



Case No: U20201913

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/10/2020

Before:

MRS JUSTICE MAY DBE

Between :

Director of the Serious Fraud Office
- and -
Airline Services Limited

Applicant

Respondent

Crispin Aylett QC and Ms. Rachna Gokani (instructed by **the Serious Fraud Office**) for the
Applicant
Alison Pople QC (instructed by **Eversheds Sutherland (International) LLP**) for the
Respondent

Hearing dates: 21 & 30 October 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MRS JUSTICE MAY DBE

Mrs Justice May DBE:

Introduction

1. On Wednesday 21 October 2020 I heard an application in private for preliminary approval of a Deferred Prosecution Agreement (“DPA”) made between the Director of the Serious Fraud Office (“SFO”) and Airline Services Limited (“ASL”). Following that hearing I indicated that it was likely to be in the interests of justice for such a DPA to be entered into and that its proposed terms were fair, reasonable and proportionate. Today, at an open hearing, I have made a final declaration and Order to that effect.
2. The total sum payable by ASL to the Consolidated Fund via the SFO pursuant to the DPA is £2,229,685.76, made up of disgorgement of profit of £990,971.45 and a penalty of £1,238,714.31. Under the terms of the DPA ASL is also required to make a contribution to the SFO’s costs of £750,000.
3. The criminality which is the subject of the present DPA concerns three occasions of bribery of an agent in order to secure valuable contracts for ASL in the period 2011 to 2013. At the time, notwithstanding the recent passing of the Bribery Act 2010, ASL had made negligible efforts to educate its staff or to introduce processes to identify and counteract occasions of bribery. This activity, and ASL’s failures in relation to it, give rise to an indictment containing three counts of failure of a commercial organisation to prevent bribery, contrary to section 7 of the Bribery Act 2010.
4. The offending came to light following an internal investigation initiated in 2015 by ASL, who thereafter self-reported to the SFO. The SFO’s subsequent investigation and the ensuing negotiations with ASL gave rise to the proposal for a DPA on the terms advanced for the court’s approval.

The legal framework

5. A comprehensive account of the purpose of DPAs, and the legal framework within which they sit, is to be found in the recent judgment of Dame Victoria Sharp, PQBD, in *Director of the Serious Fraud Office v. Airbus SE* [2020] WLUK 435, at [6]-[10]. I respectfully adopt her exposition and analysis of the relevant legal principles, allowing me in this judgment simply to give a short explanation of the process.
6. Section 45 and Schedule 17 of the Crime and Courts Act 2013 (the 2013 Act) provide for a mechanism by which a corporate body may enter into an agreement enabling it to avoid prosecution for certain specified offences, on terms negotiated with a designated prosecutor (being the DPP or the SFO, depending upon the offence). Before it can take effect, a DPA requires the approval of the court. For such approval to be given the court must be satisfied that the DPA is in the interests of justice and that its terms are fair, reasonable and proportionate.
7. The process for obtaining approval involves two stages. First, an application must be made for a declaration pursuant to paragraph 7 of Schedule 17 to the 2013 Act that the proposed DPA is *likely* to be in the interests of justice and that its proposed terms are fair reasonable and proportionate. That preliminary hearing is conducted in private and any declaration is given in private: see paragraph 7(4) of Schedule 17 to the 2013 Act.

8. If preliminary approval has been indicated, then the second stage of the process involves a hearing in open court allowing the necessary declarations to be made and the reasons for approval to be given: paragraph 8(6) of Schedule 17 to the 2013 Act.
9. Although paragraph 7(4) of schedule 17 to the 2013 Act provides that reasons for a decision at the preliminary stage must be given in private, where a DPA is to be approved the practice has developed of reserving such reasons to the final hearing, and for the open judgment to set out the whole reasoning. I have followed that practice in this case; this judgment accordingly sets out my reasons for making (i) the preliminary declaration in private last week and (ii) the final declaration and approval now.

The application for a DPA in this case

10. At the private hearing last week, I received comprehensive written submissions and heard detailed submissions from Crispin Aylett QC for the SFO and Alison Pople QC for ASL. Having considered all the material put before me, and having heard oral submissions from the parties, I made the declaration which they invited me to make, namely that entering into a DPA on the terms proposed was likely to be in the interests of justice, and that the terms were fair, reasonable and proportionate. I reserved my reasons for reaching such preliminary conclusion until the final hearing today.
11. The Director of the SFO has now applied for a final declaration under paragraph 8 of Schedule 17 that the DPA which she proposes to conclude with ASL *is* in the interests of justice and that its terms are fair, reasonable and proportionate. Nothing has occurred to cause me to change my provisional view, accordingly I have today given that approval and made that declaration.

Facts

12. The facts giving rise to the three charges which are the subject of the DPA in this case are fully set out in the Statement of Facts annexed to the agreement. In what follows I shall do no more than summarise the salient points.
13. In the Statement of Facts and in this judgment certain names have been anonymised. There are two reasons for this: first, in order to safeguard the fairness of any future prosecution(s); second, because factual assertions have been included about the conduct of persons who have not been parties to negotiations with the SFO, who have not been represented at either hearing and who have not had any opportunity to comment on how their roles may have been characterised and described. Where necessary, names and identities were made known to me to permit me fully to evaluate the extent of responsibility and proper level of culpability of ASL when considering whether or not to make the declarations sought.

ASL

14. ASL is a UK company founded in 1984 whose business expanded over time to encompass the provision of a number of services for airlines, including the manufacture and adaptation of parts for aircraft interiors. ASL's head office and workshop were at all material times based in Wythenshaw, Manchester, with staff working across a number of different UK airports. At any one time there were around 1000 employees

working for the company. At its peak, the combined group of which ASL was a member had an annual turnover of approximately £60m.

15. In 2004 there was a management buyout whereby ASL was acquired by Airline Services Holdings Ltd (“ASHL”). In 2012 Airline Services and Components Group Limited (“ASCGL”) acquired ASHL, and thereby (indirectly) also ASL, with the assistance of third-party funding in circumstances where the third party became a major shareholder.
16. During 2018, ASL completed the sales of both its Interiors and its Handling business divisions. ASL is now a non-trading entity. I was told that once the DPA has been complied with and after it terminates, ASL will be wound up.

Sales teams and use of agents

17. From about 2011 to early 2014 the ASL Sales Teams were split into three geographical areas: a team in the UK dealt with sales to airlines in India, Sri Lanka and Indonesia; a second team based in Germany had responsibility for sales into Germany and Turkey; lastly there was an individual based in Austria who dealt with sales into the remainder of Europe and the Middle East. Each salesperson was entitled to commission calculated by reference to the gross sales that (s)he achieved.
18. In order to secure business from the airlines, most of ASL’s sales personnel used agents. ASL had a number of agreements with such agents, who were considered to have better contacts with individual airlines. These agreements specified the percentage commission which agents would obtain, based upon the price of the contract.
19. The commission arrangements between ASL and its sales personnel, and between ASL and the agents, based as such agreements were on the price rather than the profitability of the contracts, generated the obvious risk that sales personnel might commit the company to contracts that were profitable for themselves and the agents with scant regard to the interests of the company.

Contracts with Lufthansa and the use of Agent 1

20. On 7 October 2011 ASL entered into an agreement with an agent (“Agent 1”) under which it agreed to pay Agent 1 10% commission (later reduced to 5%) based upon the contract price of any business won by ASL as a result of Agent 1’s efforts. Most of the business secured by Agent 1 for ASL was from Deutsche Lufthansa AG and its subsidiary Lufthansa Technik AG (together referred to as “Lufthansa”). Agent 1 worked closely with senior employees of ASL based in Germany.
21. At the same time as acting for ASL, Agent 1 was also retained by Lufthansa as a consultant project manager within a department named Product Competence Centre Cabin Interior and In-flight Entertainment. A senior employee at Lufthansa allocated work and gave instructions to Agent 1. On behalf of Lufthansa, Agent 1 worked on projects for the improvement of the interior of Lufthansa’s fleet of Airbus 340s and Boeing 747s. Agent 1’s duties included working on Lufthansa’s Requests for Proposals (invitation to tender documents) before they were sent out to potential bidders, evaluating bid documents and making recommendations to the Decision Committee regarding the bids that came in.

22. ASL was one of a number of companies submitting bids to Lufthansa for such work. Agent 1 would have been privy to commercially sensitive information submitted by rival companies submitting tenders in competition with ASL. In due course, ASL was awarded contracts with Lufthansa for both the Airbus 340 and Boeing 747 aircraft.
23. On 14 October 2011 and 28 November 2011 ASL entered into over-arching General Terms of Agreement with Lufthansa. These were framework agreements pursuant to which ASL entered into four supplemental agreements with Lufthansa referable to particular projects. ASL made payments to Agent 1 in respect of three of these four supplemental agreements. In the course of carrying out the work under these supplemental agreements ASL secured further work from Lufthansa, thereby increasing the value of the contracts.
24. The total value of work obtained as a result of entering into the three supplemental agreements in respect of which payments were made by ASL to Agent 1 was £7,387,227.00. The overall gross profit to ASL was £990,971.45.
25. These three supplemental agreements, together with the role played by Agent 1 in relation to them, each give rise to a charge against ASL of failing to prevent bribery contrary to section 7 of the Bribery Act 2010. I set out brief details of each below.

First Supplemental Agreement – Count 1

26. The first supplemental agreement (“SA1”) gives rise to Count 1 on the indictment.
27. On 12 April 2011, ASL was invited to participate in Lufthansa’s tender process for seat modifications to accommodate a new in-flight entertainment system for the Airbus 340 fleet. In the course of this tender process Agent 1 provided confidential information to ASL allowing it to improve its initial bid, supported ASL through the process and helped ASL to win the contract. Further details of Agent 1’s assistance to ASL are given in the Statement of Facts. Whilst Agent 1 was ostensibly acting for and on behalf of Lufthansa, within ASL he was described as “*our man*”, and as “*supporting us (behind the scenes)*”.
28. SA1 was signed in November 2011. Including further work consequent on SA1 this contract came to be worth £2,785,246.67 to ASL, with a gross profit accruing to ASL of £122,021.81.

Third Supplemental Agreement – Count 2

29. The third supplemental agreement (“SA3”) is the subject of Count 2.
30. On 14 September 2011, following a recommendation from Agent 1, Lufthansa invited ASL to submit a proposal to supply brand panels for Lufthansa’s regional fleet of aircraft. On 5 October 2011 a meeting took place at which Agent 1 was formally mandated on behalf of Lufthansa to discuss Lufthansa’s issues concerning this project. Just two days later, on 7 October 2011, Agent 1 signed the agency agreement with ASL. Thereafter Agent 1 worked “*behind the scene*” (sic) for ASL during the period of SA3, including providing ASL with confidential information and advising ASL to increase its contract price (against the interests of Lufthansa).

31. SA3 was dated 28 March 2012 and was worth £588,113.31 to ASL, with a gross profit accruing of £245,008.51.

The Fourth Supplemental Agreement – Count 3

32. The Fourth Supplemental Agreement (“SA4”) gives rise to the third and last count on the indictment.
33. On 17 January 2012, Agent 1 informed ASL that Lufthansa would be issuing tenders for modifications to seats on its fleet of Boeing 747s. On 6 February 2012 Agent 1 provided ASL with a list of rival bidders. On 8 February 2012 Agent 1 visited ASL’s German office; subsequent emails show that during that visit Agent 1 provided ASL with confidential information from Lufthansa and offered to help ASL with its bid. As before, emails to ASL from Agent 1 came from his personal email address. On 28 February 2012 Lufthansa invited ASL to tender; thereafter Agent 1 assisted with the bid, including travelling to ASL’s head office in Manchester and providing ASL with a copy of Lufthansa’s communications with a rival company.
34. In this way Agent 1 supported ASL’s bid at the expense of competitors. He went on to provide assistance to ASL in putting together the various tenders that ASL submitted to Lufthansa and kept ASL updated on the progress of the decision-making process. In one email dated 8 August 2012 Agent 1 referred to “*put[ting] my job on risk by providing you confidential informations* (sic).”
35. In an email sent on 23 August 2012 Agent 1 informed ASL that a competitor had just proposed a significant pricing discount, following which ASL offered a further price reduction through a credit on spares. On 3 September 2012 Lufthansa confirmed that ASL would be awarded the contract. This was a direct response to ASL’s email revising its pricing.
36. SA4 was signed on 2 October 2012; as with the other agreements Agent 1 continued to support ASL with performance under the contract, via his personal email address. SA4 came to be worth £3,336.987.72 with a gross profit accruing to ASL of £622,837.

ASL’s anti-bribery procedures

37. ASL’s compliance procedures during the relevant period from 2011 to 2013 were woefully inadequate. In December 2010 ASL had engaged external legal advisors to assess its compliance with the pending implementation of the Bribery Act 2010. This review identified that the use of a relatively small number of overseas agents represented a high bribery risk to ASL. The advisors made a number of recommendations to address this risk.
38. In order to assist ASL with implementing such recommendations the advisors provided ASL with a number of checklists and other documents, including in particular a draft “Anti-corruption Policy and Guidelines” document for use internally within ASL.
39. On 27 June 2011 a single event of training in relation to the Bribery Act 2010 was held for some of ASL’s senior managers and regional sales managers. The training included reference to the draft “Anti-corruption Policy and Guidelines”. However in September 2011 a senior executive of ASL informed the external advisors that ASL would be

adopting “a different approach”. That saw the end of the external advisors’ work with ASL on compliance with the Bribery Act provisions.

40. Save for that one training session in June 2011, ASL did not seek to communicate its “Anti-corruption Policy and Guidelines” to staff at any time prior to January 2014. Nor did ASL seek to implement any of the remaining recommendations made by the external legal advisors. It is agreed that from the implementation of the Bribery Act 2010 on 1 July 2011 to the beginning of 2015, ASL did not have in place any adequate procedures in order to prevent bribery.

Internal investigation

41. Concerns within ASL led it in 2014 to instruct external solicitors to examine a series of unrelated contracts involving a different agent and a different airline (“Agent X/Airline Y”). Although these solicitors reported allaying ASL’s original concerns in relation to Agent X, the process incidentally threw light upon the activities of Agent 1 in Germany. At this point ASL once more instructed external solicitors to investigate.
42. The results of that investigation prompted ASL to make self-disclosure to the SFO, which ASL did initially on 30 July 2015. The SFO thereafter conducted its own investigation, using material provided by ASL both voluntarily and through use by the SFO of its compulsory powers.
43. On 16 December 2015 the Director of the SFO authorised the opening of a criminal investigation.
44. ASL has continued to provide documentary material to the SFO. The SFO has conducted interviews with some former members of the ASL Board, senior management and relevant employees. At the request of the SFO, German law enforcement authorities have interviewed the senior employee at Lufthansa who was responsible for managing and overseeing the tendering process for the procurement of the relevant contracts with ASL and Lufthansa.
45. I was told that the SFO’s investigation has ranged far and wide over the business dealings of ASL during the period 2011 to 2015 with many different airlines and across many different jurisdictions. As part of that wide-ranging examination, the SFO re-examined ASL’s relationship with Agent X and Airline Y. I understand that the SFO came to a different conclusion to that of ASL’s external advisors at the time; however this aspect of the SFO’s investigation has not resulted in there being a sufficiency of evidence such as meets either of the tests set out at 1.2(i) of the DPA Code of Practice. The SFO has decided further investigation into that business activity would not be in the public interest. The charges associated with the activities of Agent 1 adequately address the overall criminality of ASL.
46. Senior management figures at ASL at the relevant time left the board and the company soon after the first internal investigations in 2014 and 2015. As I have already indicated, following the sales of its Handling and Interiors businesses in 2018 ASL stopped trading. ASL is now effectively dormant, remaining only as a shell supported by its major investor for the purposes of permitting the SFO to conduct this investigation and to conclude the DPA.

Interests of justice

47. Having set out the brief facts relating to each of the counts on the indictment, together with the history of ASL's own investigations and self-reporting I turn to consider the interests of justice.
48. Under paragraph 7(1)(a) (preliminary hearing) and paragraph 8(1)(a) (final hearing) of Schedule 17 of the 2013 Act, the first matter for this court to address is whether it is in the interests of justice for the Director of the SFO to enter into a DPA with ASL. The DPA Code of Practice which the Director of Public Prosecutions and the Director of the SFO are required to issue ("the DPA Code"), gives guidance on the general principles to be applied in determining whether a DPA is likely to be appropriate in a given case: see paragraph 6(1) of Schedule 17. The DPA Code sets out public interest factors in favour of, and against, prosecution at paragraphs 2.81 and 2.82 respectively. In respect of offences under the Bribery Act 2010 reference is also made to the Bribery Act Guidance: see paragraph 2.10 of the DPA Code.
49. Crim PR 11.3(3)(i) requires any application for a DPA to set out why such an agreement is likely to be in the interests of justice. Mr Aylett QC started by drawing attention to the following matters in favour of prosecution:
 - (i) Agent 1 was engaged because of his inside knowledge of Lufthansa's operation.
 - (ii) Agent 1 held a position of responsibility within Lufthansa, evaluating technical proposals and making recommendations to the decision committee. He was able, in short, to exercise direct influence over which bidder would be awarded Lufthansa's business.
 - (iii) The senior management within ASL at the time presided over a culture of wilful disregard of the commission of bribery offences by employees and agents. The senior management through to January 2015 failed to implement an effective compliance programme despite having sought, and been given, a guide and recommendations by which it could do so.
 - (iv) There was an obvious risk of substantial financial harm to other bidders and to Lufthansa.
 - (v) The underlying bribery offences were committed across jurisdictions.
50. As Mr Aylett rightly pointed out, these factors are such that in the absence of strong countervailing public interest factors, a prosecution against ASL ought to proceed.
51. He submitted, however, that there are strong factors telling against an immediate prosecution here, and which make a DPA appropriate:
 - (a) ASL alerted the SFO to the offending in a timely manner, by self-reporting immediately concerns which had been identified by external advisors called in for the purpose of examining the Lufthansa/Agent 1 business.
 - (b) ASL has actively cooperated with the SFO throughout the subsequent investigation, for example by facilitating interviews with ASL staff and through the timely and comprehensive provision of material requested (save that which attracted legal professional privilege).

- (c) ASL is essentially a different company to that which carried out the offending, with a differently constituted board (see [46] above).
 - (d) The offending is not recent, dating from the period 2011-2013.
 - (e) Aside from concerns raised about the business involving Agent X/Airline Y, which the SFO evaluated differently to ASL's own external advisors but which the SFO does not intend to take further (see [45] above), ASL has no prior history of similar, or indeed any, offending or regulatory misconduct.
 - (f) ASL took immediate steps to identify the deficiencies of its (then negligible) compliance programme.
 - (g) The offending did not include corrupting any public officials and did not cause major disruption to, or loss of confidence in, markets or governments.
 - (h) ASL did not make very significant gains in terms of profitability of the contracts the subject of the three counts on the indictment (relative to sums involved in other cases where DPAs have been approved).
 - (i) ASL is now effectively a dormant company. Since its core business was split up and sold off (see [46] above) ASL has remained inactive. The current board has chosen not to wind ASL up (as it otherwise might have done in these circumstances), instead acting to keep the company in existence in order to resolve matters relating to ASL's past criminal conduct.
52. Balancing the factors which Mr Aylett has identified, I am satisfied that the public interest lies against prosecution. ASL's offending behaviour was egregious, it took place over a sustained period of time and was repeated over three separate agreements. These are undoubtedly aggravating factors. But ASL mounted its own investigation, since which time it has done all that it could have been expected to do having uncovered the offending behaviour: it made a timely self-report and has since provided full cooperation to the SFO. This is an important consideration given that the core purpose of the creation of DPAs was to "incentivise" the exposure and self-report of corporate wrong-doing: see the *Airbus* case at [68], referring to *SFO v Sarclad* [2016] 7 WLUK 211 and *SFO v Rolls Royce* [2017] 1 WLUK 189.
53. I have also taken account of the fact that the offences are firmly in the past in circumstances where there is no possibility of repeat. Senior management in post at the time of the offending have long since left the company and the active business divisions of ASL have all been sold. The remaining corporate shell is being maintained and supported by its main investor solely for the purpose of agreeing, and then discharging, its obligations under the DPA. This latter point appears to me to be particularly telling when considering the public interest; I note that in the DPP's "Guidance on Corporate Prosecutions" (referred to at paragraph 2.10 of the DPA Code) there is given as an additional factor against prosecution:
- "h. The company is in the process of being wound up"*
54. The only reason why ASL has not been wound up to-date is in order to conclude the DPA and to pay whatever sum it will be required to pay under its terms. Once that has been done, ASL will be wound up.

55. It is for these reasons I came to the view that I did at last week's private hearing held in accordance with paragraph 7 of Schedule 17 of the 2013 Act, and why I have concluded today that it is proper to make a declaration under paragraph 8(1)(a) of Schedule 17 of the 2013 Act.

Fair, reasonable and proportionate

56. I turn next to the requirements of paragraph 7(1)(b) (preliminary hearing) and 8(1)(b) (final hearing) of Schedule 17 to the 2013 Act, namely whether the proposed terms are fair, reasonable and proportionate.
57. Paragraph 5 of Schedule 17 of the 2013 Act sets out the terms which must, and those which may, be included in the DPA. Crim PR 11.3 (f) and (g) (i) and (ii) require the application for a DPA to describe the proposed terms, explain how they comply with the DPA Code and the applicable Sentencing Guideline and to elucidate how they are fair, reasonable and proportionate.
58. A copy of the DPA in the terms which I have approved is annexed to this judgment. It is not necessary to set out the terms in any detail. I shall address the fair, reasonable and proportionate requirement by considering the terms under the following general heads:
- Duration
 - Cooperation
 - Disgorgement of Profit, and
 - Financial Penalty

Duration

59. Under paragraph 5(2) of Schedule 17 to the 2013 Act a DPA must specify an expiry date, being the date on which the DPA will cease to have effect (if it has not already been terminated for breach). The DPA in this case provides for ASL to be subject to a minimum period of 1 year. As a non-trading entity ASL would not benefit from a long period of instalment payments; ASL is to make payment of the sums required under the DPA within 7 days and could not be assisted by a longer term.
60. Regarding any outstanding investigations the SFO believes that it has obtained all information and material that is required from ASL in order to progress any ongoing investigation into individuals (in this or other jurisdictions). Mr Aylett told me that, should it prove necessary, 1 year will provide sufficient time for any outstanding lines of enquiry to be pursued with ASL. In the meantime, keeping ASL active for these restricted purposes, since it is otherwise a non-trading entity, will incur costs. In these circumstances the SFO believes that it would be disproportionate to extend the term any further than 1 year.
61. I am satisfied that, for the reasons given, the period of 1 year is fair, reasonable and proportionate.

Cooperation

62. Under paragraph 7.7(iii) of the DPA Code it is expected that a DPA will include a term providing for future cooperation. As ASL has access to a large amount of material which might be relevant to any prosecution of individuals it is obviously right, and in the public interest, that it should be required to assist any investigations or prosecutions of individuals concerned in the offending. Under the terms of the DPA, for the period of 1 year, ASL agrees to keep custody and/or control of the material gathered during its own and the SFO's investigations into the activities of its Interiors business. ASL will also agree to use its best endeavours to obtain any material outside of its custody held by the purchasers of its Interiors business (which was sold in February 2018).
63. The reasonable assistance which ASL undertakes to give pursuant to the DPA extends not only to law enforcement agencies in this jurisdiction but also those overseas, as directed.

Disgorgement

64. Paragraph 5(3)(d) of Schedule 17 of the 2013 Act refers to disgorgement of profit as a requirement to be included in a DPA, see also paragraph 7.9 of the DPA Code.
65. ASL's disgorgement of profit of £990,971.45 is provided for at Part B of the DPA. This figure represents the total gross profit accruing to ASL as a result of the three agreements with Lufthansa which are the subject of the counts on the indictment. I was told that the figures for each have been reviewed by an independent forensic accountant instructed by ASL and also by an accountant employed by the SFO. ASL and the SFO have agreed the gross profit figure.
66. I am satisfied that inclusion of a term requiring disgorgement, and the figure arrived at, is fair, reasonable and proportionate.

Financial Penalty

67. Paragraph 5(3)(a) of Schedule 17 of the 2013 Act identifies the payment of a financial penalty as a requirement to be included in a DPA; reference to such a penalty is also included at paragraph 7.8 of the DPA Code. Paragraph 5(4) of Schedule 17 provides that

“the amount of any financial penalty...must be broadly comparable to the fine that a court would have imposed on [the company] on conviction for the alleged offence following a guilty plea.”
68. In setting any fine, a court is required to take into account the financial circumstances of the offender: see CrimPD VII Q4 and the Sentencing Guideline for Corporate Offenders, General Principles. The SFO has thoroughly checked ASL's accounts and has sought updates from the company. As part of this process ASL's largest shareholder has confirmed that it is willing to support ASL by ensuring that it has funds to meet the amount(s) that it is required to pay under the DPA.

69. The amount of the financial penalty must be assessed by reference to the Sentencing Council Guideline on Corporate Offenders. The guideline dealing with bribery offences sets out the factors to be considered when assessing Culpability and Harm at Step 3. The figure for harm “will normally be the gross profit from the contract obtained, retained or sought”. This will usually be the same as the disgorgement amount, and that is the case here.
70. The Harm figure is then subject to a multiplier reflecting the degree of culpability. Here, ASL’s culpability falls into the highest Category A (offending committed over a sustained period of time, culture of wilful disregard of commission of offences). At Step 4 under the guideline the starting point of 300% is then subject to upward or downward adjustment by reference to a number of identified aggravating and mitigating factors. Mr Aylett told me that in this case the mitigating factors (no previous convictions or regulatory enforcement action, prompt self-reporting, extensive cooperation, offences committed under previous management) were assessed as outweighing the aggravating ones so as to justify taking 250% as the final multiplier. There are no matters requiring further adjustment under the “step back” provisions at Step 5 of the guideline, accordingly the appropriate financial penalty has been set at £2,477,428, subject to a discount.
71. It is necessary to apply a discount to this figure as the financial penalty should be comparable to a fine imposed upon conviction after a guilty plea. Ordinarily, a guilty plea would engage a maximum one third discount, or 33%. However it has been recognised in DPA cases that a further discount may be appropriate, for the reasons given by Leveson LJ in *Sarclad*, at [69]:
- “In addition, given that the admissions are far in advance of the first reasonable opportunity having been charged and brought before the court, that discount can be increased as representing additional mitigation. In the circumstances, a discount of 50% could be appropriate not least to encourage others how to conduct themselves when confronting criminality...”
72. Mr Aylett pointed out that in this case, in addition to early reporting and acceptance of wrongdoing, ASL has demonstrated a very high degree of cooperation, including a (limited) waiver of legal professional privilege in respect of ASL’s own investigation into the Lufthansa agreements and the previous one into the activities of Agent X/Airline Y. He also drew my attention to the requirement, identified at Step 9 of the Guideline, to consider the totality of offending where, as here, there is more than one offence.
73. Taking all this into account, it is submitted that the final penalty figure of £1,238,714.31 fulfils the objectives of punishment and deterrence.

Costs

74. The final element of the financial terms of the DPA relates to the SFO’s costs. Under paragraph 5(3)(g) of Schedule 17 of the 2013 Act there is reference to the inclusion of a term requiring payment of the prosecutor’s reasonable costs “in relation to the alleged offence or the DPA”. Here, the terms of the DPA require ASL to make a contribution of £750,000 to the SFO’s costs. Mr Aylett told me that this was the best estimate of

costs referable to that part of the SFO's wider investigation which concerned the "alleged offences", being the three counts included on the indictment; it also takes account of the company's financial circumstances.

75. I am satisfied that the terms requiring payment of these sums – disgorgement of £990,971.45, financial penalty of £1,238,714.31 and costs of £750,000 – are fair, reasonable and proportionate.

Compensation

76. There is no provision in the DPA for the payment of compensation. Under section 130 of the Powers of Criminal Courts Act 2000 a court is required to consider making an order for compensation in particular cases, and to give reasons in the event that compensation is not ordered. The Sentencing Guideline for Corporate Offenders specifically refers to section 130 and to the necessity of considering compensation in relation to offences such as those which underpin this DPA.
77. The SFO, having considered compensation, concluded that the inclusion of a term to deal with it would not be appropriate here, on account of the following:
- (1) The SFO has not been able to identify a quantifiable loss arising from any of the criminal conduct which the DPA is intended to resolve. Case law supports there being no order for compensation when there is no quantifiable loss: *R v. Ben Stapylton* [2012] EWCA Crim 728 at [11]; *R v. Vivian* 68 Cr App R 53.
 - (2) There is no evidence that the products or services which ASL provided were defective/unwanted, so as to justify a legal claim for the value.
 - (3) It has not been possible to identify which of the competing bidders for Lufthansa's business may have been successful in place of ASL.
 - (4) If any person or company believes themselves to have sustained a loss as a result of the events of bribery dealt with by the DPA then it would be open to them to bring a civil claim: *R v. Kenneth Donovan* (1981) 3 Cr App R (S) 192.
78. I am satisfied that these reasons amply justify the exclusion from the DPA of a term dealing with compensation.

Conclusion

79. DPAs are still relatively rare, this being the ninth to be approved since the enactment of the 2013 Act. The present DPA requires ASL to disgorge all profit made from the business obtained through bribery and also to pay a significant financial penalty. The penalty, and the discount, serve to convey two important messages: the first is that corporate offending will be visited by the imposition of a very heavy financial penalty over and above the disgorging of profits wrongly made; the second, via the discount of 50% on that penalty, conveying a positive and substantial incentive toward self-reporting and cooperation where offending is detected.

80. Pursuant to paragraph 8(1) of Schedule 17, I declare that the DPA is in the interests of justice and that its terms are fair, reasonable and proportionate. I consent to the preferring of a bill of indictment charging ASL with 3 counts under section 7 of the Bribery Act 2010. I note that, pursuant to paragraph 2(2) of Schedule 17 of the 2013 Act, these proceedings are automatically suspended. The terms of the DPA should now be enforced in default of which an application can be made under paragraph 9(1) of Schedule 17.

81. I wish to record my grateful thanks to all counsel – Mr Aylett QC and Ms Gokani for the SFO and Ms Pople QC for ASL – for their assistance with the facts and the law over the course of both hearings. The DPA, the Statement of Facts and this judgment containing the reasons for making the required declarations should now be published.

IN THE CROWN COURT AT SOUTHWARK

BETWEEN

THE SERIOUS FRAUD OFFICE

-v-

AIRLINE SERVICES LIMITED

STATEMENT OF FACTS

**PREPARED PURSUANT TO PARAGRAPHS 5(1) OF SCHEDULE 17
TO THE CRIME AND COURTS ACT 2013**

1. The agreed facts are set out under the following headings:
 - I Introduction
 - II Airline Services Limited
 - III ASL's Sales Team
 - IV The use of agents by ASL
 - V ASL Agent 1's Business
 - VI The agreements between ASL and Lufthansa
 - VII Supplemental Agreement No. 1 ("SA1") - Seat Modifications for Airbus 340 – Count 1 – Failure of a commercial organisation to prevent bribery, contrary to section 7 of the Bribery Act 2010
 - VIII Supplemental Agreement No. 2 ("SA2") – BOSE Headsets
 - IX Supplemental Agreement 'No. 2' ("SA3") - Brand Panels – Count 2 – Failure of a commercial organisation to prevent bribery, contrary to section 7 of the Bribery Act 2010
 - X Supplemental Agreement No. 4 ("SA4") - Boeing 747 Seat Modifications - Count 3 – Failure of a commercial organisation to prevent bribery, contrary to section 7 of the Bribery Act 2010
 - XI ASL's anti-bribery and corruption procedures

I. INTRODUCTION

2. This document is an agreed Statement of Facts in relation to the commission by Airline Services Limited [hereafter 'ASL'] of three offences of failing to prevent bribery contrary to section 7 of the Bribery Act 2010. It is produced for the purposes of a Deferred Prosecution Agreement between the Serious Fraud Office ['SFO'] and ASL.

3. This case relates to the way in which ASL used an agent, ASL Agent 1, to assist in securing business from Deutsche Lufthansa AG ['DLH'] and its subsidiary, Lufthansa Technik AG ['LHT'], (hereafter together referred to as 'Lufthansa'). At the same time as acting as an agent for ASL, ASL Agent 1 was also retained (as a consultant and later as an employee) by Lufthansa as a project manager. Thus, ASL Agent 1 was working for both the customer, Lufthansa, and the supplier, ASL. Three contracts have been identified in which it is apparent that ASL Agent 1 abused his position with/at Lufthansa in order to provide ASL with an unfair advantage. The overall value to ASL of these three contracts (including additional work that was subsequently awarded, thus increasing the value of the contracts) was £7,387,227.00 with a gross profit to ASL of £990,971.45.
4. Following the identification of concerns relating to ASL's engagement of ASL Agent 1, ASL instructed a firm of external lawyers to conduct an internal investigation following which ASL decided to take the significant step of self-disclosing the conduct set out in this Statement of Facts to the SFO. This disclosure to the SFO occurred initially on 30 July 2015. There followed a series of meetings and the provision of material to the SFO by ASL through ASL's legal advisers. Such material was provided both voluntarily and through the SFO using its compulsory powers.
5. On 16 December 2015, the Director of the SFO ['DSFO'] authorised the opening of a criminal investigation.
6. Since the DSFO opened an investigation into ASL, the company has continued to make electronic and documentary material available to the SFO both voluntarily and through the SFO's compulsory powers. This has included the provision of some privileged material under a limited waiver.
7. The SFO has reviewed the material provided by ASL and has conducted interviews with some members of ASL's Board, senior management and relevant employees. ASL refrained from interviewing after the commencement of the SFO investigation.
8. Further, at the request of the SFO, German law enforcement authorities interviewed Former Lufthansa Senior Employee 2. This individual both managed and oversaw the tendering process for the procurement of the ASL contracts.
9. The SFO has undertaken a comprehensive review of ASL's relationships with other agents and with other airlines and has taken necessary steps to satisfy itself that the full extent of the offending has been identified. The SFO's investigation included obtaining and reviewing significant amounts of hard copy and digital material, conducting witness interviews and interviews under caution with a number of individuals, as well as making a number of requests of an overseas jurisdiction.
10. As part of the SFO's overall investigation, the SFO has separately focused on ASL's use of a further agent in addition to ASL Agent 1. This aspect of the investigation has not resulted in there being a sufficiency of evidence to meet the Full Code Test as set out in the Code for Crown Prosecutors, nor are there reasonable grounds for believing that a continued investigation

would provide further admissible evidence within a reasonable period of time that would establish a realistic prospect of conviction under the Full Code Test against ASL in relation to this separate conduct.

II. AIRLINE SERVICES LIMITED

11. ASL is a UK incorporated company which previously provided, *inter alia*, services and products for the refurbishment of aircraft interiors. It was a family business founded in 1984. The business developed to include:
 - (i) the provision of services at different airports: cleaning, de-icing, checking passengers and baggage handling ['the Handling division'];
 - (ii) the manufacture and adaptation of parts for aircraft interiors (seats, headrests, trays etc.) ['the Interiors division'].
12. ASL's head office and workshop were based on an industrial estate in Wythenshaw, near Manchester. ASL also had staff at a number of different UK airports. In all, at any one time, the company had as many as 1,000 employees. Only a single part-time administrative employee now remains.
13. In 2004, a management buy-out took place and ASL was acquired by Airline Services Holdings Ltd ['ASHL']. After this time the new management included two family members of the founding family and a former solicitor as Chief Executive in addition to several others.
14. At its peak, the group of which ASL was part had an annual turnover of approximately £60m.
15. In 2012 the company now known as Airline Services and Components Group Limited ['ASCGL'] acquired ASHL (and therefore, indirectly, ASL) with the assistance of third party funding.
16. On 20 February 2018, ASL completed the sale of its 'Interiors' business division, and on 5 April 2018 the 'Handling' business division was sold. A transitional services agreement with the buyer of the Handling division expired on 30 June 2019. ASL is now a non-trading entity.

III. ASL'S SALES TEAM

17. ASL employed several salespeople whose job was to sell the products and services which ASL could provide to different airlines.
18. From about 2011 to early 2014, the ASL Sales Team was split into three geographic areas, the first based in the UK and dealing with sales to airlines in India, Sri Lanka and Indonesia; the second based in Germany with responsibility for sales into Germany and Turkey; and lastly an individual based in Austria who was responsible for sales into the remainder of Europe and the Middle East. Each salesperson was entitled to commission calculated by reference to the gross sales that he/she achieved.

19. ASL's dealings with ASL Agent 1 were through its German Sales Team working for ASL's subsidiary incorporated under German law, Airline Services Germany GmbH (an entity which was dissolved on 6 April 2016). Two individuals in this team were ASL Senior Employee 3 and ASL Senior Employee 4.

IV. THE USE OF AGENTS BY ASL

20. In order to secure business from the airlines most of the sales personnel used agents as ASL considered that the agents tended to have better contacts within individual airlines.
21. A number of agents had signed agreements with ASL. The agreements specified the percentage commission to which the agents would be entitled in return for introducing business to ASL. The commission for the salespeople and the agents was based on the price of the contract and not on how profitable or otherwise the contract might be. As a result, there was a risk that the salespeople might commit the company to contracts that were lucrative for themselves and their agents but not necessarily for the company.

V. ASL AGENT 1'S BUSINESS

22. On 7 October 2011, ASL entered into an agreement with ASL Agent 1's Business. Under the agreement, ASL would pay commission to ASL Agent 1's Business of 10% of the value of any contracts won by ASL as a result of the efforts of ASL Agent 1 in promoting ASL's goods and services (this commission was later reduced to 5%).
23. In acting on behalf of ASL, ASL Agent 1 worked closely with ASL Senior Employee 3 and ASL Senior Employee 4 who were based in Germany. A large part of the business that ASL Agent 1 introduced to ASL was with Lufthansa.
24. At the same time as acting as an agent for ASL, ASL Agent 1 was also retained by Lufthansa as a consultant project manager in a department named Product Competence Centre Cabin Interior & In-flight Entertainment. Former Lufthansa Senior Employee 2 allocated work and gave instructions to ASL Agent 1.
25. On behalf of Lufthansa, ASL Agent 1 worked on projects for the improvement of the interiors of Lufthansa's fleet of Airbus 340s and Boeing 747s. ASL Agent 1's duties included inputting into the Requests for Proposals (the invitation to tender documents used by Lufthansa) before they were sent out to potential bidders; evaluating bid documents submitted in response to the Requests for Proposals; and making recommendations to the Decision Committee regarding the bids that were made.
26. ASL would be one of a number of companies submitting bids to Lufthansa for this work and ASL Agent 1 was privy to commercially sensitive information submitted by companies responding to Lufthansa's tenders in competition with ASL.

27. In short, ASL Agent 1 was working both for the supplier, ASL, and the customer, Lufthansa.
28. In due course, ASL was awarded contracts for both the Airbus 340 and the Boeing 747 by Lufthansa.

VI. THE AGREEMENTS BETWEEN ASL AND LUFTHANSA

29. On 14 October 2011 and 28 November 2011 ASL entered into over-arching General Terms of Agreement ['GTAs'] with Lufthansa.
30. These framework agreements between Lufthansa on the one hand, and ASL on the other, provided a mechanism by which Lufthansa were further able to contract with ASL for ASL to undertake specific lines of work for individual projects.
31. Between November 2011 and October 2012, and pursuant to the GTAs, ASL entered into four separate Supplemental Agreements with entities within the Lufthansa group. Payments to ASL Agent 1 were made in respect of three of the four Supplemental Agreements that were awarded. The overall value of those three contracts is £6,710,347.70 with a gross profit to ASL of £989,867.32.
32. In the course of carrying out the work under some of these three agreements, ASL came to bid for, and win, further work, thus increasing the value of the contracts. The overall value of the additional work that ASL won under some of these three supplemental agreements, which cannot be allocated to individual agreements, was £676,879.30, with a gross profit to ASL of £82,843.13.
33. Therefore, the relevant overall value of the contracts and additional work in respect of the three Supplemental Agreements where payments were made to ASL Agent 1 was £7,387,227.00. The overall gross profit to ASL (following the deduction of further stock provision costs of £81,739.00) was £990,971.45.

VII. SUPPLEMENTAL AGREEMENT NO. 1 ("SA1") - SEAT MODIFICATIONS FOR AIRBUS 340 - COUNT 1 - FAILURE OF A COMMERCIAL ORGANISATION TO PREVENT BRIBERY, CONTRARY TO SECTION 7 OF THE BRIBERY ACT 2010

In Summary

Airline Services Limited, between 1 July 2011 and 30 November 2013, failed to prevent a person or persons associated with it from committing bribery in circumstances in which they intended to obtain or retain business and/or an advantage in the conduct of business, for Airline Services Limited, namely by:

- (i) **Promising and/or giving ASL Agent 1's Business between 5% and 10% of the value of any contracts awarded to Airline Services Limited by Lufthansa; and**

- (ii) **Intending thereby to induce ASL Agent 1, an employee or agent of Lufthansa, to perform a relevant function or activity improperly, namely, showing favour to Airline Services Limited in the tender process for, and performance of, the first Supplemental Agreement**

Facts

34. On 12 April 2011, ASL was invited to participate in Lufthansa's tender for seat modifications to accommodate a new in-flight entertainment system for Lufthansa's Airbus 340 fleet (Supplemental Agreement No.1). There were at least two other bidders for this contract.
35. In the course of the tendering process, ASL Agent 1 abused his position at Lufthansa in order to give ASL an unfair advantage. He provided confidential information to ASL to enable ASL to improve its initial bid; he supported ASL through the bid process; and he helped ASL to win the contract.
36. On 4 May 2011, ASL Agent 1 forwarded the Request for Proposal's technical details to ASL Senior Employee 3 and ASL Senior Employee 4 with a '*small hint*' to include the cost of a new backrest meal tray in ASL's bid. ASL Agent 1 also indicated that he would be willing to review ASL's draft proposal. He was later thanked by ASL Senior Employee 4 for his "*input and hints*".
37. On 11 May 2011, ASL Agent 1 sent ASL Senior Employee 3 and ASL Senior Employee 4 an e-mail with an alternative pricing structure for ASL and promised to provide a competitor's rough figure for a similar project. ASL Agent 1 also sent on a question asked of Lufthansa by another ASL competitor in which the competitor had provided details of the material used for the backrests. ASL Agent 1 later visited ASL's office "*to go through ... [the] proposal*", with ASL's initial bid submitted the day after the visit. ASL Agent 1 then continued to provide information about Lufthansa's internal initial response to ASL's proposal.
38. A formal meeting took place between ASL and Lufthansa on 22 June 2011, following which additional queries were raised by Lufthansa. On 13 July 2011, ASL Senior Employee 4 sent an e-mail to ASL Senior Employee 5 informing him that ASL Agent 1 had said that ASL had to "*INCREASE our proposal. I know how and why and how much. The proposal has to be send then as draft to [ASL Agent 1] ONLY, if possible by TODAY.*" The deadline for submission of the revised proposal was the following day. On the same day, ASL Agent 1 reviewed ASL's revised draft documentation and commented on the same, including the pricing. To that, ASL Senior Employee 4 replied: "*Lets push it through to the benefit of all involved parties*". ASL Agent 1 responded: "*Will do so!*" A revised bid proposal was submitted the next day.
39. ASL Agent 1 continued to update ASL on the status of the other competitors involved in the tender and continued to assist ASL with other aspects of the project proposal, including by:
- a. Having an input into ASL's pricing for its design options;
 - b. Assisting with ASL's letter regarding the airworthiness certification of the seats following the modification;

- c. Making changes to and approving ASL's presentation ahead of an Initial Technical Coordination meeting;
 - d. Advising ASL Senior Employee 4 on what was required in respect of the seating specifications;
 - e. Attending ASL's offices to "guide" and "make sure everything goes smooth and no questions from LHT etc";
 - f. Providing support to ASL through its further discussions with Lufthansa, whilst advising ASL that "...I will be supporting you."
40. Commenting that Lufthansa and a competitor were "waiting to kill ASL", ASL Senior Employee 4 described ASL Agent 1 in these terms:

"... he try to push us through against all odds."

41. On 22 November 2011, Supplemental Agreement 1 ['SA1'] was signed on behalf of Lufthansa, and on 24 November 2011 ASL was informed that it had been awarded SA1.
42. Further to being awarded SA1, ASL was awarded further work on the Airbus 340 in respect of: seat arm caps; life vest containers and pouches; modifying seats that had been supplied by another manufacturer; pad prints; and cup holders.
43. ASL Agent 1 continued to support ASL in performing its obligations under SA1, including by:
- a. Providing preparation assistance/training ahead of ASL's Preliminary Design Review (PDR) with Lufthansa, in order to "fine tune" ASL's presentations;
 - b. Supporting ASL with major changes to the proposals for the pricing and design of the seat arm caps;
 - c. Providing (from his personal e-mail account) confidential information about the specifications for the Airbus frame;
 - d. Providing confidential competitor information to ASL to assist it to estimate the cost of the storage of seats ordered from another manufacturer (with ASL Senior Employee 4 subsequently saying, "LHT offered a price of EURO 10.000ea, so we must/should be under this amount in total");
 - e. Providing ASL with a copy of a purchase order that Lufthansa had issued to a competitor company – accompanied by a reminder to "keep the P/O pricing confidential!!";
 - f. Assisting ASL to prepare for an important Critical Design Review meeting;
 - g. Contributing to the monthly reports that ASL was required to provide under SA1, with ASL Senior Employee 4 stressing that ASL should "always send the report to [ASL Agent 1] prior to send it to everyone...."
44. Whilst ASL Agent 1 was ostensibly acting for and on behalf of Lufthansa, within ASL he was described as "our man" and as "supporting us (behind the scenes)".
45. Of his own position, ASL Agent 1 wrote:

"The whole 1,5 year project time I had the umbrella over ASL..."

"As you know we, as a team, won the project ... and this created a lot of enemies on the LHT integrator side and of course challenges. So far I was able to cover and protect you against these challenges the whole 2 years ... While I am your friend and supporter I am also a DLH employee. And currently I am at the edge, where I can't protect you anymore"

46. While the work was being done, it became apparent that ASL had underestimated costs associated with seat integration work under SA1. On 12 September 2013, ASL Senior Employee 6 informed ASL Senior Employee 4 and another manager within ASL that ASL was over budget by 34% and that ASL would need to increase the price from €58,171.24 to €83,294.24. ASL Agent 1 was asked to advise on a confidential basis (via his personal email address) how this might best be explained to Lufthansa. By 30 October 2013, ASL Senior Employee 3 appears to have been confident that ASL Agent 1 would be able to recover these costs for ASL:

"I am sure with help of [ASL Agent 1] we'll get our costs covered"

47. Evidence of the close (and improper) relationship between ASL Agent 1 and ASL can be found in an internal ASL e-mail dated 15 November where ASL Senior Employee 3 advised ASL Senior Employee 6,

"Please don't hesitate to share these findings with [ASL Agent 1] (only [ASL Agent 1]) and also ask for his suggestions."

48. The agreement was signed in November 2011. In time, SA1 was to be worth £2,785,246.67 to ASL, with a gross profit to ASL of £122,021.81 on that contract.

VIII. SUPPLEMENTAL AGREEMENT NO. 2 ("SA2") – BOSE HEADSETS

49. Supplemental Agreement No. 2 ['SA2'] related to the provision of Bose headsets. ASL Agent 1 provided assistance to ASL advising ASL on price and on their revised proposals. The agreement is dated 3 January 2012 and was worth £558,102.91. It was completed and corrected through an amendment to the supplemental agreement identified as 'SA2b' signed on 2 November 2012. Evidence has not been identified which indicates ASL Agent 1 influencing the award of, or otherwise contributing to the decision to award, the contract to ASL. Although ASL tried to win further work pursuant to SA2, this work was instead awarded to an in-house team. No Bribery Act 2010 offence has been identified in respect of SA2.

IX. SUPPLEMENTAL AGREEMENT 'NO. 2' ("SA3") - BRAND PANELS - COUNT 2 - FAILURE OF A COMMERCIAL ORGANISATION TO PREVENT BRIBERY, CONTRARY TO SECTION 7 OF THE BRIBERY ACT 2010

In Summary

Airline Services Limited, between 1 September 2011 and 31 July 2012, failed to prevent a person or persons associated with it from committing bribery in circumstances in which they intended to obtain or retain business and/or an advantage in the conduct of business, for Airline Services Limited, namely by:

- (i) Promising and/or giving ASL Agent 1's Business between 5% and 10% of the value of any contracts awarded to Airline Services Limited by Lufthansa; and**
- (ii) Intending thereby to induce ASL Agent 1, an employee or agent of Lufthansa, to perform a relevant function or activity improperly, namely, showing favour to Airline Services Limited in the tender process for, and performance of, the third Supplemental Agreement**

Facts

- 50. A further Supplemental Agreement, also called No. 2, was concluded with Lufthansa [hereafter, for ease of reference, referred to as 'SA3']. This was for the supply of brand panels for Lufthansa's regional fleet. ASL Agent 1 worked "*behind the scene*" to obtain further work for ASL. He promoted ASL throughout the period of this supplemental agreement. This extended to providing ASL with confidential information and to advising ASL to increase its price (against the interests of Lufthansa).
- 51. On 14 September 2011, following a recommendation from ASL Agent 1, Lufthansa invited ASL to submit a proposal to supply brand panels for Lufthansa's regional fleet. On 5 October 2011, a meeting took place at which ASL Agent 1 was formally mandated on behalf of Lufthansa to discuss Lufthansa's issues concerning this project. Nonetheless, only two days later, on 7 October, ASL Agent 1 (as ASL Agent 1's Business) signed the agency agreement with ASL.
- 52. On 26 October 2011, Lufthansa explained that ASL would need to enter into a separate General Terms of Agreement with DLH (as opposed to the existing one with LHT). The General Terms of Agreement were entered into on 28 November 2011.
- 53. At around the same time, Lufthansa asked ASL if it was interested in developing brand panels for Lufthansa's classic fleet. This appears to be reflected in an e-mail from ASL Agent 1 to ASL Senior Employee 3 on 27 October 2011:

"Future business...In additional, I push your company also...for some work on the Longhaul Fleet."

- 54. ASL Agent 1 reiterated his efforts to get more work for ASL on 12 November 2011:

"I told you, I am pushing and you do a good job --> more work for all of us :-)"

- 55. Further, on 18 November 2011 ASL Agent 1 sent an e-mail to ASL Senior Employee 3 :

“As spoken on the phone earlier, you are aware that I work behind the scene inside DLH/LHT to bring Airline Services more business from the DLH group. In the next few days, you should receive a tender for a new project.”

56. On 13 January 2012, ASL Senior Employee 4 sent an e-mail to ASL Agent 1, asking to speak to him about, among other things, brand panels for A321 aircraft. Lufthansa later invited ASL to supply the brand panels for the A321 and intercontinental fleets. When ASL had problems developing the brand panels, ASL Senior Employee 4 told colleagues that he had spoken to ASL Agent 1 and that ASL Agent 1 would like more information. ASL Senior Employee 4 said that *“This would help him push our pricing through.”*
57. On 10 February 2012, using his personal e-mail account, ASL Agent 1 sent an e-mail to ASL Senior Employee 3 and ASL Senior Employee 4 informing them of what had taken place at a meeting on 8 February 2012; ASL Agent 1 also provided information that was confidential to Lufthansa. The same day, ASL Agent 1 recommended that ASL increase its price for intercontinental brand panels.
58. On 12 March 2012, ASL Agent 1 sent ASL Senior Employee 4 an internal e-mail exchange within Lufthansa and advised ASL to submit specific part numbers. The agreement was signed on 28 March 2012.
59. In May 2012, when ASL had problems meeting its delivery dates, ASL Senior Employee 6 made contact directly with Lufthansa. This prompted ASL Senior Employee 4 to send the following e-mail:

“Please, please, please...!!!please always ask [ASL Agent 1] if you are not sure and before you send out anything!!! Otherwise they will finish us and ASL off...I am fully aware of the present workload but please we have to concentrate on each single project properly. Please 'use' [ASL Agent 1] in our means...”
60. When an issue arose over price, ASL Senior Employee 4 asked ASL Agent 1 for advice. ASL Senior Employee 4 advised ASL Senior Employee 7: *“Don't send anything to [ASL Agent 1's] DLH email if you want some favours.”*
61. On 19 July 2012, Lufthansa made a further order for A320 brand panels.
62. On 27 July 2012, ASL Agent 1 sent a Lufthansa design to ASL Senior Employee 3 and ASL Senior Employee 4 - *“always confidential”* – to help ASL design its own panel.
63. As with SA1, ASL Agent 1 continued to provide advice, input and assistance to ASL, with ASL regularly seeking his views and his comments on draft documents.
64. This supplemental agreement is dated 28 March 2012 and was worth £588,113.31 to ASL, with a gross profit to ASL of £245,008.51 on that contract.

X. SUPPLEMENTAL AGREEMENT NO. 4 (“SA4”) - BOEING 747 SEAT MODIFICATIONS - COUNT 3 - FAILURE OF A COMMERCIAL ORGANISATION TO PREVENT BRIBERY, CONTRARY TO SECTION 7 OF THE BRIBERY ACT 2010

In Summary

Airline Services Limited, between 1 January 2012 and 31 October 2012, failed to prevent a person or persons associated with it from committing bribery in circumstances in which they intended to obtain or retain business and/or an advantage in the conduct of business, for Airline Services Limited, namely by:

- (i) Promising and/or giving ASL Agent 1’s Business between 5% and 10% of the value of any contracts awarded to Airline Services Limited by Lufthansa; and**
- (ii) Intending thereby to induce ASL Agent 1, an employee or agent of Lufthansa, to perform a relevant function or activity improperly, namely, showing favour to Airline Services Limited in the tender process for, and performance of, the fourth Supplemental Agreement**

Facts

- 65. Supplemental Agreement No. 4 [‘SA4’] was for the modification of seats for Lufthansa’s fleet of Boeing 747s. ASL Agent 1 supported ASL’s bid at the expense of its competitors. He provided confidential information to ASL and he provided personal assistance to ASL in putting together the various tenders that were offered. Thereafter, ASL Agent 1 kept ASL updated on the progress of the decision-making process.
- 66. On 17 January 2012, ASL Agent 1 informed ASL that Lufthansa would be issuing tenders for modifications to seats on its fleet of Boeing 747s.
- 67. On 6 February 2012, ASL Agent 1 provided ASL with a list of competitors. The following day, ASL Agent 1 sent a message: *“We need one to eliminate right at the beginning”*.
- 68. On 8 February 2012, ASL Agent 1 visited ASL’s German office.
- 69. From an e-mail that was sent two days later, on 10 February, it is apparent that ASL Agent 1 must have provided ASL with confidential information from within Lufthansa during his visit to ASL’s German office; ASL Agent 1 also offered to help ASL with its bid. Again, the e-mail came from ASL Agent 1’s personal e-mail account.
- 70. On 28 February 2012, Lufthansa invited ASL to tender for the modification of seats on the Boeing 747s in order to be able to incorporate a new in-flight entertainment system. On the same day, ASL Senior Employee 3 advised ASL Senior Employee 7 that ASL Agent 1 would come to Manchester to assist with the response. ASL Agent 1 went on to provide ASL with a copy of Lufthansa’s communications with a competitor whilst ASL Senior Employee 3 sent ASL’s draft bid to ASL Agent 1 for his comments. On 30 March 2012, ASL sent a copy of its final bid to ASL

Agent 1's private e-mail address for review. ASL Agent 1 replied, commenting to the effect that it helped to see the competitor's offer first.

71. On 4 April 2012, ASL Agent 1 asked to see ASL's measurements for the video-arm of the seat; the next day, ASL Agent 1 compared the pricing structures of ASL and a competitor and then sent the result to ASL. Later that day, ASL submitted its bid to Lufthansa with a total price that was €159,807.25 lower than the initial proposal sent the day before to ASL Agent 1.
72. On 19 April 2012, Lufthansa raised a number of queries relating to ASL's bid. By 24 April 2012, it had been agreed within ASL that they would ask ASL Agent 1 for help. On 22 May 2012, ASL Agent 1 e-mailed pictures of life vest pouch designs and dimensions. He added: *"P.S. You have never seen this drawing!!!"*
73. On 11 June 2012, ASL sent its revised proposal to ASL Agent 1 for review prior to submitting it to Lufthansa. ASL then submitted its proposal.
74. On 30 June 2012, ASL Agent 1 sent an e-mail to ASL Senior Employee 3 providing confidential information about the seat modifications, including an update on one competitor's efforts to win work from Lufthansa and comments on another competitor's pricing. In the same e-mail, ASL Agent 1 reassured ASL that he would do everything in his power to win the project for ASL.
75. On 6 July 2012, ASL Agent 1 informed ASL Senior Employee 3 that a competitor was putting up a fight, *"We have to keep our political involvement now more than ever until we secure the B747 order"*. The next day, ASL Senior Employee 4 sent an e-mail to ASL Senior Employee 6 within ASL:

"[ASL Senior Employee 3] will talk with you on Monday under 4 eyes and will explain further. It would be very beneficial if you and/or [ASL Senior Employee 3] could send a positive letter to DLH before Wednesday next week as they have an important 747 meeting then. As I said, [ASL Senior Employee 3] will talk with you regarding the detail plan of the attack."

76. In an e-mail on 11 July 2012, ASL Senior Employee 4 referred to possible price reductions being offered by two competitors. It is inferred that this information came from ASL Agent 1.
77. On 8 August 2012, ASL Agent 1 sent an e-mail to ASL Senior Employee 3 and ASL Senior Employee 4:

"I have done everything I can do, also put my job on risk by providing you confidential informations."

78. On 17 August 2012, ASL Agent 1 sent another e-mail to ASL Senior Employee 3 and ASL Senior Employee 4: *"I have done my best to support you guys so far."* In an email sent on 23 August 2012 ASL Agent 1 informed ASL that a competitor had just proposed a significant pricing discount and that he would *"fight hard..."* for ASL in an upcoming internal meeting. ASL went

on to offer a further price reduction by way of a €130,000 credit for spares applicable to the years 2015 to 2016 (€65,000 p.a).

79. ASL Agent 1's further efforts to support ASL are reflected in an email from ASL Senior Employee 4 to ASL Senior Employee 3 on 25 August 2012:

"I just had a long telecon with [ASL Agent 1]. I know now also all the hurdle details ... in the moment I don't think we can do anything from our side regarding 747. [ASL Agent 1] will work over the weekend on some new and additional scenarios to convince on Monday at least his team to go for ASL ... [ASL Agent 1] is trying hard and we have discussed a few possibilities."

80. On 26 August 2012, ASL Agent 1 sent an email to ASL Senior Employee 3:

"I worked the whole weekend on the presentation for the B747 Board meeting today...I am confident that I have convinced most of the people so far and that we have a 50:50 chance [re: a competitor]."

81. In response, ASL Senior Employee 3 thanked ASL Agent 1 for his "tireless support".

82. On 27 August 2012, ASL Senior Employee 4 sent an e-mail to ASL Senior Employee 3 sharing information he had received from a contact at a competitor. ASL Senior Employee 4 added that this was very confidential and that ASL Agent 1 was informed about everything that was going on.

83. On 31 August 2012, ASL Agent 1 emailed ASL Senior Employee 3 from his personal email address to congratulate ASL on winning the B747 tender before adding:

"We all have reach a good stage now at DLH with a lot of opportunities for further business and I do not want to loose this!"

84. On 3 September 2012, Lufthansa confirmed that ASL would be awarded the contract. This was a direct response to ASL's email in relation to pricing. SA4 was signed on 2 October 2012. As with the other supplemental agreements, ASL Agent 1 continued to support ASL with its performance under this SA, in particular via his personal email address.

85. This agreement came to be worth £3,336,987.72 with a gross profit to ASL of £622,837.00 on that contract.

86. Towards the end of 2014, ASL Agent 1 claimed to be owed €589,629 (£468,070.97) in commission by ASL, on top of the €53,065.88 (£42,125.81) ASL Agent 1 had already been paid by ASL in relation to SA1 and SA4.

87. In June 2015, both ASL Senior Employee 3 and ASL Senior Employee 4 left ASL.

XI. ASL'S ANTI-BRIBERY AND CORRUPTION PROCEDURES

88. In December 2010, ASL engaged external legal advisers to assess its compliance with the pending implementation of the Bribery Act 2010. This review identified that the use of a relatively small number of overseas Agents represented a high bribery risk to ASL. These external legal advisers made a number of recommendations to address the risk of ASL breaching the provisions of the Bribery Act 2010. These recommendations included:
- (i) Amending standard terms and conditions to include contractual protections for cases where ASL uses overseas suppliers or agents;
 - (ii) Allocating responsibility to a senior representative to review and monitor overseas corruption risks;
 - (iii) The implementation of regular training for staff on anti- corruption compliance;
 - (iv) The implementation of internal policies and procedures within ASL to address compliance with the Bribery Act 2010;
 - (v) The implementation of a due diligence checklist to be used by ASL to assess third party suppliers/contractors.
89. To assist ASL with the implementation of these recommendations, the external legal advisers provided ASL with:
- (i) a risk assessment checklist to assist ASL with assessing bribery risks within its business;
 - (ii) a due diligence checklist to assist ASL with assessing the bribery risk presented by its third party suppliers/contractors;
 - (iii) advice on the anti-bribery provisions that could be implemented within standard ASL contracts with third party suppliers/contractors;
 - (iv) a draft 'Anti-corruption Policy and Guidelines' document that could be implemented within ASL.
90. On 27 June 2011, training on the Bribery Act 2010 was provided to some of ASL's senior managers and regional sales managers. This training included reference to the draft 'Anti-corruption Policy and Guidelines'.
91. In September 2011, a senior executive of ASL informed the external legal advisers that ASL would be adopting "a different approach". This appears to have concluded the external legal advisers work with ASL regarding compliance with the provisions of the Bribery Act 2010.
92. Save for the training session on the Bribery Act 2010 carried out on 27 June 2011, ASL did not seek to communicate its 'Anti-corruption Policy and Guidelines' to staff at any time prior to January 2014 and did not seek to implement the remaining recommendations made by their external legal advisers.

93. From the implementation of the Bribery Act 2010 on 1 July 2011 through to the beginning of 2015, ASL did not have in place adequate procedures in order to prevent bribery.