

IN THE HIGH COURT OF JUSTICE

Claim No. CO/1567/2007

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

B E T W E E N:

THE QUEEN

on the application of

(1) CORNER HOUSE RESEARCH
(2) CAMPAIGN AGAINST ARMS TRADE

Claimants

-and-

THE DIRECTOR OF THE SERIOUS FRAUD OFFICE

Defendant

-and-

BAE SYSTEMS PLC

Interested Party

DETAILED STATEMENT OF GROUNDS

A. Introduction

1. In December 2006, the Director of the Serious Fraud Office ("the Director") announced his decision to discontinue the investigation into alleged corruption by BAE Systems Plc ("BAE") in relation to the Al-Yamamah arms contracts with Saudi Arabia (77). The Director made the decision following a 'Shawcross exercise' under which some senior ministers and the Prime Minister were consulted about the possible public interest consequences of proceeding with the investigation. The investigation was not halted on the grounds of a low prospect of a successful prosecution. Instead, the reason given for stopping the investigation was that officials in a foreign state, the Kingdom of Saudi Arabia, had threatened to withdraw diplomatic co-operation on security and intelligence matters if the SFO's criminal investigation was not halted.
2. The decision to discontinue the investigation was unlawful for the following reasons:

- 2.1. Article 5 of the OECD Bribery Convention (“the Convention”) prohibits the Director from taking into account any Saudi threats to withdraw diplomatic co-operation on security and intelligence matters, or the effect the investigation would have had on relations with Saudi Arabia. The Attorney General on behalf of the United Kingdom has publicly assured the OECD that the UK will comply with Article 5 when making prosecution decisions. Further, the Director has confirmed that Article 5 was taken into account when the decision was made. Accordingly, the Director has misdirected himself as to the effect of the Convention and the decision to discontinue the investigation was unlawful.
- 2.2. The Director failed to take into account as a relevant consideration that if the threats made by Saudi Arabia were carried out, Saudi Arabia would be in breach of numerous binding international law obligations, and of assurances repeatedly given by Saudi Arabia at the highest levels.
- 2.3. The advice on the public interest given by senior ministers and the Prime Minister was tainted by irrelevant considerations, including the effect of the investigation on the UK’s relations with Saudi Arabia. Their advice was thus flawed and could not form the basis of a lawful decision by the Director.
- 2.4. The account given to the Director of the views of the security services was inaccurate and the decision of the Director was therefore made under a fundamental mistake of fact.

B. The parties

3. Corner House is a not-for-profit company limited by guarantee. It engages in detailed research and campaigning on issues of bribery and corruption in international trade. Its long-standing interest and involvement in issues of bribery and corruption is well known and has been recognised by the Courts. See *R (Corner House Research) v Secretary of State for Trade and Industry* [2005] 1 WLR 2600 at [91] (566).
4. Campaign Against Arms Trade is an unincorporated association whose objects are sufficiently described by its name. CAAT is a campaigning organisation, engaging in research, lobbying and peaceful protest.

5. The Director of the Serious Fraud Office (“the Director”) is appointed by and subject to the superintendence of the Attorney General. He has power to commence and discontinue investigations into cases of serious fraud pursuant to Part I of the Criminal Justice Act 1987 (418).
6. The Interested Party, BAE, is a multinational arms company, based in the UK and listed on the London Stock Exchange.

C. Al-Yamamah

7. Since the 1980s, the UK has supplied fighter aircraft and associated products and support services to the Kingdom of Saudi Arabia under a series of very high value arms deals known as “Al Yamamah” (“The Dove”). The aircraft sold to Saudi Arabia under the Al Yamamah deals are all manufactured by BAE.
8. In 2004, the Director initiated an investigation into alleged bribery and corruption by BAE in relation to the Al Yamamah deals.
9. In November and December 2006 it was widely reported that the government of Saudi Arabia had threatened to suspend diplomatic ties with the UK and cancel a further proposed order for a large number of Eurofighter Typhoon aircraft if the SFO investigation was not halted.

D. Decision to end SFO investigation

10. On 14 December 2006, the SFO announced that it was ending its investigation into the Al Yamamah contracts. Its press release stated:

The Director of the Serious Fraud Office has decided to discontinue the investigation into the affairs of BAE SYSTEMS Plc as far as they relate to the Al Yamamah defence contract with the government of Saudi Arabia.

This decision has been taken following representations that have been made both to the Attorney General and the Director of the SFO concerning the need to safeguard national and international security.

It has been necessary to balance the need to maintain the rule of law against the wider public interest.

No weight has been given to commercial interests or to the national economic interest (77).

11. On the same day, the Attorney General made a statement to the House of Lords about the decision. He said:

As to the public interest considerations, there is a strong public interest in upholding and enforcing the criminal law, in particular against international corruption, which Parliament specifically legislated to prohibit in 2001. In addition I have, as is normal practice in any sensitive case, obtained the views of the Prime Minister and the Foreign and Defence Secretaries as to the public interest considerations raised by this investigation. They have expressed the clear view that continuation of the investigation would cause serious damage to UK/Saudi security, intelligence and diplomatic co-operation, which is likely to have seriously negative consequences for the United Kingdom public interest in terms of both national security and our highest priority foreign policy objectives in the Middle East.

The heads of our security and intelligence agencies and our ambassador to Saudi Arabia share this assessment.

Article 5 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions precludes me and the Serious Fraud Office from taking into account considerations of the national economic interest or the potential effect upon relations with another state, and we have not done so.

Noble Lords will understand that further public comment about the case must inevitably be limited in order to avoid causing unfairness to individuals who have been the subject of investigation or any damage to the wider public interest. It is also appropriate that I should add that the company and individuals involved deny any wrongdoing (78) (underlining added)

12. The Prime Minister also gave his views immediately after the SFO's announcement:

Our relationship with Saudi Arabia is vitally important for our country in terms of counter-terrorism, in terms of the broader Middle East and in terms of helping in respect of Israel-Palestine - and that strategic interest comes first.

If this prosecution had gone forward all that would have happened is we would have had months, perhaps years, of ill-feeling between us and a key ally" ("Blair: I pushed for end to Saudi arms inquiry", The Times, 15 Dec 2006) (83) (underlining added).

E. The Bribery Convention

13. The United Kingdom, along with all other OECD member states, has ratified the OECD Bribery Convention (348). The Convention is a multilateral treaty. Each of the signatory states recognise that collective action is necessary to end bribery in international business transactions. All signatory states introduced a criminal offence of bribery of a foreign public

official, agreed to collective enforcement mechanisms and promised to investigate and prosecute even where relations with another state would be damaged as a result. Such collective action was intended to benefit all signatory states in the long-term:

The Parties

Considering that bribery is a widespread phenomenon in international business transactions, including trade and investment, which raises serious moral and political concerns, undermines good governance and economic development, and distorts international competitive conditions...

Recognising that achieving progress in this field requires not only efforts on a national level but also multilateral co-operation, monitoring and follow-up.

Recognising that achieving equivalence among the measures to be taken by the Parties is an essential object and purpose of the Convention, which requires that the Convention be ratified without derogations affecting this equivalence.

14. Article 1 of the Convention requires parties to create a criminal offence of the bribery of a foreign public official.
15. Article 5 of the Convention provides for enforcement provisions:

Investigation and prosecution of the bribery of a foreign public official shall be subject to the applicable rules and principles of each Party. They shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.

16. Article 12 requires parties to co-operate in monitoring and follow-up of the implementation of the Convention:

The Parties shall co-operate in carrying out a programme of systematic follow-up to monitor and promote the full implementation of this Convention. Unless otherwise decided by consensus of the Parties, this shall be done in the framework of the OECD Working Group on Bribery in International Business Transactions...

17. Pursuant to Article 12, the OECD Working Group has visited the UK and reported on its implementation of the Convention. Amongst other matters, OECD has expressed concern that the involvement of the Attorney-General in giving consent for a prosecution “**involves the possible consideration of UK interests that the Convention expressly prohibits in the**

context of decisions about foreign bribery cases” (*). However, to allay the OECD’s concerns, the Attorney-General:

specifically confirmed that none of the considerations prohibited by Article 5 would be taken into account as public interest factors not to prosecute. Moreover, the Attorney-General noted that public interest factors in favour of prosecution of foreign bribery would include its nature as a serious offence and as an offence involving a breach of the public trust. In addition the UK authorities note that by acceding to the Convention, the UK has confirmed that the circumstances covered by the Convention are public interest factors in favour of a prosecution (OECD UK Phase 2 Report on the Implementation of the Convention, 2005) (1266).

18. The same assurance must also apply to decisions to discontinue an investigation before a formal decision to prosecute is taken.

19. In the Director’s response to the Claimant’s letter of claim dated 19 January 2007, the Director stated:

Article 5 of the OECD precludes consideration of the national economic interest or the potential effect upon relations with another state. Accordingly, as the Attorney General’s statement to the House of Lords on 14 December 2006 makes clear, such issues were not taken into account by the Director of the SFO (or, for that matter, by the Attorney General) (29).

F. Grounds

Breach of Article 5 of the Bribery Convention

Justiciability

20. It is a well-established principle of English public law that where a public body announces that it will comply with an international law obligation when making a decision, or that it has taken into account such obligations when taking its decision, the Court will review the decision for compliance with that obligation (see *R v SSHD, ex parte Launder* [1997] 1 WLR 839 per Lord Hope at 867F and *Fatima, Using International Law in Domestic Courts*, 2005 at para. 11.8.3). If the decision maker has misdirected himself on the Convention which he claims to have applied the decision will be legally flawed on normal domestic public law grounds.

21. As set out above, both the Attorney General and the Director have stated that this decision was taken in accordance with Article 5 of the OECD Convention. The Court should therefore review the decision for compliance with the Convention, construing it applying the usual principles of construction that apply to international law instruments.

Decision notice

22. In the decision made on 14 December, the Director stated that he had given no weight to commercial interests or the national economic interest, mirroring the wording of some of Article 5 of the Convention. However, no mention was made of the express duty under Article 5 to disregard any potential consequences of an investigation on the effect upon relations with another State.

23. This cannot have been an oversight on the part of the Director, as he had Article 5 in mind when taking the decision to discontinue the investigation. It should therefore be concluded that the effect on relations with Saudi Arabia was a relevant factor the Director took into account when taking the decision to halt the investigation. Otherwise, he would have referred to this as an excluded matter in his decision notice. It is thus apparent on its face that the decision takes into account an irrelevant consideration.

24. In contrast, when the Attorney-General spoke in Parliament, he claimed that he *and the Director* were precluded **“from taking into account considerations of... the potential effect upon relations with another state, and we have not done so”** (78).

25. This assertion contradicted the written decision notice published by the SFO, as Lord Thomas of Gresford QC immediately pointed out to the Attorney-General:

The noble and learned Lord the Attorney-General said that any serious damage to UK/Saudi security, intelligence and diplomatic co-operation would have seriously negative consequences for the United Kingdom public interest. But how can that not be forbidden by Article 5 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which says that you cannot take into account the potential effect on relations with another state? The two statements are contradictory (78).

26. The Attorney-General did not respond to this point in Parliament and the Treasury Solicitor has not dealt with this point in the response to the Claimants' letter of claim.

Article 5 and National Security

27. The Director's position is that the claimed **"real and immediate risk of a collapse in security and intelligence cooperation, which would severely undermine the fight against terrorism and the chances of improving UK security through increased peace and stability in the Middle East, outweighed the strong public interest in the prosecution of serious crime"** (29) and that such matters are not excluded from consideration by virtue of Article 5 of the Convention. In essence, the Director's position is that there is some kind of implied national security exemption in the Convention that can be applied in this case to justify ending the investigation into BAE.

28. Such a suggestion is misconceived:

28.1. Article 5 provides that the effect on relations with another state may not be taken into account. As an international law instrument, this phrase must be construed in accordance with the object and purpose of the Convention, so as to ensure that the Convention has real and practical effect. The kinds of effects on relations that might occur if a bribery investigation is continued can easily be identified. They include a withdrawal of diplomatic co-operation, ending of co-operation on intelligence sharing, and other similar matters. These are precisely the matters relied upon by the Director in this case.

28.2. However, Article 5 requires that these effects should be ignored because they are effects on the relationship between states. The Convention cannot properly be interpreted to allow one state to make diplomatic threats to another to achieve the aim of ending a bribery investigation. Such conduct is squarely prohibited by the wording and spirit of Article 5 and would defeat the purpose of the multilateral Bribery Convention under which states each agree not to submit to pressure or blackmail in individual cases (whatever the consequences) to advance the common good for all states.

28.3. If Article 5 were to be read so as to permit the SFO to take into account the alleged national security effects of damaged relations with Saudi Arabia, this would frustrate the

purpose of Article 5. There will always be such “effect[s]” if relations with another state are damaged. Article 5 requires that these effects must be ignored because of the importance of preventing bribery and corruption in international business transactions.

28.4. Those academic writers that have considered the point have reached similar conclusions:

28.4.1. In *The OECD Convention on Bribery: A Commentary*, Ed. Pieth et al, Cambridge University Press (2007), Peter Cullen distinguishes between national security arguments based on considerations of international relations, and free-standing national security arguments, such as those where a prosecution would lead to the revelation of defence secrets (413). In relation to the former, Cullen has no doubt that such arguments cannot be sustained in light of Article 5: **“National security arguments based on considerations of international relations would also, clearly, fall foul of the Article 5 prohibition”**. The present case falls into this category – the supposed harm to national security flows from possible effects on the UK’s relationship with Saudi Arabia, an impermissible consideration. Cullen also notes that national security is commonly used as a cloak for the consideration of economic interests, citing the unpublished 1992 National Audit Office report into the Al Yamamah contracts as an example (414). In other cases, he concludes that the Convention may not prevent a **“very limited national security exception”** subject to strict limitations, but notes that this is an open question and is very concerned about the likelihood of it being abused: **“State parties would almost certainly tend to employ it for precisely the reasons which the Convention seeks to exclude”**.

28.4.2. In *Treaties and National Security Exceptions* (2007), Professor Rose-Ackerman of Yale University considers whether there is an implicit national security exception in Article 5 of the OECD Convention (1415). She concludes that there is not. Where a modern treaty seeks to provide a national security exception, this has been made explicit in the wording. Further, GATT decisions indicate that there is no general right to invoke a national security exception to excuse compliance with a treaty. Nor do the principles of customary international law permit a state to derogate from a treaty obligation on grounds of national security.

28.5. In light of the above, even if there is a narrow and unwritten national security exception, it must be limited to matters outside the scope of Article 5 and be unrelated to relations between states. For example, if a bribery prosecution would cause damage to national security which flowed from, for example, the disclosure of the identity of an agent, it could be said that this would not offend against Article 5. The state would not be taking into account the effect on relations with another state, or the consequences of this, but relying on a free-standing reason for refusing to prosecute. No such free-standing reason has been identified here by the UK.

Saudi Arabia's international law obligations

29. If Saudi Arabia were to carry out its threats to withdraw diplomatic co-operation on intelligence and security matters, it would be in breach of its international law obligations.

30. Security Council Resolution 1373/2001, adopted in the aftermath of the terrorist attacks on 11 September 2001 required all states to co-operate to prevent any repetition. Article 2 of the Resolution required states to **“take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information”... and “afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings”** (1393).

31. Article 3 called upon states to **“co-operate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts”**. Article 6 created a monitoring committee and a reporting mechanism.

32. On 19 September 2002, the Minister of Foreign Affairs of Saudi Arabia, Prince Saud al Faisal gave a speech to the General Assembly of the United Nations in which he reaffirmed the Kingdom of Saudi Arabia's support for resolution 1373:

The Kingdom of Saudi Arabia reaffirms its support for all Security Council Resolutions related to the question of terrorism, and has cooperated with the international community in implementing these resolutions with the aim of combating it... (1398)

33. Pursuant to the reporting mechanism in Resolution 1373, Saudi Arabia has been asked numerous questions about its counter-terrorist co-operation procedures, and has given assurances to the Security Council about them. For example, on 29 May 2003, the Saudi

Ambassador to the UN provided a response to various queries raised by the Security Council about Saudi Arabia's implementation of Resolution 1373:

1.13 The CTC would be grateful to know the institutional mechanism by which Saudi Arabia provides early warning of any anticipated terrorist activity to another Member State, whether or not the States are parties to bilateral or multilateral treaties with Saudi Arabia.

Response

In the event that the competent authorities in the Kingdom of Saudi Arabia come into possession of information on the possibility that a terrorist offence might occur within the territory of a State or States, against their nationals or persons resident within their territory or against their interests, the Kingdom communicates to that State or States the information in its possession through notification of a possible terrorist offence, transmitted through the embassy of the targeted State or States in Saudi Arabia if such State or States have no bilateral or multilateral treaties with the Kingdom. If, however, security arrangements or treaties exist between Saudi Arabia and a particular State or States, the notification is addressed to the competent counter-terrorism authority in the State or States whose interests, nationals or residents are targeted (1412).

34. The Director did not take Saudi Arabia's obligations under Resolution 1373 into account when reaching his conclusion that the Saudi threats were real. Nor did he consider these important assurances about Saudi Arabia's approach to anti-terrorist co-operation. Nor did he consider the relevance of Resolution 1373 to the interpretation of Article 5 of the Bribery Convention. As such, his conduct was unlawful in that:

34.1. Regulation 1373 is binding on Saudi Arabia and the Saudi government has repeatedly assured the UN of its intention to comply with the Regulation. The Director failed to take into account these relevant considerations when deciding whether the Saudi threats to withdraw anti-terrorist co-operation with the UK was real. These were plainly relevant considerations and should have been taken into account.

34.2. Pursuant to Article 31(3)(c) of the 1969 Vienna Convention on the Law of Treaties, in interpreting the Bribery Convention there shall be taken into account, "**any relevant rules of international law applicable in the relations between the parties**". Such rules include those arising under relevant Security Council resolutions, including Resolution 1373, which commits all UN member states, including Saudi Arabia, to cooperate and share information on terrorist activities. As a basic matter of international law, a threat by Saudi Arabia to breach its own international law obligations cannot be a permissible matter to take into account as part of Article 5, as this would permit a state to take improper advantage of its own wrongdoing and breach of international law.

Advice on public interest

35. The SFO's decision was based on advice received from Ministers at the highest level. It is plain from public statements made by the Attorney-General and the Prime Minister that this advice on the public interest took into account the effect on the UK's relations with Saudi Arabia in that:

35.1. The Attorney General told Parliament that the view of the Prime Minister and the Foreign and Defence Secretaries of State was that "**continuation of the investigation would cause serious damage to UK/Saudi security, intelligence and diplomatic co-operation...**" (78).

35.2. On 15 December, the Prime Minister expressed similar views:

"Our relationship with Saudi Arabia is vitally important for our country in terms of counter-terrorism, in terms of the broader Middle East and in terms of helping in respect of Israel-Palestine - and that strategic interest comes first.

If this prosecution had gone forward all that would have happened is we would have had months, perhaps years, of ill-feeling between us and a key ally" (*"Blair: I pushed for end to Saudi arms inquiry"*, The Times, 15 Dec 2006) (82-5).

36. Both the Attorney-General and the Prime Minister were explaining the basis for the decision in terms of the effect that continuing the investigation might have had on relations with Saudi Arabia. However, this is a legally irrelevant consideration in light of the Attorney-General's assurances to the OECD that such considerations would be ignored, pursuant to Article 5 of the Bribery Convention.

37. As a result, it is plain that the effect on the UK's relations with Saudi Arabia were indeed taken into account by those giving advice to the Director of the SFO. As such this advice must be viewed as tainted and not a proper basis for his conclusion that proceeding with the investigation would not be in the public interest.

Views of the security services

38. On 14 December, the Attorney General assured Parliament that Ministers “**have expressed the clear view that continuation of the investigation would cause serious damage to UK/Saudi security, intelligence and diplomatic co-operation, which is likely to have seriously negative consequences for the United Kingdom public interest in terms of both national security and our highest priority foreign policy objectives in the Middle East**” and that “**the heads of our security and intelligence agencies and our ambassador to Saudi Arabia share this assessment**” (78) (underlining added). The Claimants infer that the Director was given information to similar effect before he made his decision.

39. It has since transpired that this account is inaccurate in important respects. Following reports in *The Guardian* that the Secret Intelligence Service had refused to sign up to the contents of a draft dossier setting out the government’s position, the Attorney General confirmed to Parliament that the true position was that SIS “**did not know whether this threat would be carried out**” albeit that “**it had to be taken seriously**” and SIS had no evidence with which to disagree with the assessment of Ministers that the Saudi threat was real. Similarly in its response to a request by the Claimants under the Freedom of Information Act, the Attorney General’s office has confirmed that “**the Chief of the Secret Intelligence Service’s view was that the Saudis might withdraw their co-operation if the SFO investigation continued, and that they could decide to do so at any time**” (underlining added) (Letter of 4 April 2007) (92). This contrasts with the assertion by the Attorney General to Parliament that the view of the SIS was that the continuation of the investigation would lead to a withdrawal of co-operation. It is apparent that the Director was misinformed about the view of the SIS and thus made his decision under a fundamental misapprehension as to the true position. His decision must therefore be quashed to permit him to reconsider in light of the correct factual position.

Alleged futility

40. The Treasury Solicitor, responding to the Claimants’ letter of claim has stated:

You should also be aware that, even if (contrary to the interpretation of Article 5 above) such issues had been precluded by virtue of Article 5, the Director of the SFO would in any event have been entitled under domestic law, had he wished to do so, to exercise his discretion in the circumstances against giving effect to Article 5. I am instructed by him that, in the circumstances, even if consideration of the security matters to which he had regard had been contrary to Article 5, he considered them to be so significant that he would still have taken the same decision. I therefore question the practical effect of the proposed claim (28).

41. This reasoning amounts to an inadmissible attempt at *post hoc* justification of a decision, not present anywhere in the original determination (*Nash v Chelsea College of Art & Design* [2001] EWHC Admin 538 at [35-37] and *R v SSHD ex parte Lillycrop* (Unreported, 27 November 1996)).
42. The Court should be slow to permit a judicial review to be frustrated by an after the event assertion that a decision could have been (but was not) made on a different and allegedly lawful basis. If the Court finds that the Director's decision was unlawful because he misconstrued or misapplied Article 5, the matter should be remitted to him to consider afresh, on a correct legal basis, and in light of the evidence then available. He should not be permitted to pre-empt that reconsideration, especially as the Attorney General has expressly confirmed to the OECD that prosecution decisions in the UK will comply with Article 5. Indeed, the Attorney General took great care to confirm to Parliament that both he and the Director viewed the Convention as binding on them and that they had sought to comply with its provisions.
43. In any event, as set out above, the Claimants contend that the Director's decision took into account an incorrect report of the assessment of the Secret Intelligence Service as to the risk of the withdrawal of co-operation by Saudi Arabia and failed to take into account Saudi Arabia's international law obligations. In these circumstances, the decision must in any event be retaken on a proper legal and factual basis.

G. Timing and ancillary litigation

44. The claim for judicial review has been complicated and delayed by the leak of privileged legal advice given by the Claimants' solicitors to BAE. See the witness statement of Richard Stein (10).
45. The Claimants are now able to proceed with the judicial review and have sought to put in place security measures to prevent any further leaks of privileged or confidential information.

H. Protective Costs Order

46. The Court is respectfully invited to grant the Claimants a protective costs order, limiting their liability to costs to the aggregate sum of £29,000 for the reasons set out in the witness

statements of Ann Feltham (169) and Nicholas Hildyard (314). This case clearly meets the guidelines set out in *Corner House* [2005] 1 WLR 2600 for the grant of a protective costs order:

46.1. The case is plainly arguable and raises very important points of general legal and public importance that should be resolved by the Court. The proper interpretation and application of Article 5 of the Convention and the propriety of advice and representations (which have not yet been made public) by politicians to an independent criminal investigator prompting him to abandon a major corruption investigation are matters of the highest public interest and legal importance.

46.2. Neither CAAT for Corner House have any private interest in the outcome of this litigation. They are bringing this claim as watchdogs acting in the public interest with the aim of upholding the criminal law.

46.3. The Claimants are not seeking a full protective costs order. Between them, the Claimants are able to offer a cost-cap of £29,000, following extensive fund-raising efforts. This is a substantial sum and compares very favourably with the amounts that other public interest bodies have been able to offer in other PCO cases. But this is all they can afford.

46.4. If CAAT and Corner House are not granted a protective costs order they will be forced to withdraw their claim and these important questions of law will go unresolved.

I. Conclusion

47. For the reasons set out above, the Court is respectfully invited to grant permission, a protective costs order, and, in due course, the relief sought.

DAVID PANNICK QC

DINAH ROSE QC

BEN JAFFEY