



THE
CORNER
HOUSE

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For immediate release

Serious Fraud Office win appeal in the House of Lords as public outrage continues

The House of Lords, the UK's highest court, has overturned the High Court's ruling of April 2008 that the Director of the Serious Fraud Office (SFO) acted unlawfully when, acting on government advice, he terminated a corruption investigation into BAE Systems' arms deals with Saudi Arabia after lobbying by BAE and a threat from Saudi Arabia to withdraw diplomatic and intelligence co-operation.

The High Court judgment was in response to a judicial review brought by the Campaign Against Arms Trade (CAAT) and The Corner House.

The law lords described the threat made by Saudi Arabia as "ugly and obviously unwelcome". Baroness Hale said that she would have liked to have been able to say that it was wrong to stop the investigation as it was "extremely distasteful that an independent public official should feel himself obliged to give way to threats of any sort." But she felt she had to agree that the SFO Director's decision was lawful because of the breadth of the Director's discretion.

Nicholas Hildyard of The Corner House said:

"Now we know where we are. Under UK law, a supposedly independent prosecutor can do nothing to resist a threat made by someone abroad if the UK government claims that the threat endangers national security.

"The unscrupulous who have friends in high places overseas willing to make such threats now have a 'Get Out of Jail Free' card – and there is nothing the public can do to hold the government to account if it abuses its national security powers. Parliament needs urgently to plug this gaping hole in the law and in the constitutional checks and balances dealing with national security.

"With the law as it is, a government can simply invoke 'national security' to drive a coach and horses through international anti-bribery legislation, as the UK government has done, to stop corruption investigations."

Symon Hill of CAAT said:

“BAE and the government will be quickly disappointed if they think that this ruling will bring an end to public criticism. Throughout this case we have been overwhelmed with support from people in all walks of life. There has been a sharp rise in opposition to BAE’s influence in the corridors of power. Fewer people are now taken in by exaggerated claims about British jobs dependent on Saudi arms deals. The government has been judged in the court of public opinion. The public know that Britain will be a better place when BAE is no longer calling the shots”

The law lords’ judgment confirms that the UK is in flagrant breach of its duty to implement and give force to the OECD Anti-Bribery Convention.

Both groups issued a [statement](#) calling for changes in the law to ensure that prosecutors can remain independent and are empowered to resist threats from abroad. They are also calling for measures to ensure that the Government cannot arbitrarily invoke national security without effective checks and balances to trump the rule of law.

ENDS

Notes

1. The Campaign Against Arms Trade (CAAT) works for the reduction and ultimate abolition of the international arms trade.
www.caat.org.uk.

The Corner House is an environmental and social justice NGO.
www.thecornerhouse.org.uk

2. The full Opinions of the Lords of Appeal can be read at:
<http://www.thecornerhouse.org.uk/pdf/docs/Lords-Judgment.pdf>

The High Court’s final judgment can be read at:
<http://www.thecornerhouse.org.uk/pdf/document/JR-Judgment.pdf>

3. For a time line of the judicial review, including links to arguments presented and key legal documents and evidence, please go to <http://www.controlbae.org/jr>

Since the 1980s, the UK has supplied Tornado fighter and ground attack 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 Systems, the UK’s largest arms manufacturer.

In 2004, the Serious Fraud Office (SFO) initiated an investigation into alleged bribery and false accounting by BAE in relation to the Al Yamamah deals, including corruption offences since March 2002, when bribery of foreign officials became a crime in the UK under Section 109 of the 2001 Anti-Terrorism, Crime and Security Act.

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 72 Eurofighter Typhoon aircraft if the SFO investigation was not halted.

On 14th December 2006, the government and the Serious Fraud Office declared that they were dropping the investigation into BAE's Saudi arms deals.

CAAT and The Corner House brought a full judicial review hearing against the SFO decision, arguing that it was unlawful because it contravened the OECD Anti Bribery Convention and because the SFO Director, in allowing threats/blackmail to influence his decision, did not uphold the "rule of law".

On 10 April 2008, the High Court ruled that the decision was unlawful. On 24 April 2008, the Serious Fraud Office was given leave to appeal to the House of Lords against this ruling.

4. The Serious Fraud Office (SFO) 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." It is supposed to act independently of government.
www.sfo.gov.uk

5. The "rule of law" simply means the best way of protecting everyone'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". Any action that undermines the impartial application and upholding of the law undermines the rule of law.

6. The OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions (known as the OECD Anti Bribery Convention) is a multilateral treaty aiming to ensure that all 30 OECD countries, as well as 7 other non-member signatory countries, present a combined and united front against bribery and corruption of foreign public officials. The UK signed the Anti Bribery Convention in 1998.

Article 1 of the Convention requires parties to make it a criminal offence to bribe a foreign public official, which the UK did in Section 109 of the Anti-Terrorism, Crime and Security Act 2001.

Article 5 of the OECD Anti-Bribery Convention makes various provisions to enforce Article 1. It rules out the termination of corruption investigations on grounds other than the merits of the case. Signatory governments undertake not to be influenced "by the potential effect [of an investigation or prosecution] upon relations with another State." Article 5 also prevents signatories from being "influenced by considerations of national economic interest" in deciding whether to terminate an investigation.