

Submission to the Woolf Committee from The Corner House

1. The Corner House is a non-governmental organisation focusing on environment, development and human rights. It has a track record of detailed policy research and analysis on overseas corruption and on corporate accountability. Its long-standing interest in issues of bribery and corruption is well known and has been recognised by the Courts.¹

2. This submission looks at:

- 1 BAE's response to the corruption and false accounting investigation by the Serious Fraud Office;
- 2 BAE's use of agents, consultants, advisers and sales representatives;
- 3 whether BAE's policy on hospitality and gift-giving is sufficient;
- 4 whether BAE has appropriate policies in place on lobbying and political influence;
- 5 covert monitoring of non-governmental organisations by BAE's security department;
- 6 whether BAE is sufficiently transparent about its ethical policies; and
- 7 how BAE should deal with 'legacy' issues, such as past allegations of malpractice.

A. BAE's response to the investigation by the Serious Fraud Office

3. BAE has consistently stated that it is cooperating with the law enforcement agencies in their investigation. At its AGM in 2007, it stated that it had supplied over a million documents to the Serious Fraud Office's investigation.² Full and sincere cooperation with an investigation would appear to be called for by BAE's current ethical policies of accountability ("*we are personally answerable for our conduct and actions*"), honesty ("*there is no substitute for the truth*") and openness ("*we are frank and straightforward in our answers*").

4. There have, however, been suggestions that BAE's cooperation was not quite as full and frank as it could and should have been. The Corner House urges the Woolf Committee to look in detail at BAE's responses to the Serious Fraud Office's and the US Department of Justice's request for information from BAE, and whether BAE's employees gave and continue to give the fullest cooperation possible. In particular, The Corner House urges the Woolf Committee to take evidence from law enforcement officers as to whether BAE's cooperation has been as full as it has claimed. It appears, for instance, that BAE had failed, as of June 2006 (over a year into the Serious Fraud Office's inquiry), to provide investigators with copies of relevant documentation that were kept outside of the UK.³

5. It has also emerged that BAE actively lobbied the Attorney General (including hiring a barrister to ring the Attorney General at home⁴) to have the investigation

¹ See *R (Corner House) v Secretary of State for Trade and Industry* [2005] 1 WLR 2600 at [91] (566).

² *Financial Times*, 10/5/07, "Olver pledges to remain at BAE helm for three years"

³ Leaked Serious Fraud Office Mutual Legal Assistance request to South Africa, 26/6/06, quoted in *South African Mail and Guardian*, 12/1/07, "Arms Deal: Who got the R1bn pay offs?"

⁴ <http://www.guardian.co.uk/baefiles/page/0,,2098531,00.html>

against it dropped on the grounds that it would damage UK-Saudi relations and would prevent BAE from securing further work from the Saudi government.⁵ BAE was told in November 2005 by the Attorney General that it was inappropriate for BAE to make “*private and confidential*” representations to the law officers, and that such representations should be made to the Serious Fraud Office itself.⁶ During 2006, as part of the Defence Industries Council, BAE continued to lobby ministers and MPs for a conclusion to the Serious Fraud Office’s investigation, on the grounds that UK jobs and business would be lost.

6. The Corner House urges the Woolf Committee to examine the appropriateness of BAE’s lobbying of government ministers and the law officers in light of its ethical policies and principles. It would appear anomalous that a company claiming to have the highest ethical standards, including on accountability, should lobby ministers to have an investigation dropped against it. A company that is accountable to the society and state to which it belongs should expect to be subject to the same laws and processes that all other citizens and companies of that society are.

7. BAE’s response to the ending of the SFO enquiry into allegations of malpractice with regard to Saudi Arabia also raises questions about its commitment to accountability. BAE has stated that:

“We believe a timely conclusion to the investigation was required. It is not reasonable or just that such investigations and associated allegations which are unsupported by evidence, should continue indefinitely.”

(CSR Report 2006)

8. The Corner House believes that BAE’s response to the ending of the inquiry is disingenuous. It is now in the public domain that the investigation was terminated directly as a result of a request for further evidence from the Swiss authorities.⁷ This clearly suggests that not all the available evidence had yet been gathered. Furthermore, BAE Systems must be aware that fraud and corruption investigations, by their very nature, are complex and take considerable time to complete.

9. The dropping of the Saudi investigation is extremely damaging to the credibility of BAE Systems’ ethical policies. The ending of the investigation for reasons other than the evidential base for the case has left a cloud of suspicion about unethical behaviour hanging over BAE, which will be very hard for the company to dispel. The Corner House urges the Woolf Committee to look in detail at the response of BAE Systems to the law enforcement investigations with a view to whether this response meets the standards one would expect of a company with high ethical standards.

B. BAE’s use of agents, consultants, advisers and sales representatives

10. As the Committee will be aware, it has been common practice by companies for many years to seek to avoid direct liability for bribery by using middlemen, such as

⁵ Attorney General’s office Freedom of Information disclosures: <http://www.attorneygeneral.gov.uk/attachments/Sample%20SFO%20&%20BAe%20reply.pdf>.

⁶ Ibid.

⁷ Interview with Robert Wardle, Constitutional Affairs Committee, 27/6/07; <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmconst/306/306.pdf>

commercial agents, consultants, and sales advisers or representatives. It is worth noting that as the Control Risks and Simmons & Simmons 2006 International Business Attitudes survey showed, 28% of UK companies believed that companies from the UK regularly used agents to circumvent bribery laws, and 62% thought they did so occasionally.⁸ In this survey, a UK-based defence industry respondent expressed the view that:

“The arms and defence sector has hundreds of these people. It is not stating it too grandly to say that the industry works almost entirely through middlemen, some of whom can be high-ranking government officials. We work on a basis of trust and success. The formal process of checking their record or telling them how to run their operation and not pay a bribe where it is customary to do so is laughable.”⁹

The recent expression of such a view by someone in the UK defence industry suggests that agents remain a very high risk area in terms of ethical conduct, and that UK defence companies are still likely to shield behind the supposed ‘deniability’ of using an agent.

11. BAE’s position on its use of agents, stated in its 2006 CSR report, is that:

“Companies operating in global markets, in any industry, need access to local advice, capabilities and guidance in order to pursue business. It is perfectly legitimate that such advisers/consultants are paid for what they do. As with all aspects of our business, we audit those arrangements to ensure no impropriety is taking place and that we are receiving value for money for their specialist knowledge and capabilities”

BAE has also stated that it has an anti-corruption awareness and compliance programme, ‘Integrity in Business Dealings’, which includes how the company handles “*the appointment of advisers to assist in marketing and other business activities*”. This is not, however, a public document. BAE has very little in the public domain about how it appoints its agents and how it seeks to ensure that bribery is not committed by its agents.

12. Lord Robertson, former general secretary of NATO, has suggested that defence companies need to take stronger measures in order to combat corruption, including displaying information on agents and company policy on agents in company annual reports; limiting payments to agents; and using less agents.¹⁰ As he puts it, “*it is unseemly when companies leave agents to carry out work on their behalf but wash their hands of any distasteful activities carried out on their behalf*”.¹¹ Rigorous procedures, transparency, and public disclosure are absolute prerequisites for a company seeking to prove that its use of agents is of the highest ethical standards. The

⁸ Control Risks, “Facing up to Corruption: a practical business guide”, 2007, p 35; http://www.crg.com/pdf/Facing_up_to_corruption_2007_englishreport.pdf

⁹ Ibid., p 35

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http://www.transparency.org/news_room/in_focus/2006/defence_sector/john_githongo_interviews_lord_robertson_on_the_defence_industry

¹¹ Ibid.

cull of 140 ‘independent advisors’ by BAE announced in June 2007 to protect its reputation in the US market may be a step in the right direction towards such standards, but also suggests that until very recently, some of BAE’s advisors posed a potentially serious reputational risk to the company.¹² BAE’s disclosure of its company policy on agents and on the agents it uses, meanwhile, is clearly inadequate, particularly given the considerable questions raised by information in the public domain about BAE’s use of agents on recent contracts currently under investigation by law enforcement authorities (*see* Annex 1 for table of contracts under investigation).

Secrecy surrounding use of agents

13. A recent (2006) law enforcement officers’ assessment of BAE’s agency and commission payment system stated that it “is maintained in such conditions of secrecy that there is a legitimate suspicion concerning the real purpose of the payments.”¹³ The assessment noted that a “highly secretive unit with BAE”, Headquarters Marketing, “coordinates all agreements and contracts with agents” and that BAE kept “underlying documents which govern such agreements” in Switzerland, and were failing to produce them when requested by law enforcement officers.¹⁴ Many of the commission payments currently under investigation by law enforcement officers appear to have been made by an undisclosed BAE subsidiary, Red Diamond, registered in the British Virgin Islands and into other offshore accounts or to offshore companies.

14. The Corner House is particularly concerned at the confidentiality that BAE claims for its agents. It is worth noting that in the recent 2006 International Business Attitudes to corruption survey, almost all companies surveyed said the identity of their agent was “*known in the market place*” with the exception of the defence industry where 21% of companies said the identity of their agent was confidential.¹⁵ Confidentiality or anonymity of an agent can suggest that the agent (or the company using the agent) has something to hide. For instance, the agent may be a government official or a relative of a government official. Indeed, in several of the recent allegations of bribery made about BAE, BAE is alleged to have paid commission to government officials. In the Czech Republic, for instance, one of BAE’s agents is alleged to be the head of the Czech state arms company.

15. The Corner House also has serious concerns about BAE’s alleged use of offshore accounts and companies as agents or to pay agents, and the maintenance of representative or agency agreements in Switzerland. It is worth noting that in the recent bribery trials in Lesotho, one of the factors cited by the judge in finding the Canadian company, Acres, guilty was the secrecy surrounding payments made to the company’s agent, which were paid into a numbered Swiss bank account.¹⁶ Furthermore, it is commonly agreed in international best practice on the use of agents

¹² *Financial Times*, “BAE to cut advisers on foreign deals”, 19/6/07

¹³ Leaked Serious Fraud Office Mutual Legal Assistance request to South Africa, 26/6/06, quoted in *South African Mail and Guardian*, 12th Jan 2007, “Arms Deal: Who got the R1bn pay offs?”

¹⁴ *Ibid.*

¹⁵ Control Risks, “*Facing up to Corruption: a practical business guide*”, 2007, p 37; http://www.crg.com/pdf/Facing_up_to_corruption_2007_englishreport.pdf

¹⁶ Fiona Darroch, “*At Goliath’s Feet: the Lesotho Highlands Water Scheme Corruption and Bribery Trials*”, <http://www.odiousdebts.org/odiousdebts/publications/Gauteng.pdf>

that requests for payment into offshore accounts is a 'red flag' which at the least requires investigation and for a diligent company, should be a "deal-killer".¹⁷

16. The Corner House urges the Woolf Committee to look in detail at BAE's agency and commission payment system, and whether it meets current best practice, not just on paper, but in practice. As anti-corruption expert John Bray of Control Risks puts it, "in the experience of many international business people, the formal instructions given to agents differ from the implicit objectives of employing them ... The formal instructions are to win business by ethical means: the implicit instructions are "to do whatever is necessary" according to local business practices."¹⁸ In particular, The Corner House believes that if the Woolf Committee is to establish whether BAE's current agency and representation system meets the highest ethical standards and best practice, it should look in detail at:

- a. a detailed list of who BAE's current agents are and a list of all BAE's agents from 2002-2007;
- b. BAE's audits of commission payments since its ethical business conduct policy was put in place;
- c. BAE's due diligence checks on these agents and whether these meet international best practice;
- d. records of management decision-making processes on the selection and hiring of these agents;
- e. records of board level discussions about use and approval of agents;
- f. agency/consultancy agreements and particularly whether these agreements require agents/consultants to submit to an audit by an independent auditor or accountant where necessary;
- g. use by BAE of offshore companies as agents and as means of paying agents;
- h. where BAE keeps its agency agreements;
- i. what procedures BAE has in place for assessing the level of commissions to be paid and whether legitimate services are being performed;
- j. the use of multiples agents by BAE on single contracts, particularly where one is disclosed, say to a public body, and another is not;
- k. the scope for BAE submitting to external and independent assessments of its agents and the link between their performance and remuneration;
- l. the scope for agents contracts and commission payments to be signed off by the board of directors;
- m. BAE's arrangement with joint venture partners on employing agents;
- n. any relevant clauses within the new Al-Salam contract to provide Eurofighters to Saudi Arabia which pertain to payment of commission and agents.

17. The Corner House notes that the Woolf Committee's remit is to compare BAE's policies with those in 'similar organisations'. The Corner House hopes that the Woolf Committee will not limit a comparison of BAE's ethical policies to best practice in

¹⁷ John Bray, "Agents, consultants and joint-venture partners in international business transactions", *Business Against Corruption: Implementation of the 10th United Nations Global Compact Principle against Corruption*, 2006; p 111

http://www.unglobalcompact.org/docs/issues_doc/7.7/BACbookFINAL.pdf

¹⁸ John Bray, "Agents, consultants and joint-venture partners in international business transactions", *Business Against Corruption: Implementation of the 10th United Nations Global Compact Principle against Corruption*, 2006; p 109

http://www.unglobalcompact.org/docs/issues_doc/7.7/BACbookFINAL.pdf

the defence industry, but rather look at how they compare to best practice in business in general. There is no written exception for defence companies under anti-corruption (or any other) laws, and if BAE is to both keep the law and to have the ethical policies in place to prove that it is committed to keeping the law, it needs the best in industry standards, not best sector standards. Indeed, if the aim of recent defence industry anti-corruption initiatives is to be achieved, BAE, as one of the four largest and most significant global defence companies, must show that it is leading the pack on ethical policy.

18. The Corner House also urges the Woolf Committee to look in detail at what arrangements BAE has in place for employing agents with joint venture partners, and in how BAE's ethical policies on bribery and corruption apply to joint venture partners. This is particularly important as BAE seeks to develop joint venture partners in the Asian market.

Disclosure of agents' details to public bodies

19. Both the OECD Guidelines for Multinational Enterprises¹⁹ and the International Chambers of Commerce Rules of Conduct and Recommendations on Combating Bribery and Extortion²⁰ call on companies to provide where appropriate, a list of agents employed on contracts with public or publicly-owned bodies to competent authorities, such as auditors and duly authorized governmental authorities.

20. It has not always been clear that BAE accepts and abides by these recommendations. Indeed, one of the charges that was considered by the Serious Fraud Office's recently dropped investigation into alleged payments to Saudi public officials by BAE, was the conspiracy to defraud the Export Credit Guarantee Department (ECGD).²¹ In particular, BAE Systems is alleged to have made a false declaration of information to the ECGD in 2002 with regards to agents in order to gain a guarantee for the Al Yamamah project, claiming that it had not used an agent where investigators found that it had indeed done so. In effect, the allegation is that BAE deceived a public body in order to gain a publicly-backed insurance guarantee. It is also alleged that BAE made a false declaration to the ECGD on another contract, the 2003 contract to refurbish frigates sold to Romania. In this case, it is alleged that BAE stated to the ECGD that it had paid 1% to an agent, Barry George, and 6% to a second agent that they refused to identify, when investigators found that all the money had in fact gone to George.²²

21. It is clearly unethical for a company to make false declarations to a government department in order to get taxpayer backed financial support. The Corner House urges the Committee to look in detail at the systems in place for BAE providing full, honest

¹⁹ Guideline VI, para 2. <http://www.oecd.org/dataoecd/56/36/1922428.pdf>

²⁰ Article 2, para d). http://www.iccwbo.org/uploadedFiles/ICC/policy/anticorruption/Statements/ICC_Rules_of_Conduct_and_Recommendations%20_2005%20Revision.pdf

²¹ "Further note to the OECD from the United Kingdom", March 2007; <http://www.attorneygeneral.gov.uk/attachments/SFO%20Investigation%20-%20Further%20OECD%20Note.pdf>

²² <http://www.guardian.co.uk/baefiles/story/0,,2091356,00.html>; and *The Guardian*, "British businessman arrested in fresh BAE corruption inquiry", 8/6/06 <http://business.guardian.co.uk/story/0,,1792577,00.html>

and accurate information to government departments, such as the ECGD and the Ministry of Defence. In particular, the Committee should look at whether BAE is providing accurate information on the identity of its agents and the amount of commission paid. The Corner House believes that there can be no legitimate reason for a company not to provide full information to a government department on its agents.

C. Hospitality and gift-giving

22. The Corner House notes that while BAE states that it has a policy on hospitality, gifts and managing personal interests, under its 'Integrity in Business Dealings' programme, this is not publicly available. While the giving of gifts and hospitality can be a 'grey' area in terms of legality, there are now clear examples of what constitutes ethical best practice on gifts and hospitality, including the Institute of Business Ethics' November 2006 Briefing²³ on the issue. The Corner House urges the Woolf Committee to examine whether BAE's policy is based on best practice both on paper and implementation.

23. As the Institute of Business Ethics states, the issue of gifts and hospitality "*can leave an organisation vulnerable to accusations of unfairness, partiality or deceit*".²⁴ The Corner House believes that hospitality is a key ethical challenge for BAE. It emerged shortly after the ending of the Saudi investigation by the Serious Fraud Office that BAE's principle defence was that any payments it had made to Saudi officials constituted "*support services ... provided for and paid for under the contractual arrangements that underlie the al-Yamamah programme.*"²⁵ While such contractual arrangements may have protected BAE under the law (whether it did is now, obviously unlikely to be tested), the question is whether it was ethical for BAE to have provided such support services (including hiring prostitutes) to public officials. The fact that domestic government officials may be prepared to sanction their use does not mean that the provision of such services is ethical. The allegations of excessive hospitality to Saudi officials seriously dent BAE's claim that it operates the highest ethical standards. The Corner House believes that the Woolf Committee must look at any relevant clauses in the new Al-Salam contract to provide Eurofighters to Saudi Arabia that relate to support services and gift-giving, in order to assess whether BAE is meeting best practice on hospitality and gift-giving.

24. It has also emerged that BAE provided hospitality to the Auditor General, head of the UK's National Audit Office (NAO), Sir John Bourn.²⁶ The NAO conducts frequent audits of BAE's performance on contracts with the Ministry of Defence. The serious questions raised about whether it was right for Sir John to receive hospitality from BAE should raise questions for BAE about whether it is appropriate to offer hospitality to officials in such a sensitive role.

25. The Corner House believes that BAE must show how it is implementing best practice on gifts and hospitality. It also believes that given the very sensitive role that

²³ http://www.ibe.org.uk/IBEBriefing3_Giftsand%20hospitality.pdf

²⁴ Ibid.

²⁵ Attorney General's office Freedom of Information disclosures:
<http://www.attorneygeneral.gov.uk/attachments/Sample%20SFO%20&%20BAe%20reply.pdf>.

²⁶ *The Guardian*, "Sir John Bourn, guardian of the public purse", 11/10/07

BAE plays, particularly as a contractor on government-to-government contracts, transparency about gifts and hospitality is essential. Rather than hiding behind the confidentiality of government to government contracts, if BAE is to dispel public suspicion about its hospitality to public officials, it should list in its annual reports gifts and hospitality offered to and received from domestic and foreign public officials over a certain limit.

D. Lobbying and political influence

26. Transparency of lobbying activities has become a major corporate social responsibility issue in recent years.²⁷ Institutional investors increasingly regard such transparency as a key issue. BAE has considerable political influence at the very highest levels of government, enabling it to have privileged access to ministers and officials. Such influence should bring with it a responsibility to the highest ethical standards in lobbying. It is by no means clear however that this is the case. The Corner House notes that BAE has yet to implement recommendations from the Institute of Business Ethics and F&C asset management report, “*Ethics of Influence*” from 2005. In particular, BAE still does not make public on its website or in its annual reports its written submissions to ministers and regulators and positions taken on key industry issues. It does not make public in full its membership of organisations with and through which it also engages in lobbying, and what the position of such organisations is on key issues. There have also been allegations that one of BAE’s Westminster lobbyists, Michael Wood of Whitehall Advisers, breached the rules of the Association of Professional Political Consultants (APPC) by paying for an introduction to a Minister and by acting as a ‘research assistant’ to an MP.²⁸ Wood was not himself a member of the APPC, an issue for further concern.

27. The Corner House urges the Woolf Committee to look in detail at BAE’s lobbying, in particular how its positions on key issues fit with its ethical policies. For instance, the revelation in 2004 that BAE had lobbied the Secretary of State for Trade and Industry to weaken anti-bribery rules put in place by the ECGD is clearly at odds with a company claiming to have the highest ethical standards. Likewise, the “*private and confidential*” lobbying of the Attorney General during 2005 to get the Serious Fraud Office investigation into BAE dropped suggests that BAE was seeking to use its political influence in an entirely inappropriate manner. The Corner House recommends that the Woolf Committee request from BAE:

- a) a full schedule of its lobbying positions with regards to key industry, government and regulatory issues;
- b) a full list of meetings held with government ministers and civil servants over the past 2 years;
- c) a list of lobbying activities taken as part of membership organisations, and the positions taken by these organisations;
- d) a full list of its lobbyists, including whether or not they are members of the APPC.

²⁷ See *Influencing Power: reviewing the conduct and content of corporate lobbying*, Sustainability and WWF, July 2005, <http://www.sustainability.com/insight/scalingup-article.asp?id=317>; Institute of Business Ethics, *Ethics of Influence*, June 2005.

²⁸ *The Guardian*, “Peer was paid to introduce lobbyist to minister”, 26/10/07

E. Covert monitoring of non-governmental organisations by BAE's Security Department

28. BAE states that it is committed to stakeholder engagement. On its website, it says:

“We believe it is important to understand the views of others and explain our approach. Good communication helps us develop and improve our CR programmes. We encourage dialogue and open communication with our stakeholders including employees and their families, trade unions, shareholders, customers, business partners, suppliers, competitors, governments, NGOs and local communities.”

29. Earlier in 2007 it emerged that BAE's security department had entered into a contract in 2005 with Paul Mercer of LigneDeux Associates to monitor and supply information about 'potential threats' to the company.²⁹ Such threats were clearly specified to be campaigning organisations like Campaign Against the Arms Trade (CAAT). This was not the first revelation that BAE had employed private investigation agencies to obtain information on and from within CAAT. These revelations about the operations of BAE's security department suggest that BAE, far from seeking good communication with NGOs, has employed private investigators who have covertly monitored the activities of particular NGOs. While it may be common corporate practice to be selective about which NGOs one might wish to enter into constructive engagement with, it is clearly ethically highly questionable to employ private investigation agencies to undertake covert monitoring, especially where this leads to access to confidential information.

30. BAE's contract with LigneDeux Associates specifically stated that non-public information on CAAT was not required. However, Paul Mercer clearly did not delay in handing on private emails from within CAAT to BAE. This raises the question whether, as with agency contracts, the formal instructions given to companies contracted by BAE to undertake security work is at odds with the implicit aims of employing these companies.

31. The Corner House urges the Woolf Committee to examine in detail the activities of BAE's Security Department, particularly with regard to its employment of private investigators. The Corner House suggests that the Woolf Committee request from BAE:

- a) a list of all private investigators employed by the Security Department and a copy of the contracts used to employ them;
- b) briefings compiled by the Security Department and passed to Board members and senior management on potential threats to BAE;
- c) copies of internal BAE correspondence about the confidential CAAT information provided by LigneDeux;
- d) information about what changes BAE has made to its security operations in light of the CAAT affair;
- e) oversight policies by the Board and senior management of Security Department activities.

²⁹ <http://www.caat.org.uk/issues/sfo/CAATvMercer-documents.pdf>

32. If BAE is serious about open communication and dialogue, it must show publicly that it has moved on from the days of undertaking espionage on non-governmental organisations. Such behaviour is clearly at odds with BAE's ethical principles of respect and integrity.

F. Transparency

33. BAE's ethical policy of openness states that "*When questions are asked, we are frank and straightforward in our answers*". However, the information that BAE makes available about its current ethical policies and practices is very limited. A one-page statement of Ethical Business Conduct and four brief web pages appears to be the sum of publically available information on such policies. The website refers to various other internal documents on the company's ethical policies, such as the Operational Framework. The Corner House requested copies of these documents from BAE, and was supplied with *Ethics and You* but no further documents.

34. The Corner House believes that if BAE Systems is serious about its ethical policy, it must make public the full range of its ethical policies. In line with good practice in other FTSE companies, BAE should have its written code of conduct posted on its website. There does not appear to be any good reason, for instance, why BAE's Operational Framework could and should not be posted on the web.

G. Legacy issues/dealing with allegations of past malpractice

35. The Corner House believes that any existing and future ethical policy will have little credibility or public confidence if BAE Systems does not deal effectively with allegations of past malpractice or unethical practice. BAE's current ethical policy states that honesty ("*there is no substitute for the truth*") and openness ("*we are frank and straightforward in our answers*") are key principles of the company's ethical business conduct. These principles have little meaning without a full accounting for how the company came to be mired in allegations of past malpractice, and the many questions that these allegations have raised.

36. There have been various, detailed allegations of malpractice against BAE Systems, particularly with regard to commission payments and possible bribery. These allegations have been backed by witnesses and by documentation such as invoices. It would not be appropriate to rehearse these allegations here. It is appropriate to point out that the allegations were clearly of sufficient strength, and based on enough evidence for investigations to be instigated in both the UK and the USA. One might conclude that if a company had unambiguously complied with the law in these countries, it would not find itself being investigated for breaches of law.

BAE's response to allegations of bribery and corruption

37. BAE's response has been to state that:

1. all allegations are "*unsupported by the evidence*" (CSR report 2006)
2. the company takes its "*obligations under the law extremely seriously and will continue to comply with all legal requirements around the world*".
3. the company believes that "*we meet the highest ethical standards in our dealings with others and that we have the processes in place to ensure that*

our employees comply with these standards and the law in all the companies where we operate.” (CSR report 2005)

38. The appropriateness of BAE’s response to the allegations has been queried by institutional investors and Corporate Social Responsibility experts. The Corporate Citizenship Company has said of BAE’s response to allegations of corruption, when signing off BAE’s 2006 CSR report, “*given the extent of concern expressed, including public statements from institutional and other investors, we believe readers would expect to see a fuller expression of the company’s position.*” F&C Asset Management has also noted, with reference to BAE, that “*companies need a strategy for dealing with legacy issues: they are difficult and embarrassing, but pretending they do not exist can be counterproductive.*”³⁰

39. The Corner House believes that BAE’s current level of response to the allegations does not fit with its current ethical policies about openness and honesty. Furthermore, the Corner House believes that as long as BAE maintains that such allegations occurred while it operated the highest ethical standards, questions will continue to be asked about its current operations, whether such allegations are likely to continue to surface again, and whether there is an ongoing mismatch between its policies and practice.

40. The Corner House submits that until BAE commissions an independent inquiry into the allegations of past malpractice from an independent committee of similar calibre to the Woolf Committee it will be unable to draw a line under the allegations that have arisen and prove that it has moved on. The Corner House believes that such an inquiry should examine whether the company’s behaviour on which allegations of past malpractice is based was ethical, even if in some cases it might have been legal. The inquiry should look specifically at:

- 1 agency agreements;
- 2 audits of those agreements;
- 3 use of offshore accounts;
- 4 ‘support services’ provided on government to government contracts;
- 5 hospitality provided to government officials, both domestic and foreign.

41. The Corner House believes that a realistic scope for the inquiry would be allegations that have arisen since 1999, when the UK ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, or at the very least from February 2002, when bribery of foreign officials became fully illegal within the UK. The Corner House also believes that the results of the inquiry should be made public. The Corner House also believes that undertaking such an inquiry would help show that BAE is indeed fully cooperating with the current investigations by law enforcement officers in the UK and the US (*see* para 4 above), and that it is prepared to learn from past mistakes.

³⁰ F&C, *reo Report*, “Focus on Aerospace and Defence Sector”, 4th Quarter 2006, p 15

Annex 1

Source: *The Guardian* (<http://www.guardian.co.uk/bae/files>)

Country	Amount of Commission	Details of Agent	Date of Contract	Details of Contract
Chile	£1 million	Lawyer and financial advisor to General Augusto Pinochet	Commission payments from 1998 to June 2004	Unclear. BAE sought to gain a contract to provide Chile with a rocket system during the 1990s and won a contract in September 2005 to prepare and deliver 3 frigates to the Chilean navy.
Czech Republic	£4 million	Three different agents, including the head of the Czech state arms firm.	2004	£400 million contract to lease Gripen fighter planes to Czech Ministry of Defence.
Hungary	\$8 million	Austrian businessman, Count Alfons Mensdorff-Poilly, and possibly British businessman, Brigadier Tim Landon.	2001	Contract to lease 14 Gripen jets to Hungarian government.

Qatar	£7 million	Commission paid to Qatar's foreign minister in 1998 into offshore bank accounts.	1998	£500 million 1995 contract for ships, armoured vehicles and aircraft. Only 40 Alvis armoured cars were eventually sold to Qatar in 1998.
Romania	£7 million	UK based agent with Romanian wife. Payments made into offshore accounts.	2003	£116 million contract to refurbish former UK MOD frigates for use by Romanian navy.
South Africa	£112 million forecast with £70 million paid out	Eight different entities, including a company that was the "overt" agent, Osprey, one of whose shareholders was an advisor to the former defence minister who took the decision to buy the BAE/SAAB jets. Investigators believed that there was also a "covert" agent.	1999	£1.6 billion contract to provide hawk trainer jets and gripen fighters.

Tanzania	£12 million	Commission paid into Swiss bank account of local agent closely connected to Tanzanian military.	2001	£28 million contract to supply a military radar system.
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The Corner House
31st October 2007