

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

WITNESS STATEMENT OF ANN FELTHAM

I, Ann Feltham, Parliamentary Co-ordinator, Campaign Against Arms Trade, 11 Goodwin St, Finsbury Park, London N4 3HQ, SAY AS FOLLOWS:

Introduction

1. I am employed by Campaign Against Arms Trade ("CAAT") as its Parliamentary Co-ordinator. In this role I have responsibility for, amongst other matters, CAAT's parliamentary and political work and the preparation of CAAT's monthly accounts. I also share budgeting responsibility with our fundraiser.
2. CAAT is an unincorporated association whose executive body ("the Steering Committee") has authorised me to make this statement in support of the claim for judicial review against the Director of the Serious Fraud Office ("SFO") and others.

3. CAAT was set up in 1974 by a number of peace and other organisations who were concerned about the growth in the arms trade following the Middle East war of 1973. It is a broad coalition of groups and individuals in the UK working to end the international arms trade.
4. CAAT supports the promotion of peace, justice and democratic values, and the use of the United Nations to resolve international disputes by peaceful means. CAAT is a purely peaceful campaigning organisation, engaging in research, lobbying and strictly non-violent protest to achieve its aims.
5. I have read in draft form the witness statement of Nicholas Hildyard, made on behalf of Corner House Research. Save for matters relating to the financial position of Corner House, of which I have no knowledge, I agree with the contents of his statement. Page references are to the judicial review application bundle filed in support of these proceedings.

Al-Yamamah – from the 1980s to 2006

6. In 1985/6 and 1988, the UK signed very high value arms deals with the government of Saudi Arabia for the supply of Tornado fighter and ground attack aircraft. These deals are collectively known as “Al Yamamah”. As well as actual hardware, the package included servicing and training. The aircraft and associated services are and were paid for in oil, not cash. The Al Yamamah deals are on a government to government basis, although the actual hardware, servicing and training is all provided by BAE Systems Plc (“BAE”).
7. CAAT has been campaigning on the Al Yamamah arms deals since they were signed and has always been concerned that BAE may have made corrupt payments in order to secure the deals. Evidence of our long involvement in these issues can be seen from *The Arabian Connection*, a May 2000 report on this issue at pp. 186.
8. Records from the National Archive dating from the late 1960’s and early 1970’s, outlined in *CAATnews* June/July 2006, show that even prior to the Al Yamamah deals there was extensive corruption in UK arms sales to Saudi Arabia, and that this was known about by officials in the Government’s Defence Sales Organisation who turned a blind eye. In a letter dated 1st May 1971, Willie Morris (UK Ambassador to Saudi Arabia 1968-72) described Prince Sultan, Saudi Defence Minister then and today, as having “*a corrupt interest in all contracts..*” (National Archive, DEFE 13_797), a copy of which is exhibited at pp. 219-225.

9. Former Defence Minister Lord Gilmore told Newsnight on 16th June 2006, that, with regards to Saudi Arabia in the 1970's: "*You either got the business and bribed, or you didn't bribe and didn't get the business. You either went along with how the Saudis behaved, or what they wanted, or you let the US and France have all the business*" (Daily Telegraph, 17.6.06) (p.262).
10. Only weeks after the first Al Yamamah agreement was concluded in 1985, *The Guardian* led with an article headlined "*Bribes of £600m in jets deal*" (Guardian, 21.10.85) (p.226).
11. Later, *The Observer* (19.3.89, 30.4.89) (pp.227-231) alleged that huge commissions had been paid in connection with arms sales and the National Audit Office (NAO) investigated the Al Yamamah deal. The investigation took three years, reporting in 1992. The then Labour Chair of the Public Accounts Committee, Robert Sheldon MP, read the report as did a Conservative member of the Committee, Sir Michael Shaw MP. It seems clear that the inquiry had proceeded within narrow limits: Mr Sheldon acquitted the MoD alone of having made improper payments, finding that "*the deal complied with Treasury approval and the rules of government accounting*" and that "*there was no misuse of public money*" (Independent, 12.3.92, 24.6.97) (p.232,234). However, the NAO only investigated the MoD; as Mr Sheldon states, "*We were not able to follow money outside the department once it is paid to the contractors, so we do not know what was done with it*" (Independent, 24.6.97) (p.234). Sheldon made it quite clear that the reason the report was not published was the "*highly sensitive situation regarding jobs in the defence industry*" (Independent, 12.3.92) (p.232). A few years later he said: "*The Saudis would have been upset*" (Independent, 24.6.97) (p.234). Despite much pressure since, the NAO Report has still not been published.
12. *The Guardian* later published an article in which Sir Colin Southgate, Chairman of Thorn EMI, "*admitted to paying huge commissions*" of 25 per cent on a £40m Saudi arms deal in which more than 40,000 fuse assemblies for Tornado bombers were ordered by the RSAF in 1990 and delivered through BAE in 1991 (Guardian, 14.11.94) (p.233). Granada TV also broadcast a 'World In Action' programme on 14.11.94 which identified UK and Saudi businessmen who were paid over £10m for helping to organise the fuse assembly deal, and who claimed that the MoD not only gave its approval to this, but also claimed £2m of the profits as payment for helping to design the fuses (Guardian, 14.11.94) (p.233). *The Guardian* quoted John Hoakes, former managing director of Thorn's defence systems division, as saying that "*Commissions make the world go round. There's nothing illegal about them. I don't know of a [Saudi] royal who'll get out of bed for less than 5 per cent*". *The Guardian* reported that when Hoakes was

told that Saudi law prohibited commission on defence contracts, he replied “*Then they got a big problem with Al Yamamah*” (Guardian, 14.11.94) (p.233).

13. On 11 September 2003, the Guardian revealed a letter dated 8th March 2001 by then Chief Executive Rosalind Wright of the Serious Fraud Office, to Kevin Tebbit, then Permanent Under-Secretary of State at the Ministry of Defence and copied to Detective Superintendent George Branagh of the Ministry of Defence Police (pp.235-243). It says that Edward Cunningham, a former employee of BAE and / or Robert Lee International (RLI) had reported to the authorities that RLI was submitting invoices for very large sums of money (up to £250,000) to BAE for expenses, hospitality etc. The letter says that Mr Cunningham’s solicitor approached the SFO on 15th February 2001. Rosalind Wright’s letter continues saying: “*Whilst there is insufficient evidence which would justify a criminal investigation concerns remain and I thought it right to draw this to your attention since it is conceivable that Government money has been misused*” (p.240).

14. The Guardian article says that from the SFO documents and other legal files, which are not in the public domain and described as “*documents we possess*”, the journalists were able to put together a picture of payments for plane tickets, gambling trips, yachts, etc totalling more than £20 million since the late 1980’s. It says that retired RAF Wing Commander Tony Winship is a “*key figure*” in RLI. The article also says that the Ministry of Defence did nothing about the allegations. In addition, it says that a BAE Systems security officer, Martin Bromley, had investigated RLI claims that money meant for Saudis might have been fraudulently diverted. His report was ignored by BAE Systems and handed over to the SFO in 2001 (date unspecified), something minuted by Robert Wardle, then assistant head of the SFO. (pp.235-238)

15. On 12th September 2003, the Guardian reported that Robert Wardle, now Director of the SFO, was considering opening a full-scale criminal investigation into arms firm BAE Systems and its alleged £20 million ‘slush fund’ following the emergence of fresh evidence (pp.235-238).

16. On 5th December 2003, the Guardian, quoting “*sources involved in the transactions*”, says that BAE Systems is running “*an international system of secret commission payments, using Swiss banks and a tiny island in the Caribbean*” (p.249-251). The latter is later said to be the British Virgin Island. BAE Systems denied any wrongdoing or illegality. The article goes into some detail on the ways payments were made.

17. On 25th July 2004, the Sunday Times reports that whistle-blower Peter Gardiner, a travel agent, had told it he spent £60 million on behalf of BAE. He said: *“It’s more a question of what we didn’t spend it on than what we did.”* Luxury cars, apartments and air travel for Saudi officials and royals are mentioned as well as the transfer of funds into private bank accounts (pp.252-3).
18. In recent weeks there have been further revelations about along the same lines (*“BAE hired actresses for Saudis”* (Sunday Times, 1.4.07): *“A secret slush fund set up by BAE Systems, Britain’s biggest defence contractor, was used to pay tens of thousands of pounds to two British actresses while they befriended a senior Saudi prince and his entourage. Confidential documents seen by The Sunday Times reveal that money from the £60m fund went on the mortgages and rent, credit card bills and council tax of Anouska Bolton-Lee and -----
----- ...”* (pp. 296-7)).
19. On 3rd November 2004, the SFO announced an investigation into suspected false accounting in relation to contracts for services between Robert Lee International Ltd, Travellers World Ltd and BAE in connection with defence equipment contracts with the government of Saudi Arabia (pp. 254-256). Around that time, there were newspaper reports of raids on various premises, arrests and interviews of key individuals and a separate investigation into the Al Yamamah deals.
20. By 27th September 2005 the Guardian were reporting that the Prime Minister and the then Defence Secretary, John Reid, were pursuing a new £40 billion arms deal to sell Eurofighter Typhoon aircraft to Saudi Arabia. The Guardian reported that the Saudis were asking for three concessions. First, the expulsion of two Saudi dissidents. Second, the resumption of British Airways flights to Riyadh and finally, the ending of the SFO investigation. The Prime Minister visited Riyadh on 2nd July 2005 to argue the case for the deal and John Reid followed this with a two-day visit three weeks later.
21. These negotiations were apparently successful. On 21st December 2005, the Ministry of Defence announced an *“understanding”* with the government of Saudi Arabia to modernise the Saudi armed forces with the Eurofighter Typhoon replacing the Tornado aircraft sold under the old Al Yamamah deals (The Times, 22.12.05) (pp. 258-9). Press reports suggested that the Saudis intended to order 72 Eurofighters.

22. The first hint of the decision that was to be made in December 2006 came in a report in the Times on 26th March 2006. The Times reported that the Attorney General had been asked by government officials to examine whether the inquiry by the SFO is “*in the public interest*”. This was said to follow statements by the Saudi government to Mike Turner, BAE Systems Chief Executive, that it was unhappy about the inquiry. “*Defence officials, like the Saudis, are becoming concerned about the progress of the inquiry ... the Ministry argues that if the Saudis pull out of Britain’s biggest export contract it would lead to the loss of thousands of jobs*” (pp.260-1)).

23. On 18 August 2006, the Financial Times reported that the £10 billion Eurofighter deal for 72 fighter aircraft had been signed in the past week (pp.266-7).

24. Matters then remained relatively quiet until November 2006, when there was a flurry of press reports (pp.268-275), apparently based on numerous government leaks, indicating that the Saudis were threatening the UK with various consequences unless the SFO investigation was called off. The catalyst for this increase in Saudi pressure appeared to be that the SFO was about to obtain access to Swiss bank accounts which would have revealed the destination of commission payments allegedly made by BAE:

24.1. On 19th November 2006, the Sunday Times reported that Saudi Arabia was threatening to suspend diplomatic ties with the UK, cut intelligence co-operation and terminate payments on the existing Al Yamamah deal (the effect of which would be that the Export Credit Guarantee Department would be required to pay BAE any sums owed by the Saudis) unless the SFO inquiry was called off (p.268-270).

24.2. On 20th November 2006 the Guardian reported that the SFO “*is on the brink of obtaining information from Swiss banks which may implicate the Saudi royal family in secret arms deal commissions of more than £100m, sources close to the attorney general’s office confirmed yesterday.*” (pp.271-2) The article says that it was only recently that BAE Systems, the MoD’s Defence Export Services Organisation and the Saudis realised how much progress the SFO had made. BAE Systems is said to have hired Allen & Overy LLP to protect its position. Banking sources have told the paper that asking the Swiss banks about two specific accounts indicated that the SFO had already used its powers to order disclosure by UK banks and BAE Systems.

24.3. It has also subsequently been reported in The Guardian that the Prime Minister intervened at this point, informing the Director of the SFO that in his view, the investigation should not continue (The Guardian, 23 January 2007) (pp.291-2).

24.4. On Sunday 26th November 2006 the Sunday Telegraph reported that *“the government of Saudi Arabia is set to tear up its £76bn agreement with Britain for Eurofighter Typhoons and hand the contract to France if the Serious Fraud Office opens up secret Swiss bank accounts allegedly linked to members of the Saudi royal family.”* (p.273)

24.5. On 29th November 2006 the Guardian says that “legal sources” say secret payments from BAE Systems have been found in Swiss accounts links to Wafic Said, an arms broker linked to the Saudi royal family (p.274).

24.6. By 2 December 2006, it was being reported that the Saudi threats had increased further. The Daily Telegraph reported that *“Saudi Arabia has given Britain ten days to halt a fraud investigation into the country’s arms trade - or lose a £10 billion Eurofighter contract”* and *“Tony Blair has been told that the deal faces the axe in 10 days unless he intervenes to bring the two-year investigation to a close.”* (p.276)

25. CAAT and Corner House were sufficiently concerned by the flurry of newspaper stories concerning Saudi threats that on 8th December 2006 we (along with other NGOs) wrote to Alastair Darling MP, the Secretary of State for Trade and Industry, copying in the rest of the Cabinet, urging the Government to resist pressure to curtail the SFO inquiry (pp.278-9).

26. It has subsequently been reported that around the same time, the SFO intended to offer some BAE executives a plea bargain, under which they would plead guilty to certain more minor charges to avoid being charged with more serious offences. This proposal was cleared by the Attorney General, but was not made because of the decision to halt the investigation (The Guardian, 1 February 2007) (pp.293-5).

Decision to end SFO investigation

27. 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 (p.77).

28. 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 (pp.78-81) (underlining added)

29. 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) (pp.82-5) (underlining added).*

30. In his January 2007 Press Conference, and on other occasions, the Prime Minister explained his role in the decision further:

QUESTION:

Prime Minister, you mentioned you are unveiling a Serious and Organised Crime Bill tomorrow. People inside the SFO would say that they were very hot on the heels of serious and organised crime involving the Saudi Royal Family and British Aerospace and that they were actually extremely close to prosecutable evidence when you drove a coach and horses through the case. Secondly, there are very few people when you really press them that believe the Saudis would ever have severed cooperation on security matters, that they in fact need us really rather more than we need them. Is not your message to the outside world, having led an anti-corruption crusade in terms of the way in which we provide aid to developing countries and the rest of it, corruption and bribery are totally unacceptable unless the Saudis are involved?

PRIME MINISTER:

No I would not agree with that assessment. Look these are difficult decisions that you have to take as Prime Minister, but I don't know which people you are talking to inside the SFO or other parts of the system, but let me tell you absolutely clearly, now I may be wrong but this is my view. I think that had we proceeded with this investigation it would have significantly materially damaged our relationship with Saudi Arabia, that that relationship is of vital importance for us fighting terrorism, including here in this country. It would have done damage to a major strategic partnership right at the moment when we need that strategic partnership in terms of the Middle East peace process, in terms of Iraq and other issues, and as I say all of that leaves aside the fact that we would have lost thousands of UK jobs. So you know I don't know who you are talking to when they tell you that we don't need the Saudis as much as they need us on counter-terrorism, but whoever they are it is not the information I got.

QUESTION:

And the message to the developing world in terms of anti-corruption, when you know that you had to use your executive position to override the rule of law?

PRIME MINISTER:

Look we have done, as you rightly point out, we have done more than any other country probably in recent years to push this forward and things like the Extractive Industries Initiative and so on in relation to Africa. But I have to take judgments, I mean I don't accept what you say, and I think the Attorney General made some mention of this at the time actually about the likelihood of prosecution. I don't actually accept what you say, but I have got to take a judgment about the national interest and that is my job, and you know when you come to views like this you expect it, and I knew I would be heavily criticised for it, but I believe it to be the right judgment, and you know this isn't just a personal whim of mine, it was the judgment of our entire system and I can assure you from everything that I know it was extremely soundly based (p. 297F).

...

QUESTION

At the time the SFO dropped their investigation into the BAe-Saudi arms deal did SIS know of any specific threat by the Saudis to sever intelligence links with this country?

PRIME MINISTER

Well I won't get into discussing the intelligence aspect of this, but I can absolutely assure you there is no doubt whatever in my mind, and I think those of any of the people who have looked at this issue, that had we proceeded with this the result would have been devastating for our relationship with an important country with whom we co-operate closely on terrorism, on security, on the Middle East peace process, and a host of other issues, and that is leaving aside the thousands of jobs that we would have lost which is not for consideration in this case but nonetheless I just point it out (297D).

Dossier

31. After the decision was announced, a dossier seeking to justify the decision has been prepared and deployed before the OECD. This dossier has not yet been made public (despite Freedom of Information Act requests by CAAT and Corner House), but the circumstances of its preparation have been leaked to the press. On 16 January 2007, The Guardian reported that the Secret Intelligence Service (MI6) had refused to sign up to a dossier confirming that they believed that the Saudi Arabian government would sever security and intelligence co-operation thus damaging national security if the investigation was not halted:

The attorney general, Lord Goldsmith, told parliament before Christmas that the intelligence agencies "agreed with the assessment" of Tony Blair that national security was in jeopardy because the Saudis intended to pull out of intelligence cooperation with Britain. But John Scarlett, the head of MI6, has now refused to sign up to a government dossier which says MI6 endorses this view.

Whitehall sources have told the Guardian that the statement to the Lords was incorrect. MI6 and MI5 possessed no intelligence that the Saudis intended to sever security links. The intelligence agencies had been merely asked whether it would be damaging to UK national security if such a breach did happen. They replied that naturally it would. (pp.289- 90)

32. The Attorney General responded to these allegations in Parliament on 1 February 2007:

First, the position of SIS, the secret intelligence agency, was raised. I have dealt with this in the House and I want to say something about it again. SIS has made it clear publicly that it shared the concerns of others in government over the possible consequences for the public interest of the SFO investigation. It considered that there was a threat to the UK's national security interests from pursuing the Al Yamamah investigation and it had been informed of the threat to curtail co-operation directly. Neither SIS nor anyone else who was consulted disagreed with the overall assessment that the Saudi threats were real. SIS agreed that, while it did not know whether this threat would be carried out, it had to be taken seriously. As I said on 18 January, before the SFO decision was taken, I discussed the matter directly with the chief of SIS. The SIS has authorised me to say that it is clear about the importance of the Saudi counterterrorist effort to the UK. Its view is that it would not be possible to replicate the level of counter-terrorism effort that had been achieved with the Saudis on

UK/Saudi aspects of the problem if it were necessary to work at one remove, via the USA, for example (HL Hansard, 1 Feb 2007, col. 379) (underlining added).

33. On the same occasion, the Attorney General also dealt with the wording of important parts of the SFO's decision:

If noble Lords will permit me to take a moment or two longer, I shall respond to the noble Lord, Lord Skidelsky, who raised a very important point. He said that the phrase "balancing the rule of law against the wider public interest" could lead to misunderstanding, yet he rightly identified, unlike one or two other noble Lords, that those words were from the SFO press release. I read it out in the House but they were not my words. On reflection, I think that there is a risk of misunderstanding in those words. I understood that the SFO was seeking to say that the desirability of bringing a criminal prosecution needed to be balanced against national security. That is a perfectly proper balance to bring, but I am very happy to make it clear from this Dispatch Box—if this is repudiating the statement, I am happy to do so—that there is no question of saying that the rule of law in general should be set aside for wider interests of expediency or political or national interest. I hope that that at least clarifies the issue (HL Hansard, 1 Feb 2007, col. 381).

34. The Attorney General also set out the government's case on the basis of the decision taken by the SFO:

I want to repeat some basic facts about the SFO decision. The decision to halt the case was taken by the director of the Serious Fraud Office, not by me, let alone by the Prime Minister. What the Prime Minister said was that he took responsibility for the advice given about national security. I shall return to that issue, but I can assure this House that the decision was not taken by the Prime Minister. I would never have allowed that to happen. The director of the SFO has been very clear in what he has said. The noble Lord smiles at that, but that is the fact. I would not stand at the Dispatch Box and say that if it were not the case. The director and the assistant-director of the SFO, who attended the recent meeting of the OECD working party, have made that plain.

Secondly, the decision was based on the risk to national and international security, and ultimately the risk to UK lives, if the investigation had continued. I suggest respectfully that those who expressed concern about the director's decision need to be clear about what they are saying. Are they saying that there was no risk to national security? That is the view of the noble Lords, Lord Garden and Lord Dykes. If so, they should say why their judgment and knowledge on these issues is better than that of those whose job it is to deal with them, including the Prime Minister, senior Ministers, our intelligence agencies and our ambassador. The director and I would value the co-operation of those people, if advice came about the risk, above the opinions expressed by either of the noble Lords, despite their distinction and background. If the noble Lords are not saying that, do they accept that there was a risk to national security but that the SFO should have continued with the investigation regardless, potentially and ultimately putting at risk the lives of our citizens? That is what national security is about. Is that what they are saying? You cannot get away from answering those questions. We cannot wring our hands. We had to reach a decision. The director had to reach a decision. He did so on the basis of advice he received about the risks to national and international security. I agreed with that decision but took into

account my own view that the case was unlikely to lead to a successful prosecution in any event (HL Hansard, 1 Feb 2007, col. 376).

Pre-action protocol

35. Immediately after the announcement, CAAT and Corner House, took detailed legal advice on the decision of the SFO and decided to challenge that decision by way of judicial review. A letter before claim was sent to the SFO, the Attorney-General and the Prime Minister on 18 December 2006 setting out the proposed basis of the legal challenge and asking them to provide a satisfactory response failing which judicial review proceedings would be issued. The letter was also served on BAE as an interested party to the proposed judicial review proceedings (pp.19-27).
36. The government did not reply to the letter of claim until 19 January 2007 (BAE having confirmed it had no objection to the Treasury Solicitor's request for an extension of time for this purpose, and that it would take no point on delay). In its reply, the Treasury Solicitor stated that any claim for judicial review would be "*strongly disputed*" and "*vigorously contested*" (pp.28-31).

Theft of legal advice from CAAT

37. The claim for judicial review has been complicated and delayed by the need to bring ancillary proceedings against BAE Systems Plc ("BAE") for *Norwich Pharmacal* injunctive relief. On 10 January 2007, our solicitors, Leigh Day & Co, received a letter from Allen & Overy LLP (who act for BAE) attaching a copy of an email I had sent to the Steering Committee setting out privileged legal advice received from Leigh Day & Co (p.32). This is not the first time that BAE has come into possession of CAAT's confidential and privileged documents. I set out the history of BAE's earlier attempts to spy on CAAT in my witness statement in the *Norwich Pharmacal* proceedings. It has been deeply upsetting to discover that once again CAAT are faced by an apparent betrayal of trust and that BAE are again coming into possession of CAAT confidential documents.
38. The copy of the email as disclosed by Allen & Overy had its routing information removed. This was done deliberately so as to conceal the identity of the person who had leaked the email, or the route by which BAE had received the email.
39. Upon receipt of the email CAAT carried out an internal investigation to seek to establish how BAE could have come into possession of the email. Leigh Day & Co also corresponded with

Allen & Overy to attempt to obtain the same information. Regrettably, BAE refused to cooperate, or even to undertake not to take further steps relating to confidential material belonging to CAAT.

40. On 23 and 24 January 2007, CAAT applied for and obtained a without notice injunction requiring BAE to preserve any confidential material belonging to CAAT. Underhill J also granted a without notice cost-capping order of £10,000 and a cap on BAE's undertaking in damages of £10,000. The judgment of Underhill J is exhibited at (pp.58-68).
41. On the return date hearing, CAAT applied for full *Norwich Pharmacal* relief against BAE. This application was heard by King J on 2 February 2007. King J reserved his judgment, which was handed down on 26 February 2007. A copy of the judgment is exhibited at (pp.104-136), together with King J's separate judgment on costs issues. King J directed BAE to recover and disclose a full copy of the email, including routing information, and to swear an affidavit giving full particulars as to how it came into possession of the privileged email by 12 March 2007.
42. Michael McGinty, BAE's Director of Security, served an affidavit on 12 March, identifying the BAE's source of the email as a Mr Paul Mercer, a security consultant who was (and, it seems, still is) being paid by BAE to provide information on the activities of CAAT and other similar campaigning organisations. On 14 March, CAAT obtained an injunction against Mr Mercer and the partnership through which he operates, LigneDeux Associates, requiring disclosure of information and delivery up of documents. Mr Mercer claims that he received the email anonymously through the post, on a CD-R. CAAT has real concerns as to whether this account is true, but on 18 April 2007, LigneDeux and Mr Mercer gave permanent and irrevocable undertakings to the Court never to provide such information belong to CAAT to BAE (or any other person) again, hopefully preventing any further leaks of privileged and confidential information to BAE. CAAT has also taken steps to limit the possibility of further leaks, which for obvious reasons I do not set out in detail here. The matter has also been referred to the police for further investigation. As a result, of the undertakings given yesterday, and the security measures taken by CAAT, we now feel able to proceed with the claim for judicial review.
43. The problems caused by the theft of legal advice from CAAT made it extremely difficult for CAAT to give instructions or receive legal advice from our lawyers. Indeed, this was why we took steps to discover the source of the leak. However, due to the passage of time, we were forced to issue this claim for judicial review in 'holding' form on 23 February 2007, accompanied by a request for a stay. The full reasons are set out in the witness statement of

Richard Stein (pp.10-18). That application was granted by Goldring J on 26 February 2007 (and has since been extended), along with directions permitting the filing of an amended claim form and this and other witness statements.

Protective costs order

44. In order to bring this judicial review, CAAT has obtained donations from its members and supporters and has raised approximately £25,000. We do not expect this sum to increase significantly as this has been the product of several months of concerted fund-raising effort. When combined with the sum available from Corner House (£5,000), this means that the Claimants have a total of £30,000 to fund these proceedings. However, we have incurred costs of preparing the bundle and of issuing this claim of approximately £1,000, leaving £29,000 available to fund this litigation. In order to minimise our own legal costs, CAAT and Corner House's solicitors and counsel are acting under a conditional fee agreement and we are therefore able to offer the total sum of £29,000 as a cost-cap.
45. I am informed by CAAT's lawyers that CAAT's successful fund-raising has produced a very substantial sum that should be ample to cover the costs of the Serious Fraud Office instructing the Treasury Solicitor and counsel to handle a judicial review that whilst raising points of great importance, will not require a long hearing.
46. The Court should also be aware that CAAT has already been granted a PCO in the ancillary *Norwich Pharmacal* claim by Underhill J and I do not wish to lengthen this statement by repeating the points I made in my evidence in those proceedings. But in short, without a protective costs order, neither CAAT nor Corner House would be able to proceed with this claim. As accepted by both Underhill J and King J in their judgments, CAAT will not be able to proceed with this claim for judicial review unless a protective costs order is also made in these proceedings.
47. Further, before Underhill J, CAAT offered and the Court accepted a cap of £10,000 on its costs, and £10,000 on its cross-undertaking in damages. CAAT has not yet been released from that cross-undertaking and there is a real prospect that BAE will yet seek its costs of compliance with the *Norwich Pharmacal* order made by King J. However, King J directed that CAAT not have to pay BAE's costs of the hearing on the *Norwich Pharmacal* application, thus freeing up £10,000. CAAT was granted a further Protective Costs Order, subject to a cap of £8,000 by Mr Justice Treacy in its action against Mr Mercer and LigneDeux. Following an agreement with Mr

Mercer and LigneDeux, CAAT has been released from this Protective Costs Order, and has also been paid a sum towards its legal costs by Mr Mercer and LigneDeux. This sum paid by Mr Mercer and LigneDeux cannot be used towards this litigation as it was in payment of legal costs which we are under an obligation to pay to our lawyers, pursuant to a conditional fee agreement.

Statement of Truth

I believe that the facts set out in this statement are true.

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Ann Feltham

Date: 19 April 2007