

Press Diary Note

Judicial Review Hearing
Of Serious Fraud Office decision to stop
BAE-Saudi corruption inquiry

Royal Courts of Justice
The Strand, London
Thursday 14 February – Friday 15 February 2008¹

On 14th February 2008, the High Court will hear the judicial review of the Serious Fraud Office's decision to terminate its investigation into alleged corruption by BAE Systems in recent arms deals with Saudi Arabia.

The two-day hearing is before Lord Justice Moses and Mr Justice Sullivan.

The judicial review is being brought by Campaign Against Arms Trade (CAAT) and The Corner House [1]

The Director of the Serious Fraud Office (SFO)[2], Robert Wardle, announced on 14 December 2006 that he had decided to discontinue the investigation following advice from government Ministers.

He justified his decision on the grounds that continuing the investigation would damage the UK's relations with Saudi Arabia and thus threaten the UK's national security.

Saudi Arabia had threatened to cancel a proposed order for BAE's Eurofighter Typhoon aircraft and to withdraw security, intelligence and diplomatic co-operation with the UK if the investigation continued.

Documents released on 21 December 2007 as part of the judicial review proceedings indicate that the then Prime Minister, Tony Blair, intervened with the then Attorney General[2], Lord Goldsmith, to stop the investigation, specifically raising the "critical issue" of the typhoon deal.

CAAT and The Corner House lawyers will argue that the decision to discontinue the investigation was unlawful because it contravenes the OECD Anti-Bribery Convention [3] and because the Director of the Serious Fraud Office, in allowing threats/blackmail to influence his decision, did not uphold the "rule of law"[4].

¹ To confirm the exact time and court room, please go to the website of Her Majesty's Courts Service – Court Hearings – Administrative Courts and Divisional Courts:
http://www.hmcourts-service.gov.uk/cms/list_admin.htm

They will also argue that Tony Blair's advice amounted to a direction to discontinue the investigation, which is an unlawful interference with the independence of prosecutors under UK and international law.[5]

The Government has denied any breach of the OECD Anti-Bribery Convention – but has declared that it would have taken the decision to terminate the investigation, regardless of international law, on the grounds of “national security”.

Notes

1. Campaign Against Arms Trade (CAAT) works for the reduction and ultimate abolition of the international arms trade. **The Corner House** is an environmental and social justice NGO. For more information on the legal challenge, go to <http://www.controlbae.org>; <http://www.caat.org>, or <http://www.thecornerhouse.org.uk>

2. The Serious Fraud Office is a UK government department that investigates and prosecutes complex fraud. It aims to contribute to "the delivery of justice and the rule of law." The **Attorney General** superintends the Director of the Serious Fraud Office; both are supposed to act independently of government.

The Attorney General is the chief legal adviser to the Government and is responsible for all crown litigation. The Attorney General is appointed by the Prime Minister and is a member of parliament. Under the OECD Anti-Bribery Convention, political appointees should not make decisions on corruption cases.

3. The OECD Anti-Bribery Convention, which the UK signed in 1997, is a multilateral treaty aiming to ensure that all OECD countries present a combined and united front against bribery and corruption of foreign public officials.

Article 1 of the Convention requires parties to make it a criminal offence to bribe a foreign public official. The UK did so in the 2001 Anti-Terrorism Crime and Security Act.

Article 5 makes provisions to enforce Article 1. It rules out the termination of corruption investigations on grounds other than the merits of the case. Signatory governments specifically undertake *not* to be influenced "by the potential effect [of an investigation] upon relations with another State"

But the SFO Director's decision to suspend the investigation *was* based on considerations of potential damage to relations with Saudi Arabia if the BAE-Saudi arms deals investigation continued.

Article 5 also prevents signatories from being "influenced by considerations of national economic interest" in deciding whether to terminate an investigation."

Yet Tony Blair stressed his concern about "the critical difficulty presented to the negotiations over the Typhoon contract", (a proposed but unsigned deal for the sale of 72 Eurofighter Typhoon aircraft from BAE to Saudi Arabia) in a "personal minute", dated 8th December 2006, to then Attorney General, Lord Goldsmith.

4. The "**rule of law**" is a fundamental principle in Britain's unwritten constitution. It holds that the best way of protecting people's rights from the arbitrary exercise of power is to apply and uphold legal rules impartially. Doing so requires an independent judiciary (prosecutors, judges, magistrates, courts) that acts "without fear, favour or prejudice", according to the Attorney General.

Any action that undermines the impartial application and upholding of the law – such as interference with the courts, judges, prosecutors, juries or witnesses; decisions that courts cannot review; placing individuals or entities above the law – undermines the rule of law.

Applying the rule of law means that a government's authority is legitimately exercised only in accordance with written, publicly disclosed laws that are adopted and enforced according to established procedural steps (or due process).

The rule of law involves a clear separation of powers between the Executive (government), the Legislature (Parliament) and the Judiciary. The Executive is responsible for the day-to-day management of the state; the Legislature creates, amends and ratifies laws; and the Judiciary interprets the law on a case-by-case basis.

5. The judicial review is being brought on six overlapping grounds:

i) OECD Anti-Bribery Convention

The decision to discontinue the BAE-Saudi corruption investigation was based on considerations of potential damage to the UK's relations with Saudi Arabia, in particular, damage to UK/Saudi security, intelligence and diplomatic cooperation. This is unlawful because it contravenes Article 5 of the OECD's Anti-Bribery Convention, which prevents signatories from terminating an investigation because of "the potential effect [of an investigation] upon relations with another State".

ii) Saudi Arabia's international legal obligations to combat terrorism

The UK effectively colluded with Saudi Arabia in breaching Saudi Arabia's international legal obligations to cooperate and share information on terrorist activities, and thereby colluded in committing an internationally wrongful act.

iii) Acting on tainted advice from government ministers

Government ministers (including the Prime Minister) took into account the risk of the UK not being able to sell Typhoon aircraft, and other commercial, economic and diplomatic matters when they gave advice to the SFO Director on the public interest aspects of the investigation. This was despite being told by the Attorney General that Article 5 of the OECD Anti-Bribery Convention forbids such considerations from being taken into account. The ministerial advice was therefore "tainted".

iv) Damaging national security by discontinuing the investigation

The SFO Director is under a legal obligation to take a balanced view of the public interest issues arising from an investigation. But neither the Director nor government ministers assessed or took into account the harm to the UK's national security of *discontinuing* the investigation.

v) Government ministers expressed a view on what decision an independent prosecutor (the Director of the Serious Fraud Office) should take.

The SFO Director and Attorney General requested views from government Ministers on the public interest aspects of pursuing the investigation. The rules for these consultations between the judiciary and the executive forbid Ministers from giving a

view on whether a prosecution should proceed or not. But the Prime Minister expressed a clear view that the public interest would best be served by intervening to halt the investigation. This is unlawful.

vi) Blackmail, threats and the rule of law

It is unlawful for an independent prosecutor to permit threats or blackmail to influence his/her decision to discontinue a criminal investigation or prosecution. To do so is to surrender the rule of law.

6. Background to judicial review

14th December 2006: The Director of the Serious Fraud Office (SFO) suspended the SFO's investigation into bribery and corruption by BAE Systems since 2002 in relation to the Al-Yamamah military aircraft deals signed between the governments of the UK and Saudi Arabia in 1985 and 1988. The deals ran for 20 years and were to supply the aircraft and related products and support services. The 2001 Anti-Terrorism Crime and Security Act made bribing a foreign official a criminal offence. The SFO began its investigation in November 2004.

Some time in 2005, Saudi Arabia threatened to cancel a further deal involving BAE's Eurofighter Typhoon aircraft and to withdraw security, intelligence and diplomatic co-operation with the UK if the investigation continued. These threats appear to have been made when it was discovered that the SFO was about to obtain details of Swiss bank accounts linking BAE and Saudi officials. Prince Bandar of Saudi Arabia, one of the alleged beneficiaries of the corrupt payments being investigated by the SFO, is reported to have been the source of these threats. (*The Guardian*, "BAE accused of secretly paying £1bn to Saudi prince", 7 June 2007; *The Times*, "Bandar Lobbied No 10 to drop Saudi bribes inquiry", 10 June 2007)

18th December 2006: The Corner House and CAAT wrote to the UK Government arguing that the SFO decision was unlawful and should be reversed.

9th November 2007: Lord Justice Moses and Mr Justice Irwin granted permission to bring a full judicial review hearing against the SFO decision to discontinue its investigation.

21st December 2007: At a Directions Hearing, the Director of the Serious Fraud Office presented his evidence to the Courts outlining why he had decided to drop the investigation. This included:

-a witness statement from the Director of the Serious Fraud Office, Robert Wardle
<http://www.thecornerhouse.org.uk/pdf/document/WardleWitState.pdf>

- letters and memos sent between the Prime Minister/Cabinet Office and the Attorney General from December 2005 to December 2006
<http://www.thecornerhouse.org.uk/pdf/document/RedactedDocs.pdf>.

17th January 2008:

In his judgement at the end of the Directions Hearing, Lord Justice Moses ordered the Director of the SFO to disclose letters from BAE Systems (the subject of the SFO investigation) to the Government. According to the evidence released on 21 December, a letter from BAE appears to have triggered within government departments the question of whether the SFO investigation should be discontinued. Lord Justice Moses also ordered the Director to disclose the government's reply.

7. Spokespeople for CAAT and The Corner House are available for interview:

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The Corner House - Nicholas Hildyard
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