

Serious Fraud Office

v

Sarclad Ltd

STATEMENT OF FACTS

OVERVIEW

1. Sarclad Ltd ["Sarclad"] is based in Rotherham in the United Kingdom and was incorporated in 2000. It designs and manufactures technology based products for the metal industry, in particular for use by steel manufacturers. It sells its products all over the world and relies on a network of agents in foreign countries.
2. During the period 2004 to 2012 the company and a small number of its employees and agents were involved in the systematic payment of bribes to secure contracts in foreign jurisdictions. The conduct spans the introduction of the Bribery Act 2010 on the 1st July 2011.
3. The total amount paid to Sarclad for the 28 contracts set out below that bribes were paid on is £17.2m. The total gross profit as a result of these contracts was £6.5m.
4. The common modus operandi was for Sarclad employees within the jurisdiction to arrange with intermediary agents appointed by, and acting on behalf of, Sarclad, to offer or to place bribes with those thought to exert influence or control over the awarding of contracts in the various foreign jurisdictions.
5. The Serious Fraud Office ("SFO") is not able to demonstrate whether the various Sarclad agents *actually* paid bribes to named and unknown individuals. However, offences of corruption involve conduct which may, or may not, involve loss to others.
6. Michael Sorby ["Sorby"], who had held the role of Managing Director from around 1990 until he retired on 12 August 2011, was a controlling mind of the company between 2004 and July 2011. Adrian Leek ["Leek"] commenced full time employment with Sarclad on 22 March 1999. He first took the role of Design Engineer, and then in 2004/05 he moved to the Sales Department initially taking the role as Sales Engineer, before being promoted to Sales Manager. He was

subsequently promoted to Head of Sales and Marketing in 2011. David Justice [“Justice”] joined Sarclad on 13 September 1993 as Mechanical Design Engineer. He was promoted to Sales Manager in or around 2001, and in September 2011 become Project Manager to Rolltex (one of Sarclad’s products).

7. Matters originally came to light following a self-report, dated the 31st January 2013, from Sarclad through its solicitors, McGuireWoods (“MGW”). The self-report was made following an investigation by the company of an issue which had come to light at the end of August 2012 as a result of the company’s implementation of a compliance programme. In that report, MGW identified 16 contracts said to be “implicated” (“those contracts for which there is specific evidence to suggest that the contract was procured as a result of the offer and/or payment of bribes”) and 20 contracts said to be “suspicious” (“those contracts for which there is some suspicion (but no specific evidence) that the contract may have been procured as a result of the offer and/or payment of bribes”). The scope of the investigation upon which the self-report was based was focused on contracts post-dating 1 January 2006.
8. Following the SFO’s request for production of emails, including those pre-dating January 2006, a further report was submitted, dated the 25th July 2013. In this second report MGW identified some 5 further “implicated” contracts and 1 further “suspicious” contract.
9. As a result of the first two reports, a total of some 21 “implicated” and 21 “suspicious” contracts was disclosed.
10. On 17 November 2014 Sarclad produced a number of invoices in response to a Section 2 Notice. In the course of searching for responsive invoices, various documents came to Sarclad’s attention which it believed were of relevance to the SFO’s investigation. During a meeting between MGW and the SFO, MGW raised in general terms that Sarclad intended to produce these documents and identify further “implicated” and “suspicious” contracts, which it did in a third report, dated the 27th November 2014. This third report identified a further 7 “implicated” and 25 “suspicious” contracts.
11. Of the total 74 contracts which were under investigation (28 “implicated” and 46 “suspicious”), the heart of the case for the SFO is the 28 “implicated” contracts.
12. The SFO has reviewed the material obtained by the internal investigation and conducted its own interviews including of UK based employees, ex-employees, auditors and has obtained banking material. It has also obtained material from the UK based agent Jiang.

13. Some 24 of these 28 contracts predate the coming into force of the Bribery Act. Some 4 post-date it, although in relation to 2 such contracts the agreement to make improper payments would have been concluded prior to 1 July 2011.
14. Of the 28 “implicated” contracts, some 17 involved a single agent – Dr Guang Jiang [“Jiang”] - operating through a company called “Castmasters” (14 pre-Bribery Act; 3 post-Bribery Act). These contracts were all placed in China.
15. The remaining 11 contracts involved the following agents:-
- (a) Roshfor Corporation aka Brightwell, registered in the British Virgin Islands (RX2280; SX3436; RX2339);
 - (b) Sunag Engineering, based in India (SSP4212; RX2329; ETX0296);
 - (c) Hansam Moolsan Co Ltd, based in Korea (SX3452; SX3471);
 - (d) Kyokuto Boeki Kaisha Ltd (“KBK”) based in Japan (ETX0304-2);
 - (e) Neumeyer Industrial Corp, based in Taiwan (RSP4669);
 - (f) Cheong Kum Steel Co Ltd (“CKS”), based in the Republic of Korea (TX0424).
16. Key and fundamental to the case is that, in so far as the investigation has been able to obtain evidence of the agency agreements for any of these agents, those agreements provide for agents’ remuneration on the basis of commission expressed as a *percentage of the contract values in each case*. There is no evidence in any of the agency agreements which cover the “implicated” contracts of provision for “*fixed*” commissions (i.e. fixed fees expressed as a defined figure unrelated to the value of the contract).
17. This is significant because a recurring theme in the evidence is reference to payments which have been agreed outside the “percentage of contract value” basis expressed in the agency agreements. These payments are variously described (examples include: “fixed commission”; “special commission”; “additional commission”; “compensation”; “special contribution”; “special contribution expenses”; “advance marketing expenses”; “under the table %”; “under the table cost”; “payout”). Such terms are euphemisms for bribes in each case.
18. In the case of the Jiang contracts, a system of “netting off” was used for payment of some invoices (Castmasters was not only a Sarclad creditor in respect of commission earned on contracts, but also a debtor in respect of the resale of spare parts). Some Jiang invoices remained unpaid following litigation between the parties in which, ultimately, a “drop hands” resolution was reached. Other invoices were paid.

PRE-BRIBERY ACT 2010 CONDUCT: COUNT 1

19. At Count 1 Sarclad, Sorby, Leek and Justice are jointly charged with “conspiracy to corrupt”, contrary to section 1 of the Criminal Law Act 1977 and section 1 of the Prevention of Corruption Act 1906 (“Count 1”). Jiang is an alleged co-conspirator. He has absconded from the jurisdiction.

20. The conduct falling within this count relates to the obtaining of some 24 contracts through bribery in the period from 2004 to 2011. The evidence of bribery is disclosed by the following:

Contract #1: RX2280

21. On or around the 16th June 2004 Sarclad contracted with Mittal Steel for the supply of a Rollscan machine. The contract price was £68,000. The contract was brokered through Brightwell.

22. An agency agreement between Sarclad and Brightwell has been identified, signed by **Sorby** on the 18th August 2008.

23. On the 10th April 2006 Teline of Brightwell emailed **Leek**:

“Mittal Steel Rollscan **5% reimburse**. If that is possible to agree **compensation** of this amount? This contact at Mittal Steel is important for us and we even suppose that it is quite reasonable **to give 10%**. half of them we can pay on behalf of Brightwell, that is on account (sic) of the **commission**”.

24. **Leek** replied by saying “offer nothing now but say that we will add an **additional commission** to the next contract we receive from them?”

Contract #2: SSP4212

25. On or around the 4th October 2004 Essar Steel submitted a purchase order to Sarclad for the supply of spare parts. The contract price was £35,018.50 and was brokered through Sunag.

26. An agency agreement dated the 4th February 2004 has been identified to cover the period of this contract. It does not appear to be signed. The commission on direct sales spare parts is 15% and on OEM 10%. There is no provision for the payment of any “fixed” or “additional” commission.

27. The SFO has not been provided with a copy of the contract as it was purportedly destroyed in 2012. Financial records from or before 2005 had been destroyed in 2012 in accordance with Sarclad’s document retention practices and HMRC guidelines for the retention of such documentation. This occurred prior to the discovery of the issues that became the subject of the 31 January 2012 self-report.

28. On the 25th April 2005 Anand Kumar of Sunag emailed **Justice**, copying in **Sorby**:
“Kindly remember that the name of Mr R., B. Prasad of Essar Steel who has provided with the above information should not be referred at any point of time”. This is typed in upper case and in red font. The essence of the email is that Essar Steel has appointed “Thyseen” as their engineer who in turn has recommended a different make of Rollscan machine. **Justice** is being asked to contact Thyseen to convince them to recommend Sarclad, no doubt so that the author can receive his commission.
29. **Justice** replied and did not do as instructed.
30. An HD Vasa from Sunag appears to have visited Sarclad on the 20th May 2005. On the 1st June 2005 **Sorby** emailed **Justice** and **Leek** saying that:
“during Vasa’s visit he suggested a unit price of £60000 would influence Essar. Please confirm this to Vasa but include a clause which would enable Sarclad to share on a 50/50 basis any price above £60,000”.
31. On the 26th May 2005 Sunag sent in their debit note for GBP 7,958.75
32. On the 1st June 2005 **Leek** emailed “Rajib” at Sunag telling him that the commission request for an additional 10% should be split between Sarclad and Sunag, as this is only fair, and that Sunag’s commission would therefore be GBP 6,367.
33. On the 9th June 2005 M. R. Rao of Sunag replied to **Leek**, copying in **Sorby** and others, agreeing to the proposed split but adding:
“But in case of Hazira, we had kept the additional money **in order to take care of the interest of certain people** and we had to pay this in advance for getting the order and also for effecting the payments to Sarclad”.
34. On the 14th June 2005 Rao chased **Leek** by email for payment. There were two attachments; one was a debit note addressed to **Sorby**. The particulars were described as being “the commission receivable against order booked from Essar Steel Ltd, Hazira for supply of spare parts for the existing SCM unit against purchase order No HRC/CCM/4500029562 dtd 04.10.2004 for GBP 35,018.50”.
35. On the 16th June 2005 **Leek** emailed Mr Rao at Sunag, copying in **Sorby** and **Justice**:
“In this instance we will accept your word that the **additional commission** was used to secure the order. However I am sure you understand why I questioned this situation as we have no record of any **additional requirements**.”

PLEASE NOTE this is not the first time that this situation has occurred. In future any requests for **additional commission** without written confirmation before the order or contract signing will be refused payment”.

Contract #3: SX3436

36. On or around the 13th April 2005 Sarclad entered into a contract with Novolipetsk Iron and Steel Corporation (NMLK) for the supply of a Strand Condition Monitor. The contract price was £201,431. SX3436 was one of 4 orders for SCM machines placed by NMLK at the same time (the others being SX3436, SX3456 and SX3457). The contract was brokered through Brightwell. It was apparently destroyed in 2012. Financial records from or before 2005 had been destroyed in 2012 in accordance with Sarclad’s document retention practices and HMRC guidelines for the retention of such documentation. This occurred prior to the discovery of the issues that became the subject of the 31 January 2012 self-report.
37. No agency agreement for Brightwell has been located to cover the period relevant to this contract.
38. In an email dated 6th April 2005, Peter Teline, representing Brightwell, emailed **Leek**. He stated:
“In the agency agreement it’s stated 10% for SCM direct sale and the base is EXW proce (sic) without on-site commissioning. Also, as agreed, **we would have to provide 5% to the mill people**”.
39. On the 26th April 2005 Teline emailed **Leek**:
“Yuri told that during this week they should pay the **down payment** for this contract. He asked to find out when do you think it would be earliest possible for Sarclad to pay the **commission**? At least **their part (5%)** needs to be transferred asap after receiving the funds by Sarclad”.
40. On the 6th May 2005 Teline emailed **Leek**:
“Sorry for pushing you, we just need your assistance to find out for what date is the **commission payment for Lipetsk contract scheduled**? At least you can transfer **5% first** if the total amount could be a problem, and then the rest part later. Yesterday I wrote to Vicky at Sarclad asking to check this issue. Would you be so kind to get the reply as this is very urgent?”.
41. On the 2nd March 2006 **Leek** emailed **Justice**. This email appears to be a copy and paste of the email referred to at paragraph 36 above, with the words “mill people” having been removed:
“Also, as agreed, we would have additional commission of 5% for and therefore we are getting the following calculation: (contract value 201,431 GBP - 12,000 (on-site engineering) – transportation) x 15%”.

Contract #4: SX3452

42. On or around the 10th June 2005 Sarclad contracted with Posco E and C for the supply of a Strand Condition Monitor and to upgrade an existing machine. The contract price was £281,000 (£197,000 of which was for SX3452 and £84,000 of which was for an upgrade to an existing machine, SUG1060) and was brokered through Hansam.
43. No agency agreement has been located to cover the period of this contract. Sarclad have said that it is likely that no formal agency agreements were entered into with this agent. However, an unsigned agency agreement between Sarclad and Hansam has been located, dated the 3rd September 2003, which is specified to cover the period up to “the 4th September 2004, renewable for a further period subject to 3 months notice in writing before the date of termination by either party”. In this agency agreement, the representative for Sarclad is stated to be **Mike Sorby**. Agent’s commission on direct sales of strand condition monitoring equipment is specified as 10%. On OEM sales of the same product it is stated to be 3%. There is no provision for “fixed” commission or similar.
44. There is a Posco E and C contract dated the 10th June 2005 signed by **Justice** in which the contract amount has changed from £289,000 to £281,000. The contract is also signed by **Leek**.
45. In an email dated 20th May 2005 from Judy Park of Hansam to **Leek** it is stated:
“...we also request you to include our commission of 15percent (10% standard commission+ **5% special contribution**) in your price”.

Contract #5: RX2329

46. On or around the 1st August 2005 Sarclad contracted with Salem Steel Plant for the supply of a Rollscan machine. The contract price was £80,960. The contract was brokered through Sunag. The contract was destroyed in 2012. Financial records from or before 2005 had been destroyed in 2012 in accordance with Sarclad’s document retention practices and HMRC guidelines for the retention of such documentation. This occurred prior to the discovery of the issues that became the subject of the 31 January 2012 self-report.
47. On the 1st August 2005 Mr Rao of Sunag emailed **Sorby**:
“...as I already explained to you during our meeting at Jamshedpur that we have kept **£2500 extra** over and above Sarclad supply price of £70460 which has been already used up in advance for meeting **requirement of individuals in order to secure this order**. I request you to kindly pay us this **£2500 over and above the commission payable to us** after Sarclad receive their payment”.
48. Rao enclosed a debit note to **Sorby** for Sunag’s expenses to secure the order.

Contract #6: SX3471

49. On or around the 9th September 2005 Sarclad contracted with Posco E and C for the supply of a Strand Condition Monitor. The contract price was ££301,200. The contract was brokered through Hansam. There is a contract dated 9th September 2005 which is unsigned.
50. On the 7th July 2005 Judy Park of Hansam emailed **Leek** advising him of an order Posco would place “without any competition”. She continued:
“In this regards, we may kindly ask you to include **additional 5 per cent as special contribution expenses** ie our commission is total 15% if we were awarded”.
51. On the 5th August 2005, Jennifer Kim of Hansam emailed **Leek** saying:
“We understand that our commission 10% is included in project that we are processing. However you are kindly requested to include 10% as **special contribution** on No.3CC-4M/C(PH) as well”.
52. There was a further exchange between the parties about, amongst other things, what the 10% “**special contribution**” represented. On the 5th August 2005, **Leek** emailed Hansam to say that he could include the “**extra commission**” subject to clarification of the issue as to which contract the request related. On the 8th August 2005 Hansam emailed **Leek** to confirm the contract and stated “therefore we requested 10% for **special contribution** for No.3CC-4M/C”.
53. On the 19th August 2005 **Leek** emailed Hansam, copying in **Justice**. **Leek** explained that he was only prepared to reduce the quoted price by the 10% requested in order to secure the contract and only their commission will remain.
54. Later that day Hansam replied to **Leek**:
“Even though POSCO E and C requests 10% price reduction we will suggest 7% reduction only...
Sarclad 3.5% reduction
Hansam 3.5% reduction from our commission (keeping **10% special commission**)”.
55. **Leek** then in turn responded. He implicitly agreed to the suggestion and sent a revised quotation based on a 7% reduction. He stated “this still includes the **special commission** of 10%”. **Justice** was copied in.
56. On the 26th August 2005 Hansam emailed **Leek** with the subject heading “commercial offer for POSCO E & C”. The email attached an offer and stated that a 3% additional reduction from their “**special contribution**” was requested, so that in total a 10% price reduction was made.
57. On the 20th October 2005 **Leek** emailed Hansam:

"I have contacted Mr Koo and I am meeting with him in Linz on the 26th October. Is there anything that you would like me to discuss or mention to him?...please let me know if I need to discuss anything with Mr Koo that may help future contracts".

58. Jennifer Kim of Hansam replied to **Leek**:

"Mr Koo is very supportive to Sarclad so we will very appreciate if you can give him **small gift (eg company gift)**". Mr Koo appears to be the deputy general manager of POSCO E and C.

59. Against the background of technical difficulties, on the 3rd August 2006 Hansam emailed **Leek**, which included:

"as you know Mr Koo/POSCO E and C/ always tries to help Sarclad for other projects against POWER MNC. Without his strong recommendation we could not get a contract for No 3CC. Please **revise your quotation** according to POSCO E & C's suggestion".

60. On the 24th August 2006 Hansam emailed Steve Shillito of Sarclad, copying in **Leek**:

"I'm much regretful to advise you that POSCO (superintendent of No 3CC-4M/C) and POSCO E and C (Mr Ku and his boss) are really upset now. As I agreed with you, Hansam/Sarclad got big favor from them to get this contract as "without any competition" exceptionally. You don't need any explanation about it".

61. There appears to have been a dispute between **Leek** and Hansam about their commission amount. In an email dated 6th September 2006 Hansam spelt out the fact that a "**special contribution**" of 10% was agreed because "we beated [sic] a local competitor POWER MNC, under strong cooperation with POSCO E and C before bidding. Therefore we did not have any competitor for this project".

62. On the 26th February 2007 Hansam emailed Pat Jones of Sarclad, copying in **Leek**:

"we are happy to advise you that POSCO ENC finally agreed to remit full amount (EUR 19,500) under **special cooperation and pressure** by purchasing director and Mr Koo in job site".

63. On the 28th September 2007, Charlie Park of Hansam emailed **Leek** in relation to a different POSCO contract but added:

"...if we want to get a contract from POSCO and POSCO ENC there is only one way. **We have to do political way not bidding**".

64. On the 25th February 2010 **Leek** emailed Park, copying in both **Justice** and **Sorby**, to discuss a customer visit either through POSCO "or directly with Kwangyang". **Leek** added: "if it is done through POSCO E & C is there any way we can pay some **additional commission** to help secure this contract?"

65. Deloitte's provided material which recognised the 10% commission and additional commission of £10,000 on a spreadsheet. The explanation was:
"£10k **additional commission** was agreed with Hansam Mulsang (the agents) for extra expenses, man power and work required to secure this contract. Per discussion with **Adrian Leek** (sales manager) there is no paperwork for this at present, they are waiting to be invoiced from Hansang [sic]".

Contract #7: ETX0296

66. On or around the 1st February 2006, Sarclad contracted with Bokaro Steel Plant for the supply of a Rolltex machine. The contract was brokered through Sunag. The contract price appears to have been the aggregate of 2,944,000.00 Euros and 28,158,000.00 Rupees.
65. A contract agreement was signed between **Sorby** and Bokaro dated the 16th November 2006. It is described as a "consortium" of Sarclad and Sunag.
66. On the 4th April 2006 M.R. Rao of Sunag emailed **Justice**, copying in **Sorby**:
"at the time of pricing I have requested Mr **Sorby** to keep cushion of 5% for **advance marketing expenses. Over & above, our commission and negotiating margin** to which he has readily agreed. I hope, you have taken care of this while submitting the price. We are trying (sic) our best to make it a single tender".
67. Later that day **Sorby** replied, copying in **Leek** and **Justice**:
"my record of our discussion regarding the 5% addition is that this figure was included as a negotiation margin and to fund **extra non-Sunag commissions** if necessary. At this stage we do not know if any discount or other commissions will be required. Your mail suggests that I had agreed an extra 5% commission for Sunag on top of **whatever is required for negotiation** etc. this is not the case. It is important for both parties to have a clear understanding of this issue prior to any commercial discussions with the customer".
68. On the 5th April 2006 Rao emailed **Justice** back, copying in **Leek** and **Sorby**, to say:
"I requested you earlier to keep 5% for negotiation and also fund for **extra non-Sunag commission**, if necessary. I fully agree with you as per your today's email".
69. On the 15th January 2007 Sunag emailed **Sorby** asking for an additional 7%. The email contains a number of significant statements:
- (a) "This **5% extra** was requested by us before you finalized the final price for **fulfilling our commitments** to get this order against stiff competition of M/s. Waldrich".
 - (b) "The above 3 discounts from Sarclad amounted to 2% of their originally quoted price. Moreover, this 2% discount was given from the 5% extra money provision".

- (c) "You are fully aware of the severe competition from WALDRICH and when the Consultants i.e, CET have recommended both Sarclad & Waldrich as technically acceptable, we had to incur **very heavy expenditure** in order to **change this decision to single party bid i.e, of M/s. Sarclad only**".
- (d) "Due to above stated reasons an amount equal to 7% (**3% on account of additional provision** to meet expenses + 4% of total value of equipment as our standard commission) becomes payable to us by Sarclad".
- (e) "I, therefore, fervently request you to give due weightage to our sincere efforts and expertise in marketing this project and pay us the **3% additional provision** to enable us to **fulfill (sic) our commitments to various project personnel**".

70. On the 6th February 2009 the email of the 4th April 2006 from **Sorby** to Rao was re-sent from H.D. Vasa of Sunag to **Sorby**. Mr Vasa additionally stated:

"As per enclose Sarclad have included 5% as negotiation margin and to fund **extra non Sunag commission**. As it was informed to you on many occasions we had to make **advance payment** to remove Waldrich competition so that Sarclad could get the order".

71. **Sorby** replied:

"We have always had in mind an **extra payment** to Sunag but our limit is Euro 20,000 maximum which is approximately 50% of the bonus. We consider your claim of an extra 3% to be outrageous. Please invoice for Euro 20,000 ASAP under a description of "**additional site support** to Sarclad during commissioning period".

Contract #8: ETX0304-2

72. On or around the 1st March 2006 Sarclad contracted with Dongbu Steel Co Ltd for the supply of a Rolltex machine. The contract price was 1,396,844 Euros. The contract was brokered through KBK.

73. Contract number 4500029290 is between Dongbu Steel Co. Ltd, South Korea and Sarclad and has the hand annotation 'TX0304'. The total contract price is €1,370,000 and the contract has been signed by **Leek** on behalf of Sarclad on 28 November 2006.

74. There is no agency agreement available for KBK.. However, there is an agency *certificate* dated the 25th April 2006.

75. On the 13th March 2006, in reply to an earlier email of that date, **Leek** emailed KBK, copying in **Justice**. He stated that the 15% requested commission was too high and that normally Sarclad pays 5% of the Sarclad portion of the contract value. He said that he would be willing to increase it to 6%.

76. On the 17th March 2006 Teruo Maehata of KBK emailed **Leek**, copying in **Justice**:

“Please note that the following expenses which is almost impossible for us to pay out of our commission.

1, **under the table 0.5%** common in Korea **to make business**

2, pay for the client to make a business trip for Rolltex machine (to China and to England). Most of case client will not pay for the expenses”.

77. On the 18th March 2006 Teruo Maehata of KBK again emailed **Leek**, copying in **Justice**:

“it is my understanding that commission for KBK and **Korean sub-agent** will be about 58,200 euro in total.

Will please Sarclad pay for the following costs which is essential for successful contract?

Under-the-table cost (typical and important Korea) 9,000 euro

Travel costs to take client to China as well as to England 14,000 euro

Total 23,000 euro

These expenses will be spent by Korean agent **for clients to secure the contract”**.

78. There is no reply addressing these points, only that Sarclad need to get a “better feel” for the contract.

79. Teruo Maehata of KBK emailed **Leek**, copying in **Justice**, on the 21st March 2006:

“...I think you need to agree to pay the **under the table cost**. You can pay direct to one or you may pay through KBK/Korean agent”.

80. Later that day **Justice** emailed Maehata, copying in **Leek**:

“...the **extra commission** of €9,000 is typical for contracts of this size and hence **we agree to this”**.

81. There were thereafter two emails, dated the 26th October 2006:

(a) Email from Y S Choi to **Leek** dated 26 October 2006:

“Since you allowed us to reduce price 5%, we have submitted quotation after discount 4% from the previous quotation amount as attached. For the balance 1% of contract amount, we **would like to pay for Dongbu (each procument [sic] dept. and factory) in order to make harmony with them as a entertainment expense**. We believe that this method is better than discount 5%. Of course this is not good for company but **lot of people concerned this project expect something** when they have signing contract”.

(b) Email from **Leek** to Choi, copied to Maehata, dated 26 October 2006:

“We accept 4% discount and **1% additional commission** as explained in you [sic] email..... To conclude: We agree with ALL of your suggestions however we do not understand how you have arrived at the figures that have been quoted”.

Contract #9: RX2339

82. On or around the 6th July 2006 Sarclad contracted with Ilyich Iron and Steel for the supply of a Rollscan machine. The contract price was 114,180 Euros. The contract was brokered through Brightwell. The contract, dated the 5th April 2006, is signed by **Leek**.
83. On the 26th July 2005 Teline of Brightwell emailed **Leek** to state that the **Ilyich engineers** were looking for **5% commission**. Teline also stated "...and also please look at the possibility to consider **additional 5% in price**, so that Brightwell could get paid 15% and **set the matter with the mill people**".
84. On the 12th October 2005 Teline emailed **Leek**:
"I would like you to confirm the actual price for EX2339. It should be considered 15% commission there to allow us to transfer **5% to the mill people...**".
85. On the 6th July 2006 Brightwell emailed **Leek** confirming that the "**additional commission**" is 5% (5,090 euro).

Contract #10: TSP4228

86. On or around the 23rd October 2006 Sarclad entered into a contract with Hunan Valin Lian Yuan Iron & Steel Co Ltd ("Lian Yuan") for the supply of spare parts. The contract price was £146,298.15 and the contract was brokered through Castmasters.
87. Contract number LGE106109 details 'Sarclad Contract No: TSP4228' and has been signed on behalf of the buyer (date unknown) and on behalf of Sarclad on the 26th October 2006 (the signature appears to be that of Kathy Wiggans).
88. On the 8th August 2006 "Lin", using a "Sarclad-tech" email address, emailed Kathy Wiggans re "TSP4228":
"With reference to 3% discount, You said that you could give them 10% discount if Lianyuan steel ordered all the spare parts in TSP4228. Because Lianyuan haven't order all the spare parts, So I only give them 3% discount."
89. Wiggans responded to "Lin" on the same day:
"Have we secured the order at 3%? If not, please note that for this value we could increase our discount up to 10% if it would help."
90. On the 23rd October 2006 "**Guang**" emailed **Leek**, copying in **Sorby** and Wiggans, re "Spare parts order from Lianyuan":
"The attached is analysis of the order from Lianyuan. The total order value is GBP146,298.15 against sarclad (sic) original quotation of GBP151,629.61. We have given them 10% discount

on this order but as we discussed and agreed that customer want to place the order for the above value **with GBP6000 payout.**”

91. A Castmasters invoice in respect of this contract is dated the 18th December 2006, however this date has been crossed out and a handwritten date of the 1st January 2007 has been written in. The invoice shows a **“Fixed amount commission”** of £6,000.00 against the reference TSP4228.

Contract #11: TSP4469

92. On or around the 18th January 2007 Sarclad entered into a contract with Benxi for the supply of spare parts. The contract price was £32,140.00 and the contract was brokered through Castmasters.
93. Contract number 06BGJBJ-163 was hand annotated with reference number TSP4469. The contract has been signed on behalf of the buyer, Benxi, on the 26th December 2006 (signature illegible) and on behalf of Sarclad on the 18th January 2007 (the signature appears to be that of Kathy Wiggans; the contract has also been initialled on each page with “KW”).
94. On the 10th January 2007 **Jiang** (‘btill’) emailed **Justice**, copying in Wiggans, re “Benxi EDT spare order”:
“The spare contract we talk about yesterday is for Benxi EDT Your quotation number is TSP4469. The customer is going to **add 4000 GBP** to the total order value. And this amount need to **pay back to the customer**. As mentioned yesterday, the customer will let the contract go through their 2006 order, but this will not affect the our delivery time. The contract number is going to be 06BGJBJ-163. We should receive the contract in the next few days”.
95. This email is hand annotated by an unknown individual, with the words:
“Ask Pat re how best to enter on Sun as commission?”, which has been crossed out.
96. The Castmasters invoice in respect of this contract is dated the 2nd July 2007 and details a **“Fixed amount commission”** of £4,000.00 against the reference TSP4469.
97. An undated Sarclad audit spreadsheet relating to outstanding 2007 commissions, contains an annotation regarding TSP4469 dated the 25th November 2008: “included in value was £4,000.00 which is **fixed commission** which need to be deducted before commission calculated This was not done so accrued figures out by £3199.98”.

Contract #12: TSP4594

98. On or around the 17th August 2007 Sarclad entered into a contract with Benxi for the supply of spare parts. The contract price was £109,636.24 and the contract was brokered through Castmasters.
99. Contract number X070530S206U01J was apparently hand annotated with reference number TSP4594. The contract was signed on the 17th August 2007 (signature illegible) and initialled with 'KW' on each page.
100. Contract number X070905S6UH418J was also hand annotated with reference number TSP4594. The contract value is £92,000.00. The contract has been signed on behalf of the buyer, Benxi (signature illegible and undated) and on behalf of Sarclad on the 20th November 2007 (the signature appears to be that of Kathy Wiggans; the contract has also been initialled on each page with 'KW', and also against some amendments made to the contract).
101. On the 6th August 2007 **Jiang** emailed "Kathy" re "Spare parts orders – TSP4606 & TSP4594":
"The following customers will place the following two orders with you directly. But each order involves some **fixed amount pay out to the customer**... Order 2: TSP4594 (1797): You have agreed that the total selling price 102,636.24. The customer will place the order with **7000 GBP add on as extra commission** and draft the contract immediately if this is ok with you. The total contract value will be 109,636.24 GBP".
102. On the 13th August 2007 Wiggans emailed **Jiang** re "TSP4606 and TSP4594":
"I am attaching both the revised quotations as requested to include **extra commission**, along with the L/C terms documents. Please note that your commission will only be payable on the original parts prices as follows: Quotation 1830 — 42,840 GBP. Quotation 1797 — 102,636.24 GBP".
103. On the 7th November 2007 **Jiang** emailed "Kathy", copying in "**Mike**", re "Spare parts order from Benxi – Your quotation number 1901-2 & 1867-2":
"Benxi is going to place an order against the above two quotations for a total order price of GBP92,000.00. They have allowed GBP1,500.00 for the freight costs. Therefore the total order value for goods is GBP90,500.00. Your total quotation for the same is 75836.50 + 9720 = 85556.50 (GBP). The remain of GBP 4943.50 need to be paid back to benxi together with castmasters' commission."
104. On the 8th November 2007 Wiggans emailed **Justice** re "Spare parts order from Benxi – Your quotation number 1901-2 & 1867-2", forwarding the above email and adding:
"Is this OK too?".

Contract #13: SSP4700

105. On or around the 24th August 2007 Sarclad entered into a contract with Wuhan Iron & Steel Group (“WISCO”) for the supply of spare parts. The contract was brokered through Castmasters.
106. Contract number 07ZJ/10255GB was hand annotated with reference number SSP4700. The contract has been signed by the buyer (signature illegible) and on behalf of Sarclad on the 24th August 2007 (the signature appears to be that of Kathy Wiggins; the contract has also been initialled on each page with ‘KW’, and also against some amendments).
107. On the 10th August 2007 **Jiang** emailed “Kathy” re “SCM Spare parts contract – SSP4700 (1824-3)”:
“WISCO would like to place an order against the above quotation with 3300 GBP added as **extra commission**. They will spread the extra amount among the spare parts. They are asking us for the acceptance before they sign the contract.”
108. On the 13th August 2007 Wiggins emailed **Jiang** re “SCM Spare parts contract – SSP4700 (1824-3)”:
“I have adjusted the quotation to allow for 3,300 GBP **extra commission**... Please be aware that Castmasters will only get commission on the original 24,700 GBP.”
109. On the 23rd August 2007 **Jiang** emailed “Kathy” re “Recent spare parts contract – SSP4700”:
“Regarding the notes/comments that you made on the contract price and airport of delivery on the recent contract, we have contacted the customer and they said it is ok (do not need to change). They have spread the price in their own way. Therefore please could you work out what is the **extra commission** due according to the signed contract...each customer have their own way to spread the prices.”

Contract #14: TSP4606

110. On or around the 31st August 2007 Sarclad entered into a contract with Handan Iron & Steel Stock Co. Ltd (“Handran”) for the supply of spare parts. The contract was brokered through Castmasters.
111. Contract number HG/CR/SD079724 was hand annotated with reference number “TSP4606”. The contract has been signed by the buyer (signature illegible) and on behalf of Sarclad on the 31st August 2007 (the signature appears to be that of Kathy Wiggins; the contract has also been initialled on each page with “KW” and against some amendments made to the contract).
112. On the 6th August 2007 **Jiang** emailed “Kathy” re “Spare parts orders – TSP4606 & TSP4594”:

"The following customers will place the following two orders with you directly. But each order involves some **fixed amount pay out** to the customer...Order 1: TSP4606 (1830) The customer would like to buy 20 off MA30186. The price you quoted is 2142 GBP per unit. The customer would like to add 7000 GBP as **extra commission** and place the order directly with you as soon as you confirm this is ok. The total order value will be over 51,000 GBP".

113. On the 13th August 2007 Wiggins emailed **Jiang** re "TSP4606 and TSP4594": "I am attaching both the revised quotations as requested to include **extra commission**, along with the L/C terms documents. Please note that your commission will only be payable on the original parts prices".

Contract #15: TX0326

114. On or around the 1st December 2007 Sarclad contracted with Jiuquan Iron and Steel ("JISCO") for the supply of a Rolltex machine. The contact price was 2,320,000 Euros. The contract was brokered through Castmasters.

115. There were two agency agreements between Sarclad and Castmasters, dated 2002 and 2008 respectively. They were as follows:

- (a) 18th October 2002: this set out the commission to be received by Castmasters at between 4% and 20% of the price secured for each contract, dependent upon the type of product or service sold. It made no provision for the payment of "fixed" commissions. The agreement expired on the 18th October 2007. It was signed by **Sorby** on behalf of Sarclad.
- (b) 18th November 2008: this again set out the commission to be received by Castmasters at between 4% and 20% of the price secured for each contract, dependent upon the type of product or service sold. Again it made no provision for the payment of "fixed" commissions. It was signed by **Sorby** and witnessed by **Leek**.

116. An email dated the 5th December 2007, and timed at 21:39 hrs, from **Jiang** to "**Mike**" (**Mike Sorby**), and copied to **Justice** and **Leek**, stated:

"...the final contract price is 2,320,000 euro **including 90,000 euro payout**. I have been informed that the top man of JISCO will approve the contract within this week".

117. The Sarclad self-report quotes both the above email and also a different email of the 5th December, timed at 21.44, which includes the words "**including 90,000 Euro my agreed additional commission**".

118. The contract was attached to the email. The price was broken down as follows :

"Equipment, materials FOB EURO 2, 285,000

Spare parts FOB EURO 35,000"

Thus it would appear that the 90,000 Euro pay-out was hidden within the contract price.

119. Deloitte had a signed copy of the contract dated the 23rd November 2007 and the above mentioned similarly worded email at paragraph 119 above, which they reviewed in May 2009. There is no evidence about to whom the pay-out went or how it was paid.

Contract #16: TSP4735

120. On the 19th May 2008 Sarclad entered into a contract with Benxi Iron & Steel (Group) International Economic & Trading co. Ltd (“Benxi”) for the supply of spare parts. The contract value was £43,228.00 and the contract was brokered through Castmasters.

121. Contract number X08R20B039H46BJ appears to have been hand annotated with the reference “TSP4735” and was signed on the 30th April 2008 by the buyer, Benxi (signature illegible) and on the 19th May 2008 by Sarclad (the signature appears to be that of Kathy Wiggans).

122. On the 12th May 2008 **Jiang** emailed Wiggans re “Spare parts order – TSP4735 – Your quotation No.2334”:

"They said that they will not ask for discount for the order but want Sarclad to delivery (sic) the good with the quoted price (the total order value will be around 40k GBP). They will also add **4000 GBP** to the order which need to be paid back to them as a **fixed commission**. They will spread this 4000 GBP among the order. The order will be sent to you in the next few days".

123. A Castmasters invoice in respect of this contract is dated the 12th October 2008. The invoice shows a “**Fixed amount commission**” of £4,000.00.

124. A Sarclad generated spreadsheet titled “December 2008 Commission” lists various amounts of commission paid or invoiced by the agent in relation to the contract. An entry listed in the “comments” section, dated the 26th November 2008, states “Included in value was £4000.00 which is **fixed commission**. This needed to be deducted before commission calculated. This was not done so accrued figure down by £922.40”. The agent’s commission invoice number is listed as 200194.

Contract #17: TX0334

125. The self-report of the 31st January 2013 states that on or about the 15th July 2008 Sarclad contracted with Baoshan Iron and Steel for the supply of a Rolltex machine. The contract price was 2,426,350 Euros. The contract was brokered through Castmasters. The contract date seen on a draft agreement, signed by **Jiang**, is the 30th November 2007, sometime earlier than the 15th July 2008.

126. On the 5th December 2007 **Jiang** emailed **Sorby**, copying the email to **Leek** and **Justice**. It included the following:

“...I may be able to get this contract approved by baosteel (sic) authority with only 1% discount on the machine bid opening price **and 80,000 Euro payout**”.

127. The next day, on the 6th December 2007, **Justice** emailed **Jiang**, copying **Leek**. **Justice** wrote: “...I can agree on the price **and the extra commission**, so at least you can agree the price with the customer”.

128. On the 14th January 2008 **Jiang** sent **Justice** and **Leek** an email confirming that the contract was signed. The email is copied to “**mike**” (**Mike Sorby**).

129. The auditors, Deloitte's, were aware of the fixed commission of 80,000 Euros. The prosecution cannot prove to whom the 80,000 Euro pay-out was made.

Contract #18: SSP4994

130. On or around the 26th August 2008 Sarclad entered into a contract with Jinan Iran and Steel Company Ltd (“Jinan”) for the supply of spare parts. The contract price was £14,666.00 and the contract was brokered through Castmasters.

131. Contract number 200BCU-123Z-B appears to have been hand annotated with the reference “SSP4994” and was signed on the 24th August 2008 on behalf of the buyer, Jinan, (signature illegible) and on the 1st September 2008 on behalf of Sarclad (the signature appears to be that of Kathy Wiggans).

132. On the 26th August 2008 **Jiang** emailed “Kathy” re “Spare parts order from Jinan – SSP4994”: “The customer of Jinan has placed order for the spares. The (sic) have added GBP1500 into the price as **extra commission** to be paid to them through Castmasters. They have also spread the shipping cost into each item of the spares. The total contract price is GBP14,666.00. The contract will be with you shortly for you to sign.”

133. There is a Castmasters invoice dated the 12th October 2008 in respect of this contract. The invoice shows a “**Fixed amount commission**” of £1,500.00.

Contract #19: SX3555

134. The self-report of the 31st January 2013 stated that on or around the 3rd November 2008 Sarclad contracted with Ilyich to supply a Strand Condition Monitor to Xiangtan Iron and Steel Co Ltd. The contract price was £206,650. The contract was brokered through Castmasters.

135. There is a contract with a “concluded date” of the 20th August 2007. It is signed by **Jiang** on behalf of Sarclad Ltd. It was signed by the buyer on the 27th November 2007.

136. In respect of this contract two emails are relevant:-

- (a) Email from **Justice** to Suzanne Roberts, dated the 4th September 2008: "please find a copy of the contract review.....I believe there's £10,000 **extra commission** that's not shown on the review";
- (b) Email from **Jiang** to **Sorby** and Dawtry, dated the 4th November 2009, attaching a Sarclad generated SCM spreadsheet which details **fixed commission** payable on the SX3555 contract as **£15,000**. Additionally the agent's commission total at 8.5% is listed as £15,092.00.

Contract #20: TX0368

137. On or around the 3rd November 2008 Sarclad contracted with Xinyu Iron and Steel Co Ltd for the supply of a Rolltex machine. The contract price was £1,610,000. The contract was brokered through Castmasters. There is a contract, dated the 22nd October 2009, which is signed by **Leek**.

138. On the 22nd July 2008 **Jiang** emailed "**mike**" (**Mike Sorby**); **Justice** and **Leek** were also copied in:

"...the final word today with **Mr Chen who is in charge of this project** is that if we **pay him GBP10,000** he will finalise this project for a moving electrode machine for a contract value of GBP1,610,000".

139. **Leek** replied to **Jiang**, copying in **Justice** and **Sorby**, at 6.22pm the same day:

"I have spoken to **Mike** and he has agreed to your proposal. Just to confirm **additional commission** will be **£10,000**".

140. **Jiang** replied to **Leek**, copying in **Justice** and "**mike**" (**Sorby**):

"The message has been passed onto Mr Chen and he will let me know the outcome of the top man's meeting. I will let you know the results as soon as I have any news".

141. There is a commission statement dated the 3rd January 2013 (the statement refers to the fact that there was purportedly an "original" document dated the 6th August 2012). It was signed by Dawtry on the 6th February 2013 but is unsigned by the agent. There is no reference to fixed commission. The percentage is stated as 5%. There is a comment that a lower percentage has been agreed. There are also handwritten comments about "funds outstanding".

142. There is also a contract review obtained from Deloitte and produced as part of their audit process, which notes that the agent's commission is **fixed** at £10,000.

Contract #21: SX3749

143. On or around the 23rd March 2010 Sarclad contracted with Wuhan Iron and Steel (Group) Corporation (“WISCO”) for the supply of a Strand Condition Monitor. The contract price was £169,000. The contract was brokered through Castmasters. There is a signed contract dated 9th February 2010.
144. On the 30th November 2009 **Jiang** emailed **Sorby**, copying in **Justice** and **Leek**:
“...Two persons are the most important people on this project. Shall we **pay them to get this project?** ...For the costwise I think **GBP5,000 per person** should do it...let me have your comments urgently”.
145. **Justice** replied to **Jiang**, copying in **Leek**, on the 1st December 2009. Sorby was away:
“...if the price was not submitted we can accept the **£10,000 GBP extra commission**, however if the revised price was submitted we need to figure out a way of increasing the contract value to **allow for the commission...**”.
146. **Jiang** emailed **Justice** and **Leek**, copying in “**mike**”, on the 1st December 2009:
“...one other way is to put my commission back to the original 10% I will then do everything I can to get this contract. What do you think?”.
147. **Justice** replied to **Jiang** and **Leek** on 2nd December 2009, copying in **Sorby**:
“...secondly if we remove the manufacture of the stand and eliminate the supply of a cover we can save some money, enough to offer **£3500 as commission**...therefore if we offer £3500 and you offer the same we are almost there... is it possible to **tie these two men into the next contracts and say that we can offer commission if we win the next two contracts?**”.
148. **Jiang** replied to **Justice** and **Leek** (copying in **Sorby**) on the 2nd December 2009 (at 16.40):
“I am working on you **contributing £3500** towards getting this project”.
149. Thereafter **Jiang** emailed **Justice** (copying in **Sorby**) on the 2nd December 2009 (at 22.25):
“I am here in Wuhan. I will meet WISCO people tomorrow morning. They want me to explain the measurement results to them and to demonstrate our equipment good. **This opportunity is achieved under the help of WISCO insiders. I will work on Mr Wang to get this project**”.
150. The Deloitte audit shows the total commission as 6%, “being £12,887 plus **agreed fixed amount of £3500**”.
151. According to the 31st January 2013 self-report, on the 24th June 2010 **Justice** signed off a commission statement providing for a commission payment of £3,500 (described as a “**fixed commission**”), in addition to Castmasters’ commission of 6% .

Contract #22: RSP4669

152. On or around the 9th September 2010 Sarclad contracted with Yieh United Steel Corp (“YUSC”) for the supply of Rollscan spares and a 4 probe capsule. The contract price was £3,211. The contract was brokered through Neumeyer. The contract has apparently been mislaid or accidentally destroyed when Sarclad moved office in May 2012, prior to the discovery of the issues which became the subject of the 31 January 2013 self-report.

153. An agency agreement between Sarclad and Neumeyer is dated the 3rd February 2000. It is signed by “JF Morris” but is witnessed by **Sorby**. It specifies that commission on all direct sales will be paid and agreed on a case by case basis.

154. On the 6th September 2006 **Leek** emailed Neumeyer, copying in **Sorby** and **Justice**:

“I thought the **additional 10%** was for Neumeyer but I have spoken to **Mike Sorby** and he has explained that the **additional 10% is actually for YUSC people**. I agree that Neumeyer can have the **full additional commission of 10% for the YUSC people**”.

155. On the 9th September 2010 **Leek** emailed Neumeyer, copying in **Justice**. There was some confusion about what the additional commission was for and **Leek** said:

“If the situation had been made clear to Sarclad from the very beginning about where the **additional 10% commission** was going and the way it was being used none of this confusion would have occurred. Anyway, as per your discussion with Mike Sorby, Sarclad has agreed to pay Neumeyer 35% commission for this spares order, you can **use it as you deem necessary**. I would like to point out that I would have agreed exactly the same as Mike had I been informed of the full situation and the exact requirement for the **additional 10%**”.

156. Neumeyer sent a schedule of commissions for the year 2009/2010. **Leek** appears to have signed it off. The commission due for this contract is stated to be “£1,043.58”.

Contract #23: SX3773

157. On or around the 9th September 2010 Sarclad contracted with Xinyu for the supply of a Strand Condition Monitor. The contract price was £212,000. The contract was brokered through Castmasters. There is a signed copy of the contract dated 20th August 2010. Whilst the signature of the Sarclad representative is illegible, it appears to be dated the 8th September 2010.

158. In an email dated the 20th May 2010 **Leek** emailed **Jiang**, copying in **Sorby** and **Justice**:

"We agree with your proposal for the **additional commission of £40,000 GBP** making the total contract value £299,500GBP".

159. On the 21st May 2010, after a conversation between **Jiang** and **Leek**, **Leek** emailed **Jiang**, copying in **Justice** and **Sorby**:

"Total contract price £235,000 CIF Shanghai (may be reduced by approximately £3000 if they chose FOB)

Additional commission £15,000 GBP.

Your commission for this contract 8%".

160. It appears that a competitor put in a lower offer. **Leek** emailed **Jiang**, copying in **Justice** and **Sorby**, on the 27th May 2010:

"Go for it, we accept these terms.

However, we will need to discuss what we are getting for the **additional commission** as there seems to be a lack of **influence?**".

161. On the 28th May 2010, **Jiang** emailed **Leek**, copying in **Justice** and **Sorby**:

"I have passed your acceptance of the price and terms to Xinyu based on 8% of Castmasters commission and **15.000 GBP additional commission**. I am waiting for Xinyu final decision. Regarding this **additional commission** we have to pay for the amount agreed. He said that **he is working on to keep us in otherwise Sider has already got the contract**. We can discuss **options for his commission** if we have to further reduce our price to get this contact. Or we can make decision that we do not need his involvement any further if we are not successful after this price submission".

162. On the 6th August 2010 **Leek** wrote to **Jiang**, with **Justice** and **Sorby** copied in:

"is there any way we can reduce the **15k additional commission** as we are making a loss on this contract and **this guy doesn't seem to have done a great deal for us?**".

163. **Jiang** replied to all on the 8th August 2010:

"We can not **bypass that guy and reduce his amount now. He is working** until now to **keep us in**". **Jiang** repeats that the terms and conditions as previously agreed include "**Fixed amount payout: GBP15,000.00**" in addition to "Castmasters' commission: 8%".

164. **Leek** and **Jiang** signed a commission statement (dated the 9th September 2010) on the 15th September 2010 detailing these amounts. The commission percentage is stated to be 8% and the "**fixed commission value**" is **£15,000**.

Contract #24: SX3789

165. On or around the 23rd March 2011 Sarclad contracted with Angang Group International Trade Corporation for the supply of a Strand Condition Monitor. The contract price was £182,430. The contract was brokered through Castmasters. There is a signed contract dated the 11th March 2011.
166. On the 26th January 2011 **Jiang** emailed **Justice** and **Sorby**, copying in **Leek**:
“...But as the Chinese New Year is near I can **try to offer the decision maker GBP5,000.00 payout** to try to get this contract.....do you want me to try this? By doing this way we may get this job for GBP181,000. Take off **GBP5,000 payout** we will get GBP176,000 for this job. I think it is worth trying. Do you agree?”.
167. Later that day **Justice** emailed **Jiang**, copying in **Sorby** and **Leek**:
“**Yes please try to win the contract using 5k commission**”.
168. The following day **Jiang** emailed **Justice** and **Sorby**, copying in **Leek**:
“I spoke to the **top man** and offered **5k and he has accepted** it. He said that he is going to speak to the project term (sic). Later this afternoon it has been confirmed from the project term (sic) that they has (sic) been asked to re-evaluate Sarclad offer. So I think that it is all the good sign”.
169. On the 31st January 2011 **Jiang** emailed **Justice** and **Sorby**, copying in **Leek**:
“Good news! I have just been informed that **we have been awarded this contract**”.
170. **Justice** replied to **Jiang** and **Sorby**, copying in **Leek**, later that day:
“that’s very welcome news, thanks very much for your efforts”.
171. On the 31st January 2011 **Justice** emailed **Dawtry**:
“Contract value is 180k but we have **fixed commission of 5k**”.
172. On the 16th March 2011 **Jiang** emailed **Justice** and **Sorby**, copying in **Leek**:
“Good news! We have won this contract. The attached is a copy of signed commercial contract. I has (sic) used **5k commission** but we get a slightly better price than we set off originally. The contract start date is 11th of March 2011”.
173. There is a commission statement dated the 23rd December 2011 signed by **Leek** and **Jiang** in respect of contract SX3789. The commission percentage is 10% and it states “**fixed commission value £5,000**”.
174. On the 14th June 2012 **Dawtry** emailed **Jiang** to tell him that his invoice was wrong. **Jiang** replied, copying in **Leek**:

“what miss out from your calculation is **fixed amount commission of GBP5000.00**. So the invoice is correct”.

POST-BRIBERY ACT CONDUCT: COUNTS 2 AND 3

175. At Count 2, Sarclad, Michael Sorby, Adrian Leek and David Justice are jointly charged with “conspiracy to bribe”, contrary to section 1 of the Criminal Law Act 1977 and section 1 of the Bribery Act 2010 (“Count 2”). Again, Dr Jiang is an alleged co-conspirator.

176. At Count 3, Sarclad is charged alone with an offence under section 7 of the Bribery Act 2010 (“Count 3”).

177. The conduct falling within these counts relates to the obtaining of some 4 contracts through bribery in the period from 2011 to 2012. Contracts 25 and 26 relate to count 2 in that pre-contractual negotiations began whilst Michael Sorby was still a controlling mind. Contracts 25-28 relate to count 3. The evidence of bribery is disclosed by the following:

Contract #25: TX0435

178. On or around the 17th August 2011 Sarclad contracted with Jiangsu Shagang International Trade Co (“Shagang”) for the supply of a Rolltex machine. The contract price was 1,780,000 Euros. The contract was brokered through Castmasters. This contract spans the implementation of the Bribery Act. There is an unsigned copy of the contract.

179. On the 20th June 2011, at 7.37, **Justice** emailed **Jiang**. He wrote:

“...will you be able to make contact with any one at Shagang to determine the state of play and if there are **additional commissions**?Also should I send the price direct or through you. None of this seems safe to me”.

180. On the 21st June 2011, at 16.08, **Jiang** emailed **Justice**:

“Both Mr Yang and Mr Chen are willing to help us. Mr Chen is technical leader and Mr Yang is in charge of the commercial aspects.They will not go through the bidding process so just on negotiation. We need to go for a very low price but need to leave **1% for pay out to Mr Chen and Mr Yang** and 5-6% for negotiation”.

181. On the 22nd June 2011, **Justice** emailed **Leek** and added a post script:

“just about to start looking at Guang's Shagang offer now as he needs this by tomorrow. He's **only asked for 1% extra commission**, very reasonable”.

182. On the 17th August 2011 **Jiang** emailed **Justice**, copying in **Leek**:

“I had a discussion this lunch time with Mr Chen. He will work for us towards getting this job. He will do some work before the meeting with the top man. He asked me what our bottom price

is. I told him the most reduction we can give is 5%. We are currently still at 1.83m Euro. **He has already been offer (sic) a 1% commission. But he suggest that we pay a 2% commission and he will try to conclude the contract within 3% reduction.** I Have (sic) agreed with him If (sic) he can conclude the contract quickly and with no more than 3% reduction **we will pay him Euro 35,000**".

183. It is clear from the email correspondence that there is a telephone conversation between **Jiang** and **Justice**. The contract is then concluded at 1,780,000 Euros.

184. On the 23rd December 2011 **Leek** and **Jiang** signed off a commission statement providing for "**fixed commission of £30,000**" in addition to Castmaster's commission of 6.5%. There are handwritten amendments on the statement.

Contract #26: TX0424

185. The self-report of the 31st January 2013 states that on or around the 25th August 2011 Sarclad contracted with POSCO E and C for the supply of a Rolltex machine. The contract price was \$1,535,000. The contract was brokered through CKS. The actual date on the contract seen is 28th July 2011.

186. There is an agency agreement between Sarclad and CKS signed by **Leek** on behalf of Sarclad on the 24th August 2010 and by Taewan Kim on behalf of CKS on the 2nd September 2010. The agreement provides for the payment of commission at rates of between 10% and 20% depending upon the product sold. There is no provision for the payment of fixed commission.

187. There is a commission statement in relation to this contract dated the 3rd January 2013 (it is annotated "original document dated 14/08/12"). It is signed by Dawtry on the 6th February 2013 but unsigned by the agent. The percentage commission is set out as 10% to CKS and 4% to Castmasters. There is no reference to fixed commission, and it contains handwritten amendments.

188. There are the following emails of relevance:

189. Email, dated the 26th April 2011, from Kim to Leek: "After having a meeting, we will have a dinner with a director of POSCO China CGL and suggest something for him";

190. Email dated 3 May 2011 from Kim to Leek: "If you are ok, we would like to report final result about POSCO China CGL after discussing with Mr T W Kim tomorrow because he had a secret meeting with a director of POSCO China CGL"

191. Email, dated the 13th June 2011, from Kim to Leek: "... we have been keeping in touch with a person who was a director of POSCO Cold Rolling Mill and made a deal with him";
192. Email, dated the 14th June 2011, from Leek to Kim, copying in Justice and Evans: "We agree to 10% commission for Cheong Kum Steel and to the additional commission of \$80,000USD but understand that you will try to reduce this if possible";
193. Email, dated the 23rd September 2011 from Kim to Leek: "Additional commission for POSCO CHINA GCL- US\$80,000.00 (For reference, we have already gave US\$20,000.00 of promised money for directors **of POSCO**)".

Contract #27: TX0443

194. On or around the 14th December 2011, Sarclad contracted with Hebei Machinery Import and Export to supply a Rolltex machine. The contract price was 1,900,000 Euros. The contract was brokered through Castmasters.
195. On the 1st December 2011 **Jiang** emailed **Leek**, copying in **Shillam** and **Justice**:
"Our contact here is very good. He was the roll shop manager of Tangshan where we have our TX0208 installed. He worked for us on TX0208. He was retired from Tangshan and now is the Chief Engineer of Qianan Siwen Kede. He is willing to work for us again on this project and everything I told you about this project comes from him. **This will cost 2% of the contract price for his service**".
196. **Leek** replied, copying in **Shillam** and **Justice**:
"**Additional commission** noted and included".
197. On the 13th December 2011 **Jiang** emailed **Leek** at 13.40, copying in **Shillam**:
"...I have been contacted by one of the top man today and he said that he guarantees we get the contract. But for this **he requires Euro 150,000**. I told him that we will need minimum of Euro 1,700,000 for this contract. He said that he will try to conclude the contract for Euro 1,850,000 to 1,900,000 tomorrow if we agree to his proposal. **...the pay outs will be Euro 150,000 plus Euro 35,000 agreed before to the Chief Engineer**".
198. On the 14th December 2011, at 09.53, **Leek** emailed **Jiang**, copying in **Shillam**:
"we cannot entertain, condone or accept these additional payments. This is considered illegal practice in the UK and we cannot accept this".
199. It would appear that there was then a telephone conversation between **Jiang** and **Leek**.
200. On the 14th December 2011, at 16.04, **Jiang** emailed **Leek**, copying in **Shillam**:

"We have got this contract on the terms as we agreed during our telephone conversation this morning". He attached a signed copy of the contract.

201. **Leek** then sent the contract to **Dawtry**; he stated "email for payments attached".

202. There is a Castmasters invoice and two versions of the same commission statement for this contract:

(a) The Castmasters Invoice is dated the 23rd March 2012 and refers to "**Fixed amount commission** 185,000 x 15% @1.21135 = GBP 22,908.33".

(b) There is a commission statement dated the 23rd December 2011 signed by **Leek** and **Jiang**. The commission percentage is 6.5% and "**fixed commission value**" is 185,000 Euros. There are handwritten amendments.

(c) There is also a duplicate of this statement but the fixed commission value has been scrawled out and there are other amendments.

Contract #28: TX0407

203. The self-report of the 31st January 2013 stated that on or about the 12th June 2012 Sarclad contracted with Pangang Group International Economic and Trading Co for the supply of a Rolltex machine. The contract price was \$2,448,000. The contract was brokered through Castmasters.

204. The contract was signed by **Jiang** on behalf of Sarclad.

205. On the 11th November 2011, at 10.21, **Jiang** emailed **Justice**, copying in **Shillam** and **Leek**.

The email included the following:

"We are in danger of losing this job.....there are 3 group of people we need to work on. They are decision maker, project leader and bid company people. I can get this issue sorted out but I will need **GBP30,000 extra commission**. If you agree to this I can make sure we are get in and try and reduce the negotiation margin to **compensate these pay outs**".

206. At 11.05 **Justice** emailed **Leek** and **Shillam**:

"...Guang's 30k commission would be a replacement to the 2% agreed with Mike verbally, no signature.....the call is yours, please let me know our discuss (sic) direct with Guang"

207. At 15.07 **Leek** emailed **Justice** and **Shillam**:

"Hi Keith

I have spoken to Dave and I think we go for it unless you think otherwise".

208. At 16.45 **Shillam** replied to **Leek** and **Justice**: "Agreed. Go for it!"

209. On the 12th November 2011 **Justice** emailed **Jiang**, at 11.04, with **Leek** and **Shillam** copied in: "We agree to your proposal. I will issue a commission agreement for you next week."

210. On the 23rd December 2011 **Leek** and **Jiang** signed off a commission statement providing for a £30,000 "**fixed commission**". There is an amended version with the £30,000 crossed out.

13 April 2016