

The Director
Serious Fraud Office
Elm House
1-16 Elm Street
London
WC1X OBJ

Direct Dial: 0207 650 1243

Email: rstein@leighday.co.uk

Your Ref:

Our Ref: RS/CAAT(6)

Date: 07 January 2011

Dear Sir,

BAE Systems plc - Pre-action letter

We continue to act for Campaign Against Arms Trade and Corner House Research. Please treat this letter as a letter before claim pursuant to the judicial review pre-action protocol. We request a reply by 21 January 2011. We have sent a copy of this letter to BAE Systems plc ("BAE").

This letter concerns paragraph 8 of the settlement agreement between the SFO and BAE. Paragraph 8 provides that:

"There shall be no further investigations or prosecutions of any member of the BAE Systems Plc group for any conduct preceding 5 February 2010."

This provision is exceptional in its scope and effect. We respectfully agree with the remarks made by Bean J on 21 December 2010 when sentencing BAE:

"5. The Settlement Agreement is, with respect, loosely and perhaps hastily drafted. In paragraph 6 "any person" is not defined, and paragraph 10 is not, at least expressly, confined to conduct preceding the agreement. But the heart of the matter is paragraph 8, whereby the SFO agreed that there would be "no further investigation or prosecutions of any member of the BAE Systems Group for any conduct preceding 5 February 2010." It is relatively common for a

Martyn Day
Anne Winyard
Russell Levy
Sally Moore
Frances Swana
Richard Stein
Cristy Dixon
Oliver Lewis
Sally Jean Nicholas

Sean Hunter
Bozena Michalowska - Howells
Sapna Malik
Sarah Campbell
Ailvan Miller
Nicola Wainwright
Claire Pagan
David Sarron
Richard Meenan

Chris Benson
Penny Knight
Camilla Palmer
Shubhae Srinivasan
Suzanne White
Gene Matthews

Practice Director:
Adrian Cole

Leigh Day & Co
Priory House
25 St John's Lane
London
EC1M 4LB

Tel 020 7650 1200
Fax 020 7253 4433
DX 53326 Clerkenwell
Web www.leighday.co.uk
Email postbox@leighday.co.uk

prosecuting authority to agree not to prosecute a defendant in respect of specified crimes which are admitted and listed in the agreement: this done, for example, where the defendant is an informer who will give important evidence against co-defendants. But I am surprised to find a prosecutor granting a blanket indemnity for all offences committed in the past, whether disclosed or otherwise. The US Department of Justice did not do so in this case: it agreed not to prosecute further for past offences which had been disclosed to it."

Paragraph 8 of the settlement agreement purports to provide a blanket immunity to BAE from any further investigation or prosecution in relation to any matter whatsoever, whether related to bribery and corruption or not. BAE has secured immunity over any criminal conduct it has committed of which the SFO are currently unaware and which the SFO would (if they discovered it) ordinarily wish to investigate and prosecute in the public interest. In exchange for this benefit, BAE has pleaded guilty to a relatively minor accounting offence.

In the present context, paragraph 8 is particularly troubling. The difficulties in the investigation and prosecution of bribery, corruption and serious fraud are well-known. By definition, bribery and corruption are carried out in secret. Those who are involved in criminal bribery and corruption do not readily disclose evidence of their wrongdoing. To the contrary, they tend to do everything they can to conceal it. That was BAE's practice in the case of Tanzania case. A complex scheme of offshore companies was used to pass and make payments. Steps were then taken to conceal those payments from BAE's accounts.

BAE has not warranted that the SFO discovered all possible instances of bribery and corruption or serious fraud that it has been engaged in, or that it has given full and complete disclosure of all offences or possible offences in which it has been involved. In these circumstances, it is difficult to see any proper basis on which the SFO could properly have offered BAE a blanket immunity in respect of all offences committed prior to February 2010, including in respect of offences or matters of which the SFO is completely unaware and which may be unrelated to the investigations carried out to date. It is impossible to understand how the public interest is served by paragraph 8, which is, to our knowledge, exceptional, unusual and entirely unnecessary. As Bean J noted, the US Department of Justice agreed not to prosecute in relation to past offences disclosed to it. No blanket immunity was offered.

The effect of paragraph 8 of the settlement agreement is particularly surprising when contrasted to paragraph 9 of the same agreement. Paragraph 9 provides BAE with a limited (and proper) immunity from civil proceedings "in relation to any matters investigated by the SFO". There is no attempt to give BAE civil immunity over matters about which the SFO is completely unaware. We do not understand why the SFO has chosen to give BAE an immunity against criminal prosecution which is wider than the SFO has offered in relation to civil proceedings.

We consider that paragraph 8 of the settlement agreement was irrational, served no proper public purpose and should be quashed. No public prosecutor, in the circumstances set out above could properly enter into a settlement agreement guaranteeing immunity in respect of serious criminal offences of which it was entirely unaware. If BAE has in fact fully disclosed all relevant conduct to the SFO, there is no reason why it should seek the inclusion of paragraph 8 in the settlement agreement. The inference must be that BAE still has something to hide, of which the SFO is currently unaware.

Timing and candour

It was not until the terms of the settlement agreement were read in open court by Bean J that our clients became aware that the SFO had agreed not to bring any proceedings against BAE in respect of any matter arising before February 2010. Our client has acted promptly as soon as the relevant facts were known. To the extent necessary, our client will seek an extension of time to bring a challenge to paragraph 8.

The reason why a claim in relation to paragraph 8 of the settlement agreement has not previously been brought is straightforward. The SFO press release of 5 February 2010 was misleading and is entirely at odds with the true position:

"The SFO... has determined that no further prosecutions will be brought against BAE Systems in relation to the matters that have been under investigation by the SFO." (emphasis added)

In addition, the failure of the SFO to disclose the terms of paragraph 8 of the settlement agreement in the earlier litigation was a significant breach of the duty of candour owed by the SFO and is regrettable. We make clear that the response to this letter ought to include an explanation for the misleading terms of the press statement and as to why we were not informed of the true position earlier. We remind you that paragraph 1.2 of the Treasury Solicitor's guidance on the duty of candour requires disclosure of material that would give rise to additional grounds of

claim ("the duty extends to documents/information which will assist the claimant's case and/or give rise to additional (and otherwise unknown) grounds of challenge"). Paragraph 8 of the Settlement Agreement plainly falls within this category.

Yours faithfully,



Leigh Day & Co

cc: BAE Systems plc