

IN SOUTHWARK CROWN COURT

REGINA

V.

CHRISTOPHER SMITH, NICHOLAS SMITH, TIMOTHY FORRESTER, ABDIRAHMAN OMAR

and SMITH AND OUZMAN LIMITED

OPENING NOTE

1. Smith & Ouzman Limited ("S&O") is a specialist printing firm based in Eastbourne. They print secure documents such as ballot papers and exam papers and certificates. They are a company of some longstanding. The company was incorporated in 1939 and has traded under its current name since 1946. [See AFM 0193 at p.23 for certificate of change of name] The company trades in the UK but in addition S&O have substantial business interests abroad including substantial business in African states. This case concerns S&O's business transactions in four African States: Kenya, Ghana, Mauritania and Somaliland¹.
2. The prosecution case is that in each of these countries directors and senior employees of S&O, and agents employed by S&O in those countries, agreed to make corrupt payments to officials and employees working for institution in those countries in order to obtain printing contracts and to ensure repeat business in the future.

¹ Note the status of Somaliland – to be dealt with later.

3. The scale of the corruption alleged by the prosecution varies according to the country we are dealing with from £349,057.39 in Kenya (Counts 1 and 2) to £12,365.96 in Ghana (Count 3). The total level of corrupt payments alleged in this case is in the order of £433,062.98.
4. How were the corrupt payments made? In each of these countries S&O employed agents to assist them in making the tenders for the business. There is nothing wrong with that of course, in fact it's sensible for a company engaged in business in foreign countries to have a representative working for them on the ground in those countries. These agents worked on commission. Again, a standard arrangement. The prosecution case is that the defendants used commission payments to these agents to mask corrupt payments to public officials in the countries who were in a position to influence the outcome of the tender for the business. As in this country when awarding contracts which are publicly funded, the tender process was supposed to be an open, competitive tender. What these payments did was to make it far more likely that the business, and, importantly, future business, would be awarded to S&O. The evidence shows commission payments, artificially inflated, the prosecution says, to include payment to public officials, and email evidence, in some cases, between one or more of these defendants and the agents, discussing the payment of bribes, or, as one of the agents referred to it "chicken". Documents in the form of pricing summaries and spreadsheets from S&O's premises demonstrate how the commission was divided up between paying the agent working for S&O for his services and paying bribes to officials, although the documents do not, of course, use that language.
5. Inflated commission payments was the main way that the defendants achieved their aim of making corrupt payments to people who could influence the outcome of the tender process in favour of S&O. But there is also evidence, in particular relating to Mauritania, of direct payments to relatives of the government official who was being bribed.

The defendants

6. **Christopher Smith:** was the chairman of S&O for five year period prior to October 2011. He stated in an interview under caution in October 2011 that he had previously looked after the business in a number of African countries, but had passed those duties on to his son Nicholas Smith on becoming chairman in 2006 [check date]. He still retained some involvement in the company's business in Kenya and Uganda, although he said Nick Smith had largely taken over the Kenyan business. There is no doubt that during the course of his chairmanship Christopher Smith gradually took a less active role in the day to day business in African countries, and it appears that towards the end of the indictment period he suffered from some illness. However, the evidence demonstrates ongoing and active involvement in S&O's business activities in relation to Kenya and Ghana. That is counts 1 to 3 on the indictment.
7. **Nicholas Smith:** was sales and marketing director of S&O and the son of Christopher Smith. He described his role in interview under caution in October 2011 as "a more strategic role...rather than being....the first level salesman." He said that he had previously had direct responsibility for sales in Southern African countries, although over the preceding 5 years he had reduced the number of countries for which he was responsible as the company brought in sales managers. His area of responsibility included generating new business and he was the most involved in organising the payment of bribes to secure that business. He was involved in, and the driving force behind, the majority of the corrupt deals which are the subject of this case, taking over responsibility in Kenya and Ghana from his father, Christopher, and supervising the corruption arranged by Timothy Forrester in Mauritania and Somaliland.
8. **Timothy Forrester:** became International Sales Manager at S&O on 16/6/08 and was involved in S&O's business in Africa. In particular, in the context of this case Ghana, Mauritania and Somaliland the prosecution allege that he was engaged in securing business with the assistance of corrupt payments.

9. **Abdirahman Mohamed Omar:** was S&O's agent in Somaliland. He was the contact with the corrupt officials who were paid in respect of the Somaliland deal (count 5), and was the conduit for the payment of those officials.
10. There were other agents in other countries. They are not in the dock but were nonetheless parties to these offences. Ref indictment – Counts 1 and 2: the agent in Kenya was Trevy James Oyombra, known by those at S&O as Trevy. In Ghana (count 3) there were two agents. Originally S&O's agent was Ebenezer William Amarteifio, known at S&O as Bill Amarteifio. He was replaced by S&O during the period which you are considering and Elliot Agyare was given the job, together with responsibility for paying bribes to corrupt public officials. The remaining country is Mauritania (count 4). S&O's agent was called Karim Reaich. These agents were the go betweens, arranging corrupt payments.
11. **Smith & Ouzman Limited:** the fifth defendant is the company. A limited liability company can itself commit criminal offences. It is treated by the law as having legal personality. A company can therefore commit crime. S&O is here charged on all five counts of the indictment. The company's criminal liability depends on the criminality of those who represent the directing mind and will of the company. The company cannot be guilty of any of these offences unless the offence has been committed by one of the directing minds of the company. Who is it who represents the directing mind and will of the company? It is the board of directors, the managing director and superior officers of the company who carry out the functions and management and speak and act as the company. In other words – the bosses. In this case the defendants who are employees of S&O are Christopher Smith, the chairman and former managing director, who was on the board of directors, Nicholas Smith, the sales and marketing director who took an active role in the management of the company and was on the board of directors and Timothy Forrester who was recruited in 2008 as International Sales manager. Two of these defendants, Christopher Smith and Nicholas Smith were guiding minds of the company. If they are guilty of the offences charged in this indictment, then the company

is guilty. You will need to consider the position of the individual defendants first. If you find either or both of them guilty of any of these offences, then go on to consider whether they are directing minds of the company. If they are, then the company is guilty of the offence.

12. **The indictment:** [ref indictment and Graphic G2. Counts Overview (Graphics p.5)] All the counts are brought under the same section of the Prevention of Corruption Act 1906. In each count (see e.g. count 1) the relevant individual defendants employed by S&O and the company S&O, are alleged to have agreed with S&O's agent in the relevant country to make corrupt payments to employees of public bodies. What is a corrupt payment? It is a payment made as an inducement or reward for showing favour to S&O in relation to the business of the corrupt official's employer, in other words, a bribe to influence the official in his decision as to who to award the contract to. The payment of a bribe is more likely to influence the award of the contract in S&O's favour.
13. In count 1, for example, the corrupt official's employer, the Interim Independent Electoral Commission ("IIEC") of Kenya, was responsible for the conduct of elections in that country. This included obtaining printed materials for those elections e.g. ballot papers. The count alleges agreement between the defendants and the agent, Trevy James Oyombra in the case of count 1, to make corrupt payments in relation to the award of and payment for contracts to print materials. Note that it is the agreement to make payments which is the central feature of this offence.
14. The prosecution in fact allege actual payments to officials took place in this case. Evidence of payments, or evidence from which you can conclude that payments must have been made is good evidence of such an agreement. But it is the agreement between defendants and the relevant S&O agent to make these payments which is critical, whether payments were in fact made or not.

15. **Graphics pages 1 – 4 illustrates deals and corrupt deals:** Graphic G1a: You are no doubt all familiar with a simple business transaction for the sale of goods or services. A contract (agreement) is made between supplier and customer, the supplier supplies the goods and invoices the customer the agreed price, and the customer pays for the goods. Graphic G1b is an example of a corrupt transaction. The supplier agrees with an official or employee of the customer to pay that official in order to try and win the contract to supply the goods. The contract is awarded, and goods are supplied and invoiced as for a legitimate transaction. The customer pays for that supply of goods in the normal way, but there is an additional payment to the corrupt official in accordance with the corrupt agreement between the supplier and that official. A corrupt payment in advance of delivery of the goods may properly be described as an inducement. A corrupt payment after delivery may properly be described as a reward. Both an inducement and a reward for showing favour to S&O fall within the definition of the alleged offences in this case.
16. This case features agents and, the prosecution allege, it is often the agent, based in the customer's country, who is responsible for making the corrupt payment. Graphic G1c shows a legitimate business transaction using an agent. The agent is retained by the supplier under a contract to use his best efforts on behalf of the supplier in the country the agent is operating in. Negotiations between the supplier and the customer will often include the agent who is there and can speak to employees of the customer. As a result of successful negotiations a contract (agreement) is reached between supplier and customer for the supply of goods which are duly shipped over and the customer is invoiced by the supplier. The customer pays the invoice amount and the supplier pays the agent his fee, which is usually a commission payment in this case.

17. Graphic G1d shows the difference if it is a corrupt transaction involving the agent. Step 1 is the corrupt agreement to bribe the official or employee who is in a position to influence the award of the contract. This time the agent is involved as well. The agent has agreed with the supplier to bribe the official. Once the supplier has won the contract, the transaction proceeds as for a legitimate contract but after the customer has paid for the goods, the agent receives a payment which includes the bribe to the corrupt official. The supplier is therefore at one step removed from the actual making of the corrupt payment to the official and can say that the payment was all commission to the agent or that if money was paid on it was without the supplier's knowledge. That is, the prosecution allege, what happened in this case.
18. The defendants contest this. They say they had nothing to do with making any corrupt payments at all either as employees of S&O (Christopher Smith, Nicholas Smith and Timothy Forrester) or as agent (Abdirahman Omar on count 5). They say that payments which went to the agents were either for the agent or were to be used by that agent in making entirely legitimate business related payments. They therefore deny either that corrupt payments were made or that they knew about any such corrupt payments, and therefore, they say, they did not agree to make corrupt payments. There will no doubt be other issues raised by the defendants, but these are likely to be central issues in the case.
19. Bear in mind that it is the prosecution who bring this case and it is for the prosecution to prove it. In order to prove these counts the prosecution must make you sure of guilt. The prosecution case is that a close and dispassionate examination of the evidence establishes knowledge by each of these defendants of agreements on the counts with which they are charged to make corrupt payments.
20. The corrupt official is not entitled to receive the payment. It is against the law in the official's country as it is in this country. [KJH0001] The institutions S&O did business with are public

bodies. [KJH0002] They are funded by their governments (and therefore their taxpayers) or in some cases by international aid or a combination of both. The corrupt payments were built into S&O's price for printing the materials so that the inflation in the price as a result of that corruption was passed onto those funding the institutions which contracted with S&O. In a number of the transactions you are concerned with in this case, the bid process by those wanting to secure the contracts was supposed to be by competitive tender, no doubt to try and ensure that these contracts were awarded on merit to the best company for the job. It was usually a stipulation of these tenders that no inducement had been offered to any public official in order to secure the contract. One or other of these defendants on behalf of S&O signed such declarations. The agreement alleged by the prosecution between these defendants to make corrupt payments and the making of corrupt payments which followed made a nonsense of any attempt at competitive tendering on merit. S&O, of course, benefited by making a profit from those contracts to print materials.

21. **The counts – overview: Count 1:** (Graphic G4a p.7) Count 1 concerns the dealings of S&O with the Independent Interim Electoral Commission in Kenya. The defendants charged with this offence are Christopher Smith, Nicholas Smith and the company, S&O. Their agent in Kenya was Trevy James Oyombra ("Trevy"). He was a party to the agreement to commit this offence and bribe officials. He was appointed by S&O as their agent on 5/10/08. (Admission 4) It is, in terms of the value of the contracts and the level of bribes, significantly the most serious count on the indictment. Under this count you are concerned with seven contracts or groups of contracts, that is, agreements to print and produce materials, usually in a secure environment. All the agreements under count 1 were with the Interim Independent Electoral Commission ("IIEC").
22. The IIEC is a public body, funded by the Kenyan Parliament, responsible for organising and conducting elections in Kenya. [Ex. KJH0002], (Admission 5 and 6). This includes Presidential, National Assembly and local government elections. It is responsible for the registration of

voters and maintaining the voter register. It is, unsurprisingly, against the law in Kenya to pay bribes to public officials and for public officials to accept bribes. (Admission 3)

23. The defendants and the agent Trevy James Oyombra (known as Trevy) agreed to bribe a number of officials at the IIEC. They are identified on Graphic G4a (Graphics p.7) and you will see them referred to in the email exchanges between Christopher Smith, Nicholas Smith and Trevy. The positions held by the officials at the IIEC are set out in admission 7.
24. The value of the seven contracts was £1,377,257. S&O received ten payments from the IIEC from 22/9/09 to 8/12/10 in the total sum of £1,366,976. From that sum S&O retained £980,834. £380,859 was paid to Trevy's bank account. Of that sum the prosecution say that it was agreed between the defendants and the agent Trevy that £337,993 was to be paid on by Trevy in bribes to the IIEC officials.
25. **Count 2:** (Graphic G5a p.22) Count 2 concerns S&O's dealings with the Kenyan National Examinations Council ("KNEC"). The defendants are Christopher Smith, Nicholas Smith and S&O. The agent in Kenya was, again, Trevy. There were three agreements for S&O to supply materials to the KNEC. The tender for the first of these contracts was submitted by S&O in September 2009 and the final payment by KNEC to S&O was made in November 2010.
26. The KNEC is the public body in Kenya, created by statute, which is responsible for Kenyan public examinations. It is responsible for setting and maintaining standards, conducting examinations, and issuing examination certificates. The position of the officials who, it was agreed between the defendants and Trevy, were to receive bribes are set out in admission 76.
27. The payments received by S&O from the KNEC for supplying these examination materials was £282,339. The sterling equivalent of £9,604 was paid to the agent Trevy. It was agreed that he was to pay on the sterling equivalent of £2,803 (\$4,000) to officials. In addition S&O paid £5,200 directly to two officials, Paul Wasanga and Ephraim Wanderi.
28. **Count 3: The West African Examinations Council, Ghana** (Graphics G6a p.24) Under count 3 it is alleged that bribes were paid in relation to contracts for the supply of plastic envelopes

and examination materials between S&O and the West African Examinations Council (“WAEC”) in Ghana. The defendants charged under this count are Christopher Smith, Nicholas Smith, Timothy Forrester and S&O. The relevant events took place from January to September 2009. There are two agents working for S&O named under this count. This is because S&O changed agents during 2009. (Admissions 103-105) Ebenezer William (“Bill”) Amarteifio had been S&O’s agent in Ghana since 1993. Although S&O made a further agency agreement with Amarteifio in March 2009, they were not satisfied with his performance and were particularly concerned that he may not have paid the bribes to officials of WAEC which he was supposed to have paid. They therefore sacked Amarteifio and in May 2009 employed a new agent Elliot Agyare.

29. The WAEC is a public body which was set up under a convention signed in 1984 by Ghana and other West African states and began operating in Ghana in 1991. The duties of the WAEC Ghana committee was to carry out public examinations in Ghana and provide advice to the WAEC committee. [Ex, KJH0002 p.8] The roles of the officials who were to be paid bribes under the agreement between the defendants and the agents are set out in admission 107. It is a criminal offence in Ghana to pay a public official a bribe and for a public official to receive a bribe. [KJH001]
30. The contracts which are the subject of count 3 had a value of £272,407. From that sum £24,549 was paid to Bill Amarteifio and £12,366 to Elliot Agyare, who had instructions to pay bribes on to the WAEC officials.
31. **Count 4: The Ministry of the Interior (“MIDEC”), Mauritania** (Graphics G7a p.26-7) The defendants under count 4, Nicholas Smith, Timothy Forrester and S&O, are charged with arranging to pay bribes to officials at the Ministry of the Interior in Mauritania in respect of a contract to print election ballot papers. S&O’s agent in Mauritania, and the point of contact there with the corrupt officials who were the recipients of the bribes, was Karim Reaich.

32. The Ministry of the Interior is a Mauritanian government ministry and part of the central government [KJH 0002 p.9] and, it follows, the officials who worked for it were public officials. Under Mauritanian law it is a criminal offence for an official to accept bribes or to pay a public official bribes. [KJH 0001 p.9]
33. The value of the contracts for the provision of ballot papers was US\$ 902,069.75 (£560,924 sterling equivalent), which was paid to S&O in four payments from 7/5/09 to 15/7/09 (Graphic G7a p.26) and of that sum S&O agreed to pay \$76,182.83 to the Secretary General of MIDEDEC, Mohamed El Hadi Macina. The method of payment differed from the previous corrupt transactions in Kenya and Ghana in that payments for the Mauritanian contract were made directly to corrupt officials or their nominees. In the event S&O made 5 direct payments amounting to €50,000 (£45,219) to French bank accounts held by Macina's two daughters and a further payment, in addition to his agreed commission, to the agent Karim Reaich of £4,560. These payments were made by S&O at Mohamed El Hadi Macina's direction. In addition direct payments were made by S&O to two other MIDEDEC officials on the total sum of £2,550 and a repayment of an over payment to S&O of £1,840 was used to pay an official rather than repaying to MIDEDEC. In total, therefore, bribes of the sterling equivalent of £53,169 were paid by S&O in relation to these contracts.
34. **Count 5: The National Electoral Commission, Somaliland** (Graphic G8a p.28-9): Count 5 alleges against Nicholas Smith, Timothy Forrester, Abdirahman ("Abdi") Omar and S&O that they agreed to pay bribes to officials of the National Electoral Commission ("NEC") in Somaliland in respect of a contract to supply voter identification cards, ballot papers and other election materials, indelible ink and other stationery.
35. Under this count S&O's agent in Somaliland, Abdi Omar, is also a defendant. S&O's association with Abdi Omar went back some years, at least to December 2007. At the time of these contracts in 2010 Abdi Omar traded under a company called UK Global Tech.

36. The National Electoral Commission of Somaliland was a public body. It was established in 2001 by Somaliland law and funded by the Somaliland government. [KJH0002, p.10-11], (Admission 150) Its function was to set the date for and organise elections. It is an offence under the law of Somaliland for a public official to receive a bribe and for anyone to pay an official a bribe. [KJH0001 p.12]
37. Somaliland had declared unilateral independence from Somalia in 1991 (admission 149) and is still not universally recognised as a sovereign state by other states. An organisation called Interpeace (the International Peacebuilding Alliance) worked with the NEC in organising elections in Somaliland. Interpeace had been set up by the United Nations in 1994 and had operated as independent organisation since 2000. Interpeace has a representative on the NEC's tender committee. (Admission 151) It informed S&O of forthcoming tenders for election materials and payments for S&O's contracts came through Interpeace.
38. The total value of the contract for election materials, which was divided into 3 lots was \$1,032,193.64. It appears that only lots 1 and 2 were completed and paid for by the NEC. Payment was through Interpeace. S&O received a payment of \$147,795 (£96,932 sterling equivalent) for lots 1 and 2. From this sum payments of \$32,000 and €3,000 (totalling £22,590) were paid by S&O to the agent Abdi Omar and from that Omar paid on \$12,314 (£8,000) to corrupt officials via a third party.

COUNT 1 IN DETAIL– KENYA - (Independent Interim Electoral Commission "IIEC").

Defendants: Christopher Smith, Nicholas Smith, and Smith & Ouzman Limited.

39. There are 7 contracts or groups of contracts which are the subject of count 1. The defendants who dealt with these contracts, and are charged under count 1, are Christopher Smith and

Nicholas Smith. The company S&O is also charged because both Christopher and Nicholas Smith are and were guiding minds of the company. Trevy James Oyombra was the agent acting for S&O at the direction of Christopher and Nicholas Smith in all of these seven sets of contracts. He had become agent for S&O on 5/10/08 [AFM 0162] and he had been an official at the predecessor to the IIEC, the Electoral Commission of Kenya ("ECK") before becoming S&O's agent. He therefore had a relationship with S&O and specialist knowledge of the requirements of the IIEC.

40. The commission payments: (Graphic G3 p.6): It is a feature of the commission payments in contracts with the IIEC that the commission payments are unusually high. The position is illustrated on Graphic G3 (p.6). The average commission for a transaction with the IIEC during the count 1 period was approximately 27%, and in some cases it was significantly higher. The commission on contract 2 was 31.8% of the total contract price, on contract 3 it was 37.5% and on contract 7 it was 32.5%. The defendants' case is that this commission was predominantly legitimate commission to pay the agent Trevy. If all the commission payments were to be retained by Trevy he did very well in the 18 month period that these transactions took place. He received £380,859 (Graphic G4a p.7).
41. **Contract 1: Shinyalu and Bomachoge By-Election.** (Graphics 4b-c p.8-9). On the 16th June 2009, Nicholas Smith wrote to the IIEC chairman, Ahmed Issack Hassan [Ex AFM 0293]. The letter referred to a meeting between S&O and Hassan at IIEC's offices in Nairobi and quotes for printing voter registration forms, voter ID cards and ballot papers for the urgent Shinyalu and Bomachoge by-election. The price quoted was £32,526. The 200,000 voter ID cards and 20,000 voter registration ("OMR") forms were quickly produced by S&O and delivered on 27/6/09. There remained the ballot papers to produce and ship. The S&O invoice makes clear that they were delivered on 18/8/09 [AFM 0018].
42. Between the first and second shipments email discussions had taken place between Nicholas Smith and the agent Trevy Oyombra about payment of commission to Trevy and the necessity

to pay the Senior Procurement officer at the IIEC, Kenneth Karani and other officials. On 29/6/09 Nick Smith sent Trevy the "attached calculation of payment for the by election requirements", adding that Trevy had been allotted £750 for his efforts. [AFM 0292]. Trevy replied by email on the same date 29/6/09, asking for his £750 to be increased to £1,000. Nicholas Smith replied the following day, 30/6/09, saying he had just texted Trevy and attaching what he described as the accurate figures. [AFM 0292] That attachment was a spreadsheet [AFM 0291] relating to this contract. It is clear that the payment to Trevy is £1,000. It is described on the spreadsheet as 4.6% of the total contract price of £32,526. The remainder off that contract price is divided up between funds from the contract for S&O: £21,950 and a sum of £10,576 for "comm". Comm, the prosecution suggest is short for "commission". The email traffic makes clear who this "comm" is for. In the email of 29/6/09, which Nicholas Smith replied to, Trevy made it clear that it was necessary to distribute this sum covertly by sending it to Trevy's account. "Karani says since his email is tagged with the government website it will not be safe to highlight the same on his email so the understanding is to have everything wired to my account and ill cash it out and give them the amount as expected. were doing this putting in mind the big jobs that will come in the future. they are happy and i know were on the right track.....[Karani] also mentioned to me we should be discrete since all peoples eyes and the government intelligence are watching their every move even on phone to ensure transparency."

43. The need to be "discrete" arose from the illegality of what was being done. It had to be kept away from "government intelligence". Wiring to Trevy's account would avoid suspicions according to Trevy and, Trevy informed Nicholas Smith, Karani had been in communication with the seven other members of the committee about this. He added that they (IIEC officials) had been informed that "this would be done" [i.e. payment made to the officials] after S&O received their money. In a further email from Trevy the following day, 30/6/09, [AFM 0263] Trevy again tried to review the amount he was getting and discussed paying money to IIEC

officials. Referring to the mark up on this deal he said "I knew what we did for omr and voter card was just for the iiec guyz" as Trevy was expecting his cut from the ballot papers part of the deal. This email exchange makes it clear that both Nicholas Smith and Trevy understood and intended that Karani and the other IIEC officials would be paid bribes.

44. There was further email contact before the delivery of the ballot papers on 18/8/09. On 4/8/09, Trevy e mailed Nicholas Smith: [AFM 0261]: "i had a meeting i the morning and assured mr. karani and es team that once you are paid that's when you will send over something and karani got it clear from you at the hilton that this will be done on payment. once that has been done i told em we shall all go to my bank and ill give the chicken to karani although karani hasnt told em how much it is but that's their business. i think all this came about since they are anxious and very broke." He added that they wished to speed up payment and that he explained to them that it took three days for cash receipts to clear his bank account. Trevy added "anyway that was just my brief to you on my meeting with the 7 tender committee members including Karani over a cup of tea at the restaurant down at anniversary tower." Trevy added, somewhat unnecessarily, "these people are after making money since they know they are soon going back to the government, i think they also wanted to confirm through me that what karani has been telling em is the truth" This email relates two meetings with the officials of the IIEC, or some of them. 'Chicken' is the word used by Trevy, on this and other occasions, for bribe. Trevy had been reassuring the officials that they would get their money once IIEC had paid S&O.
45. In the event S&O shipped 142,350 ballot papers. Nicholas Smith knew about this and gave instruction to his staff to leave the quantity off the shipping invoice. [AFM 0190] Karani queried this with Nicholas Smith by email on 15/8/09. [AFM 0260] Nick Smith contacted Trevy about this and Trevy advised Nicholas Smith to let Karani know that the number of ballot papers actually needed was less than 200,000. Trevy stated that he was having breakfast with Karani and others and that payment would be made on the contract as agreed.

46. The ballot papers were delivered to the IIEC on 18/8/09, and on 28/8/09 S&O issued a final invoice for the contract in the sum of £32,526.56. [AFM 0018] (Admissions 11-12) The invoice included a price of Ksh 11.52 per ballot paper. This reflected Trevy's observation in his emails of 30/6/09, where Trevy stated that the commission for the voter forms was just for "the iiec guyz" and that the reason for increasing the price of the ballot papers from 9Ksh to 11Ksh was to pay Trevy his commission. [See AFM 0263] On 22/9/09, the Kenya Ministry of Finance paid the contract amount to S&O. [AFM 0013], (admission 15).
47. Trevy emailed Nicholas Smith the following day, 23/9/09. [AFM 0259] The officials were keen to receive their money. Trevy wrote that he "did let them know that they will be taken care of once you get the pay.....they are desperate for the chicken....Once I have the chicken ill duly pass it to them as agreed no matter where they are." On 24/9/09 Nicholas Smith, as he admitted in interview, created an updated pricing summary [AFM 0019]. The total commission figure was shown as £11,236. This reflected the payments to the IIEC officials and the £1,000 for Trevy, less a payment of £250 which had been made by S&O on 11/8/09 [AFM 0189]. The following day, 25/9/09 S&O sent a payment of £11,576 to Trevy [AFM 0016, AFM 0013], (admission 17)
48. There was a delay before Trevy distributed the payments. Karani got in touch with Nicholas Smith by email on 13/10/09 asking Nicholas Smith to contact him urgently. Nicholas Smith then emailed Trevy: "Karani has been in touch saying he hasn't heard from you. I guess he is after chicken. Please confirm all is distributed." Nicholas Smith was using the word 'chicken' to mean bribe as well. Trevy replied saying that he'd distributed to the others but not yet to Karani as Karani had not been in town. Trevy added that he would let Nicholas Smith know once Trevy had settled with Karani. [AFM 0311]
49. Others in the IIEC group were already looking to the future. Trevy emailed Nicholas Smith on 17/9/09 [AFM 0307] stating that Dena and Nyaundi were "asking that if at all for the big orders what would be their percentage?" He added "now that's tricky....but you don't have to

compromise your work for a bigger chicken. He stated later in the email that "if they go contrary to set regulations it will be an advantage to use but pay has to be fast....i hope you get my point" and "hope we make it....its big cash and good chicken for everyone who has played a role." IIEC subsequently placed some large orders with S&O. (See contracts 2 – 7 below)

50. Nicholas Smith in interview stated that he made no arrangements to pay corrupt payments to IIEC officials, that he did not know if they were in fact paid and that his request on 13/10/09 for confirmation that chicken had been distributed was, he assumed, a reference to facilitation payments being distributed to customs officials. He said that there was no reason for Karani to receive a payment.

Contract 2: 2009-2010 Voter ID forms. (Graphics G4d-e p. 10-11, Admissions 18 - 30)

51. S&O secured a contract with IIEC to produce 18 million voter registration cards. The value of the contract was £278,838.
52. On 11/11/09 Nicholas Smith sent a commercial proposal to one of the IIEC officials, Davis Chirchir. The tender was a substantial bid and included an offer to supply 18 million voter ID cards for £278,838 [AFM 0257, AFM 0258]. On 3/12/09 Ahmed Hassan at the IIEC emailed Nicholas Smith with the formal advertisement and inviting S&O to tender for the contract. [AFM 0148] In fact Trevy had emailed with details of the tender invitation two days earlier on 1/12/09. [AFM 0255]. On 3/12/09 Christopher Smith emailed Nicholas Smith saying that he had spoken with Trevy and Trevy "reckons this tender for IIEC will be ours thanks to Dena pushing". [AFM 0206] Dena was another individual who assisted S&O to arrange bribes for Kenyan officials.

53. S&O worked on the tender in December 2009, submitting a draft bid to Trevy on 20/12/09 [AFM 0149] and a final tender dated 30/12/09. [AFM 0152, AFM 0153]. In the tender S&O certified that it had not offered any inducements to any officials to secure the contract.
54. On 30/12/09 Trevy emailed Nicholas Smith enclosing the details of other companies who had tendered, saying "have a scrutiny of these bidders and let's talk after." [AFM 0254] Trevy emailed Nicholas Smith again on the same day, 30/12/09, [AFM 0253] saying that "when it comes to handling these guys (chicken) I would prefer that if dena or karani or anyone tries to come directly to you please stik to your guns and let them come and discuss non official issues with me and tha involves chicken" Trevy not only had access to information on rival bids, he was going to handle the payment of bribes for these contracts personally. He was able to give details on 30/12/09 of how competitor bids would be rejected by the IIEC except for S&O's and the bid of a company called Punchlines.
55. The voter ID cards contract was awarded to S&O, who formally accepted the contract in writing on 31/1/10. [AFM 0065]. S&O subcontracted the production of half of the forms to a company called Synyang at a cost of £75,250. [AFM 0252, AFM 0251]
56. The allocation of the proceeds of the contract by S&O was apparent from a pricing summary [AFM 0250]. The entries for 'commission' come to a total of £88,840. It is worth noting that after deducting the cost of the commission payments, airfreight and the cost of subcontracting the production of half of the forms, S&O only kept £96,579, out of which they had to pay the costs of producing half the forms.
57. The pricing summary has the following entries "Comm K" £69,840, "Comm D + com" £6,000, "Comm O + H" £3,000 and "Comm T" £10,000. This summary therefore divides up the commission payments. 4 days after S&O wrote accepting the contract, Trevy emailed Nicholas Smith on 4/2/10, stating that "Dena and Chirchir will be in London and would like to meet you on Monday." He stated they "were looking for a figure of 10 million ksh for emself, commissioners and others." He advised Nicholas Smith to let them know the commission the

"board have decided was 6000 pounds as we've earlier discussed to everyon without saying names.....dont mention uve met kebs or oswago or hamida." Trevy went on to state that "these commissioners are seriously fronting and I know they are with punchlines....they want to reap where they do not sow."

58. The total amount demanded in bribes ("For emself, commissioners and others") of 10 million ksh (Kenyan shillings) in Feb 2010 was worth £79,000. This comprises the three commission figures other than "Comm T". "Comm K" of £69,840 is likely to be either a reference to KEBS, the Kenyan Bureau of Standards, referred to in Trevy's email, or is possible a reference to Karani. "Comm D + com" of £6,000 is consistent with a reference to Dena and the commissioners and reflects the £6,000 mentioned in Trevy's email. "Comm O + H" of £3,000 is consistent with a reference to Oswago, the IIEC Chief Electoral Officer, and Hamida, an individual connected to Oswago. Finally "Comm T" of £10,000 refers to Trevy's commission. The bribes figure (removing Trevy's commission) is a sterling figure of £78,840 which is close to the sterling equivalent of the 10 million ksh referred to by Trevy in his email. These entries are the amounts to be paid in bribes in return for getting this contract.
59. On 10/2/10 S&O produced an invoice to the IIEC for £278,838 [AFM 0035] and delivery was in two batches on 10/2/10 and 16/2/10. [AFM 0248, AFM 0247] S&O requested 50% advance payment [AFM 0158] and received two payments of £139,419 on 30/3/10 [AFM 0013] and £139,191.50 on 27/5/10 from the Kenyan Ministry of Finance. Nicholas Smith wrote to Oswago at the IIEC telling him that he had allocated the shortfall of £227.50 against bank charges. [AFM 0034] On receipt of the first of the payments a handwritten note on the banking receipt [AFM 0043] indicated that £44,420 was payable to Trevy as commission. This was duly paid by S&O on 7/4/10. Nicholas Smith wrote to Kenya Commercial Bank, where Trevy's account was held on 9/4/10 stating that Trevy had received the £44,420, which was 50% of the commission on £88,840 for voter ID cards. Nicholas Smith requested the Branch

Manager's "assistance in making payments to the above mentioned person and account which have been transmitted by our company." [AFM 0200]

60. On 2/6/10 Nicholas Smith instructed S&O's account department [AFM 0226] to pay to Trevy the balance of £44,420, which was included in a larger sum of £121,676.64 (the balance of which related to contract 3 below) which was paid to Trevy by S&O that day. [AFM 0013] The payment had been preceded by requests from Trevy for payment. On 1/6/10 Trevy emailed Nicholas Smith, chasing the chicken: "ive spoken to the ceo on delivery of forms and he will get back to me tomorrow. hes so happy iv mentioned that chicken will be with me on friday or saturday. i hope you will be able to make the debit transactions to me today to facilitate me to have the payments done to them by saturday latest." [AFM 0226] Nicholas Smith, apparently unsurprised by the confirmation that bribes were to be paid, replied "Our Finance Director isn't in today so we can't get this payment out today, but I will ensure it is made tomorrow." The following day Nicholas Smith instructed that the balance to Trevy be paid. On 7/6/10 Trevy emailed Nicholas Smith to say that he had not been well and therefore had not yet distributed the money. "I will give people their chicken latest tomorrow. I couldn't do it over the weekend coz I wasn't feeling well." [AFM 0224] The chicken was in the pot.

Contract 3: Hot Deal Elector's Card Pouches ("Hot Pouches") (Graphics G4f-g p. 12-13, Admissions 31-36)

61. This contract relates to the supply of 4 million electors' card pouches. The value of the order was £205,600. S&O subcontracted the production of electors' card pouches to a Chinese company at a cost of \$135,604.21.
62. In March 2010, S&O wrote to Oswago and offered to assist with an urgent delivery of between 2 million and 4 million electors' card pouches [AFM0066]. The IIEC placed an order for 4 million

electors' card pouches. S&O then invoiced the IIEC on 9/3/10 for the order, valued at £205,600 (AFM 0036, Admissions 31-33).

63. S&O produced a pricing schedule on 6/3/10 to calculate the cost and commission payable on such an order (AFM0244) and sent it to Trevy [AFM 0246]. In interview, Nicholas Smith admitted he created the schedule. The schedule reveals that S&O calculated two separate commission payments in addition to the S&O sale price: "Commission Total "T"" represented the commission payable to S&O's agent, Trevy. That figure was £10,000 regardless of the size of the order. The "Total Com" figure was much larger than the commission due to Trevy, and it increased with the size of the order, reaching £67,256.64 on an order of 4 million pouches. This, together with the payment to Trevy amounted to 37% of the contract value.
64. The "Total Com" figure was the figure for bribes to be paid to IIEC officials. This is clear from the pricing schedule [AFM 0244]. It is made clearer by the email from Nicholas Smith to Trevy on 6/3/10. Nicholas Smith emailed the pricing schedule to Trevy: "Please see attached confirmation of pricing for the pouches. I want to check with you that this includes everyone concerned" [AFM 0246]. In interview, Nick Smith said this was a reference to facilitation payments intended for customs officials.
65. Between 12th and 13th March 2010, Nicholas Smith, Christopher Smith, Trevy and Chirchir (IIEC Commissioner) exchanged emails [AFM 0243]. The emails reveal that Chirchir would travel to London the following week and he wanted to visit S&O's factory to review progress on the electors' card pouches. Trevy advised Nicholas Smith and Christopher Smith to refer Chirchir to Trevy for 'facilitation' of their 'needs' in the competitive bidding process: "it is important to note that where as its a competitive bidding that we are subjected to at times we understand their needs and it would also be important for them to contact Myself for facilitation of such kind of needs". Christopher Smith stated in his reply to Trevy that he would give Chirchir "some chicken so he can buy things to take home for his family". An amount was not specified.

66. On 15/3/10 S&O subcontracted the production of electors' card pouches to a Chinese company, Shenzhen Hong Fei Plastic Products Co Ltd, at a cost of \$135,604.21 [AFM 0242] and on 22nd March 2010, the IIEC completed a purchase order for the electors' card pouches, valued at £205,600 [AFM 0238].
67. On 9th April 2010, Nick Smith wrote to Kenya Commercial Bank, and notified them that he would transfer the commission total of £77,256.65 to Trevy's account in relation to the contract for electors' card pouches [AFM 0200]. This was the same instruction as the first transfer to Trevy of the Contract 2 commission for the voter ID cards.
68. On 27th May 2010, S&O received payment of £205,600 from the Kenyan Ministry of Finance [AFM 0238, AFM 0013 and AFM 0037]. On 1st June 2010, Nick Smith exchanged the emails with Trevy referred to under Contract 2 (voter ID cards) above asking for the transfer of funds to pay chicken. [AFM 0226]. The following day, on 2nd June 2010, Nick Smith instructed S&O's account department to pay £121,676.64 to Trevy [AFM 0200] Nick Smith explained the payment included £77,256.64 for this contract for electors' card pouches. The payment was transferred on Friday 4th June 2010 [AFM 0032 and AFM 0013]. On 7th June 2010, Trevy emailed Nick Smith to say he had not been able to distribute the bribes at the weekend because he had been unwell. (See Contract 2) [AFM 0224]
69. **Contract 4: South Mugirango and Matuga Parliamentary and Civic By-Election Ballot Papers**
(Graphics G4h-i p. 14-15, Admissions 37 – 47)
70. This was a contract to supply ballot papers for various By-Elections. S&O was initially under pressure to quote low prices, which would have left them without enough profit to enable them to pay bribes. Trevy held various meetings with Oswago (Chief Electoral Officer) which resulted in the prices being increased after the contract had been awarded to S&O, which enabled S&O to pay bribes to Oswago and his colleagues. The bribes were, as usual, factored into the price of the contract, but in this case the price of the contract was raised with the

collusion of the IIEC corrupt official, following a meeting with Trevy, in order to permit bribes to be paid.

71. The total final value of the contracts was £64,870.31. The ballot papers were dispatched between May and July 2010. An S&O spreadsheet headed "Summary of Orders"² sets out the details of this and other contracts with the IIEC. (Reference WT6259 for these contracts) The spreadsheet split the 'commission' into separate columns. One was headed "Trevy Fee", the other was headed "Commission". The prosecution case is that the column headed "Commission" was for the payment of bribes. The fee payable to Trevy was £1,647.72. The bribes intended for IIEC officials totalled £12,686.61.
72. On 7th May 2010, Oswago (Chief Electoral Officer at the IIEC) wrote to S&O to inform them that they had been awarded a contract to supply 57,000 ballot papers for the upcoming By-Election in South Mugirango on 10th June 2010 [AFM 0235]. The award of the contract appears to have preceded any price tender by S&O in this case.
73. Initially S&O did not intend to pay commission or bribes on this contract. On 10th May 2010, Christopher Smith prepared two replies to Oswago's letter. The first draft reply indicated the price to supply the ballot papers would be £7,410 [AFM 0232]. The second reply gave a lower price: £5,130 [AFM 0231]. On 10/5/10 Christopher Smith indicated this in an email he sent to Trevy, (Nicholas Smith was cc'd) attaching the second letter (above) with the lower price: *"we have sharpened our pencils and all chickens are dead"* [AFM 0256]. Christopher Smith stated in the email that no commission would be available on this contract.
74. In interview, Chris Smith said the phrase *"all chickens are dead"* meant *"no commission, and there's no money, all the chickens are dead [...] chicken is money [...] I've obviously had to reduce I, I can't remember, but I've obviously had to reduce the prices. And said you know I've*

² The original spreadsheet is exhibit AFM 0214. An updated spreadsheet has been identified and will be served in evidence as exhibit AFM 0407. The figures set out in this note reflect those in the updated spreadsheet.

brought the price down, and that's as low as I can go, and there's no commission for you"
[AFM 0010 p.15].

75. By 17th May 2010, Trevy had met with Oswago and agreed a higher price to enable S&O to pay bribes. The price for the ballot papers jumped from £5,130 to £8,179.50. Nick Smith emailed Oswago (the Chief Electoral officer at the IIEC) referring to a meeting he had with Trevy and confirming the prices that were agreed [AFM 0166]. Nick Smith attached a letter and invoices showing a price of £8,179.50 for 57,000 ballot papers for the South Mugirango By-Elections. The prices for 51,000 ballot papers for the Matuga By-Elections and 230,800 ballot papers for the Civic By-Elections were £7,318.50 and £36,581.80 respectively [AFM 0165]. Those prices would later jump up again.
76. On 14th May 2010, S&O sent letters to several IIEC officials inviting them to visit the S&O factory during the week of 24th May 2010 to view printing of ballot papers [AFM 0164]. In an exchange of emails on 19th May 2010, between Trevy and Nicholas Smith, Trevy discussed a potential further contract for ballot papers for Matuga [AFM 0312], and they went on to discuss the visit of IIEC officials to S&O and the payment of bribes, which were described again as *"chicken"*. Nick Smith wrote *"We will provide some chicken for the visitors, £250 each. The rest is after payment"*. Trevy warned against paying *"chicken"* to the visitors, stating *"we don't wana send a wrong picture to the other person from Government printer (hes not an employee of IIEC) and the commissioner whos coming"*. Trevy explained that the officials had an out of office allowance and he suggested that S&O should just *"take care of their travel expenses within uk incase they need to roam around and maybe hotel"*. Trevy also stated that *"if we had sholei, ceo [Oswago], chirchir, nyaundi abd the finance dir, proc man [Karani] they would understand as they are the ones driving this orders to us"*. Nick Smith replied *"Understood. We will keep our chickens for now"*.
77. In interview, Chris Smith said the *"chicken"* referred to in this email was travel expenses of £250 for the visiting officials, which S&O would commonly pay. Nick Smith said the reference

to “*chicken*” meant “*subsistence*” for the visiting officials, which S&O might have later deducted from the commission due to Trevy.

78. Following a further meeting between Oswago and Trevy the value of these contracts rose again. This was done, the prosecution suggest, to enable the payment of bribes to officials whilst maintaining some profit for S&O. On 21st May 2010, Warren Sanders of S&O emailed Nick Smith attaching a draft letter to Oswago which set out details of an updated printing specification [AFM 0230]. The attached letter was in Nick Smith’s name. It referred to a further meeting between Oswago and Trevy and set out further price increases for the ballot papers for the Parliamentary and Civic By-Election [AFM 0229]: This time the price for the 57,000 ballot papers for South Mugirango increased from £8,179.50 to £9,034.50 (following on top of the previous price jump from £5,130 to £8,179.50 between 10th May and 17th May); the price for the 51,000 ballot papers for Matuga increased from £7,318.50 to £8,083.50; the price for 230,800 ballot papers for the Civic By-Election increased from £36,581.80 to £51,583.80.
79. On 26th May 2010, Oswago wrote to S&O enclosing a Republic of Kenya Local Purchase Order made out to S&O in relation to the South Mugirango By-Elections [AFM 0228]. The value of the order had increased again to £9,958.74. The purchase order also reduced the number of ballot papers to be supplied from 51,000 to 48,150 (plus associated forms).
80. On 16th June 2010, the IIEC wrote to S&O awarding them a contract to supply further forms for the Referendum, the Matuga By-Election and the Civic Wards By-Election. [AFM 0222] Between May and July 2010, S&O shipped 48,150 ballot papers for South Mugirango (reduced from the initial figure of 57,000) [AFM 0227]; 48,550 ballot papers for Matuga (reduced from the initial figure of 51,000) [AFM 0170]; and 187,400 ballot papers for Civic By-Elections (reduced from the initial figure of 230,800) [AFM 0171]. The total value of the orders was £64,870.31.
81. S&O produced a commission spreadsheet which calculated a commission figure for Trevy and a separate “*Commission*” figure. The prosecution case is that this ‘commission’ figure

represented the bribes intended for officials at the IIEC [AFM 0214 – to be replaced with updated spreadsheet AFM 0407]. The spreadsheet shows that Trevy's fee was £1,647.72. The commission column amounted to a further payment, through Trevy, of £12,686.61. Therefore, the total payment to be sent to Trevy was £14,334.33.

82. On 10th and 28th September 2010, S&O received payment for this contract together with payments for other contracts [AFM 0014]. On 20th September and 7th October 2010, S&O sent Trevy payments totalling £95,672.20, which included £14,334.33 to cover both Trevy's fee and bribes to be distributed to officials in respect of this contract [AFM 0014, AFM 0212 and AFM 0214].

Contract 5: Referendum Ballot Papers (Graphics 4j-k p 16-17; Admissions 48-58)

83. This was a substantial contract to supply approximately 14.6 million ballot papers and associated forms for a Referendum. The items were dispatched in July 2010. The total contract value was £431,161.15. Trevy's fee for this contract was £11,872.05. The prosecution case is that bribes intended for officials at the IIEC and the Kenyan Bureau of Standards ("KEBS") totalled £108,203.82, which was reduced to £105,193.82 to take account of "hotel" costs paid by S&O during a 3-4 day visit of IIEC officials to S&O's factory on 14th July 2010³.
84. In a series of emails dated 1-3/5/10 between Trevy and Christopher Smith, with Nicholas Smith cc'd, the question of proposed corrupt payments was addressed explicitly. [AFM 0237, AFM 0236] Trevy was upbeat about S&O's prospects of landing this lucrative contract. He reported that S&O were popular by this time with the IIEC because of previous corrupt payments which had by this time been paid or were agreed and awaiting payment and because S&O managed to combine the corrupt payments with reliable quality of product. He sought to persuade Christopher and Nicholas Smith that bribes should be offered to secure

³ The figures are taken from the updated spreadsheet to be served as AFM 0407, rather than the original exhibit AFM 0214.

this contract and went on to discuss the level of these bribes. Christopher Smith took the lead on setting the bid price, and although he thought it was tight, he replied that he could accommodate both Trevy's commission and payment for the "guys" within the bid price.

85. Trevy reported that the officials at the IIEC were due to leave the IIEC at the end of 2010. The email on 1/5/10 [AFM 0237] was to Christopher Smith and Nicholas Smith, but was apparently directed to Christopher, ("Nik will fill you in on how we worked out on their demands".) Trevy explained that the officials wanted to take the opportunity while they were at the IIEC to make money: *"Please also be advised that these guys are also here to make money [...] These people are only in IIEC till the end of the year so they are after making money and they will play game with whoever puts what they want. They've reiterated that its better to make money with us coz we don't compromise on quality but at the same time they want to make money"*. Trevy added that he had spoken to the CEO (Chief Electoral Officer, Oswago) on the telephone and he explained how a figure of KSh 0.92 (as part of the bid price) was split between bribes for public officials at the KEBS, commissioners at the IIEC, Oswago and Dena. Trevy stated that Oswago told him he did not want to work with one of S&O's competitors, Lithotech. By contrast, Oswago had assured Trevy that he would continue to work with S&O, who had paid him bribes in the past and would continue to pay him bribes in the future: *"He believes in S&O and that's what is important and we've given him money for the voters card and after payment for balance and pouches we are set to give him Gbp 21000 that Kshs 2,100,000. So he knows we can deliver both materially and money and I think this good will is important"*.
86. Trevy reported to Christopher Smith that he had discussed with Oswago the level of the bribes for the IIEC officials (KSh 0.55 per ballot paper). The level of uplift for the bribe was reduced because of the size of the proposed order: *"He says they can only shelve small and he thinks kshs 0.55 is good for all of them. Nik [Nick Smith] will fill you in on how we worked out on their demands. CEO [Oswago] has also said the quantities may be between 10 – 11 million so that's why they cant go beyond 0.55. Let me know what you think about it."*

87. Trevy went on to discuss the level of bribes for officials at KEBS, which, at KSh 0.20 per ballot paper was lower than that proposed by the officials at IIEC (KSh 0.20 per ballot paper) and Trevy's own fee (KSh 0.10 per ballot paper), which would all be added to S&O's price: *"KEBS [Kenyan Bureau of Standards] are key guys so lets shelve theirs to Ksh 0. 20 this and any other person who will be in the technical committee. I was of getting Ksh 0.10. This makes a total commission of Kshs 0.85 to be loaded to your price"*.
88. In their interviews, Christopher Smith and Nicholas Smith both admitted that the above email suggested IIEC officials were susceptible to bribes. However, they both said they did not believe that was true and they suspected Dena was responsible for the wording in the email. Chris Smith said that initially S&O did factor those pricing suggestions into their prices because they suspected Dena would pass those prices on to their competitor. Therefore, they did not want to give Dena the correct prices. Nick Smith said they ignored the remarks in Trevy's email and did not factor payments to third parties into their bid submission.
89. In the emails of 2-3/5/10, Trevy, Chris Smith and Nick Smith exchanged emails in which they continued to discuss the levels of bribes they would pay for this contract [AFM 0236]. Chris Smith said S&O would find it difficult to pay the levels of bribes that were being suggested: *"I want to print this [job], but these men are very demanding"*. Initially, Chris Smith said he would allow KSh 0.77 per ballot paper for *"guys"*, and a further KSh 0.05 per ballot paper for *"extras"*, (i.e. KSh 0.82 in total commission per ballot paper). Chris Smith calculated the commission to be an additional 34% on top of the cost of each ballot paper and he asked Trevy *"Will they go for this"*. In response, Trevy wrote *"My guys are after money yes, but this should not make us not win the tender"*. Trevy suggested that they might be able to bargain with the officials after they secured the contract. He proposed adding KSh 0.75 to the price to pay bribes. Trevy made it clear that his own fee was a separate consideration: *"as for me you will see what to do"*.
90. Christopher Smith agreed with Trevy's proposal to add Ksh 0.75 to pay for bribes and he proposed adding another KSh 0.08 for Trevy's fee, which increased the total price to KSh 3.13:

"Ok Trevy. I can just do that. Bid 3.13 ksh. Guys 0.75 + you 0.08. S+O 2.30. We will send it all to Bid bond tomorrow." Christopher Smith had factored 0.75 Ksh bribes per ballot paper into the bid price.

91. On 12th May 2010, S&O produced their bid submission for the tender. The prices had been converted into Sterling. The total price for 18 million ballot papers was £448,200. (AFM 0163, admission 48).
92. In an email on 1/6/10 ([AFM 0226] - referred to above in relation to Contracts 2 and 3), Trevy reported to Nick Smith that he had spoken to the CEO (Oswago) and informed him that the *"chicken"* for Contracts 2 and 3 would be ready for distribution on Friday or Saturday. Trevy then went on to report that the IIEC would pay S&O in advance for the Referendum ballot papers because it suited them to pay before the close of their financial year: *"IIEC will pay us in advance for referendum ballot papers because of the close of financial year in June."*
93. In his reply, Nicholas Smith, having confirmed that he was sending Trevy the money for Contracts 2 and 3 (see above) the following day, referred to the possibility of an advance payment for the Referendum contract and he confirmed that if S&O received an advance payment, they would pay immediately: *"If it is a straight advance payment then of course we are happy, and the chickens will fly straight away"*. (i.e. the bribes would be paid straight away).
94. On 7th June 2010, Nick Smith informed Trevy that S&O wanted to start printing the Referendum ballot papers on Monday 14th June in order to deliver them by 10th July [AFM 0224]. Four batches of Referendum ballot papers (totalling 14.51 million ballot papers) were dispatched between 20th June and 28th July 2010. The shipping invoices show the total value of those papers was £361,299.01. [AFM 0218, AFM 0217, AFM 0199 and AFM 0203]. The specific value for the last 10,000 ballot papers invoiced the IIEC £3,977.19 for a further 121,900 ballot papers and associated forms [AFM 0217].

95. On 14th July 2010, S&O hosted a 3-4 day visit from five officials from the IIEC, namely Hassan, Nyaundi, Oswago, Tororey and Sang [AFM 0172]. Nick Smith directed other staff to make arrangements for this visit, which included booking hotel accommodation for the officials. Hotel costs of £3,010 were later deducted from the bribes paid to the officials, which appear to relate to this visit [Originally AFM0214, updated spreadsheet is AFM 0407].
96. On 26th July 2010 Nick Smith and Trevy exchanged emails in which they agreed to increase the price for the shipment of 10,000 Referendum ballot papers. The earlier shipping invoice indicated these papers were priced at £249 [AFM 0203]. Trevy and Nick Smith agreed to invoice the IIEC for £7,550 for these papers. Trevy reported that he had told the IIEC the cost would be between *"5 – 8 thousand pounds"*. Nick Smith then suggested the invoice be made out for £7,400 to *"subsidise the hassle-factor for the packing lists as there is a lot of time being spent on this"* [AFM 0216]. The eventual invoice gave a price of £7,550 [AFM 0309]. Nick Smith told Trevy *"I have included the usual commission in this, plus some extra special Trevy consultancy fee..."*.
97. Nick Smith then sent Gladys Boss of the IIEC an email with an explanation for the price increase [AFM 0178]: *"For the "Shipping Invoice" we just used the standard price. But I believe that Trevy has explained to you that we had to stop printing another job, completely break the printing press down to be able to print this extra requirement, and then perform another press make ready to start printing the other job again. This has cost quite a bit more unfortunately."*
98. S&O's statement of account to the IIEC, dated 8th August 2010, shows there were two further shipments for which shipping invoices have not been found. The invoices for those shipments were attached to the statement of account. They show those shipments were for 339,300 copies of Form 6, and 2,100 copies of Form 7 [AFM 0180]. S&O's 'summary of orders' spreadsheet dated 9th December 2010⁴, indicates that the orders for 339,300 copies of Form

⁴ To be served

6 and 2,100 copies of Form 7 were priced at £56,494.06 and £1,755.81 respectively. The total contract price for the Referendum ballot papers was £431,193.82.

99. The "Summary of Orders" spreadsheet, details the invoices relating to the Referendum ballot papers (WT6450.01, WT6450.02, and WT6450.03) [Originally AFM 0214, now AFM 0407]. The spreadsheet shows that of the total price of £431,161.15, Trevy's fee was £11,872.05. The Commission column totalled £108,203.82. The prosecution contend that this last figure was for the "guys" as Christopher Smith had put it, i.e. the officials at IIEC and KEBS.
100. The spreadsheet also shows that the 'Commission' was reduced by £3,010 to £105,193.82 to take account of hotel costs. That is, inferentially, payment of expenses to the IIEC officials who came on the visit to S&O's factory on 14th July 2010. The fact that those costs were deducted from the total "*commission*" figure is significant: it is evidence that the amount in the 'commission' column represented money that was intended to benefit public officials.
101. On 18th August, 28th September, and 8th December 2010, S&O received payments for this contract [AFM 0014]. The receipt of the first payment prompted an email enquiry on 24/8/10 from Trevy to Nicholas Smith [AFM 0213]: "*let me know once you send the commission for the referendum. These guys are already on the table waiting to be served.*" In interview, Nicholas Smith said he did not know what Trevy was referring to when he said "*these guys are already on the table waiting to be served*". He denied that it was a reference to onward payment to officials.
102. S&O made the payments on 25th August and 7th October 2010, sending Trevy payments totalling £172,837.27. The prosecution case that this included £117,065.87 to cover Trevy's fee (£11,872.05) and the bribes to be distributed to officials in respect of this contract (£108,203.82 minus £3,010 "hotel" costs) [AFM 0014, AFM 0212 and AFM 0214].⁵

Contract 6: OMR Correction and Nomination Forms (Graphics G4I-m p. 18-19)

⁵ Figures taken from updated spreadsheet AFM 0407 replacing AFM 0214

103. This began as a contract to supply 1.5 million OMR correction forms and 1,000 nomination forms. In the end, S&O supplied 5 million OMR correction forms (plus an extra 23,000 OMR forms free of charge) and 1,000 nomination forms. The forms were dispatched between May and July 2010. The contract was worth £206,230. Trevy's fee was £4,600. (See 'Summary of Orders' spreadsheet, Exhibit AFM 0407) The commission payments on the Summary of Orders spreadsheet was £24,250. The prosecution case is that this sum was intended for bribing public officials. (S&O references on spreadsheet: WT 6310.01, WT6311.01, WT6446.01 and WT6494.01)
104. On 26th May 2010, Oswago (Chief Electoral Officer) wrote to S&O requesting them to print 1.5 million OMR forms for correction of the voter register and 1,000 nomination forms [AFM 0228].
105. On 4th June 2010, Nick Smith asked Trevy to obtain a Local Purchase Order ("LPO") for the OMR forms contract [AFM 0224]. SFO investigators have been able to locate shipping invoices for seven shipments totalling 4,584,000 forms [AFM 0225, AFM 0167, AFM 0223, AFM 0169, AFM 0168, AFM 0221, and AFM 0220]. Those shipments were dispatched between 26th May and 8th July 2010. One shipment on 24th June 2010 was said to include an extra 23,000 OMR forms free of charge. The total value of those shipments was £188,268.80.
106. S&O produced a statement of account, dated 8th August 2010, which suggests there must have been a further shipment of 440,000 OMR forms valued at £17,960.80, taking the total to 5 million OMR correction forms (plus an additional 23,000 OMR forms free of charge) and 1,000 nomination forms [AFM 0180].
107. The S&O spreadsheet, which indicates that Trevy's fee for this contract was £4,600. The further column headed "*Commission*" amounts to £24,250. For reasons already given, the prosecution say that this sum was intended for the payment of bribes.
108. On 10th and 28th September 2010, S&O received payments totalling £422,007, which included £206,230 from the IIEC in respect of this contract [AFM 0014]. On 20th September and 7th

October 2010, S&O transferred payments totalling £95,675.20 to Trevy, which included £28,850 to cover Trevy's fee and the bribes to be distributed to officials in respect of this contract [AFM 0014, AFM 0212 and AFM 0214].

Contract 7: Ultra violet lights and Other Parliamentary and Civic Ballot Papers (Graphics G4n-o p. 20-21; Admissions 64 – 73)

109. S&O supplied the IIEC with 34,000 ultra violet detection lights, which are referred to in the statement of account produced for the IIEC. They appear to have been delivered in July 2010. The total value of this contract was **£88,400**. The spreadsheet of payments shows that Trevy's fee was **£1,530** and the 'Commission' payment, which the prosecution allege was for the payment of bribes, was **£27,200**. (S&O ref WT 6842.01)
110. On 28th September and 8th December 2010, S&O received payments totalling £369,728.91, which included payment for these items and other contracts [AFM 0014]. On 7th October 2010, S&O transferred £78,739.92 to Trevy, which included £28,730 to cover Trevy's fee for these items (£1,530) and the further payment of £27,200 [AFM 0014, AFM 0212 and AFM 0214]. (For full details regarding these payments, see paragraphs 238 to 246 of Edwin Harvey's statement of 30th October 2013).
111. S&O also supplied the IIEC with 490,300 Parliamentary ballot papers and 19,000 Civic ballot papers. These items were dispatched in September 2010. S&O redrafted their pricing summary four times for these items, increasing the total price on each occasion. The final price was £69,631.46⁶. Trevy's fee was £2,216.47. The commission, intended, the prosecution say,

⁶ Figures amended. Spreadsheet to be served in evidence as Exhibit AFM 0407.

as bribes was £11,990.32. (S&O references on Spreadsheet of Orders: WT6820, WT7070/7081)

112. Between 31st August and 6th September 2010, S&O produced four separate versions of a pricing summary for the Parliamentary and Civic ballot papers [AFM 0211, AFM 0210, AFM 0209, and AFM 0208]. The pricing summaries set out both Trevy's fee (described as "*Comm TO* [i.e. Trevy Oyombra]" and the additional commission payments (described as "*Comm*").
113. Between the first and the last versions of the pricing summary, S&O increased the total price from £50,879.20 to £61,859.26. The payment retained by S&O increased from £44,284 to £49,102.42. Trevy's fee increased from £1,076.78 to £2,054.82. The 'Comm' figure increased from £5,518.16 to £10,702.02. The prosecution case is that the bribery figure was being increased, to the benefit of the corrupt public officials at the IIEC, with the increase in the price.
114. On 13th September 2010, S&O dispatched the Parliamentary and Civic ballot papers and associated forms. The shipping invoice reflected the final pricing summary, and gave a price of £61,859.26 [AFM 0207]. S&O produced a summary of orders, dated 9th December 2010, which indicates there was a further order for 25,750 By-Election ballot papers and associated forms priced at £7,772.20.
115. On 28th September and 8th December 2010, S&O received payments totalling £385,051, which included payment for these items and other contracts [AFM 0014]. On 15th December 2010, S&O transferred £13,261.61 to Trevy, which was part payment of Trevy's own commission and the bribery payment for this contract [AFM 0014].

Outline of the interviews of Christopher Smith and Nicholas Smith on the Kenyan Transaction

116. Some answers given by Christopher Smith and Nicholas Smith in interview are set out above. The following is an outline only.

117. **Christopher Smith** stated that he was the chairman of the company and had played less of a front line role in recent years and for the last 5 or 6 years. He had also suffered from some ill-health. He denied that the IIEC had been paid bribes. He stated that Trevy had been paid such a high level of commission, which he said had been authorised by Nicholas Smith, because Trevy worked so hard to get the contracts. He said that a 35% commission was a standard level for the Electoral Commission. He said that all of the commission money was meant for Trevy. He said that 'chicken' was a reference to a payment but not to a bribe. It was just an ordinary payment which he would make to Trevy in good faith. Christopher Smith thought that Trevy's offer to give Karani the chicken sounded like waffle. When Trevy said that Karani has been in touch saying that he hasn't heard from you, "I guess he's after chicken", Christopher Smith thought that it looked like Karani was asking for money, but he (Christopher Smith) did not deal directly with him and did not know if Nicholas Smith did. S&O would not, he said, deal directly with people like that. Chicken could mean money to an agent, but it could mean several things such as a CD, money for transport or medical treatment. Christopher Smith's father used to give out actual chickens. The money to Karani could be money for transport. Christopher Smith was not aware of any bribes.
118. **Nicholas Smith** said that Trevy earned his commission because he had done a lot of running around to secure the contracts. The commission payments, which Nicholas Smith calculated, were for Trevy alone. "Chicken" is, he said, a loose term. It can mean money, cash, payment, facilitation payments, but S&O do not pay bribes. In relation to the 2009 by-election deal (Contract 1), he said that Trevy's reference to the demands of Nyaundi and Dena to know their percentage had to be seen in the context of other emails where Trevy made it clear that S&O do not pay kickbacks. Nicholas Smith stated that he did not know what the email meant when it referred to Nyaundi (an IIEC official) knowing what is involved in the chicken and communicating this with the Chair [AFM 0307]. Regarding the email of 23/9/09 [AFM 0259] Nicholas Smith did not remember what was specifically being referred to when Trevy stated

that they were “desperate for the chicken”. He also stated that where he used “chicken” in an email he was referring to a subsistence payment. He denied that S&O made any payment to Karani and did not know why Karani was said by Trevy to be after chicken or why Trevy would pay him anything. Karani works at the IIEC.

119. **The meaning of “chicken”:** Both defendants and Trevy used the word chicken in emails. In December 2008 Trevy emailed Christopher Smith about business which Trevy was trying to develop for S&O with the National Registration Bureau in Kenya. Trevy described a meeting he had with a procurement officer called Dixon Lugonzo: “well i was successful on the mission. i had 2 hours of his time and we spoke at length. he was so surprised i know a lot of procurement regulations and the loopholes until i told em im a procurement officer with the former ECK now to be known as IIEC.....1st he asked me if you are a nice guy and if you give chicken and yes I told em that is why i was there....he is very comfortable working with me coz i told em we have to work with you and you will make that change in his life only if he gives us that order for the forms....I told and assured Dixon and his team that Chicken is not a problem 1st Dixon should be the one dealing with us to avoid suspicions and the like....Once we know your cost we can increase it in a reasonable manner to take care of them. The procedures they use is what we also used to use during procurement although ours is tough theirs has so many loopholes infact when i mentioned to him he got so astonished. I told em still young as iam and we should take the opportunity to make money and not just help people who will not help us in return. i even told em you never know in life he might not even be there tomorrow so whatever chance we get we utilize and more so now that they have the tender he should guide us we get the contract the rest will be peanuts. Hes an nice guy smith he is in my pockets now, lets use em to get the contract and as i promised em we get the order he gets chicken.....Smith these peoples problem is chiken after award and I told them as lond as we get the tender and after looking at our margins then will definately give them the chicken...”

COUNT 2: The Kenya National Examinations Council (“KNEC”)

Defendants: Christopher Smith, Nicholas Smith and Smith & Ouzman Limited.

120. The Kenya National Examinations Council (“KNEC”) is responsible for the administration of public examinations in Kenya. S&O, and particularly, Christopher Smith, had a longstanding relationship with the KNEC, particularly with the computer manager there, Ephraim Wanderi, going back 30 years as he explained in his interview, and Nicholas Smith stated in an email to Christopher Smith (AFM 0147).
121. Three contracts were awarded to S&O by KNEC over the indictment period; a contract for the production and printing of OMR forms, a contract for the production of examination certificates and OMR mark sheets, and a contract to produce photo collection forms. The amount paid to S&O by KNEC in relation to these contracts by November 2010 was £282,339. Trevy Oyombra was instructed by Nicholas Smith to pay four of the KNEC officials US\$1,000 each. In addition the executive secretary of KNEC, Paul Wasanga, was paid £5,000 cash when he visited S&O’s premises in Eastbourne in July 2010, and Christopher Smith made a payment of £200 by Western Union to Ephraim Wanderi, the KNEC computer manager on 21/5/10.
122. There was a steady flow of business through 2008 (see e.g. AFM 0055, AFM 0056, AFM 0061, AFM 0062) but it is clear that Nicholas and Christopher Smith took the view that they had lost business to competitors. In 2009 they set about getting the business back.
123. In June 2009 Nicholas Smith went to Kenya and met KNEC officials. He met Ephraim Wanderi to discuss specifications for the supply of certificates and OMR forms. In his follow-up email to Wanderi on 15/6/09 Nicholas Smith discussed options for a forthcoming printing contract and added that he looked forward to receiving the tender documents and added, “sincerely hope that this year we can win this work back and continue our relationship with KNEC.” (AFM 0288) As he made clear in an email to Christopher Smith (AFM 0294), he also met Paul Wasanga, the KNEC executive secretary and Michael Ndua, the principal supplies officer. Ndua was aware that S&O

really wanted this business back although Nicholas Smith was “not sure he really needs anything....” There was dissatisfaction at KNEC with the existing supplier and Nicholas Smith wished to exploit the opportunity and secure the contract.

124. Ephraim Wanderi was no doubt well-disposed towards S&O and to Christopher Smith in particular. Christopher Smith, through S&O, made gifts of electronic goods to Wanderi and his sons. An HP laptop computer was given to Wanderi (AFM 0052), in July 2009 Wanderi’s son received a Samsung notebook (AFM 0072, AFM 0078) and in August 2009 a PlayStation 3 games console and games. (AFM 0053, AFM 0075, AFM 0076) Christopher Smith explained in his interview that these were gifts based on long standing friendship. There is nothing wrong in giving gifts to a friend. It was, however, no coincidence that the gifts to Wanderi’s son were made at the time S&O were on a drive to get back the business with KNEC which they had lost.
125. On 22/7/09 Nicholas Smith emailed Christopher Smith reporting that Wasanga, the executive secretary was keen for S&O to win back the business. He added: “Wasanga is playing ball and certainly wants us to win this back.....I’ve reiterated that we will make inclusion for the Min.” (AFM0339)
126. By 30/9/09 S&O submitted bids for two contracts, one for the supply of 1,265,000 OMR forms and OMR mark sheets [AFM 0186] and one for the supply of 1,360,700 certificates [AFM 0187, (subsequently amended a week later, AFM 0185)] and Nicholas Smith instructed the agent, Trevy, to attend the tender bid opening on 7/10/09. [AFM 0289 and AFM 0287]. Nicholas Smith presented an update to Christopher Smith on 6/11/09 [AFM 0147]. He confirmed that the contract to print the entry forms (OMR forms) was to be awarded to S&O because it was urgent but that the certificate printing and OMR mark sheets contracts were to be re-tendered.
127. KNEC confirmed the award of the OMR forms contract on 16/11/09 (AFM 0285) and S&O signed the contract on 25/11/09 (AFM 0281). The value of the contract was £30,414.70. S&O invoiced for this contract between January and March 2010 (AFM 0280, AFM 0279 and AFM 0161). The

eventual total, because of the necessity to print additional forms, was £37,528.70. Two payments were made by KNEC in relation to this contract, of £30,415 on 23/3/10 and £915 on 30/3/10.

128. The certificates contract was awarded to S&O on 26/3/10 (AFM 0277). The final value of this contract, after corrections, was £216,576.67 (AFM 0273, AFM 0274, AFM 0275).
129. The award of the large certificates contract prompted Nicholas Smith to arrange for payments to be made to the KNEC officials. On 5/4/10 Nicholas Smith sent his proposal for payments to KNEC officials to Trevy. (AFM 0272) "Hi Trevy, Have has a look at the figures, and I suggest that we put USD1,000 each for Gitogo, Wanderi, Ndua and Wanyanga. USD 5,000 for yourself. I will separately take care of Wasanga. After receipt of payment for the certificates. Please confirm." Trevy replied, "That's oky we had agreed it was just a handshake as we did not take care of anyone while tendering.... I'll have that digested." Nicholas Smith was, the prosecution suggest, making arrangements for bribes to be paid to KNEC officials. Trevy was to pay Gitogo (the ICT manager), Wanderi (the computer manager), Ndua (the principal supplies officer) and Wanyanga (the deputy CEO) Trevy himself was to receive \$5,000 for his work. Nicholas Smith was going to pay the bribe to Wasanga (the executive secretary) himself. As usual the arrangement was to pay the bribes after receipt of payment on the contract.
130. On 21/5/10 Christopher Smith transferred £200 to Ephraim Wanderi by Western Union (AFM 0040, AFM 0013, AFM 0041). Christopher Smith stated in interview that this was to pay hospital fees for Wanderi's father.
131. Despite the plan to pay the KNEC officials after receipt of payment for the certificates contract, the officials appeared to be impatient to receive their money. In an email to Nicholas Smith on 26/5/10 (AFM 0234) Trevy wrote, "ive been speaking to gitogo.....please advice me at what stage are they to be given the usd 1,000 as you had earlier indicated. hes asked me when im ready to see them and i couldnt answer well. please advice me before i make a mistake that i cant reverse".
132. On the same day Nicholas Smith gave instructions to S&O finance department to pay \$1,000 to Trevy. He stated that the payment was "in respect of Kenya National Examinations Council OMR

forms produced earlier in the year, and can be charged as an advance against Certificate orders which are currently in the factory." (AFM 0038) Payment was made on 28/5/10. (AFM 0013) This email instruction was copied to Trevy and prompted a response the following day from Trevy to Nicholas Smith (AFM 0271), "hi nik, I think uv been too busy. We were to give gitogo, ndua and the deputy ceo (mwanyaga) each 1000 usd. I wouldn't want to give gitogo alone as these people discuss n it may not be wel to the rest". Nicholas Smith replied on 7/6/10, "Hi Trevy, You are correct on this and thank you for the reminder. USD 1,000.00 has already been paid last week....We will pay an additional USD 2,000.00 this week, so that you can disperse as you have stated." The \$2,000 was paid on 8/6/10. Its sterling equivalent was £1,404.89 (AFM 0270, AFM 0013).

133. A further contract, to print and supply photo collection forms, was awarded to S&O by KNEC in June 2010. The contract was signed on 17/6/10. (AFM 0265) The total contract value was £67,152.22. (AFM 0267, AFM 0266) On 4/8/10 S&O invoiced in the sum of £31,260.69 for completion of part of this contract. (AFM 0268)
134. Nicholas Smith had indicated to Trevy that he would take care of Paul Wasanga, the executive secretary of the KNEC, himself. Wasanga visited S&O's premises in Eastbourne on 15/7/10 (AFM 0174). On 11/7/10 Nicholas Smith and Christopher Smith discussed the forthcoming visit. (AFM 0201) Nicholas Smith asked Christopher Smith "do we need to provide subsistence? How much is usual?" He asked whether Christopher Smith had organised a car. Christopher Smith replied "I have always given £5,000 which will be fine, he missed a year." Christopher Smith confirmed that he would organise the car for Wasanga. Nicholas Smith replied, confirming that he would sort out the cash. The following day, 12/7/10, Nicholas Smith instructed Peter Ellis in the finance department of S&O to provide £5,000 cash by Thursday morning, which was to be recorded against the certificates contract. (AFM 0176) The email attached a receipt for the cash in the form of a letter dated 15/7/10 from S&O to Wasanga enclosing "£5,000 subsistence payment to assist you in the duration of your stay in the United Kingdom." (AFM 0175) Nicholas Smith had looked

after Paul Wasanga. The S&O minute of the meeting with Paul Wasanga on 15/7/10 indicates that they discussed extending the certificates contract without a further tendering process.

135. On 20/7/10 S&O sent Trevy £4,500 in relation to the certificates contract. This may have included funds to pay Ephraim Wanderi his \$1,000, the computer manager at KNEC, who appears to have missed out on the original distribution. This would have left \$5,000 for Trevy. (AFM 0014, AFM 0031)
136. On 31/8/10 Nicholas Smith sent Trevy a statement of account which showed that at that stage £39,254.69, excluding the certificates contract. Nicholas Smith informed Trevy that when S&O received payment for the large certificates contract he would "arrange for the payment of GBP 3,000 to be made to your account for your own efforts that you've been doing here. I trust that is OK."
137. On 22/11/10 S&O were paid £251,009 for the certificates contract and the balance on the statement of account issued by Nicholas Smith on 31/8/10 [AFM 0014]. This brought the total paid to S&O on these contracts by the end of November 2010 to £287,176.06.
138. Following receipt of payment for the certificates contract, S&O sent Trevy a payment of £3,000 [AFM 0014, AFM 0183] as promised by Nicholas Smith the previous August.
139. **Christopher Smith's interview:** Christopher Smith stated in interview that he thought he would have supplied electrical goods to Ephraim Wanderi. He confirmed he had been in touch with Wanderi's son and he thought that S&O had probably supplied the requested goods but could not confirm this. These were gifts which was a normal practice in Africa. He had known Ephraim Wanderi for over 30 years. The £200 western union payment to Ephraim Wanderi was to help him with medical costs.
140. The reason for the suggestion that each of the KNEC officials should be paid \$1,000 each was because S&O had had difficulty getting paid and wanted assistance in securing payment. Christopher Smith did not make the payments and did not know whether Nicholas Smith had made them.

141. Christopher Smith was referred to the email in which Nicholas Smith said that he would separately take care of Wasanga. Christopher Smith said that he did not know what Nicholas Smith meant by this. He said that Trevy's observation in response that "we did not take care of anyone while tendering" was waffle and he did not think it meant making payment to public officials.
142. The £5,000 paid to Wasanga was not a bribe. It was a high amount because he was one of the most important people that S&O dealt with. He lived that way because he stayed at the Edwardian in Oxford Street. The £5,000 payment was made once a year. Wasanga expected a chauffeur driven car and this was provided in addition to the £5,000. You had to keep them sweet to maintain the relationship.
143. **Nicholas Smith's interview:** Nicholas Smith stated that Christopher Smith had known Ephraim Wanderi for 30 years. They had a good relationship and Christopher Smith had given him gifts but Nicholas Smith had no direct knowledge of these matters. The reason for Nicholas Smith's suggestion that Trevy should pay the KNEC \$1,000 each was because S&O had problems being paid on time. Nicholas Smith's statement in an email that "I will separately take care of Wasanga" meant that if Wasanga came over to the UK he would take care of him. Trevy's response was not a reference to making payments to KNEC officials during tendering. Nicholas Smith had not made any such payments during tendering. In relation to Wasanga's visit to the UK Nicholas Smith stated that S&O were happy to pay the £5,000 which covered the whole week although Wasanga was only spending a day with S&O at Eastbourne. This is what had been done in the past and it seemed reasonable. It was not a bribe dressed up as subsistence.

COUNT 3: The West African Examinations Council, Ghana.

Defendants: Christopher Smith, Nicholas Smith, Timothy Forrester, Smith & Ouzman Limited

144. The West African Examinations Council ("WAEC") was responsible for the conduct of public examinations in Ghana and its duties included commissioning the printing of examination certificates and plastic envelopes. Thomas Dalu was the head of procurement until July 2009,

when AR Abdul-Razak took up that post. The Finance director was called Mr Binai. (Admission 107).

145. S&O had a commercial relationship with the WAEC and during the indictment period was awarded contracts to print examination certificates and plastic envelopes to the value of £272,407.
146. As in Kenya S&O retained an agent in Ghana. Initially this was Ebenezer William Amarteifio, known as Bill. Christopher Smith stated in interview that Bill Amarteifio had worked for S&O since 1993. Initially S&O retained him during the indictment period, and renewed his agency agreement with S&O on 13/3/09. (AFM 0071) By May 2009, such was the dissatisfaction with his performance that he was replaced by a new agent called Elliot Agyare. (AFM 0245) The main reason, the prosecution suggest, that Agyare was recruited was that it was discovered that Amarteifio had not been paying bribes to WAEC officials. S&O continued to deal with Amarteifio but when Elliot Agyare was appointed, the first thing he was required to do by the defendants was to pay the WAEC officials their bribes.
147. On the 28th-29th January S&O invoiced WAEC for the supply of examination certificates. (AFM 0122, AFM 0121, AFM 0120, admission 108) These invoices were reissued, amending the specification of the goods supplied, on 10/3/09. The invoiced amounts were £85,724.12 and £85,246.19. (AFM 0083, AFM 0084, admission 112)
148. On the 16th February 2009 S&O drafted a tender bid response for the supply and delivery of scannable forms and plastic envelopes. Timothy Forrester was named as S&O's nominated representative. (AFM 0069, Admission 110) S&O secured the contract and invoiced WAEC for the goods on 9/4/09 in the sum of £99,422.27. (AFM 0117, AFM 0026, Admission 111)
149. On 4/8/09 S&O received a payment of £272,407.28 in payment for these contracts.
150. Timothy Forrester took the lead on securing business with the WAEC during the indictment period. His name was on the February tender as having power of attorney on behalf of S&O. On 11/3/09 he emailed Bill Amarteifio, copying in Christopher and Nicholas Smith, informing Amarteifio that Razak at the WAEC had told him that price was not the only factor which would determine the

outcome of the bid, and that the quality of the submitted samples was important. He asked Amarteifio to try and ensure that as many of a competitor's samples (Trent) were disqualified as possible by the WAEC IT department.

151. On 19/3/09 Amarteifio emailed Forrester referring to a forthcoming visit Forrester was going to make to Ghana which would include a visit to WAEC. In relation to the current bid Amarteifio said that he had obtained confidential test results and prices and had made considerable moves aimed at "giving us safe landing".
152. By 27/5/09 S&O, having secured the contract, had raised a shipping invoice (AFM 0026). On 19/6/09 Timothy Forrester emailed Amarteifio to say that original shipping documents were being sent to Razak at the WAEC. He added "I would like to remind you that commission will be payable provided that payment is received in our account prior to July 31st. I trust that the issue of payment will be handled in an appropriate manner with respect to the WAEC personnel involved." The prosecution suggest that this must be a reference to the payment of bribes to WAEC officials.
153. In July 2009, after Elliot Agyare's appointment as S&O's agent, he went to meet officials at WAEC on 22/7/09. Timothy Forrester emailed Christopher Smith on 23/7/09 (AFM 0068), reporting what Agyare had told him. "Razak is now head of procurement....I believe this is excellent news for us and I immediately rang Razak to offer my congratulations." He also reported that there was a "big problem between Bill [Amarteifio] and the director of Finance, the details of which will come out during my visit." Christopher Smith replied, "Bill used to pally with Binai (finance dir) but it has been cool this year. Probably lack of grease." Forrester replied "Bill probably made promises to Binai that weren't kept."
154. Timothy Forrester went to Ghana and met with the S&O agent Agyare and with the recently promoted WAEC head of procurement, Razak. In an email to Christopher and Nicholas Smith, on 3/8/09 (AFM 0112) he stated, "the meeting was very constructive both in terms of understanding the recent past and how to proceed in the future." He was critical of Bill Amarteifio's failure to pay bribes. "Bill has not made any 'expression of appreciation to anyone in WAEC below HNO level

during Razak's three years employment there.....The tender system on OMR forms and plastic envelopes was introduced specifically to circumvent Bill's lack of co-operation.....in order to safeguard our long term interests, I believe that we need to retain some portion of the commission due to Bill on the funds recently paid so that Elliot can do the needful with Razak and other key employees."

155. Nicholas Smith replied, "Bill made it clear to us that he has not and does not make payments to people on a % basis, but on an as and when basis. But this is unaccountable and at this stage with him dubious. My thought was that we should not pay Bill amounts that we want forwarded. These can be paid through Elliot."
156. Christopher Smith then emailed Nicholas Smith: "I am very disappointed that Bill has not given anything to middle management. I thought he was looking after Dalu and Razak, but at a smaller rate than it should be. But now it appears they get nothing I agree we should tell Bill that we will arrange distribution of this from his account. (Please tell him this before making the distribution, in case we find out more as to where the money goes)."
157. All three therefore were concerned that Amarteifio had not been paying bribes and were looking for a solution. After S&O received the payment of £272,407.28 for the invoiced contracts Timothy Forrester came up with a solution. In an email of 8/8/09 (AFM 0077) to Nicholas Smith with Christopher Smith copied in he said "My recommendation on this is as follows: Pay Bill Amarteifio the 60% he maintained he kept for himself at our meeting in Eastbourne earlier this year. Create a 'pot' with the 40% and then authorise Elliot Agyare to organise a suitable disbursement at all levels up to and including HNO level. It may be that the amount needed for this exercise is much less than the pot, but he will be able to gauge this." Forrester calculated that (from his agreement of March 2009, indicating he was to get 20% commission on the certificates contract and 7.5% on the plastic envelopes contract) the commission figure was £40,914.90. Forrester proposed dividing that sum so that Amarteifio retained 60% of it i.e. £24,548.94, and that the remaining

40%, £16,365.96, should be used as the "pot" and Agyare could distribute payments to WAEC officials from the pot.

158. Christopher Smith replied that this calculation took insufficient account of freight costs and the pot figure should be reduced to £12,747.79. Timothy Forrester recalculated the figures, having, as he said, discussed it with Nicholas Smith and settled on £25,439.94 for Amarteifio and £12,365.96 for the pot, which Christopher Smith approved. (AFM 0077)
159. On 11/8/09 Forrester emailed Amarteifio, and referred to an earlier telephone conversation. Forrester informed Amarteifio that he would be paid 60% of the agreed commission. (AFM 0111) This was paid by S&O the following day, 12/8/09. (AFM 0025, AFM 0013) On 1/9/09 Timothy Forrester gave instructions to the S&O finance department to pay the £12,365.96 into Eliot Agyare's UK bank account. (AFM 0077) The payment was made by S&O the following day on 2/9/09. (AFM 0020, AFM 0013, AFM 0001). Agyare does not appear to have used his UK account to make direct payments to any WAEC officials. There is clear evidence of agreement between the defendants that Agyare and would pay bribes to WAEC officials. The inference is that Agyare carried out that agreement. It is not possible to say how much was paid to the WAEC officials out of the sum paid to Agyare or how he paid the money. If in fact Agyare got greedy and reneged on the agreement after receiving the money and did not pay the money to the officials, this does not affect the fact that there was a corrupt agreement. It is also highly unlikely Agyare did not pay the officials. Agyare must have known that S&O's dissatisfaction with Amarteifio was based on a belief amongst the S&O defendants that he had not paid sufficient bribes to officials and Amarteifio had lost his job. In an internal email on 5/10/09 Forrester confirmed that the payments to Amarteifio and Agyare related to the WAEC contract invoices. (AFM 0305)
160. The dissatisfaction on the part of the defendants with Bill Amarteifio's performance related to his failure to pay bribes or 'grease' as Christopher Smith referred to it. They regarded Amarteifio as old and past his best. The perception of all three S&O executives was that the failure to pay bribes had resulted in a lower level of business with WAEC than would otherwise be the case, and that

payment was being delayed because of the absence of bribes, particularly to middle level management. The defendants' usual method was to pay bribes after receipt of payment for the contract to which the bribes related. This was an incentive to the corrupt officials to pay S&O what they were due and increased the prospect of future business. In Amarteifio's case his approach to payment on an "as and when" basis was regarded as unacceptable by the defendants. Their solution was to use Agyare to pay bribes, and to designate a 'pot' of money for that purpose. What is striking about the exchanges between the defendants in sorting out this problem is that none of them raised the legality of what they proposed. They were all prepared to bribe corrupt officials to secure the business.

161. **Christopher Smith** stated in his interview that the decision to stop using Amarteifio was because he was about 75 years old, which made him inefficient and slow. He said that Amarteifio was given three months' notice and confirmed that Agyare was engaged to replace him. He said that Amarteifio gave up halfway through the contract and Agyare took over so S&O paid 40% of Amarteifio's commission to Agyare. Christopher Smith said that he must have discussed with Timothy Forrester the payments to Amarteifio and Agyare but that he could not recall those conversations. He said that he was ill at the time and was not really involved.
162. **Nicholas Smith** confirmed in interview that Agyare replaced Amarteifio. He said that Christopher Smith had handed over Ghana to Timothy Forrester. They were unhappy with Amarteifio's performance. He was doing the minimum possible and not developing any new business for S&O. The reason Amarteifio's commission was split with Agyare was because Agyare took over from Amarteifio. Part of the commission payment was paid to the agent for ensuring that S&O was paid on time. He said that Amarteifio was warned that if S&O did not receive payment by 31st July, they would not pay Amarteifio's commission.
163. Nicholas Smith said that Timothy Forrester had travelled to Ghana to introduce Agyare to the customer and S&O subsequently paid Agyare £12,365.96 commission. Nicholas Smith said that he expected that Agyare would have to make payments to run his business. The email reference to

Agyare making disbursements “at all levels up to and including HNO” was probably a reference to Agyare paying for meals and entertainment for customers, but it was down to Agyare how he dispersed his commission.

164. **Timothy Forrester**, interviewed on 12/3/12, read out a prepared statement and made no comment answers to all questions he was asked in interview. In his prepared statement he said that WAEC was one of his customers and that S&O had a sole supplier agreement with the WAEC for examination certificates, consequently there was never any need or question of having to pay bribes to get their business. Amarteifio was S&O’s agent, although he did not have an official agency agreement with S&O. Amarteifio was about 75 years old. He had fallen out with the director of finance and the procurement director at the WAEC. The WAEC had owed S&O £272,417.28 for more than 6 months since the invoices were issued. Forrester stated in his prepared statement that he travelled with Christopher Smith to Ghana because they were worried that S&O would not receive the £272,418.28 that was owed. He said they hired a new agent, Agyare, to replace Amarteifio. They paid Agyare £12,365.96 but Forrester did not know what Agyare did with that money. S&O also paid Amarteifio £25,548.94 commission, which was the commission due to Amarteifio on the contracts that led to the £272,417.68 debt.

COUNT 4: The Ministry of the Interior (“MIDEC”), Mauritania.

Defendants: Nicholas Smith, Timothy Forrester, Smith & Ouzman Limited

165. The Ministry of the Interior in Mauritania (Ministere de L’interieur et de la Decentralisation de Mauritanie) (“MIDEC”) is responsible for organising elections in Mauritania. In 2009 Mauritania was due to hold elections. S&O secured the contract to print the ballot papers. In the event the election was postponed, with the result that S&O secured a further contract to print ballot papers for the postponed election. The value of these contracts was US\$902,069.75 (£560,924 sterling equivalent.)

166. S&O's agent in Mauritania was Karim Reaich. He traded through a company called CRI Imprimerie. He had been S&O's agent in Mauritania since 2006. (AFM 0051, admission 119) S&O had a trading history with MIDEDEC and had previously provided ballot papers to MIDEDEC in 2006 and 2007. (AFM 0134, AFM 0135)
167. The secretary general of MIDEDEC was Mohamed El Hadi Macina. The prosecution case is that the defendants agreed to pay Macina a bribe which was the equivalent of 15% on the sale price, including shipping. This was set out in an S&O spreadsheet headed "Mauritania Ballot papers – Commission Confirmation CRI Imprimerie". (AFM 0049) It showed that, in addition to the commission to be paid to CRI Imprimerie (Karim Reaich) there were additional sums, under the heading "15% Commission" to be paid. These sums were US\$76,430.84 on the first contract and US\$33,693.50 on the second contract, a total of US\$110,124.34 in additional commission. The prosecution case is that this was intended for Macina. At Macina's request S&O made five direct payments of €50,000 (£45,219 sterling equivalent) to French bank accounts in the name of his daughters Aminata Macina and Ndeye Macina. S&O also made a payment of £4,560 to Karim Reaich on Macina's instruction. Macina wished to show his gratitude to Reaich.
168. In addition, when a delegation of officials from MIDEDEC visited S&O's premises in the UK in May 2009 and again in July 2009, S&O made payments to two of them. One official, Sidi Yeslem Sellamou Amar Cheine was paid £2,250. Another, Moctar Ahmed Moctar, was given £300 in cash. Cheine was also the beneficiary of a payment of £1,840. This was an overpayment on the sum due to S&O on the contracts.
169. The total value of these payments, taken together, was £54,170.63.
170. On 28th April 2009, S&O tendered a bid, which was successful, for the contract to produce ballot papers for Presidential elections which were scheduled to take place on 6/6/09 and 20/6/09. [AFM 0192 and CLB 0008]. On 7th May 2009 and 16th June 2009, S&O received payments from Mauritania totalling £207,804.14. [AFM 0013] in payment of this contract.

171. The elections had to be postponed. Timothy Forrester stated in interview that the opposition parties had boycotted the first election, which was rescheduled for 18/7/09 and 1/8/09.
172. On 18/5/09 a delegation from MIDEDEC was in the UK visiting S&O. On that date Nicholas Smith, through S&O, paid Cheine £2,250 cash. Cheine was asked to sign a receipt describing the payment as a "cash advance" to be repaid to S&O's agent in Mauritania. (AFM 0050). Nicholas Smith withdrew £900 of this money from ATM machines and the remaining £1,350 was marked as having come from "Accounts/Natwest". (AFM 0050, AFM 0063, AFM 0064) In interview Nicholas Smith said that he gave Cheine cash because the delegation did not have any money to pay for hotel bills, food and laundry. He said that S&O gave Cheine the money so the delegation could eat and that the money was deducted from the commission due to the agent Reaich.
173. S&O set about pricing the contract to print the ballot papers for the postponed election. An S&O pricing summary, dated 18/5/09, the same date as the cash payment to Cheine was made, set out a single commission calculated as 30% of the cost of the printed products [AFM 0027]. In interview, Nicholas Smith stated that S&O had negotiated a 30% commission with their agent, Reaich.
174. Three days later, on 21/5/09, Timothy Forrester and Nicholas Smith discussed by email an open invitation for Macina to visit the UK. Karim Reaich was copied in. Forrester was in Mauritania and had just had a meeting with Macina. S&O were prepared to pay for Macina's flight and Forrester indicated that Karim would take the opportunity to "advise Macina of the extent of our hospitality". Nicholas Smith described the "financial justification" for S&O to pay for Macina to visit them in the UK, based on the orders Macina was responsible for placing with S&O. (AFM 0308)
175. S&O then produced a series of further drafts of a tender document, dated 11/6/09 [AFM 0145 and CLB 0009], 16/6/09 [AFM 0144 and CLB 0011], and 24/6/09 [AFM 0143 and CLB 0012] to bid for a contract to produce ballot papers for the postponed election. In interview, Tim Forrester said that S&O were in fact awarded the contract without a tender.

176. On 15/6/09 Karim Reaich emailed Timothy Forrester about the receipt of payment for the balance of the first contract. The official Moctar had informed Reaich that he had included an overpayment. Reaich thought it could be used to pay expenses for a proposed further MIDEDEC delegation visit. Timothy Forrester forwarded to Nicholas Smith who agreed the overpayment could be used for this purpose. He said the officials could be paid in cash and the payment could be described as "sustenance". The payments had to be made discreetly otherwise the officials would have the money deducted from their MIDEDEC expenses. Nicholas Smith wrote, "I think we should say that we will pay this amount to the delegation in cash for their "sustenance". Whether they put it against their hotel or more shopping is up to them. We will still pay for Sidi [Cheine] and Moktar's hotel, and Karim of course. This will probably need to be unofficial (just communicated through Karim), otherwise the delegation will have this amount deducted from their expenses....Please let Pete know that this is an overpayment and we will pay it out in cash and get Sidi to sign for it." Timothy Forrester emailed Karim Reaich (AFM 0310) saying the overpayment would be paid to Sidi (Cheine) when the next delegation visits the UK. Nicholas Smith then emailed Timothy Forrester telling him to leave the amount out of the payment receipt acknowledgement letter to MIDEDEC. (AFM 0310)
177. The S&O spreadsheet headed "*Mauritania Ballot Papers – commission confirmation CRI Imprimerie*", dated 29/6/09 sets out the position in preparation for issuing an invoice for payment. [AFM 0049]. The document shows that the contract total for the first round of the postponed presidential elections was \$585,969.75. Significantly, the spreadsheet also shows that, in addition to the commission for their agent Reaich (CRI Imprimerie), which was calculated in the same way as the 30% commission on the earlier pricing summary, S&O also calculated a further commission payment, described as a "*15% commission*". The commission confirmation indicates that the commission for S&O's agent was \$76,182.83. The agent would also pay the contract tax of £5,859.70 on behalf of S&O, which meant the agent was due to receive a total payment of

£82,042.52. The separate 15% commission payment was \$76,430.84. It is the prosecution case that this was the bribe intended for Macina.

178. On 29/6/09, the same date as the spreadsheet above, S&O invoiced MIDEDEC for \$585,969.75 for the provision of ballot papers for the first round of the presidential elections [AFM 0142] and the ballot papers were shipped on 8th July 2009 [AFM 0138 and AFM 0139]. S&O received payments totalling £353,120.52 (US\$588,693.05) for this contract on 6th July 2009 (30%) and 15th July 2009 (70%), in payment of the invoice of 29/6/09. The payment included an overpayment of US\$2,723.30. This was repaid in due course to Cheine.
179. On 1/7/09 S&O prepared a receipt for Cheine to confirm receipt of £1,840 cash which was the approximate sterling equivalent, although a little more generous, of the \$3,196.26 overpayment in June. (AFM 0141) On 5/7/09 Nicholas Smith told Timothy Forrester that he would withdraw an additional £300 cash to give to Moktar (AFM 0140, AFM 0013) Nicholas Smith wrote, "I'll get GBP300 for Moktar and give it to you. He requested some additional "assistance" from Karim. This will need to be discrete but we will need a receipt as well." Two days later on 7/7/09, Timothy Forrester confirmed that he had prepared the receipt for Moktar's £300. "I have prepared a receipt for Moktar's wedge."
180. In interview Nicholas Smith said that he gave Cheine a cash payment during a delegation visit to the UK because MIDEDEC had overpaid S&O. He said that they decided to return the money to MIDEDEC via the delegation and assumed the delegation would use the money for their subsistence.
181. After payment on these contracts was received the defendants addressed the issue of commission payments. On 21/7/09, Timothy Forrester emailed Karim Reaich, "The total commission payable on the above is US\$158,473.36 which is made up as follows:- Normal commission: US\$82,042.52
15% uplift: US\$76,430.84. We look forward to receiving your instructions so that payment can be made accordingly." Forrester added that S&O had received an overpayment of UD\$2,274.01, which he assumed had been transferred to S&O in anticipation of a second delegation visit had it taken place.

182. Why did Timothy Forrester need instructions for payment? If all the commission was for the agent Reaich it could simply be paid to him in the normal way. The reason is clear from Karim Reaich's response. The 15% uplift was for Macina. Reaich wrote, "I have already spoke with Nick about that, for the moment you can do the transfer only for my commission because I am waiting for Macina instructions". Nicholas Smith was also aware of the arrangement to bribe Macina. Tim Forrester then instructed S&O's accounts department to pay \$82,042.52 to Karim Reaich's account which was Reaich's commission and the local contract tax which was payable. (See AFM 0049)
183. By 12/8/09 the defendants had clearly received their instructions on payments of the 15% uplift. An updated S&O spreadsheet of 12/8/09 (AFM 0133) showed details of receipts on this contract and of commission payments. In addition to showing the payment to Karim Reaich which was made on 21/7/09, there were details of a further payment, dated 12/8/09, of €10,000. (US\$14,200). The document noted that outstanding commission to be paid stood at US\$62,230.84. This was the first of the payments to Macina's daughters' French bank accounts. On 13/8/09 S&O made a payment of €10,000 (£8,779.63) to a bank account in France in the name of Aminata Macina. The payment was given the reference "S&O Commission". (AFM 0126, AFM 0024, AFM 0023, AFM 0013, AFM 0315, AFM 0131, admission 138).
184. On 1/11/09, Nicholas Smith emailed Tim Forrester (AFM 0132) to inform him that Macina had offered to share 10% of his payment with S&O's agent: "Macina is likely to be going to France to see his daughter soon, so will probably ask for the remaining payment to made. He's offered Karim 10% as a gesture of his appreciation (which is nice...), so I have recalculated the commission amounts and outstanding as attached. No payments to be made until Karim confirms." Nicholas Smith attached a spreadsheet accounting for the further payment to Reaich. (AFM 0131) On 23/11/09 S&O paid 10% of Macina's agreed payment (US\$7,643, £4,560.13) to Reaich's account. (AFM 0126, AFM 0129, AFM 0130, AFM 0013)

185. No doubt because Macina was going to visit his daughter in France, on 20/11/09 S&O made a further payment of €10,000 (£8,896.80) to Aminata Macina's French account. The payment reference was "S&O Studies". (AFM 0126, AFM 0131, AFM 0129, AFM 0130, AFM 0013, AFM 0315)
186. On 10/12/09 a further payment was made to a daughter of Macina, this time to an account in the name of Ndeye Macina. The payment was €10,000 (£8,968.61) with the reference "Frais de Formation et de Sclarite". (AFM 0126, AFM 0127, AFM 0047, AFM 0127, AFM 0046, AFM 0013.)
187. The final payments to Macina's daughters were made on 11/3/10 when S&O paid €10,000 (£9,287.64) to Aminata Macina's account, with the payment reference "Smith & Ouzman Frais de Sclarite" and a payment of €10,000 (£9,287.64) to Ndeye Macina's account with the reference "Frais de Sclarite Smith & Ouzman". S&O had paid a total of €50,000 (£45,220.32) to Macina's daughters' French accounts.
188. S&O also offered to provide work placements for Macina's daughters. Aminata Macina wrote a letter explaining that she was required to undertake a work placement with a British company as part of her course. (AFM 0160). Nicholas Smith wrote to Reaich on 11/3/10 saying it was proving difficult, (AFM 0128) but on 2/4/10 he offered to provide work placements at S&O (AFM 0125) and wrote to the daughters on 9/4/10 making the offer. (AFM 0123, AFM 0124). It appears that the work placement never took place.
189. **Nicholas Smith** in interview stated that he had negotiated a 30% commission with Karim Reaich and that the agent did a great deal of work to earn that commission. He agreed that he authorised the payments to Reaich and also to Macina's daughters. These payments were made at Reaich's request and were part of his 30% commission. Nicholas Smith knew that Macina was in overall control of the Mauritanian elections. He understood from Reaich that it was difficult for Macina to send money to his daughters in France. He understood that Reaich had an arrangement with Macina, whereby Reaich asked for part of his commission to be sent to Macina's daughters. Nicholas Smith initially questioned why he could not simply pay these amounts to Reaich's account in France but he decided to do as Reaich had requested because he realised that S&O would be

able to collect bank interest on the money while they waited for Reaich to give payment instructions for Macina's daughters. He accepted that he did not feel comfortable about the payments in the light of the SFO investigation and the new anti-bribery legislation which had been passed since these events.

190. He confirmed that he gave Cheine £2,250. Cheine was the head of the delegation which came to the UK to oversee the production of the ballot papers. The delegation had no money to pay for hotels or food. He also gave Cheine another payment during a further delegation visit to the UK. This was because MIDEDEC had overpaid S&O and he decided to return the money to MIDEDEC via the delegation. He assumed the money would be used by the delegation as subsistence.
191. **Timothy Forrester** submitted a prepared statement asserting that he did not have a hands on role in the Mauritania contracts and that Nicholas Smith was in charge of this business. Forrester stated that he was copied in to emails but was not actively involved in negotiations with S&O's agent. He was asked to hand over cash to members of the delegation which visited the UK which he understood was to pay for subsistence. He said he had no role in making payments to Macina's daughters. He denied being aware of any bribery or corruption.
192. The evidence discloses direct payments by S&O for the benefit of a senior government official. This arrangement was clearly part of the deal to obtain the printing contract. The assertion that all of this money was intended for Karim Reaich, at a grossly inflated commission of 30%, is a transparent fiction, and an attempt to distance the defendants from responsibility for the corrupt payments. The fiction is demonstrated by the way the figures were set out in the pricing spreadsheets and by where the payments made by S&O at the direction of these defendants actually went. It is, in any event, no defence to say that this was Karim Reaich's money to do with as he wished. The defendants were aware that these were direct payments to the benefit of a government official. Nonetheless the payments were made. There was no refusal to have anything to do with such clearly corrupt payments. Timothy Forrester's claim that he had little to do with these deals and these payments is contradicted by the evidence. He was closely involved in these

contracts, he went to Mauritania to meet Macina, and he knew about and instructed the corrupt payments to Macina's daughters to be made.

COUNT 5: National Electoral Commission, Somaliland.

Defendants: Nicholas Smith, Timothy Forrester, Abdirahman Omar, Smith & Ouzman Limited

193. The National Election Commission ("NEC") organised elections in Somaliland. Somaliland unilaterally declared independence from Somalia in 1991. (Admission 149). The National Electoral Commission worked with an organisation called Interpeace (the International Peacebuilding Alliance) which had been set up in 1994 by the United Nations and had been an independent organisation since 2000. (Admission 151).
194. Abdirahman ("Abdi") Omar was S&O's agent in Somaliland. S&O's association with him went back some years. Abdi Omar worked for the Zollinger Investment Group and S&O entered a representation agreement with Zollinger in December 2007 to act as S&O's agent in Somaliland. (AFM 088, AFM 0318, AFM 0319, admission 141)
195. **The invitation to tender and the agency agreement with UK Global Tech Limited:** In March 2009 tenders were invited by Interpeace to provide ballot papers and indelible ink for Somaliland presidential elections. By this time Abdi Omar was working for a company called UK Global Tech Ltd, a UK company which was registered to an address in Harrow. S&O decided to make UK Global Tech Ltd their agent in Somaliland. On 16/3/09 Nicholas Smith wrote to Abdi Omar, referring to a meeting they had had that day, and stating that it was S&O's intention to retain UK Global Tech as their representative in Somaliland. (AFM 0194, admission 144) his position was formalised on 26/3/09, 10 days later, when Nicholas Smith signed an irrevocable undertaking to employ UK Global Tech as S&O's agent in relation to the tenders for ballot papers and indelible ink. Payment was to be by commission in the event that S&O obtained the contracts. The commission was set at 37.9%. (AFM 0109. Admission 146) In the event the election was cancelled and Interpeace informed Timothy Forrester at S&O.

196. The efforts of Abdi Omar in attempting to secure the contract for S&O can have left neither him nor Nicholas Smith or Timothy Forrester in any doubt as to why the commission was so high. It must have been discussed between Nicholas Smith and Abdi Omar before Nicholas Smith signed the agreement. In an email string from 28/3/09 to 3/4/09 (AFM 0108) the position was set out in writing. On 28/3/09 Timothy Forrester emailed Abdi Omar informing him that a hard copy bid for the election material contract had been sent on 28/3/09 and the electronic version would be sent on 31/3/09. On 2/4/09 Abdi Omar replied to Tim Forrester, copying in Nicholas Smith, congratulating S&O on their bid "which I have no doubt under the circumstances will be successful". He went on to explain that the elections had been postponed until September 2009 by the Upper House of the Somaliland government. Timothy Forrester replied, thanking Abdi for his email and asking to know which other companies had bid for the contract and the details of the bids for each lot.

197. **The proposed bribe of Jama Omer:** The following day, 3/4/09, Abdi Omar replied to Tim Forrester, copying in Nicholas Smith. [AFM 0108] Abdi Omar replied that he had asked his contact Ali but Ali had said that this time the contract went through Interpeace and they had not seen it themselves yet. He added "It seems that on this occasion Interpeace have no intention of showing NEC the participant before the decision date (or roughly about that time) because of the shenanigan involved the last bidding." It was clear, however, that Abdi Omar had made clear to relevant, influential NEC members that S&O were bidding. In fact he had discussions about the level of bribe:

"I wish to tell you that as a whole, both us (ukglobaltech) and them (the NEC) we are making 24,000 euro out of this deal which is ok, but we, Ukglobaltech only making 4000, the rest is for Mr Jama and NEC. As I mention to Tim Mr Jama has absolutely refuse to take less than this much and threaten to take on a different company who is bidding for the whole Lots, and who will give him 3 times more than what I am offering. He insisted he already met the representative of this company twice there in hargaysa, and he is not interested in my offer. After this he would not speak to me for 2 days, claiming he was busy. I had to act fast and not only

agree to the 24,000 but we also had to find another company who is willing to bid for Lot3 and Lot4 only, with commission cut. Luckily in the end everything sorted it's self out and we had an agreement, with Ali and other people's help. He might be bluffing but I could not take the risk. We did this for future reference and to get a result.

My point is, this amount of 4000 my colleagues don't know yet, both in london and in hargeysa, as far as they know it is 45% and 50% out of 24,000, once they find out they will go mad. Now I am putting to you, could you be kind enough to top up this amount and contribute us the missing 6000 to make it 10,000 which is the required Ukglobaltech % (45%). This is just a good will gesture from you part if you could do it, if not fine. This is not part of the contract so don't get headache about it.

there are also other people whom we had to pay, i.e. Mr Jama's relatives who we had to go through when we were talking to Jama, and I can honestly tell you because of the short time we had we would not do it without them. Not to mention all the other people whom we had to promise little something, and believe you me they are all important, in different ways."

198. Timothy Forrester and Nicholas Smith can have been in no doubt that they had agreed to pay an inflated percentage in order to fund bribes to NEC officials. 'Mr. Jama', the prosecution suggest, is Jama M. Omer, the Chairman of the NEC and the Co-Chair of the Tender Evaluation committee.
199. Nicholas Smith replied (AFM 0108), thanking Abdi Omar for the information and for Abdi Omar's honesty and thoroughness. Nicholas Smith then stated that he would consider Abdi Omar's request for an additional €6,000: "I will be with Tim all day on Tuesday and we will look to see what can be done, I don't have any of the calculations with me so please be patient until then. I cannot promise anything, but we will see what we can do in consideration of your considerable effort and our future relationship." Nicholas Smith was agreeing to consider increasing Abdi Omar's commission fee because of the high amount Abdi Omar was having to pay in bribes.
200. Between 6-9/4/09 Abdi Omar, Nicholas Smith and Timothy Forrester exchanged emails. (AFM 0106) On 7/4/09 Abdi Omar stated that he had spoken to Jama who had confirmed that the tender was a "done deal" and that S&O would be awarded the contract. Jama asked for additional

information about S&O to be used by the tender committee to justify awarding the contract to S&O.

201. Timothy Forrester replied on 8/4/09 (AFM 0106). He provided a critique of S&O's competitors, a list of elections in which S&O had been involved and a short list of points which he claimed marked S&O out from the listed competitors. Forrester began the email with a response to Omar's earlier request (in his email of 3rd April) for an additional €6,000 commission in light of the large amount of the payment Omar had agreed to pay Jama. Forrester wrote: "we have discussed the request detailed in your April 3rd email and are pleased to advise that we are willing to pay an additional €3,000 in recognition of both your efforts on this tender (assuming we are successful) and as a good will gesture in respect of our future co-operation".
202. **Cancellation of the election:** In the event the 2009 election was eventually cancelled and Jerry McCann at Interpeace wrote to Timothy Forrester to inform him of this on 8/8/09 (AFM 0103), citing a suspension of funding because of non-compliance by the NEC and the Somaliland government with the pre-conditions of the donor nations for funding. Jama lost his job at the NEC. When the process restarted in 2010 Abdi Omar identified Ali Khadar Osman and Abdirahman Dixood as the influential individuals on the NEC.
203. On 16/2/10, the process was restarted. Jerry McCann of Interpeace sent S&O and other companies an email to inform them that Interpeace was issuing a further tender for Somaliland. This initial tender was for voter identification cards over a short timeframe, with a deadline for submission on 1st March 2010 [AFM 0159]. S&O subsequently tendered for a larger contract to print election materials.
204. **The tender committee in 2010:** On 20/4/10, Omar wrote to Forrester, Nick Smith and others (AFM 0101): "The tender deciding committee consists of three people as you know, two from the NEC and one from interpeace. The two from the NEC are Mr Ali khadar H Osman [Osman] and MR Abdirahman Dixood [Dixood], and the one from the interpeace will be Mr Mustafe (rashid) Yusuf. Of course there will be other members of interpeace present at the selection time but the most

two important persons are Mr Ali and Mr Abdirahman who will decide the tender (and whom we have relationship with).....Before we go any further we need to re-do the agreement (the Irrevocable Undertaking), so we could all be singing from the same tune. Because of the time scale we need to do this as soon as it is physically possible for you, this will help us to re-assure the two NEC members. What you should do now is to put your bid together (without the price) and then I will let you know the official pricing so we are not over or under pricing the tender." Abdi Omar was once again being transparent with Timothy Forrester and Nicholas Smith: this time about the need to influence the relevant NEC officials and fix the price. Abdi Omar had access to price sensitive information and was using this to S&O's advantage.

205. **The renewal of the representation agreement with UK Global Tech:** Abdi Omar was keen to formalise the renewed Irrevocable Undertaking because time was tight to get the bid in and he needed credibility with the NEC tender committee members he was trying to influence. He said he was concerned about the competition for this contract. No doubt he also wanted to secure certainty about his own potential income. On 21/4/10, (AFM 0101) Omar and Forrester discussed setting the commission at the same level that had been agreed for the previous tender: €24,000. Omar said he had already given Osman an idea of how much S&O would pay. Omar also suggested that S&O should view this tender as an opportunity to establish themselves in Somaliland, as there would be much more lucrative contracts available in the future: "Ali [Ali-Khadar Hassan Osman] is a family and friend and I already told him how much we could expect, so hopefully we should not have a problem"

206. The previously agreed €24,000 commission was roughly converted into US dollars and Nicholas Smith (on behalf of S&O) and Abdi Omar signed an Irrevocable Undertaking, which was dated 21/4/10 to pay \$32,000 commission to UK Global Tech Ltd should S&O be awarded the contract [AFM 0102]. Forrester sent the Irrevocable Undertaking to Omar on 21st April 2010, and he explained that the commission figure would later be updated to be described as a percentage of the FOB price (i.e. Free on board': the price excluding freight and insurance) when they had

established what the bid price would be. [AFM 0101]. On 26/4/10 S&O submitted their bid for the production of the election materials (AFM 0099) and, as Timothy Forrester had indicated to Abdi Omar on the same date a further irrevocable undertaking was signed, replacing the previous one, appointing UK Global Tech as S&O's agent at a commission rate of 40%. (AFM 0100) No-one at S&O appeared to question the high commission rate, no doubt because of what Abdi Omar told them in 2009. Much of the commission would be required for bribes to the NEC officials.

207. On 24th April 2010, Abdi Omar informed Timothy Forrester that he was hoping to bring Osman (the Deputy Head of the Tender Committee) to meet Forrester at S&O's offices. Forrester replied, saying that he looked forward to welcoming Osman in Eastbourne on Thursday 6th May 2010.
208. **The award of the 2010 contract:** On 11/5/10 S&O were awarded the contract for all three lots (AFM 0097), but in the event only signed a contract with Interpeace, on 14/5/10, for the production and delivery of lots 1 and 2 to a value of \$140,104.64 (AFM 0096, AFM 0095).
209. On 12/6/10 S&O raised a final invoice for US\$140,104.64, (AFM 0093, admission 157) which was paid by Interpeace on 22/7/10. Interpeace paid US\$147,794.64, which was the contract amount plus additional supplies which had been made.
210. **The argument about being paid:** Between the issue of the invoice and the date of payment Abdi Omar appeared to believe, mistakenly, that S&O had received payment for the contract and were holding back the commission payment to UK Global. He was concerned that the commission would not be paid because Timothy Forrester's view was that Interpeace, through Jerry McCann, would have awarded the contract to S&O in any event. The implication was that Omar's efforts and his promises of bribes to the NEC officials were irrelevant to the outcome. In the event Nicholas Smith confirmed that payment of commission would be made in the normal way on receipt of payment for the contract.
211. Abdi Omar was again transparent about the fact that commission would be paid on to the corrupt NEC officials. He sent two emails on 8/7/10. In the first he reminded Timothy Forrester and Nick Smith that on 3/4/09, Forrester had agreed S&O would pay UK Global Tech an additional €3,000

commission (because Omar had said he had agreed to make payments totalling €20,000 to Jama and the NEC to secure the contract for S&O) [AFM 0092]: "As I explained to you when we negotiated this amount, it is to recover some of the money we lost already. We took this money in to account when we were negotiating with the NEC how much commission they will get. If anything you are getting more business now considering the two elections coming."

212. In the second email on 8th July 2010, Omar asked Timothy Forrester and Nicholas Smith to send the agreed payment of \$32,000 plus the additional €3,000 to his HSBC account. Omar then went on to emphasise that S&O had only won the contract because Omar had arranged to pay bribes to members of the NEC [AFM 0173]: *"I am sorry to say that I am sensing from you and your organisation little retreat and feet dragging (if you like), when it came to honouring your side of the contract. I mean we had no communication from you since your left for Somaliland, we had to chase you for simple information. Whatever the situation is we just want to keep our word to the NEC guys whom I think did fought for this contract despite what your feelings are and granted you this contract. When I ask Mr Ali [Osman] whether they over played their differences with Mr Jerry and hat he was in favour of Smith&Osman anyway and he would have gone for them. His exact words was 'bullshit, he was totally and utterly against it and very much wanted Copenhagen company to win it'. They believe that he probably have some kind of a share with this company given his history support of the company. Why don't you ask him which company he supported when you next see him. I say just because he was polite to you when you saw him in Hargaysa does not mean he actually supported you when it mattered, he did not, far from it. This is not a character contest sir.*

213. Nick Smith replied to Omar, saying that they expected Interpeace would send payment on 16/7/10, and S&O would send UK Global Tech the commission payment promptly thereafter.

214. On 17/7/10, Omar forwarded to Nick Smith and Forrester an email he had received on 12th July from Osman (Deputy Head of the Tender Committee), who was still waiting to receive his bribe. It became clear that the NEC official had believed that S&O were deliberately withholding

payment. Osman had stated on 12/7/10 that it was the NEC, not Interpeace, who was responsible for S&O being awarded the contract to supply electoral materials [AFM 0205]: "If Smith and Osman should act fairly. If they believe Jerry will assist them, then they will be mistaken. I fought for this myself, and they won the contract. Tim was convinced by Jerry that he is the one who fixes things, but we will see during the next election who is in charge - nec or interpeace." Abdi Omar went on to apologise in the same email. "I should have chosen my words differently. However there was situations I was under at the time i.e. pressures from both UK Globaltech and some of the NEC people who [were] convinced that the money were already with Smith&Ouzman".

215. Nicholas Smith replied on 19/7/10 (AFM 0205) accepting Abdi Omar's apology and saying that they had been deeply offended by his suggestion. He made clear his view that S&O enjoyed a longstanding relationship with Jerry McCann at Interpeace which was important because it meant that Interpeace "were not against us" which makes the process of the contract award less difficult. He added "This is not to belittle the efforts of NEC to award contracts to S&O, but is a statement of fact. This has always been our belief."
216. Nicholas Smith's view was that both Interpeace and the NEC officials were important to securing the contract. This contrasted with Abdi Omar's view that but for the influence and efforts of the NEC officials, the contract may have been awarded to another company. What is clear is that neither regarded Interpeace as the sole decision makers.
217. These email exchanges make clear what Timothy Forrester and Nicholas Smith already knew: that any payment to Abdi Omar at UK Global Tech included a substantial payment to a corrupt official or officials at the NEC. Timothy Forrester's assertion in his prepared statement under caution (below) that he did not know what Abdi Omar was going to do with the money after it was paid to him by S&O is not credible.
218. **Payments:** S&O were paid by Interpeace for this contract on 22/7/10. They received \$147,794.64 comprising the total of \$140,104.64 for Lots 1 and 2 plus additional supplies totalling \$7,690 [AFM 0067, AFM 0015].

219. On 26th July 2010, S&O paid €3,000 to Omar's account. The following day, 27th July 2010, S&O paid a further \$32,000 to Omar's account. After the payments were converted into sterling, the total value of the payments Omar received was £22,590.71 [AFM 0030, AFM 0029, AFM 0015 and AFM 0002].
220. On 15th August 2010, Abdi Omar paid the bribe on to Ali Osman of the NEC tender committee. He transferred £9,871 to Dahabshiil, a money transfer agent specialising in transfers to Somaliland [AFM 0002]. On 26th September 2010, on Omar's instruction Dahabshiil forwarded £8,000 (minus charges) to Osman. [AFM 0003].
221. **Interviews:** Nicholas Smith was not interviewed in relation to the NEC Somaliland contract. It was identified by investigators after the date of his interview on 12/10/11.
222. Timothy Forrester, interviewed on 26/3/12, in his prepared statement under caution said that S&O has always printed Somaliland's ballot papers. He said that Interpeace conducted the evaluation process, and S&O's bid was successful due to S&O's good track record and because S&O submitted the lowest priced technically compliant bid. He stated that Jama had been head of the election commission but that after the elections were postponed in 2009 Jama was removed from his post. He stated that he had visited Somaliland in June 2010.
223. He stated that S&O made two commission payments to UK Global Tech, which he said was led by Abdi Omar. One was a payment for \$32,000, Forrester stated that he did not know what Omar did with the \$32,000 he received from S&O. The other was a payment for €3,000, which Forrester said was a payment Nicholas Smith had agreed to make to Omar in 2009 for Omar's market development expenses. Forrester said that the commission represented approximately 20% of the value of the contract.
224. Abdi Omar was interviewed on 13/5/13. He made no comment to all questions asked.

Trevor Archer

30/9/14