



**In the High Court of Justice
Queen's Bench Division
Administrative Court**

**CO Ref:
CO/2734 /2010**

In the matter of an application for Judicial Review

The Queen on the application of
Campaign Against Arms Trade
Versus:
Director of the Serious Fraud Office

**Application for permission to apply for Judicial Review
NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)**

Following consideration of the documents lodged by the Claimant [and the Acknowledgement(s) of service filed by the Defendant and / or Interested Party]

Order by the Honourable Mr Justice Collins

Permission is hereby refused.

Reasons:

1. I have given very careful consideration to the order I should make in this case bearing in mind the undoubted importance of and public interest in the course of action proposed by the defendant and the obvious need for a very speedy determination of the claim if it is arguable.
2. The ultimate question is whether corruption in the form of bribery should be charged against BAE Systems and Count Mensdorff-Pouilly. It is in my view clear that the proceedings in the U.S. are material (indeed, as I read the claimant's Reply it is recognised that it would, in the light of the U.S. prosecutions and penalties resulting, be difficult to proceed on the relevant charges here which leaves Tanzania). It is to be noted that corruption charges are not seen broadly to affect matters covered by s.221 of the Companies Act.
3. Great reliance is placed on the announcement of 1 October 2009. It was undoubtedly drafted in an unsatisfactory way if it was intended only to convey that the investigation was not complete and that when it was and if various outstanding matters were satisfactorily dealt with the Attorney-General's consent would be sought. But the case cannot turn on the construction of the announcement as if it was a legislative provision. The words 'when the SFO considers it is ready to proceed' are not consistent with a concluded view that by 1 October 2009 a prosecution could or should be launched.
4. I have noted the concern about what was said or understood to have been said at the off-the-record meeting. There is no nor could there be any abnegation of bad faith and, even if evidence could properly be put forward to try to contradict the factual position set out in the Acknowledgement of Service. The court will not be prepared to go into the issue since what matters is what motivated the defendant in reaching his decision and the claim has to be based on the assertion that that was unlawful.
5. The defendant was entitled to consider not only the U.S. decision, since he reasonably was entitled to regard the matter as one which had other than merely national effect, but also the steps taken by BAE to remedy what had gone on before and the substantial sums which would benefit Tanzania. In addition, the effect of a corruption conviction (if one was achieved) on the future of BAE was relevant and not prohibited by Article 5 as a proper consideration.
6. There were in addition potential difficulties in establishing criminal liability prior to 2002 and in establishing the liability of the company by identifying its controlling mind.

7. The decision to charge Count Mensdorff-Pouilly is sufficiently explained in the Acknowledgement of Service and, if it was reasonable to deal with the matter overall by a plea which did not extend the need to prove corruption, it was reasonable not to prosecute him.
8. I bear in mind the decision in the previous claim. It is only in the most exceptional case that the court will think it right to interfere with a prosecutorial decision such as this. The defendant has applied the guidelines as he believed properly. I am unable to see that it is arguable that his decision to limit the charge to one under s.221 is unlawful. I accept the validity of the matters raised in both Acknowledgements of Service. The Crown Court judge will have to consider whether the sentence proposed is acceptable and he will be able to consider all material facts and, if necessary, to decide issues of fact.
9. I have accordingly refused permission. I recognise that the claimants may wish to set an oral renewal. If they do, it will be to a Divisional Court. It will be heard early next term and should be a rolled-up hearing then so that, if the court decides that my refusal of permission was wrong, it can deal immediately with the substantive claim.
10. The claimants and defendant have agreed a PCO with a £20,000 cap for the claimants. BAE is unhappy with that agreement. I am surprised that the £125,000 includes any uplift for a contingency fee: it should not. However, this is not prima facie a case in which BAE as an interested party would be likely to receive an award of costs if the claim failed. Thus I see no good reason to vary the PCO.
11. I would only add this. It is apparent that I have formed a clear view that this claim will fail. In those circumstances, the claimants should think long and hard whether they should pursue the matter since I would be inclined if they do not to be very generous to them in considering any claim for costs by the defendant in relation to the Acknowledgement of Service. I would not award costs to BAE at this stage.
12. I shall extend Owen J's order for a further 8 days and it will continue thereafter if a renewal application is lodged until the claim is determined or further order.
13. The parties' representatives must, if an oral hearing is requested, liaise with Master Venne and put forward a sensible time estimate with a view to obtaining an expeditious hearing.

Signed: **Sir Andrew Collins**

22 March 2010

Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendant's, and any interested party's solicitors on (date):

Solicitors:
Ref No.

JB/RS/CAAT (6)

Notes for the Claimant: If you request the decision to be reconsidered at a hearing in open court, you must complete and serve the enclosed FORM within 7 days of the service of this order - CPR 54.12



**In the High Court of Justice
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Administrative Court**

CO Ref no: CO/2734/2010

In the matter of a claim for Judicial Review

The Queen on the application of

CAMPAIGN AGAINST ARMS TRADE and Others

versus DIRECTOR OF THE SERIOUS FRAUD OFFICE

Notice of RENEWAL of claim for permission to apply for Judicial Review (C P R 54.12)

1. *This notice must be lodged in the Administrative Court Office and served upon the defendant (and interested parties who were served with the claim form) within 7 days of the service on the claimant or his solicitor of the notice that the claim for permission has been refused.*
2. *If this form has not been lodged within 7 days of service (para 1 above) please set out below the reasons for delay:*
3. *Set out below the grounds for renewing the application:*

4. *Please supply*
COUNSEL'S NAME:
COUNSEL TELEPHONE NUMBER:

Signed

Dated

Claimant's Ref No.

Tel.No.

Fax No.

To the Administrative Court Office, Royal Courts of Justice, Strand, London, WC2A 2LL