

A IN THE CROWN COURT  
AT SOUTHWARK

No: **T20097513**

B 1 English Grounds  
Battlebridge Lane  
LONDON

SE1 2HU

C FRIDAY 25TH SEPTEMBER 2009

Before:

D HIS HONOUR JUDGE RIVLIN QC  
HONORARY RECORDER OF WESTMINSTER

\_\_\_\_\_

E R E G I N A

-v-

MABEY AND JOHNSON LIMITED

\_\_\_\_\_

F MR J HARDY, MR P BLAIR & MR P CAVIN appeared on behalf of  
the PROSECUTION

MR T LANGDALE appeared on behalf of MABEY AND JOHNSON  
LIMITED

\_\_\_\_\_

G SENTENCING REMARKS

\_\_\_\_\_

H Computer-Aided transcript of the Stenograph notes of  
WordWave International Limited  
(A Merrill Communications Company)  
101 Finsbury Pavement, London, EC2A 1ER  
Tel No: 020 7404 1400, Fax No: 020 7404 1424  
(Official Shorthand Writers to the Court)

Crown copyright©

\_\_\_\_\_

Friday 25th September 2009

A

**SENTENCING REMARKS**

B

JUDGE RIVLIN: This case is not merely unusual because of its facts and circumstances, it is particularly unusual in two other respects: first, it comes about following a dramatic and notable instance of board change, and what has been called self referral, in practical terms self reporting, by the company's new directors. This was accompanied by an internal investigation by the company and voluntary disclosure of deeply incriminating documents to the Serious Fraud Office.

C

D

E

Second, it is the first case, following the new Attorney General's guidelines on plea discussions in serious or complex fraud dated 18 March of this year. The parties have been able to put forward firm proposals which have been agreed between them as to the appropriate overall sentence by way of financial penalties in this case.

F

G

I deal first with the self reporting and the offences committed by the company. The defendant company Mabey and Johnson Limited, otherwise known as M and J, is one of a family owned group of companies; it is owned and run by the Mabey Family. Its registered office is in Lydley, Gloucestershire. It is an engineering company specialised in bridging, steel fabrication, temporary

H

A work systems and plant hire, but the principal business  
over many years has been supplying bridges and bridging  
B equipment. This has been done in over 100 countries, in  
the main in the developing world. The company claims,  
perhaps with good reason, I know not, to be the world  
C leader in this specialist field. I am told that the  
company currently employs 240 people, of whom 210 reside  
in the United Kingdom.

D As regard regards M and J's overseas clients, they consist  
in the main of government departments and highways  
authorities. Its contracts with foreign governments  
include, amongst others, the governments of Ghana, count  
E 1; Jamaica, Count 5, and the republic of Iraq, count 9.

A number of other countries have been referred to by  
Mr Hardy in the course of his opening address.

F Moreover, its contracts have often been underwritten by  
the United Kingdom Export Credits Guarantee Department,  
EGGD, whose role is to benefit the United Kingdom  
G economy by helping exporters of UK goods and services to  
win business abroad. Relevant to this case the ECGD  
unwrote contracts with the governments of Ghana and  
H Jamaica.

I have mentioned that the company exports most of its  
bridges overseas. As far as this indictment is  
concerned, as I have mentioned the three countries with  
which the court is concerned are Ghana, Jamaica and

A Iraq, but as I shall point out, I hope very briefly in a few moments, counts 1 and 5 are really different in character to count number 9.

B I have mentioned self reporting. The criminal involvement of this company first came to the attention of the Serious Fraud Office in March of last year. It seems to C a considerable extent to have been precipitated by the events in a civil action then taking place in the High Court. At all events, in that month, no doubt D following advice and consultation with the directors and being aware of the existence of a document, a memorandum, to which I have been referred, which in no E uncertain terms spells out the company's guilt in this case, solicitors for the company disclosed to the Serious Fraud Office that memorandum, and as a result of F their disclosures this case has been investigated and presented to the court.

G The history of the revelation of criminal activity under this self reporting includes importantly the resignation of certain directors and the appointment of a new board. H All of this is clearly set out by the Crown in their written material. Suffice to say that the disclosure to which I have referred went on to lay bare a story of fraud and corruption of such seriousness that the company has been prosecuted and has pleaded guilty to serious offences of corruption in relation to the first

A two named governments and to an offence of what has been  
loosely described as sanctions busting in relation to  
the third.

B I am informed that in all five directors who were  
considered to be actively involved in, or who were  
considered possibly to have been actively involved in,  
C or to have overseen inappropriate conduct in connection  
with the company's contracts, have now stepped down as  
directors and ceased to be employees of the company.  
D The current board of directors includes two directors  
appointed in 2008; it has been described by Mr Langdale as  
a new board, in effect a new company.

E It hardly needs saying that the fact that following the  
discovery of incriminating documentation in  
February 2008 the company decided it must make a clean  
F breast of its offending. That is a matter which  
deserves recognition and approval. No doubt this  
disclosure was made in pursuance of the director's  
G duties as citizens, and also to preserve the company's  
credibility as a manufacturer of renown, but it was an  
important and responsible step to take, which provides  
H these defendants, that is the company, with perhaps  
their most important mitigation in this case.

As regards these offences the circumstances of counts 1 and  
5 have been described in some detail by Mr Hardy, and  
those in relation to count number 9 by Mr Blair.

A Dealing first with counts 1 and 5 in brief, and I mean  
in brief, the circumstances of these offences were as  
follows: first, they relate to Ghana and Jamaica. The  
B Crown's case is that in these countries, to the  
defendant's knowledge, its agents were involved in  
making corrupt payments to public officials or  
C politicians who were in a position to influence M and  
J's business affairs. M and J accept that they agreed  
with their agents to pay bribes directly to these people  
D in those jurisdictions. These bribes were then deducted  
from the overall commissions due to the agents. It is  
accepted that not all payments made to agents were, or  
E indeed are, illegitimate, or that all agents acted  
corruptly. It is not accepted that all payments made  
were bribes, but there is no doubt that some payments  
F made in Ghana and Jamaica were bribes, and the  
defendants by their pleas accept that they employed  
agents that were known to offer bribes for commercial  
G gain and were therefore engaged to facilitate  
corruption.

I deal first with count 1, Ghana. Ghana covers the period  
H 1993 to 1999. In relation to its policy of making  
corrupt payments to secure contracts in Ghana, M and J  
created what has been described as a notional fund, in  
effect a slush fund, of £750,000 against which direct  
payment to public officials were made. It was

A euphemistically called the Ghana Development Fund. M  
and J knew perfectly well that proportions of this fund  
of £750,000 might be used for corrupt purposes. In  
B fact, it has been calculated that between December 1994  
and August 1999 the sum of £470,792 was drawn down from  
this fund and associated accounts, and paid over in  
C bribes, hence the figure in count number 1. The  
Ghanaian contract that may have been said to have  
resulted from these payments was valued at £26 million.

D The precise detail of the evidence in this matter does  
not call for repetition. As might be anticipated in a  
situation such as this, the day to day involvement of a  
E number of persons mentioned by Mr Hardy and the  
documentation which was raised is somewhat convoluted.  
I say that might be anticipated in a situation such as  
F this for this reason: when one is behaving corruptly, as  
was happening here, it obviously benefits those who are  
engaged in crime to make matters as complicated as they  
G reasonably can. The bald fact which I have stated does  
represent the overall criminality of what occurred in  
Ghana during those years.

H Count 2, Jamaica. The period covered by count 2 is 1993 to  
2001. For much if not all of this time the person  
acting as M and J's agent was a man called Gibson. The  
Crown's case here, to which I defendants have pleaded  
guilty, is as follows: Mr Joseph Uriah Hibbert served as

A a Jamaican government official until October 2002. He  
had first joined the Ministry as an engineer; he rose to  
the position of chief engineer; he was promoted to  
B technical director of the Ministry and he left the  
Jamaican Civil Service in October 2002. During his time  
in office, he held delegated powers to act on behalf of  
C the permanent secretary of the Ministry, that is the  
Ministry, of course which had the power to hand out  
contracts in relation to such matters as bridges and  
D bridge work. Mr Hibbert was in a position to enter into  
binding financial commitments. He could, indeed, also  
act as the permanent secretary, and so he was obviously  
E in an important and influential position when it came to  
the possible granting of government contracts. Of  
course, whenever he was in receipt of money from M and J  
F he was or ought strictly to have to have been bound by  
the relevant public service staffing orders; he was not  
entitled to receive any money except and in respect of  
G the exercise of his duties. We know that in due course,  
in 2002, Mr Hibbert entered national politics and became  
a member of the Jamaican Parliament. It is the  
H prosecution case that over a period of time corrupt  
payments were made to that gentleman as a reward for his  
assistance to M and J Limited in securing contracts for  
them. It has been calculated that M and J paid him  
directly from so-called commission payments earmarked

A for their Jamaican agent the sum of £100,134 between  
November 1993 and October 2001. I have been informed  
B that the direct bribes received by this man from 1993  
onwards would for all practical purposes have had the  
effect of approximately doubling his salary. The  
C contract or contracts that resulted from this corruption  
has been calculated to have amount in total value to  
£15,798,000.

D Count 3, Iraq. This time the charge is one of making funds  
available to Iraq, and the offence of corruption which  
plainly was involved in this case was only a part of the  
E criminality, because to that offence must be added the  
element which has been described as sanctions busting.  
The dates or the bracket of dates for this count is  
F May 2001 to November 2002.

G It is not necessary for me to outline the history of  
resolutions and statute by which at the time of these  
H offences and which at least without licence had  
altogether outlawed the payment of money to Saddam  
Hussain's government in Iraq. As time progressed, we  
know that the strict rules in relation to commercial  
contact with Iraq were relaxed to the extent of  
permitting, again with licence, what has been described  
as humanitarian aid to that country, that aid to include  
food, medicine and assistance with maintaining basic  
infrastructure. This became known as or nicknamed the

oil for food programme, or OFFP.

A In the 1980s the defendant company had extensive commercial  
interests in Iraq, but of course by early 2001 that  
B business had dwindled to the point of being  
non-existent, and it was in an endeavour to breath life  
C into the Iraq connection and the Iraq business that this  
offence was committed. It involved making kick back  
D payments, that is payments by way of bribery, to the  
government of Iraq amounting to approximately 10 per  
E cent of the total contract price in order to secure  
contracts, or rather in relation to this count, a  
F contract. The sums involved in this count reflect the  
arrangement, for in all 422,000 euros were paid in  
G illegal bribes to secure a contract worth 4.2 million  
euros, or £2,560,000 in sterling. As to the mechanics  
of this offence, again these were no doubt deliberately  
H complicated and involved moneys being routed through  
different jurisdictions. They are explained in graphic  
detail in the flow chart with which I have been provided  
by Mr Blair. The moneys went over in two main tranches.  
However, despite the sophistication of the offence  
those responsible for it, which is said very directly to  
have involved one of the company's directors, did leave  
a paper trail of incriminating documents, which, say  
the Crown, and the defendant, can leave no doubt as to  
the criminality then in being.

A I have mentioned the 10 per cent kick back policy. How was  
this funded? In fact, as we now know, it was ultimately  
B funded by the government of Iraq, because the sum was  
added on to the price of the contract. It is an unhappy  
C postscript to this offence that when M and J appeared as  
it were in the frame as one of the companies found to  
D have breached the law they instructed and seriously  
misled a firm of highly reputable solicitors. Those  
E solicitors had been asked to review the facts of this  
case, but they were presented with wholly misleading  
information by the defendants, with the result that they  
presented to the investigating authorities a wholly  
misleading picture of the defendant's activities. In  
effect, that picture exculpated them from blame.

F In my view this corruption and this sanction busting, for  
it was no less, albeit now some time ago, is much the  
most serious of the offences to which the defendants  
G have pleaded guilty. It struck at the heart of the  
government policy not to allow the Iraqi government  
H funds, which could be used for any purpose other than  
those set out in the OFFP. As has been said, with such  
illicit monies or monies such as these coming in from  
all over the world, payments of this kind were liable to  
build up and to be used for purposes severely  
detrimental to the proclaimed interests of the United  
Kingdom, and indeed the United Nations.

A The second matter that I deal with is the question of the  
plea discussions and their results. It must be  
understood that the discussions that have taken place in  
B this case amount in law to no more than that; that is  
discussions between the parties. These discussions may  
or may not result in agreement. They have resulted in  
C agreement in this case, but when they do result in  
agreement it must be for the court to decide, taking the  
agreement into account, quite independently of the  
D parties whether the sentence that is proposed is  
appropriate in all the circumstances of the case and in  
the interests of the justice; in other words, the  
E sentence must be the court's sentence, for which the  
court and no one else bears responsibility.

F In this case I have examined the agreement with care. I  
have considered how it has been reached and I am  
satisfied that the various steps and pre-conditions set  
G out in the Attorney General's guidelines have been  
complied with. As is known, on a previous occasion I  
also asked a number of questions of the parties. They  
H have been answered in writing, in full, and I accept the  
undertaking given to me by the Serious Fraud Office that  
no, and I use this word in inverted commas, that no  
'deals' have been done, either with the current  
defendants or any possible defendants which could be  
said to impact upon the administration of justice.

A In circumstances such as these the duties and  
responsibilities of the Serious Fraud Office are fully  
set out in the Guidelines to which I have referred, and  
they are indeed important duties and responsibilities.  
B I accept it is in the interests of the defendants and  
the interests of justice that this case should be dealt  
with at this stage, and should not be delayed to await  
C any further inquiries that may be in train. I am also  
satisfied that in reaching the levels of financial  
penalties thought to be appropriate in this case the  
D following matters have been fully taken into account:  
first, the seriousness of the offending and the  
importance of deterring any company from adopting as a  
E policy corrupt practices with foreign governments and  
authorities, or any other associated breaches of the  
law.  
F Second, the mitigating points advanced by Mr Langdale both  
in his document which is behind annex 5 in one of the  
G folders of documents with which I have been provided,  
and also before me in court today. In particular, of  
course, I must take into account the important matter of  
self reporting to which I have referred. It is in my  
H judgment appropriate and important at this point that to  
acknowledge the considerable level of cooperation which  
M and J, through its current directors and solicitors,  
has afforded to the Serious Fraud Office, enabling the

A investigation into the affairs of this company to be  
expedited. Indeed, the level of cooperation coupled  
B with the company's readiness to admit guilt and to have  
its future business monitored in order to ensure its  
C compliance with the law are all factors to persuade me  
that it is important for the case against the company to  
be proceeded with and disposed of before any allied  
investigations against others are concluded.

D Third, the Serious Fraud Office also recognises that since  
the commencement of the investigation M and J has taken  
important remedial steps. The Serious Fraud Office has  
E been informed that five former directors have stepped  
down as directors and are no longer part of the company.

F It has been assured that further training has been  
provided, both at board level and to sales managers and  
commercial staff. The company has also introduced new  
G ethical procedures and agreed to the appointment of an  
external monitor. That, as I have been informed, is  
likely to be an expensive exercise, and indeed today I  
H have been referred to a formal agreement as between the  
Serious Fraud Office and the company which sets out its  
undertaking to ensure that it will do everything in its  
power to make sure that no offence of this nature will  
be repeated again.

I also take into account the profitability of the company,

I have been provided with the relevant figures, and its

A ability to meet what must inevitably be substantial  
financial penalties, but when all is said and done the  
good sense and public interest must also be in ensuring  
B that a company such as this, with a new and responsible  
board, should be permitted to continue in business  
giving employment to very many people and bringing  
C further significant revenue into this country.

With all this in mind I am satisfied that the maximum  
figure agreed as being properly available for sanctions  
is realistic and just one. It should be said that it is  
D perhaps far easier to see how an agreement of this  
nature can work in relation to a company than individual  
defendants, who may face sentences of custody. Here I  
E am not talking about this case in particular, I am  
talking about plea agreements and discussions of this  
kind generally, but having said that, with all of these  
F matters in mind I have no reason to second guess the  
outcome of the discussions that have taken place, and  
the view that the overall sum by way of financial  
G sanctions or penalties in this case should not exceed  
the figure of £4.6 million, plus any orders for the  
costs of the prosecution or monitoring the company's  
H future business, or any sums that are to be paid by way  
of reparation to the governments concerned.

Accordingly, the sentence of the court will be as follows:

in respect of count 1, there will a fine of £750,000; in

A respect of count number 5 there will be a fine of  
£750,000; in respect of count number 3 there must be a  
fine of £2 million, that is a total of £3.5 million. In  
B addition, having considered the provisions of sections  
71 and 72 of the Criminal Justice Act 1988, and being  
satisfied that the defendants have benefitted from each  
C of these offences, and here I refer to counts 1 and 5,  
to the extent of a sum well in excess of the minimum  
figure of £10,000, I believe that it would be  
D appropriate to make a confiscation order in respect of  
these offences. Accordingly, I order that the company  
should pay the sum of £1.1 million by way of  
E confiscation in respect of counts 1 and 5, and so, the  
overall sum to be paid by way of penalty in the form of  
finances and confiscation in this case will amount to the  
figure of £4.6 million.

F I must set a time to pay, but I imagine, Mr Langdale, you  
will be asking for 28 days.

G MR LANGDALE: My Lord, yes.

H JUDGE RIVLIN: Thank you. That sum to be paid within 28  
days. I order that the sum of £350,000 should be paid  
towards the costs of the prosecution. There are other  
ancillary matters. I am prepared to accept the  
defendants' solicitors undertaking in respect of the  
total sum of -- and I believe this is the correct figure  
-- £1,413,611 which has been agreed as appropriate to be

A paid by the company by way of reparations to the United  
Nations Iraq fund in respect of count number 9, or the  
B governments of Ghana and Jamaica, or otherwise in the  
event that those last two governments refuse payment, to  
the Serious Fraud Office. Those undertakings are  
C important, formal undertakings, and as I have made  
clear, the sanction for any breach of those undertakings  
would be that breaches would amount to a contempt of  
D court. Having said that, I have not the least concern  
that there will be any breaches of those undertakings in  
this case. Now, Mr Hardy I don't know if there is  
anything I have failed mention?

E MR HARDY: Would your Lordship just confirm that to  
satisfactory section 72(4) that your Lordship determined  
the amount to be paid by way of confiscation and made  
F the order for confiscation before going on to sentence.

JUDGE RIVLIN: Well, I did, actually.

G MR HARDY: In short, so the record shows that the correct  
procedure--

JUDGE RIVLIN: Has been complied with.

H MR HARDY: I am very grateful for that, and may I mention  
to your Lordship that representatives of the government  
of Ghana are in court today and will make arrangements  
to accept the sum offered by way of reparation.

JUDGE RIVLIN: Good.

MR HARDY: Other than that, no thank you, my Lord.

A JUDGE RIVLIN: Well, may I express my gratitude to the  
Serious Fraud Office and those representing Mabey and  
B Johnson, that is the solicitors, for all of the very  
hard work they have done in this case. I have seen  
C enough to suggest to me that a very great deal of hard  
work has been done in order to attempt to arrive at a  
just outcome in this case. May I also of course express  
my gratitude to learned counsel for their assistance  
D throughout these matters. Thank you.

E  
F  
G  
H

A  
  
B  
  
C  
  
D  
  
E  
  
F  
  
G  
  
H

We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

.....  
Signed on behalf of WordWave International Limited.