by entering into an agreement on negotiated terms with a prosecutor designated by the 2013 Act.

7. The court's role is as follows. Following the commencement of negotiations and what might become an agreement, the scheme mandates that a hearing must be held in

private for the purposes of ascertaining whether the court will declare that the proposed DPA is "likely" to be in the interests of justice and its proposed terms are fair, reasonable and proportionate: see paras. 7(1) and (4) of Schedule 17 of the 2013 Act. Reasons must be given and, if a declaration is declined, a further application is permitted (paras. 7(2) and (3) *ibid*). In that way, the court retains control of the ultimate outcome and, if the agreement is not approved, the possibility of prosecution is not jeopardised as a consequence of any publicity that would follow if these proceedings had not been held in private.

8. If a declaration has been granted pursuant to para. 7(1) of Schedule 17 and the DPA is finalised on the terms previously identified, para. 8 of Schedule 17 comes into play. This provides:

> "(1) Where a prosecutor and P have agreed the terms of a DPA, the prosecutor must apply to the Crown Court for a declaration that –
>
> (a) the DPA is in the interests of justice, and
>
> (b) the terms of the DPA are fair, reasonable and proportionate.
>
> (2) But the prosecutor may not make an application under sub-paragraph 1 unless the court has made a declaration under paragraph 7(1) (declaration on preliminary hearing).
>
> (3) A DPA only comes into force when it is approved by the Crown Court making a declaration under sub-paragraph (1).
>
> (4) The court must give reasons for its decision on whether or not to make a declaration under sub-paragraph (1).
>
> (5) A hearing at which an application under this paragraph is determined may be held in private.
>
> (6) But if the court decides to approve the DPA and make a declaration under sub-paragraph (1) it must do so, and give its reasons, in open court.
>
> (7) Upon approval of the DPA by the court, the prosecutor must publish –
>
> (a) the DPA
>
> (b) the declaration of the court under paragraph 7 and the reasons for its decision to make the declaration,
>
> (c) in a case where the court initially declined to make a declaration under paragraph 7, the court's reason for that decision, and

> (d) the court's declaration under this paragraph and the reasons for its decision to make the declaration,
>
> unless the prosecutor is prevented from doing so by an enactment or by an order of the court under paragraph 12 (postponement of publication to avoid prejudicing proceedings)."

9. Thus, even having agreed that a DPA is likely to be in the interests of justice and that its proposed terms are fair, reasonable and proportionate, the court continues to retain control and can decline to conclude that it is, in fact, in the interests of justice or that its terms are fair, reasonable and proportionate. To that end, it remains open to continue the argument in private, again on the basis that, if a declaration under para. 8(1) is not forthcoming, a prosecution is not jeopardised although it has to be recognised that, absent a material change of circumstances between the para. 7 hearing and the para. 8 hearing, it is difficult to see how the court could conclude that a DPA which it considered likely to be in the interests of justice with terms fair, reasonable and proportionate was not, in fact, in the interests of justice with terms which are fair, reasonable and proportionate.

10. That is particularly so in the context of this case where, for entirely justifiable reasons, the para. 7 hearing (which commenced with a directions hearing on 12 January and was argued on the following day), was concluded only in the late afternoon of 16 January. Linked to the change in administration in the United States, it became necessary for a para. 8 hearing to be conducted on 17 January (depending on para. 7 approval).

11. Once the court has expressed itself minded to approve under para. 7, the case must be opened and argued and a declaration, along with the reasons for it, provided in open court. The entire process, including the engagement of the parties with the court then becomes open to public scrutiny, consistent with the principles of open justice. Thus, the DPA (which must contain an expiry date and include a statement of facts: see para. 5 of Schedule 17) must be published along with the declarations provided under both para. 7 and para. 8 and, in each case, the reasons provided by the court for doing so. The only exception is where publication is prevented by statute or must be postponed to avoid a substantial risk of serious prejudice to the administration of justice in any other legal proceedings.

This Application

12. On 19 December 2016, an application was made by the Director of the Serious Fraud Office ("the SFO") pursuant to para. 7(1) of Schedule 17 of the 2013 Act in relation to a proposed DPA between the Director of the SFO, on the one hand and Rolls-Royce and RRESI on the other. A preliminary hearing was initially arranged for 23 January but, as I have indicated, for reasons which I accept were entirely justifiable, the timetable had to be substantially abridged with the hearing being conducted on 13 January. A considerable body of material was put before the court and I received submissions from Sir Edward Garnier Q.C. and Mr Richard Whittam Q.C. for the SFO and David Perry Q.C. (who appeared over a video link from Hong Kong where he is presently engaged in other work) and Ms Miranda Hill (who was in court) for Rolls-Royce and RRESI.

13. Having considered the matter following the submissions, yesterday afternoon, I declared that entering into the DPA was likely to be in the interests of justice and that its proposed terms were fair, reasonable and proportionate. Given that I considered it appropriate to provide the most detailed explanation for my decision in this judgment (which follows less than 24 hours after my preliminary decision), I have decided that a draft of this judgment should be made available to the parties on the usual confidential terms as broadly representing my reasons while reserving the right to modify or change them should anything in the para. 8 hearing cause me to do so. Neither side suggested that this approach did not fully comply with the provisions of Schedule 17 but it should not be taken as a precedent for any future application and follows only from the extremely limited time available to deal with the matter.

14. Since my decision under para. 7, the DPA has now been agreed and the Director of the SFO applies for a declaration under para. 8 that it is in the interests of justice and that its terms are fair, reasonable and proportionate. In other words, I repeat that I am asked definitively to approve that which I previously approved provisionally. Having regard to my conclusion that I would grant the appropriate declaration, I ordered that the proceedings should be held in public and gave leave for an appropriate stock market announcement to be published by Rolls-Royce. The case has been put into the list for Southwark Crown Court and the SFO agreed to ensure that the press (as representatives of the public) were fully informed.

15. The interests of justice and each of the terms of the DPA require detailed consideration. First, however, it is necessary to describe in some detail the nature of the investigation (and, in particular, the critical part that Rolls-Royce has played in it) and the conduct exposed by the investigations and which is covered by the agreement.

The Investigation

16. In early 2012, internet postings which raised concerns about the operation of Rolls-Royce's civil business in China and Indonesia came to the attention of the SFO which sought information from Rolls-Royce. An investigation was immediately commenced by Rolls-Royce itself which led to a report on the findings into these and other issues in its civil and defence work.

17. Furthermore, starting in 2013, Rolls-Royce also voluntarily supplied to the SFO reports in respect of its internal investigations into its energy, defence, civil, and marine businesses. This has been far more extensive than was identified in the public domain; it included written reports revealing further corruption indications and a report concerning conduct Rolls-Royce had known about since 2010 and previously (under different leadership) decided not to notify.

18. The investigation, continuing to date, has included collection of data and review of email containers from relevant employees together with a review of relevant archive material; 229 internal investigation interviews. Rolls-Royce also reviewed over 250 relationships it had with intermediaries, agents, advisers and consultants, closely analysing over 120 of these relationships. Throughout, it has issued regular reports to the SFO and DOJ on its findings with full consequential disclosure of those findings to the SFO.

19. As a result, the SFO commenced an investigation into each of these businesses and it is the largest such investigation to date. In addition to examining the internal investigations (including the interviews, Rolls-Royce having waived any claim for legal professional privilege on a limited basis), the SFO, with what Sir Edward, for the SFO, recognised was "the extraordinary cooperation of Rolls-Royce", has conducted its own extensive investigation. This investigation has included:

    i) obtaining from Rolls-Royce the key documents identified by the internal investigations including memoranda of interviews, along with access generally to Rolls-Royce hard copy documents;

    ii) obtaining from Rolls-Royce complete digital repositories or email containers where available of in excess of 100 key employees or former employees, without filtering the material for potential privilege, but, instead, permitting issues of privilege to be resolved by independent counsel;

    iii) obtaining documentary evidence through requests for mutual legal assistance;

    iv) arresting domestic and overseas intermediaries and former Rolls-Royce employees (including searches of their premises) and conducting numerous interviews of suspects and others whether voluntarily or under compulsion;

    v) making other targeted requests and review of material (all of which have been voluntarily provided), such as compliance material, including historic internal reviews; personnel files; employee notebooks; telephones; marketing services agent files; and accountancy records.

20. The full and extensive nature of this co-operation has led to the acquisition, and application of digital review methods to over 30 million documents. All this has been in the context of an investigation concerning conduct in multiple jurisdictions, across four business lines and spanning a long period of time. Sir Edward has made clear (and the Statement of Facts confirms) that the proactive approach to co-operation adopted by Rolls-Royce has led to the SFO receiving pertinent information which may not otherwise have come to its attention. Rolls-Royce's approach has included:

    i) genuine cooperation with the SFO in the conduct of Rolls-Royce's own internal investigation, including deferring interviews until the SFO had first completed its interview, and the audio recording of interviews where requested;

    ii) disclosure of all interview memoranda was made (on a limited waiver basis), despite Rolls-Royce's belief that the material was capable of resisting an order for disclosure, on the basis that it was privileged;

    iii) providing all material requested by the SFO voluntarily, that is to say without requiring recourse to compulsory powers (in one case at least effectively relinquishing control to the SFO); and

    iv) consulting the SFO in respect of developments in media coverage, and seeking the SFO's permission before winding up companies that may have been implicated in the SFO's investigation.

21. I have recited the extent of the assistance provided by Rolls-Royce because it is highly material both to the interests of justice and the assessment of the balance between prosecution and DPA and also to the appropriate discount to allow from the financial penalty imposed. In both *SFO v Standard Bank plc* (U20150854) and *SFO v XYZ Ltd* [U20150856], the DPA followed what was a self-report at a time that the SFO neither had knowledge of, nor known means of likelihood of learning about, the conduct which led to the DPA (see [27]-[28] of the decision dated 30 November 2015 and [24]-[25] of the redacted decision dated 8 July 2016 respectively). In this case, the SFO had been alerted because of the public internet posting and had initiated an inquiry.

22. The fact that an investigation was not triggered by a self-report would usually be highly relevant in the balance but the nature and extent of the co-operation provided by Rolls-Royce in this case has persuaded the SFO not only to use the word "extraordinary" to describe it but also to advance the argument that, in the particular circumstances of this case, I should not distinguish between its assistance and that of those who have self-reported from the outset. Given that what has been reported has clearly been far more extensive (and of a different order) than is may have been exposed without the co-operation provided, I am prepared to accede to that submission.

23. Before passing from this aspect of the case, I must make two further points. First, in relation to the marine business, the SFO has concluded (as it would have to before inviting negotiations in relation to a DPA) that there is neither sufficient evidence to satisfy the evidential test in the Code for Crown Prosecutors nor reasonable grounds for believing that a continued investigation would provide further admissible evidence within a reasonable period of time: see para. 1.2 of the Code of Practice in relation to DPAs. Thus, the marine business does not feature in this case.

24. The second point is that the investigation into the conduct of individuals continues and nothing in this agreement in any way affects the prospects of criminal prosecutions being initiated if the full code test for prosecution is met. I have already observed that a DPA is only available to a body corporate, a partnership or an unincorporated association (each of which could only ever be met by a financial penalty). It is not available to an individual who, if convicted of corruption or bribery is likely to face a substantial custodial sentence.

The Facts

25. The starting point must be the structures in place at Rolls-Royce. In that regard, the Statement of Facts identifies the written policies and committees relevant to its appointment and payment of intermediaries. Put shortly, the Code of Business Conduct (first issued in 1996) included a prohibition on the payment or receipt of bribes. Rolls-Royce's marketing services department ("Marketing Services"), based at corporate headquarters, had responsibility for overseeing the intermediary appointment procedure, conducting checks on standing and maintaining a master list of appointed intermediaries and, in 1999, was responsible for administering the first written policy governing the use of intermediaries. No process for due diligence was specified. Additional approval was required from a senior Rolls-Royce employee where the proposed payment exceeded 5% of the contract price. In 2003, a revised

policy extended this additional approval process also to require approval from Rolls-Royce's CEO.

26. In 2003, an intermediary policy and guidance notes on the policy stated that Marketing Services was to be responsible for any necessary due diligence. The policy and guidance notes were subject to further minor amendments in 2004, 2005 and 2007. In that year, Rolls-Royce issued a Global Code of Business Ethics containing a specific section on bribery and corruption. This Code was supported by a number of policies, including a revised intermediary policy which extended the additional approval process and distinguished between advisers and consultants requiring the former to complete an external due diligence process.

27. In October 2009, one of the four major accountancy firms completed an Anti-Bribery and Corruption ("ABC") Compliance Review which resulted in a new policy on intermediaries issued by Marketing Services on the basis that accountability and responsibility for intermediaries was unclear, and that enhanced due diligence was not seen, even in areas of high risk. It noted that Marketing Services acted as an adviser to business units on intermediary matters and recorded documents, but did not perform any relevant compliance function; that some Rolls-Royce business units had a lack of understanding about this role; and that Marketing Services suffered from a lack of resources.

28. The 2009 policy was more detailed, extending its remit to include other intermediaries with Marketing Services maintaining its central responsibility. The policy also prohibited commissions in excess of 10% of the contract price. The following year, following the accountants' further recommendations, a yet more detailed policy was issued which transferred overall responsibility for the process to Rolls-Royce's compliance function, and imposed requirements of business case, proper identification, and risk assessment for each intermediary. It also required that due diligence and approval processes be defined by the risk rating for each intermediary. Rolls-Royce established a new Compliance team, which replaced Marketing Services, and a Committee for Approval of High Risk Intermediaries.

29. In addition, from at least 1997 until 2008, Rolls-Royce operated a Contracts Review Sub Committee which met once a year, at the time of the year-end audit, to consider all material contracts (defined by 2006 as greater than £10 million) where intermediaries had been paid commissions. By 2006, this committee comprised the Head of the Audit Committee (chair), another non-executive director, the Chief Executive Officer and Chief Financial Officer. Rolls-Royce General Counsel and an external audit representative also attended. In 2008, however, it was discontinued when Rolls-Royce established an Ethics Committee which oversaw the compliance function. The Ethics Committee reported to the Audit Committee (until 2011, when it became a committee of the Board).

30. With that introduction, it is important that this judgment includes a summary of the specific allegations contained in the draft indictment. Given that the indictment covers activities spanning 7 countries and, taken collectively, over 24 years, it is inevitably complex. In relation to a number of the counts, I have attempted to reduce the exposition of the facts but in the event that there is any difference between this summary and the Statement of Facts (which is agreed by the parties and which must be included in a DPA: see para. 5(1) of Schedule 17 to the 2013 Act), the latter should

be preferred. Further, rather than disturb the balance of this judgment, my summary is included as Appendix A and forms part of the judgment.

31. In both Appendix A and the Statement of Facts, the identity of the individuals concerned has not been included although there is a distinction drawn between 'employees' and 'senior employees'. The latter term is used to contextualise communications by an employee with a superior, or, more significantly, to identify decision-makers who may be argued to represent the corporate mind.

32. I ought to add that the identities and positions of employees within Rolls-Royce referred to in the Statement of Facts have been made known to me so that I have been able to assess their comparative seniority and, thus, the responsibility of Rolls-Royce but, given the continued criminal investigation into individuals, to go further than the Statement of Facts or my summary and identify the employees or others by name, would be to prejudice potential criminal proceedings. In addition, to name the recipients of corrupt payments or bribes, in relation to certain countries, could lead to action or the imposition of a penalty which, in this country, we would regard as contravening Article 3 of the European Convention on Human Rights. In the circumstances, none are identified.

The Interests of Justice

33. In the first DPA (*SFO v Standard Bank plc)*, I made it clear (at [25]) that:

> "The first consideration must be the seriousness of the conduct for the more serious the offence, the more likely it is that prosecution will be required in the public interest and the less likely it is that a DPA will be in the interest of justice."

34. That case concerned a failure to prevent bribery in which it was not suggested that the Bank was complicit in the corruption involved. It was followed by *SFO v XYZ Ltd*, 8 July 2016, which concerned the systematic offer and payment of bribes to secure contracts in foreign jurisdictions and I added to my remarks by making it clear (at [69]) that:

> "… nothing I have said should be taken as indicating that the courts take anything other than a stern view of this type of offending. Individuals who are involved in wholesale corporate corruption and bribery can expect severe punishment and, absent exceptional circumstances such as obtain in this case, corporations set up or operated in that way are unlikely to survive. Analysis of the guideline underlines the likely approach of the court when prosecutions follow with punishment and deterrence being at the forefront of the sentencing decision."

35. Thus, it is against that background that I must consider the conduct covered by the proposed DPA in this case which is not only far more extensive systemic bribery and corruption but involves (as Sir Edward submitted and Mr Perry did not challenge) the following aggravating features*:*

i) The conduct involved offences relating to the bribery of foreign public officials, commercial bribery and the false accounting of payments to intermediaries.

ii) The offences were multi-jurisdictional, numerous and spread across Rolls-Royce's defence aerospace, ivil aerospace and energy businesses.

iii) The offences have caused and/or will cause substantial harm to the integrity/confidence of markets.

iv) The offending was persistent and spanned from 1989 until 2013.

v) The offending involved substantial funds being made available to fund bribe payments.

vi) The conduct displayed elements of careful planning.

vii) The conduct related to the award of large value contracts which, taken together, ultimately earned over £250 million of gross profit (although care must be used in relation to this term which is based on calculations reached by accountants instructed by the SFO and Rolls-Royce and agreed by the parties and does not necessarily reflect the way in which the accounting profession would approach gross profit for reporting standards).

viii) The conduct involved senior (on the face of it, very senior) Rolls-Royce employees.

36. Sir Edward recognised that there will be cases where the use of a DPA would be inappropriate and contrary to the public interest and interests of justice; where, effectively, the offending is so egregious that closure of the implicated company is the only appropriate and just conclusion. He also accepted that the aggravating circumstances in this case were such that, in the absence of strong countervailing public interest factors and the availability of appropriate penalties within the DPA scheme, a prosecution of Rolls-Royce and RRESI would be appropriate. He was right to do so and was doing no more than reflecting the DPA Code of Practice (at 2.5) which 'usually' requires a prosecution 'unless there are public interest factors which clearly outweigh those tending in favour of prosecution'.

37. Having considered the Code for Crown Prosecutors, the Joint Prosecution Guidance on the Bribery Act 2010, the DPA Code of Practice and the Sentencing Council Definitive Guideline in respect of Fraud, Bribery and Money Laundering, and recognising that CrimPR 11.3(3)(i)(i) requires an application to explain how a DPA is in the interests of justice, Sir Edward argues that there are strong countervailing considerations in this case. He starts by identifying the list, dealing with the interests of justice, set out in *SFO v XYZ Ltd* which was in these terms (at [20]):

> "i) the seriousness of the predicate offence or offences;
>
> ii) the importance of incentivising the exposure and self-reporting of corporate wrongdoing;
>
> iii) the history (or otherwise) of similar conduct;

iv) the attention paid to corporate compliance prior to, at the time of and subsequent to the offending;

v) the extent to which the entity has changed both in its culture and in relation to relevant personnel;

vi) the impact of prosecution on employees and others innocent of any misconduct."

Co-operation

38. Dealing with each in turn, I have analysed the nature of the reporting at [20] to [26] above. Although the SFO had been prompted to ask questions of Rolls-Royce by reason of public postings on the internet, I am entirely satisfied that from that moment, the company could not have done more to expose its own misconduct, limited neither by time, jurisdiction or area of business. As I observed in *SFO v XYZ Ltd* (at [24]-[26]), incentivising self-reporting is a core purpose of DPAs and the weight it attracts depends on the totality of the information provided. In one sense, the more egregious the conduct, the greater significance of wholesale self-reporting and admission: the question is to identify the tipping point.

39. Although entirely a consequence of its own conduct, for the sake of completeness, I record that the costs of the work done by Rolls-Royce in connection with its investigation and work with prosecutors in multiple jurisdictions, together with the cost of the intermediary review and the appropriate professional financial advice, as at December 2016, amounted to £123,115,643 and will doubtless continue to increase.

Prior Conduct

40. Dealing with the history (or otherwise) of similar conduct, it is important to mention four investigations. In June 2012, Data Systems and Solutions LLC which was a joint venture between Rolls-Royce and a company called SIAC entered into a deferred prosecution agreement (involving a payment of US $8.82 million) with the Department of Justice in respect of bribery in the civil nuclear sector during the period 1999 to 2004 contrary to the US Foreign Corrupt Practices Act. There is no suggestion of any involvement by Rolls-Royce.

41. Similarly, in April 2016, the Stuttgart prosecutor entered into a settlement with MTU Friedrichshafen GmbH, now a subsidiary of Rolls-Royce Power Systems AG (formerly Tognum) in respect of bribery conduct prior to 2011. The acquisition of that company by Rolls-Royce, however, only commenced in 2011. Again, it is not relevant to the present position.

42. The third and fourth investigations are the recent deferred prosecution agreement with the Department of Justice and the leniency agreement with the Brazilian Ministério Público Federal both of which concern solely the energy division. The conduct in the jurisdictions covered by those agreements is of much the same type as the conduct identified in this application. In short, from about 2000 to about 2013, Rolls-Royce, RRESI and members of their staff conspired with others to make over $35 million in commission payments to commercial advisors and others, knowing that those payments would be used to bribe foreign officials on behalf of the companies and

caused other corrupt benefits to be conveyed to the foreign officials in order to influence them in their official capacity. A DPA should not become wrong simply because different prosecutors have been involved in investigations in different countries although it is right to observe that the extension of the criminality to these countries is relevant to the balancing exercise.

Corporate Compliance

43. The fourth factor which falls to be considered is the attention paid to corporate compliance prior to, at the time of and subsequent to the offending. Nothing, of course, can be said to the attention paid prior to and at the time of the offending but the steps that Rolls-Royce has since taken are of real significance. In particular, in 2013, Rolls-Royce appointed Lord Gold (an expert in this area) to conduct an independent review of its ethics and compliance procedures and to act on an ongoing basis as a "quasi-monitor" of its compliance programme. Lord Gold's instructions have included reviewing the company's policies and procedures, conducting site visits with employees and carrying out focus groups with employees.

44. In addition, Rolls-Royce has taken the following steps to enhance its ethics and compliance procedures such that organisation and governance has been improved by the recruitment of experienced compliance personnel in key positions (including Head of Risk and Head of Compliance) as well as additional Compliance Officers and the appointment of designated Local Ethics Advisers. There has been a significant re-organisation of reporting lines which ensures that compliance officers are independent of business divisions. In addition, there are:

    i) Enhanced policies and procedures covering high risk areas of Rolls-Royce's business divisions.

    ii) Top level commitment to ethics and compliance through improved communication and annual manager led ethics training.

    iii) Development of a risk assessment framework and implementation of risk assessment procedures into business divisions.

    iv) Improved due diligence in respect of intermediaries comprising business justification, external due diligence, approval by an Adviser Panel (consisting of Lord Gold and both the Head of Risk at Rolls-Royce and one of its senior external legal advisers) together with ongoing monitoring.

    v) Regular compulsory training on compliance issues for all staff with extensive monitoring of anti-bribery and corruption procedures including regular audit by Rolls-Royce's Audit Committee of anti-bribery and corruption procedures and investigations of issues.

    vi) Implementation of compliance procedures and training in respect of concessions provided in the Civil Aerospace industry.

45. Rolls-Royce has also specifically addressed the potential risks arising from its intermediaries by reviewing 250 intermediary relationships across the company. This

has led to the suspension of 88 intermediaries and led to a material reduction in the number of intermediaries used across the Rolls-Royce Group.

46. Further, as a consequence of the internal investigation, Rolls-Royce has conducted disciplinary proceedings in respect of 38 employees in its Civil Aerospace, Energy and Marine divisions leading to 11 employees leaving RR during stages of the disciplinary process and decisions to dismiss six employees; others have suffered sanction short of dismissal.

47. I am told that, up to December 2016, these steps (excluding the intermediary review and disciplinary proceedings) have cost Rolls-Royce £15,175,331.46 and that the review is ongoing. In that regard, a term of the DPA deals with issues of compliance and the SFO has identified issues to be addressed which would be included within the conditions of the DPA. Suffice to say that I entirely accept that Rolls-Royce could not have done more to address the issues that have now been exposed. I comment only that it is a real tragedy that it did not do so following the well-known observations of Kofi Annan, in the foreword to the 2004 UN Convention against Corruption which spoke about it as "an insidious plague".

Change of Culture and Personnel

48. The cultural change is evidenced by the steps which I have just described but I have pressed Rolls-Royce to disclose its present constitution and, in particular, the membership of its Board. Had any member of the today's senior management who was implicated or been in a position where they should have been aware of the culture and practices which I have described and were clearly endemic at Rolls-Royce remained in his or her position, this, itself, would have been of real significance and could have affected my approach.

49. I am informed (and accept) that no current member of the Board was involved in any of the conduct described in the Statement of Facts and that conduct occurring after 1 July 2011 did not involve any of the (then) directors. The Group President (appointed in January 2016) was previously on the Board and now has responsibility for operational functions (e.g. IT, Group Property, Quality etc.); his focus as a director (since 2005) has been on engineering, technology and research. The Chief Executive, the Chief Financial Officer and the Company Secretary have all been appointed since January 2014.

50. As for the non-executive directors, none are or have been involved in the day to day running of the business. The Chairman (who was a non-executive director from 1 March 2013) was appointed in May 2013 and is not a member of the executive leadership team. Four non-executive directors were in post from 2008, 2011 (two) and 2012 and four have been appointed since January 2014. The Senior Independent Director was appointed in 2015.

51. This is the Board that has clearly authorised all that Rolls-Royce has done since 2012 and is to be highly commended for that. In the circumstances, I am satisfied that both the senior management and those responsible for the strategic direction of Rolls-Royce are different to those responsible for the running of the company (and its culture) during the period when the events which I have described occurred.

The impact of prosecution

52. The final consideration identified in *SFO v XYZ Ltd* is the impact of prosecution on employees and others innocent of any misconduct or what might otherwise be described as the consequences of a conviction. To understand the extent of that impact, it is first necessary to consider the impact on Rolls-Royce.

53. First, a conviction would undeniably affect the ability of Rolls-Royce to trade in the world where, as I started this judgment by observing, it is a world leader and has a reputation for excellence. It is well known that many countries operate public sector procurement rules which would debar participation following conviction. Thus, I have no difficulty in accepting that which I am informed to the effect that, as at the end of 2014, a minimum in the order of 15% of the Rolls-Royce order book was from entities subject to public sector procurement rules in countries with mandatory debarment and, approximately, a further 15% was from entities subject to public sector procurement rules in countries with discretionary debarment pursuant to express legislation.

54. Furthermore, it is not difficult to visualize that the direct losses to revenue which would be caused by debarment would have a long term financial effect consequent upon losing contracts which, for commercial aircraft, can extend for 25 to 30 years. There would also be incumbency effects of a short term debarment, leading to longer term exclusion from other contracts and reduced research & development caused by the loss of a key revenue stream.

55. Debarment and exclusion would clearly have significant, and potentially business critical, effects on the financial position of Rolls-Royce. This could lead to the worst case scenario of a very negative share price impact, and, potentially, more serious impacts on shareholder confidence, future strategy, and therefore viability.

56. These repercussions for Rolls-Royce risk additional repercussions to third party interests, including:

    i) adverse effect to the UK defence industry, where Rolls-Royce has a critical role in supplying engines for UK military and naval vessels, nuclear propulsion technology for nuclear submarines, and aftermarket services;

    ii) consequential financial effects on the supply chain;

    iii) impairment of competition in highly concentrated markets, where there are limited alternative sources of supply and significant barriers to entry;

    iv) a potentially significant fall in share price, which is likely to be made more dramatic by the debarment consequences of a conviction;

    v) possible group-wide redundancies and/or restructuring; and potential weakening of Rolls-Royce's financial covenant for pensions.

57. I have no difficulty in accepting that these features demonstrate that a criminal conviction against Rolls-Royce would have a very substantial impact on the company, which, in turn, would have wider effects for the UK defence industry and persons who

were not connected to the criminal conduct, including Rolls-Royce employees, and pensioners, and those in its supply chain. None of these factors is determinative of my decision in relation to this DPA; indeed, the national economic interest is irrelevant. Neither is my decision founded on the proposition that a company in the position of Rolls-Royce is immune from prosecution: it is not. It is not because of who or what Rolls-Royce is that is relevant but, rather, the countervailing factors that I have to weigh in the balance when considering the public interest and the interests of justice. As I have made clear before, and repeat, a company that commits serious crimes must expect to be prosecuted and if convicted dealt with severely and, absent sufficient countervailing factors, cannot expect to have an application for approval of a DPA accepted.

Other Considerations

58. Sir Edward points to two other advantages in favour of accepting that for Rolls-Royce to enter into a DPA is in the interests of justice. The first is that the proposed DPA would avoid the significant expenditure of time and money which would be inherent in any prosecution of Rolls-Royce. He points to the fact that the SFO's investigation has been the largest undertaken and that, to date, notwithstanding all the co-operation to which reference has been made, has already cost just short of £13 million. Although the SFO is ready and able to prosecute large corporates like Rolls-Royce, where necessary, its resources (both financial and in terms of manpower) are not unlimited so that when an agreement such as this can be negotiated, the public interest requires consideration to be given to the cases that will not be investigated if very substantial resources (sufficient to prepare the case for a hearing) are diverted to it.

59. The same point can be made about the resources available to the court. On the other hand, consideration is being given to the prosecution of individuals and a trial might be necessary in any event. Further, nothing must ever be done to encourage the view that those with money can 'buy' themselves out of prosecution and appropriate conviction on the basis that an unsatisfactory resolution of the case releases time and resource for other cases.

60. The second and particularly powerful point advanced by Sir Edward is one that I have continually repeated during the various judgments in *SFO v Standard Bank plc* and *SFO v XYZ Ltd* which is that a DPA will likely incentivise the exposure and self-reporting of wrong doing by organisations in similar situations to Rolls-Royce. This is of vital importance in the context of the investigation and prosecution of complex corruption cases in bringing more information to the attention of law enforcement agencies so that crimes can be properly investigated, and prosecuted effectively. Furthermore, the effect of the DPA is to require the company concerned to become a flagship of good practice and an example to others demonstrating what can be done to ensure ethical good practice in the business world.

Conclusion

61. My reaction when first considering these papers was that if Rolls-Royce were not to be prosecuted in the context of such egregious criminality over decades, involving countries around the world, making truly vast corrupt payments and, consequentially, even greater profits, then it was difficult to see when any company would be prosecuted. A possible exception could be the corporate vehicle for fraud, set up for that purpose and, in the public interest, requiring dissolution (although that also might

be achieved in different ways). As for the non-penal consequences of conviction, the purpose of the procurement rules is specifically to discourage corruption and they should not be circumvented.

62. On the other hand, I accept that Rolls-Royce is no longer the company that once it was; its new Board and executive team has embraced the need to make essential change and has deliberately sought to clear out all the disreputable practices that have gone before, creating new policies, practices and cultures. Its full co-operation and willingness to expose every potential criminal act that it uncovers and the work being done on compliance and creating that culture goes a long way to address the obvious concerns as to the past.

63. So the question becomes whether it is necessary to inflict the undeniably adverse consequences on Rolls-Royce that would flow from prosecution because of the gravity of its offending even though it may now be considered a dramatically changed organisation. In any event, it will have to suffer the undeniably adverse publicity that will flow from the facts of its business practices which will be exposed by the DPA so that the way in which it has done business will be obvious. Any public procurement exercise will be conducted in the light of its history and it will doubtless only win contracts on the merits of its products. That, of course, is as it should be. Neither will the conduct of Rolls-Royce escape sanction: it could only ever be fined and the DPA has to be approached on the basis that it must be broadly comparable to the fine that a court would have imposed on conviction following a guilty plea (see para. 5(4) of Schedule 17 of the 2013 Act).

64. In the circumstances, subject to the terms being fair, reasonable and proportionate, I have come to the conclusion that it is in the interests of justice that the conduct of Rolls-Royce be resolved through the mechanism of a DPA. It is to those terms that I now turn.

The Terms of the DPA

65. The essential basis of this DPA is that effective from the date of the declaration under paras. 8(1) and (3) of Schedule 17 to the 2013 Act for a period of five years (or four years if the SFO confirm in writing that the agreement has concluded by payment of the disgorgement and financial penalty and taking account of any remaining obligations), the SFO will agree, having preferred the indictment, to suspend it and, subject to compliance with the terms of the DPA, after its conclusion, will discontinue the proceedings.

66. Other conditions include the absence of any protection against prosecution of any present or former officer, employee or agent or against Rolls-Royce or RRESI for conduct not disclosed by them prior to the date of the agreement (or any future criminal conduct). There is also a condition that fresh proceedings may follow if Rolls-Royce provided inaccurate, misleading or incomplete information to the SFO and knew or ought to have known that it was inaccurate, misleading or incomplete.

67. Taken together, the requirements falling upon Rolls-Royce and RRESI which the court declared were likely to be in the interests of justice and were fair, reasonable and proportionate can be summarised as follows:

> i. Past and future co-operation with the relevant authorities (as further described) in all matters relating to the conduct arising out of the circumstances of the draft Indictment;
>
> ii. Disgorgement of profit on the transactions of £258,170,000;
>
> iii. Payment of a financial penalty of £239,082,645;
>
> iv. Payment of the costs incurred by the SFO (put at £12,960,754);
>
> v. At its own expense, completing a compliance programme following the recommendations of the reviews commissioned by Rolls-Royce from Lord Gold (formerly of Herbert Smith Freehills LLP now of Gold Associates) of the approach to anti-bribery and corruption compliance (as further described).
>
> It is also acknowledged that no tax reduction shall be sought in relation to any part of the payments (ii), (iii) and (iv) above in the UK or elsewhere, with time to pay the disgorgement and financial penalty in four instalments subject to simple interest at an annual rate of 80 basis points over GBP 6m LIBOR on any sum unpaid calculated from 30 June 2017.

68. Putting entirely to one side the £15 million cost of the compliance programme (which Rolls-Royce and RRESI – to say nothing of the other Rolls-Royce entities – required in any event), the risk of potential liability in jurisdictions not covered by this DPA and the agreements reached with the United States and Brazil and the legal and other costs incurred by Rolls-Royce in the investigation of its conduct in multiple jurisdictions, the intermediary review, expert advice and negotiation of these agreements (which as I have noted above amounted, in December 2016, to £123 million), the total financial penalty (including costs to the SFO) arising out of the DPA with which I am concerned exceeds £½ billion.

69. In addition, included for the sake of completeness, the deferred prosecution agreement reached with the Department of Justice requires a financial payment of $169,917,710 and the leniency agreement with the Brazilian authorities a payment of US $25,579,645.

70. CrPR 11.3 (f) and (g) (i) (ii) require the application for a DPA to describe the proposed terms, explain how they comply with the DPA Code of Practice and Sentencing Guideline, and explain how they are fair, reasonable and proportionate. As a result, I turn to consider the terms individually.

Co-operation

71. The future co-operation of Rolls-Royce is provided for in Section A of the Terms of the agreed proposed DPA (visualized by para. 7.8 of the Code of Practice as a term normally present). Thus, Rolls-Royce must co-operate in the investigation and prosecution of individuals related to this case or any other matter of interest to the SFO where Rolls-Royce holds relevant information.

72. As Rolls-Royce will ordinarily be the main repository of material relevant to the prosecution of individuals both in terms of evidence and disclosure it is obviously fair, reasonable and proportionate that the company be required to assist investigations or prosecutions of individuals. To facilitate this co-operation, for the duration of the DPA, the company will keep the material gathered during the course of its investigation and that of the SFO within this jurisdiction.

73. There is a further requirement that, at the reasonable request of the SFO, Rolls-Royce will assist law enforcement agencies, regulators and multilateral development banks including those overseas as directed. This recognises the concurrent jurisdictional nature of this case and the nature of Rolls-Royce's global business. Needless to say, these provisions (and the proposed length of the DPA) are all fair, reasonable and proportionate.

Disgorgement of Profit

74. The Sentencing Guideline for Corporate Offenders: Fraud, Bribery and Money Laundering ("the Guideline"), at Step 2, requires that, in cases of conviction, confiscation be considered. Without a conviction, that is not possible but para. 5(3)(d) of Schedule 17 of the 2013 Act refers to disgorgement in an illustrative list of possible terms (as does para. 7.9 of the DPA Code of Practice). The removal of profit is equally reflected in the same Guideline at Step 5 referring to the need for a combination of orders (mentioning compensation, confiscation and fine) required to achieve the removal or all gain, appropriate additional punishment and deterrence.

75. Public policy favours the removal of any benefit from crime and Rolls-Royce and RRESI have the means and ability to pay. The only difficulty has been to assess what, in fact, was the gross profit made as a consequence of the criminal activities identified in the indictment.

76. To ascertain an appropriate approach, Rolls-Royce instructed specialist financial consultants Forensic Risk Alliance ("FRA") to analyse underlying financial material and to prepare submissions on gross profit figures for the SFO. Acting jointly, the SFO and DOJ also instructed specialist financial consultants, FTI Consulting ("FTI"), in order to check the figures submitted by Rolls-Royce, as well as the underlying information on which those figures were based. Save in respect of counts 5 and 6 (on which see [91] and [92] below), the figures which have been submitted by the SFO and Rolls-Royce in respect of disgorgement and penalty are based on the agreed position following analysis by both FRA and FTI. In reaching this agreement, Rolls-Royce accepted that certain expenses including research and development, did not fall to be deducted from revenue in the assessment of the gross profit figures: the caveat expressed at [35(vii)] above must be repeated and emphasised whenever a 'gross profit' figure is identified.

77. In respect of the offences under s. 7 Bribery Act 2010 offences at counts 8 and 10, the SFO and Rolls-Royce agree that the gross profit earned prior to implementation of the Bribery Act 2010 on the 1 July 2011 does not fall to be disgorged since the offending was not causative of that profit being earned.

78. Further the SFO agrees (on a fact specific basis and without prejudice to the appropriate approach in other cases) that gross profit earned subsequent to the final

payment to the intermediary which Rolls-Royce failed to prevent being made need not be disgorged in the circumstances of this case. The rationale advanced for this submission is based on considerations of totality of the proposed financial orders under the DPA.

79. As a consequence of the above decisions of the SFO, the parties have agreed that the total gross profit to be disgorged for the conduct which is the subject of counts 8 and 10 should be prorated by reference to the number of months post- implementation of the Bribery Act 2010 until the last payment to the intermediary as a proportion of the total number of months during which gross profit was earned on the contract. Thus, using hypothetical figures, if £10 million of profit was earned during a period of 80 months and, of these 80 months, 20 spanned the implementation of the Bribery Act 2010 to the last payment to the intermediary, that is, 25% of the full period during which profit was earned. The prorated profit in this instance would be calculated, therefore, as 25% of the £10 million overall profit, which is £2.5 million.

80. I have had the opportunity of studying the count by count analysis of gross profit appropriate for disgorgement. I am not in a position to challenge the figures but, given that they are agreed by the accountants acting for both the SFO and Rolls-Royce, I am content to accept that the disgorgement by Rolls-Royce and RRESI of profit in the sum of £258,170,000.00 as provided for in the proposed agreed DPA is fair, reasonable and proportionate.

81. Before leaving the topic of removing profit, I ought also to mention the question of compensation (for which the SFO is not applying). Although s. 130 of the Powers of the Criminal Courts (Sentencing) Act 2000 requires a court, after conviction, to consider the question of compensation and the Guideline states that the court must consider compensation, it is intended for "clear and simple cases" (*R v Michael Brian Kneeshaw* (1974) 58 Cr App R 439), also described as "the simple, straightforward case" (*R v Kenneth Donovan* (1981) 3 Cr App R (S) 192). Equally, it is clear in *R v Ben Stapylton* [2012] EWCA Crim 728 that:

> "there is no jurisdiction to make an order where there are real issues as to whether those to benefit have suffered any, and if so, what loss": *R. v Horsham Justices Ex p. Richards* (1985) 7 Cr. App. R. (S.) 158, 993."

82. I dealt with this problem in *SFO v XYZ* (U20150856) 8 July 2016, when I said (at [41]):

> "17 of the 28 implicated contracts were with entities based in a country in Asia with which there is neither a request for mutual legal assistance nor an established mechanism or practice in place for payments of compensation orders to the authorities. Other bribes XYZ agreed to offer involved agents based in or working in relation to other countries in Asia and elsewhere in respect of which the same difficulties arise. Further, the amounts of the bribe payment are not always confirmed in the evidence and neither is any rise in the contract price to accommodate it (which would generate the loss). Finally, the SFO is not able to demonstrate whether and, if so, in what sum,

> the various XYZ agents actually paid bribes to named or unknown individuals. Taken together, these factors amount to it not being possible to positively identify any entities as victims who may be compensated.'

83. The SFO acknowledges that compensation for victims should be sought when addressing corporate offending, and, where this is not possible, reasons must be given. Where it has been possible to identify victims, the SFO has sought and achieved compensation, (see, for example, *SFO v Standard Bank plc*) but here, the factual complexity of the totality of the allegations in the Statement of Facts, including the use of intermediaries, makes quantifying bribes actually paid impossible.

84. Thus, the SFO has not been able to identify a quantifiable loss arising from any of the criminal conduct which it is proposing to resolve. There is no direct evidence of contracts where there was a rise in the contract price to accommodate a bribe (see [41] of *XYZ* above) nor evidence that any of the products or services which Rolls-Royce sold to customers were defective or unwanted. In any event, any of the victims of the criminal conduct covered by the proposed DPA is in a position to pursue a claim for compensation.

Financial Penalty: Introduction

85. I have observed that par. 5(4) of Schedule 17 to the 2013 Act requires any financial penalty to be comparable to a fine imposed on conviction after a guilty plea. This must be read with s. 143 of the Criminal Justice Act 2003 (requiring the court to consider the offender's culpability and any intended or foreseeable harm caused) and the Guideline that prescribes an approach to be followed unless it is contrary to the interests of justice to do so: see s. 125(1) of the Coroners and Justice Act 2009. Thus, the court must take into account the financial circumstances of the defendant which has required investigations beyond the accounts and (as with disgorgement) involved a thorough interrogation of the financial circumstances of Rolls-Royce. In that regard, the SFO has made it clear that Rolls-Royce cooperated fully with the financial investigation, providing documents and written responses to questions asked.

86. One further detail should be explained. The DPA refers to Rolls-Royce plc and RRESI collectively as 'Rolls-Royce' and there is no question but that the former will ultimately be responsible for discharging the financial commitments imposed. In the circumstances, for ease of reference, I have generally referred only to Rolls-Royce.

Financial Penalty: Harm and Totality

87. The Guideline covers offences of bribery but not corruption although, in my judgment, a parallel approach can be adopted which takes, as a starting point, that harm is normally represented by the gross profit from the contract obtained, retained or sought as a result of the offending: in relation to counts 1 and 7, this is the case with harm figures of £30.33 million and £38.6 million respectively. Where there is no gross profit, the Guideline also prescribes an alternative measure (which would include offences under s. 7 of the Bribery Act 2010) as the likely costs avoided by failing to put in place appropriate measures to prevent bribery.

88. As a matter of principle, it is also appropriate to take into account the Sentencing Council's Definitive Guideline on Offences Taken into Consideration and Totality ("the Totality Guideline") which accepts the impossibility of arriving at a just and proportionate sentence for multiple offending by adding together notional single sentences (at page 5) and provides guidance (at page 12) in these terms:

> "The court should determine the fine for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the court.
>
> The court should add up the fines for each offence and consider if they are just and proportionate.
>
> If the aggregate total is not just and proportionate the court should consider how to reach a just and proportionate fine. There are a number of ways in which this can be achieved. For example:
>
> • where an offender is to be fined for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious offence a fine which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences;
>
> • where an offender is to be fined for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate fine for each of the offences. The court should add up the fines for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the court should consider whether all of the fines can be proportionately reduced. Separate fines should then be passed."

89. Thus, by way of example, counts 2, 3 and 4 represent multiple offending of a similar nature being a course of conduct in one jurisdiction, using one intermediary in respect of one airline involving the same senior Rolls-Royce employees. In one sense, the harm figure is the total gross profit across the entire period but given that the starting point is the disgorgement of that profit, a financial penalty calculated on the same basis would, with the culpability factor then built in, create a disproportionate result.

90. Thus, Richard Whittam Q.C. (who dealt with this aspect of the case on behalf of the SFO) argued that it would be appropriate to approach the assessment in relation to these three counts by prorating the gross profit to be attributed by reference to the number of engines sold attributable to count 4 as a proportion of the total number of engines sold attributable to counts 2, 3 and 4. This effectively imposes a concurrent

penalty for each of those offences although it will also impact on the culpability in relation to this offending which is discussed below. Performing the calculation, the harm figure as a basis for the fine is £39.5 million.

91. In relation to the offence of false accounting (count 5), it is argued that a combination of approaches identified by the Guideline is appropriate. The normal approach (in the absence of evidence of the amount likely to be obtained, 10–20% of the relevant revenue 'may' be appropriate: see step 3) works in relation to the Pegasus LTA2 contract where payments to an intermediary have been concealed: the harm can be quantified by a proportion (here 10%) of the relevant revenue Rolls-Royce intended to retain (£43.3 million, the value of the contract). As for the RRTM Licence agreement, for which Rolls-Royce received a one off fee, £3.59 million represents the amount Rolls-Royce intended to retain (value of licence fee minus allowable costs) by falsely accounting for, and thus concealing, the payments. Finally, the cover-up in relation to the payment for the adviser list is encompassed by count 6 and should not be double counted. I agree that this represents the correct approach so that the harm figure for this count is £7.89 million.

92. Dealing with count 6, in relation to the payment to the intermediary in relation to the adviser list designed to prevent an investigation into both Rolls-Royce's intermediaries and tax situation, it is argued that the appropriate starting point from which to calculate the penalty is the sum of £1.85 million paid to the intermediary. No specific contract was obtained as a result of this payment and no causal link between the return of the list and a concrete gain or loss figure can be established. That is clearly an entirely justifiable approach and I agree with it.

93. In respect of the offences contrary to s. 7 of the Bribery Act 2010, (counts 8 to 12), it is common ground (and reflects my observations in *SFO v Standard Bank plc* at [46]), that failing to prevent bribery is less egregious than an offence of bribery or corruption not least because although it represents a serious failure of corporate governance, the operative minds of the company are not involved in the predicate offence. Having said that, however, subject to issues of totality, the normal position of gross profit is the appropriate measure for the penalty for these offences; where there is no profit, other proxies (such as, for example, the cost avoided by failing to put appropriate procedures in place to prevent bribery) have to be sought.

94. The relevance of totality in the case of these allegations is that the failure of corporate governance is the same in each case: Rolls-Royce and RRESI did not have proper systems (or cultural recognition) in place to ensure that offences of bribery did not take place. Furthermore, that bribes or corrupt payments might have been solicited is not to the point. Thus, recognising that although the harm caused in relation to each of the counts is separate (although in relation to count 9 regarding the contracts in Nigeria, there was no contract and thus no gross profit actually obtained), for reasons solely of totality (see below), it is fair that the harm figure for the energy offences (counts 8 and 9) and the civil offences (counts 10 to 12) should be calculated as an average of the gross profit sought or obtained in each case. This effectively imposes a concurrent penalty for each of those divisions' respective failing to prevent offences and amounts to £7.055 million and £20.713 million respectively.

Financial Penalty: Culpability

95. Having assessed the harm figure for each of the offences, the Guideline requires that the financial penalty which is calculated is then subject to a multiplier and (at Step 3) identifies a non-exhaustive hierarchy of culpability characteristics which are used to determine whether the conduct falls into high, medium or low categories of culpability.

96. Having identified the appropriate culpability category, the Guideline (at Step 4) identifies harm multiplier ranges for the different categories of culpability including the relevant starting point for each category. It then provides a non-exhaustive list of aggravating and mitigating factors which are used to adjust the harm multiplier from the relevant starting point. This exercise must be performed on a count by count basis in order to ensure that a comprehensive approach to different types of conduct involving different persons, industries and time periods.

97. Before that exercise is undertaken, however, it is necessary to underline the fact that the indictment as a whole reveals bribery was being carried out by Rolls-Royce's employees over a long period of time in multiple jurisdictions and multiple business areas. Overall, this resulted in financially motivated offending where considerable financial gain to Rolls-Royce was in fact achieved (whatever the merits of the products that it was selling); substantial harm to the integrity of governments; and substantial harm to the integrity of and confidence in markets (including the potential damage caused to competitors).

98. Starting with the conspiracies to corrupt (counts 1-4 and 7), it is beyond argument (and the contrary is not suggested) that these fall into the highest category. This is demonstrated by the following characteristics:

    i) Rolls-Royce played a leading role in organised, planned unlawful activity over a very substantial period of time.

    ii) There was corruption of local or national government officials or ministers.

    iii) In the light of its international reputation, Rolls-Royce abused its position of trust and the responsibility it owed to promote good practice across the world.

    iv) There were many and varied attempts to conceal misconduct and obstruct detection through the use of contracts and side letters to disguise the bribes; destruction of emails and memos with conversations not recorded or kept off email; auditors who were best placed to detect misconduct were not provided with a complete picture; and the Board was increasingly kept out of correspondence.

99. Placing the offending within the range of multipliers (with the starting point of 300% and a range of 250-400%), it is necessary to consider the factors that increase or reduce seriousness. The overarching points are obvious and factors increasing seriousness include the substantial harm inevitably caused by such conduct on this scale to the integrity of, or confidence in, markets and commerce; the substantial harm caused to the integrity of national governments; and the cross-jurisdictional offending (involving three countries).

100. The factors which reduce seriousness or reflect mitigation are comparatively modest. The first is discussed above and to the effect that Rolls-Royce has no previous relevant convictions and has suffered no relevant enforcement action. The second is a point relevant to the interests of justice that the offending was committed under different management. The co-operation of Rolls-Royce in the investigation (advanced by Mr Whittam and David Perry Q.C. for Rolls-Royce) has no real impact at this stage: it has been taken very substantially into account when deciding the interests of justice and will come back into play when discounting the penalty not only for the admissions but also the additional voluntary assistance and self-disclosure.

101. Although I do not accept that one of the features of suggested mitigation ought to be taken into account at this stage, I am prepared to accept that the culpability level for the offending at counts 1 and 7 is 325%. I also agree that, since it is proposed that there should be no separate penalty for reasons of totality in respect of counts 2 and 3 it is appropriate for the culpability level of count 4 to be 400% on the grounds that the conduct which receives no separate penalty may be relied on to aggravate the culpability of the count to which a penalty attaches. That figure should not be taken as the potential limit of the uplift because it is always possible to sentence above the guideline, but having stood back and looked at the overall penalty (as I am required to do), I do not consider it necessary to do so in this case.

102. Moving to the offences of failing to prevent bribery (counts 8-12), the Guideline culpability characteristics are not exhaustive and an analysis of the conduct identifies a number of features relevant to each of the offences namely the involvement by mid-ranking Rolls-Royce employees in predicate corrupt conduct and the failure on the part of Rolls-Royce to instill within the wider business a culture of compliance especially in jurisdictions all of which could objectively be seen as having a high corruption index perception (which should have been known to the Rolls-Royce personnel concerned). Further, whilst some effort was made to put bribery prevention measures in place it is evident that training was sporadic and minimal (also evidenced by the substantial work undertaken by Lord Gold).

103. In addition, it is necessary to consider the allegations individually. Thus, in respect of count 8 (Energy Indonesia) the conduct was committed over a sustained period of time (1 July 2011 to July 2013) and involved 47 payments to the intermediary a proportion of which Rolls-Royce employees agreed were to be passed on as corrupt payments. Neither was this bribery conducted exclusively by a third party: payments were made as the result of a corrupt arrangement by Rolls-Royce's employees, two of whom were still in post on 1 July 2011 when the Bribery Act 2010 came into force.

104. In respect of count 9 (Energy Nigeria), there are a number of seriously aggravating factors. These are that the bribes, paid over a sustained period (two years elapsing before the tender was withdrawn) were made with the knowledge of Rolls-Royce's employees (and not exclusively by a third party). It constituted the corruption of government officials and senior employees, in particular at Rolls-Royce Energy, exhibited a culture of wilful disregard of the commission of offences. It was a remarkable example of abuse of the position of trust and responsibility held by Rolls-Royce by virtue of its size and international reputation.

105. Turning to count 10 (Civil Indonesia), the bribery which Rolls-Royce failed to prevent was the corruption of government officials and was in the context that Rolls-Royce knew that Indonesia was a high risk jurisdiction, (where it had previously been involved in bribery) such that a complaint had been made about ongoing bribery involving Rolls-Royce's personnel and civil aviation intermediary in Indonesia. Further, a Rolls-Royce employee took steps to ensure that the offending was difficult to detect by outside enquiry and that payments were approved despite known concerns and involvement of Compliance.

106. In respect of count 11 (Civil China), the bribery which Rolls-Royce failed to prevent was the corruption of government officials and employees both took steps to pressure internal compliance personnel to approve corrupt arrangements and disregarded clear external advice not to proceed with the arrangements which constitute an offence under s. 1 Bribery Act 2010.

107. Finally, in respect of count 12 (Civil Malaysia), employees took steps to pressure both junior sales and internal compliance personnel respectively to create and approve corrupt arrangements.

108. Bringing these four counts together, it is submitted (and I endorse) that for counts 9, 11 and 12 the culpability level is at the highest (with a starting point of 300% and a range of 250-400%). For counts 8 and 10, the culpability level is in medium (with a starting point of 200% in a range of 100-300%).

109. Looking at the factors that increase and reduce seriousness, Mr Whittam submits (without challenge from Mr Perry) that the gravity of the offending is increased by reason of the substantial harm caused to the integrity of national governments by such conduct on this scale, carried out across different jurisdictions. Similarly, substantial harm is inevitably caused to the integrity of, and confidence in markets and commerce. Finally, it is highly significant that employees took steps to conceal their conduct and ensure that the offending was difficult to detect by outside enquiry.

110. The general factors reducing seriousness or reflecting mitigation remain the absence of previous relevant convictions or enforcement action and the fact that the offending was committed under previous directors/manager. In relation to count 10 (Indonesia), it can also be said that the offending was of modest duration and for counts 11 and 12 (China and Malaysia) the request for what amounted to a bribe originated from outside of Rolls-Royce rather than having been offered by Rolls-Royce or its intermediaries.

111. It is argued that taking these factors into account, the culpability for count 8 (Indonesia) is 200%, for count 10 (Indonesia) is 250% and for counts 9 (Nigeria), 11 (China) and 12 (Malaysia) is 300%. Having considered the facts with some care, I agree with these assessments. Further, taking into account the analysis concerning the issue of totality and the fact that the harm figure for the Energy offences (counts 8 and 9) and the Civil offences (counts 10 to 12) should be calculated as an average of the gross profits sought or obtained in each case, it is also submitted that culpability multiplier is averaged.

112. During the course of argument, I was not convinced that it was not appropriate to take the most serious example of this type of conduct (which would lead to an uplift of

300%), in the same way that the penalty for counts 2, 3 and 4 uplifted to reflect the extent of the criminality over such a long period of time. Having reflected on the issue, however, I accept that a difference can be justified on the basis that these four counts reflect an overall similar failure of corporate governance and, to that extent, are repetitive. A financial penalty must, however, be imposed in respect of each of the two different business divisions which reflects individual divisional failures. In those circumstances, I am prepared to endorse this approach so that, in respect of counts 8 and 9 it is 250% and for counts 10 to 12 it is 283%.

113. I turn to counts 5 (concerning the false accounting in India) and 6 (the conspiracy to corrupt in relation to the adviser list acquired by the tax authorities. For both, it is submitted (and not challenged) that the culpability should be assessed at the highest level.

114. In relation to count 5, the following high culpability characteristics support of this conclusion. This was an organised and considered scheme, unlawful from the start, in which Rolls-Royce played a leading role, involving the creation of numerous intentionally misleading agreements and was committed over a sustained period of time. Further, as it progressed, it increased in sophistication, being designed deliberately to contravene the Indian Government's defence procurement rules and allowing Rolls-Royce to retain Indian Government contracts which it knew had been obtained in breach of those rules and in breach of signed contractual declarations of compliance.

115. Turning to count 6, the high culpability characteristics which support this conclusion are that Rolls-Royce played a leading role in the arrangement, unlawful from the start, which involved an intention to bribe a tax inspector or other public official of the Indian Government and was designed to prevent an investigation by the Indian authorities into both the tax affairs of Rolls-Royce and its use of advisers (contrary to the relevant regulations and various signed contractual declarations). The ultimate motivation was purely financial.

116. For both counts, the culpability starting point is 300% and the range 250-400%. Turning to factors which increase seriousness, there is the fact of substantial harm to the integrity of national or local Indian government. The same mitigating elements of absence of relevant convictions or enforcement action and the subsequent change of leadership in Rolls-Royce remain.

117. When assessing the appropriate penalty in these two cases, it is also important to recognise that the count of false accounting (the maximum penalty for an individual being 7 years' imprisonment) should not be punished as if the facts proved underlying bribery (maximum penalty 10 years' imprisonment). Furthermore, one of the payments falsely accounted was intended to involve payment to a public official. To avoid double counting of this aggravating feature, it is taken account of in the bribery count 6 only. Taking all these factors into account, I agree that it is appropriate to assess the culpability level in relation to count 5 (false accounting) at 250% and count 6 (conspiracy to corrupt) at 325%.

118. Collecting these assessments together, prior to any discount, the penalty amount is calculated as £478,165,290.00: it is set out below.

Discount

119. Any penalty under a DPA must be comparable to a fine imposed upon a conviction after a guilty plea. The court should therefore take into account any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the Guideline issued by the Sentencing Guidelines Council on Guilty Pleas. It is argued that, taking into account the agreement by Rolls-Royce to resolve by way of DPA the broad range of conduct in the proposed draft indictment, a full reduction of one third of the proposed penalty is appropriate.

120. In the preliminary judgment in *XYZ*, I explained (at [57]):

> "In addition, given that the admissions are far in advance of the first reasonable opportunity having been charged and brought before the court, that discount can be increased as representing additional mitigation. In the circumstances, a discount of 50% could be appropriate not least to encourage others how to conduct themselves when confronting criminality as XYZ has."

121. In this case, Rolls-Royce has demonstrated extraordinary cooperation (as explained at [16] to [20] above). The co-operation is reflected in part by the willingness to enter a DPA but it also falls within the principle to which I have referred. Summarising, it includes voluntary disclosure of internal investigations, with limited waiver of privilege over internal investigation memoranda and certain defence aerospace and civil aerospace material (for count 11); providing un-reviewed digital material to the SFO and co-operating with independent counsel in the resolution of privilege claims; agreeing to the use of digital methods to identify privilege issues; co-operating with the SFO's requests in respect of the conduct of the internal investigation, to include timing of and recording of interviews and reporting of findings on a rolling basis; providing all financial data sought and fully co-operating with the assessments which had to be undertaken; not winding up companies of interest including RRESI.

122. Two further points ought to be made. At the request of the SFO, Rolls-Royce identified conduct which might be capable of resolution by a DPA prior to any invitation to enter into DPA negotiations being made. Thus, a potential route map through this exceptional case was assisted by the co-operation provided. Second, Rolls-Royce have not sought to generate any external influence over the investigation by the SFO; media enquiries and Whitehall engagement has been handled in a manner agreed with the SFO.

123. In order to take account of this extraordinary cooperation, I repeat the views which I expressed above and confirm that a further discount of 16.7% is justified taking the total discount of the penalty to 50%. This gives a total penalty figure of £239,082,645.00 to which must be added the disgorgement of £258,170,000 being the gross profit (as defined for the purposes of this case) that Rolls-Royce has obtained as a result of its criminal misconduct, making £497,252,645 in all. In the circumstances, I conclude that it is fair, reasonable and proportionate to assess the overall financial penalty in this sum.

Costs

124. As a matter of public policy, it is appropriate that a defendant with means to do so should pay the costs incurred by the Crown arising out of an investigation and (in those cases) prosecution: see para. 3.4 of The Criminal Practice Direction (Costs in Criminal Proceedings) Amendment No. 1. Furthermore, para. 7.2 of the DPA Code of Practice states that costs should ordinarily be sought.

125. It is not suggested that Rolls-Royce does not have the means and ability to pay these costs (identified as £12,960,754 to date) and the term within the DPA that these costs be paid is not challenged. In the circumstances, it is fair, reasonable and proportionate that an order be made to that effect.

Summary

126. Collecting together the figures mentioned during the course of this judgment, the overall calculation is set out in the spreadsheet attached to this judgment as Appendix B.

127. Putting to one side the reputational damage that will flow from the conduct of Rolls-Royce and their employees and agents, leading to the DPA, the total financial impact of the penalties and costs imposed exceeds £500 million and I am satisfied that it achieves the objectives of punishment and deterrence. The financial advisors to the SFO and DOJ have confirmed that, taking into account Roll-Royce's financial circumstances, the penalty is substantial enough to have a real economic impact: when added to the costs incurred by Rolls-Royce it amounts to a sum in the region of £650 million. Mr Whittam, for the SFO agrees with this view and submits that the penalty will bring home to both management and shareholders the need to operate within the law without putting it out of business which outcome would be inappropriate in these circumstances. Mr Perry, for Rolls-Royce, accepts the accuracy of that submission.

128. In view of the size of the proposed combined financial orders including those imposed in the USA and Brazil (about $196 million/£155 million) and cumulatively about £652 million (plus £13 million costs), Rolls-Royce seeks (and, having been advised, the SFO accepts) that it is reasonable to allow time for payment. In the circumstances, payment will be by instalments, as set out in the DPA.

Corporate Compliance

129. I have described the steps taken by Rolls-Royce (and its involvement of Lord Gold in the implementation and maintenance of remedial measures): see [43] to [47] above. In that regard, para. 7.9 of the DPA Code of Practice specifically draws the attention to the fact that putting in place a robust compliance and/or monitoring programme may be a term of a DPA, Such a programme is described in the proposed DPA and is agreed by Rolls-Royce.

130. Thus, in large part, the conduct in this case concerns the failure of Rolls-Royce to implement or enforce procedures to prevent bribery by its associated persons and in order to reduce the risk of future failings, amongst other steps, Rolls-Royce should continue to review its existing internal anti-bribery and corruption controls, policies, and procedures regarding compliance with the Bribery Act 2010 and other applicable

anti-corruption laws, enhancing, in particular, its policies and processes in respect of third parties and improve its training in respect of anti-bribery and corruption policies.

131. In addition, at Rolls-Royce's expense, Lord Gold must continue his role as an independent specialist to report on their findings and where appropriate advise and make recommendations which should be implemented. There are also provisions which require copies of Lord Gold's reports to be submitted to the SFO and a requirement that he address specified risk areas. These requirements are obviously fair reasonable and proportionate.

Further Observations

132. First, in his sentencing remarks in *R v Innospec*, 2010 WL 3580845, Thomas LJ (as he then was) suggested (at [32]) that it was appropriate to approach sentencing in cases of this nature on the basis that a fine comparable to that imposed in the US would be a useful starting point. I referred to that decision in *SFO v Standard Bank plc* (at [58]) in which case the DOJ confirmed that the financial penalty is comparable to the penalty that would have been imposed had the matter been dealt with in the United States.

133. Although I have approved the deferred prosecution agreement reached with Rolls-Royce, the nature and extent of the criminality which falls to be dealt with along with the complexity of the sentencing exercise, including considerations of totality and the substantial disgorgement makes it difficult to provide a meaningful comparison to what would have occurred in the USA.

134. Secondly, it is appropriate to underline that para. 5 of the DPA provides that it does not cover conduct not disclosed by Rolls-Royce prior to the date on which the DPA comes into force. Having said that, I am informed that the SFO has reached a view and agreed to provide assurance to Rolls-Royce that, on approval of the DPA, it would not consider it to be in the interests of justice to investigate or prosecute it for additional conduct pre-dating the DPA and arising from the currently opened investigations into Airbus and Unaoil (which, in any event, is covered by the deferred prosecution agreement reached by Rolls-Royce in the United States). It is appropriate that I record this assurance.

135. The reason for this conclusion is that the conduct resolved by the DPA spans eight jurisdictions, three of Rolls-Royce's business divisions and over 20 years of conduct. The geographic, commercial and chronological scope together with the quantum of proposed financial terms is such that the matters which are the subject of the DPA are sufficiently extensive to satisfy the public interest. The investigations into Unaoil and Airbus are insufficiently advanced so as to provide evidence that could yet be included in a DPA or prosecuted and substantial further investigation would be required before such an eventuality if it were reached at all. Even if it did it is unlikely that the inclusion of additional matters would materially contribute to any change to the proposed terms.

136. For the avoidance of all doubt, the SFO has not made any agreement that would provide cover for future conduct committed by Rolls-Royce, past conduct of which the SFO has no direct or implicit knowledge nor any cover for individuals.

Order

137. In line with this judgment, pursuant to para. 8(1) of Schedule 17 of the 2013 Act, I declare that the DPA is in the interests of justice and that its terms are fair, reasonable and proportionate. I consent to the preferring of a bill of indictment charging Rolls-Royce with six offences of conspiracy to corrupt contrary to s. 1 of the Criminal Law Act 1977, five offences of failure of a commercial organisation to prevent bribery contrary to s. 7 of the Bribery Act 2010 and one offence of false accounting contrary to s. 17(1)(a) of the Theft Act 1968 each in the terms set out in the draft indictment that accompanied the application: see s. 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933. I note that, pursuant to para. 2(2) of Schedule 17 of the 2013 Act, these proceedings are automatically suspended. The terms of the DPA now fall to be enforced in default of which an application can be made under para. 9(1) of Schedule 17. The DPA, the Statement of Facts and this judgment containing the reasons for both my rulings must now enter the public domain.

Concluding Remarks

138. Although these proceedings have been required to validate a proposal and, then, a concluded agreement in relation to the investigation by the SFO into the activities of Rolls-Royce and RRESI, it is important to underline that the court has not acted merely to provide formal confirmation of that agreement. On the contrary, there has been robust challenge to the approach following a detailed analysis of the circumstances of the investigated offences, and an assessment of the financial penalties that would have been imposed had the indictment proceeded to trial and conviction. Neither have I assessed the position in a way that is identical to the approach adopted by the parties although I recognise that it has been important to stand back and assess, from an overall perspective, whether the terms of the DPA are both in the interests of justice and fair reasonable and proportionate.

139. Thus, as I have observed in relation to previous DPAs, there is no question of the parties having reached a private compromise without appropriate independent judicial consideration of the public interest: furthermore, publication of the relevant material now serves to permit public scrutiny of the circumstances and the agreement. Suffice to say that I am satisfied that the DPA fully reflects the interests of the public in the prevention and deterrence of this type of crime.

140. Having said that, some of the remarks which I have made in the earlier cases involving DPAs justify repetition and expansion in the context of this case. Thus, in *SFO v Standard Bank plc* (30 November 2015), I made the point (at [66]) that it should not be thought:

> "… that, in the hope of getting away with it, Standard Bank would have been better served by taking a course which did not involve self report, investigation and provisional agreement to a DPA with the substantial compliance requirements and financial implications that follow. For my part, I have no doubt that Standard Bank has far better served its shareholders, its customers and its employees (as well as all those with whom it deals) by demonstrating its recognition of its serious failings and its determination in the future to adhere to the highest

> standards of banking. Such an approach can itself go a long way to repairing and, ultimately, enhancing its reputation and, in consequence, its business.

141. If that point was properly made in relation to Standard Bank plc, it is even more appropriate in relation to Rolls-Royce. I repeat that Rolls-Royce is an industry of central importance, with an engineering capability and capacity that is rightly the envy of all those involved in the field. Although the criminal behaviour which has been outlined in this case must rightly be condemned, its conduct since 2013 must be commended; its willingness to unearth and then accept what it has done, to learn and to start to build again will, I hope, generate support and (as with Standard Bank) better serve shareholders, customers, employees and those with whom it deals. Even more so than with Standard Bank, only in that way will it start to repair and, ultimately, enhance its reputation and, in consequence, its business.

142. I add one further points. It may be that there are other companies aware of its own past conduct similar to that in which Rolls Royce engaged. They cannot now change that fact, but those companies do have available to them a choice as to how they confront it. A responsible company will engage openly in the way that Rolls-Royce and so contribute to an increasing recognition of the vice that bribery and corruption constitutes and provide impetus to preventing businesses from operating in this way.

143. A cynic (or irresponsible company) might look at the costs which Rolls-Royce have incurred in their own investigation and wonder whether it be more sensible to keep quiet and hope that its conduct does not fall under the eye of the authorities. Quite apart from the total failure to acknowledge the difference between right and wrong, that is to fail to understand that such an approach carries with it cataclysmic risks. Whatever the costs Rolls-Royce have incurred, they are modest compared to the cost of seeking to brazen out an investigation which commences; absent self-disclosure and full co-operation, prosecution would require the attention of the company to be entirely focused on litigation at the expense of whatever business it is trying to conduct and conviction would almost inevitably spell a far greater disaster than has befallen Rolls-Royce.

144. It only remains for me to express my appreciation to counsel and those who instruct them on both sides for the very great care that they have taken in the presentation of this case, involving, as it has, considerable complexity and the need to focus on detail. Ensuring that all sides of the argument are properly reflected (as has been the case on both sides) has allowed this case to be concluded in a very much shorter time span than it otherwise would have required.