

Robert Wardle
First
For the Defendant
Exhibits RW1, RW2 and RW3
Dated: 17 December 2007

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

CO/1567/07

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 ROBERT WARDLE

I, Robert Wardle, Director of the Serious Fraud Office, Elm House,
10-16 Elm Street, London WC1X 0BJ, SAY AS FOLLOWS:

1. I am the Director of the Serious Fraud Office ("the SFO") and I am the Defendant in this matter. The contents of this witness statement are within my knowledge or belief unless otherwise stated, and are true to the best of my knowledge and belief.
2. Two bundles of documents, marked RW1 pp.1-31 and RW2 pp.1-31 are now produced and shown to me. Exhibit RW1 is a closed exhibit, a copy of which will be provided for the Court, but not to the other parties or to the public. Exhibit RW2 is a typed-up version of all the documents in

RW1, subject to certain, specified redactions that have been made on public interest grounds. I am informed that the redactions will be explained and justified by means of a ministerial public interest immunity certificate. The page numbers in RW2 match the page numbers in RW1, so, for example, where in this witness statement I refer to a document at RW2/14-18, the Court will find a true, unredacted copy of the same document at RW1/14-18.

3. In addition, there is now produced and shown to me a further bundle marked RW3 pp.1-71, which contains publicly available documents.,

The Investigation

4. The Director of the SFO may investigate any suspected offence which appears to him on reasonable grounds to involve serious or complex fraud (s.1(3) Criminal Justice Act 1987) and he may institute criminal proceedings which appear to him to relate to such fraud (s.1(4) CJA 1987). On 21 July 2004, following the receipt of information from the Guardian Newspaper, an investigation into the affairs of British Aerospace plc (now BAE Systems plc) (hereafter "BAE"), and two service companies supplying services to BAE, was referred to me by the Ministry of Defence ("MOD") Police. After consideration, I formally accepted the referral for investigation on 29 July 2004, as it appeared to me that there were reasonable grounds to suspect that offences amounting to serious and complex fraud may have been committed, as required by s.1(3) of the Criminal Justice Act 1987.
5. I asked Matthew Cowie to act as the Case Controller, with the support of the Assistant Director of the SFO, Helen Garlick. The team which was assembled to carry out the investigation included accountants, financial investigators and police officers, as well as SFO lawyers. From the start it was obviously a case of importance and high public interest, and I maintained close contact with the investigation team, as well as with Counsel appointed to advise the SFO.

6. One aspect of the investigation concerned an agreement, known as the Al Yamamah contract, to supply arms to the Kingdom of Saudi Arabia. The investigation was conducted by the SFO in conjunction with the MOD Police.
7. The SFO has powers of investigation under Section 2 of the Criminal Justice Act 1987 whereby the Director, or a member of the SFO, may issue a Notice in writing requiring a person to answer questions or otherwise furnish information or to produce documents. There are also provisions for obtaining search warrants. In this case a number of Section 2 Notices were issued to BAE, including the "5th Notice" dated 14 October 2005, concerning payments to agents/consultants in respect of the Al Yamamah contract.

Public interest representations – first stage – 2005

8. The service of the 5th Notice provoked public interest representations from BAE and the MOD to the SFO and to the Attorney General (the Attorney General has the function of superintendence of the Director of the SFO under section 1(2) of the Criminal Justice Act 1987). Jonathan Jones, Director General of the Attorney General's Office, informed me on 7 November 2005 that Sir Kevin Tebbit, Permanent Under-Secretary of State at the MOD, had telephoned him to tell him that BAE intended to write to the Attorney General. BAE intended to draw to the Attorney General's attention the risks to the national interest that they considered were attendant upon compliance with the 5th Notice, and had sketched out their assessment of the risks. These included commercial risk to the Al Yamamah contract and the position of Saudi Arabia in the Middle East and in relation to the UK's counter terrorism strategy. Jonathan Jones told me that Sir Kevin considered that this was a unique case in which the public interest needed to be considered at an early stage.
9. BAE wrote to Lord Goldsmith QC, the Attorney General, on 7 November 2005, enclosing a memorandum in which they made representations that compliance with the 5th Notice and the continuance of the investigation in relation to the Al Yamamah programme would be contrary to the

public interest. Jonathan Jones forwarded that letter and memorandum, together with his reply in which he explained that the proper recipient of such representations was the SFO, to me by letter dated 10 November 2005.

10. On 11 November 2005, BAE's Legal Counsel telephoned me to ask for a 14 day extension of time for compliance with the 5th Notice (which had a deadline of 14 November 2005), whilst I considered the matters raised in BAE's memorandum of 7 November 2005. The request for an extension was addressed further in correspondence between BAE's solicitors and Matthew Cowie. In summary, BAE's legal representatives stated that they considered that BAE would have a reasonable excuse for failing to comply with the 5th Notice while the SFO was considering the public interest representations.
11. On 15 November 2005, Sir Kevin Tebbit telephoned me. He informed me that the investigation created a serious risk of damage to important aspects of the UK's relationship with the Kingdom of Saudi Arabia. He suggested that the question of the balance of the public interest should be considered at this stage, to prevent damage being done.
12. At that stage, I was minded to insist on full compliance with the Section 2 Notice. Nevertheless, in view of the MOD's support of BAE's position, I considered that BAE might be able to avail themselves of the statutory defence of 'reasonable excuse' for failing to comply with the Notice, unless and until I was able to inform them that their public interest representations had been fully investigated and there were no grounds for failing to comply. Accordingly, I decided that I should consult with the Attorney General and seek his advice.
13. On 30 November 2005, I was informed by Jonathan Jones (who also attended the meeting) that Sir Gus O'Donnell, the Cabinet Secretary, went to see the Attorney General to hand over an unsolicited letter he had been sent by Sir Richard Evans, the then Chairman of BAE. Sir Gus raised with the Attorney General the question whether it would be proper for the government to make any representations as to the public interest

considerations raised by the SFO investigation and, if so, whether any such representations could be made at the investigation stage. He asked for guidance from the Attorney General on this point. The Attorney said he would consider this and respond to Sir Gus. The Attorney commented that Article 5 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (“the OECD Convention”) would be relevant. I was briefed about the meeting at the time via Helen Garlick and Matthew Cowie, who met Jonathan Jones on 1 December 2005, when he gave them an account of the Attorney’s meeting with Sir Gus the previous day and handed over the documents provided to the Attorney by Sir Gus.

14. On 2 December 2005, the case team and I attended a meeting with the Attorney General at the Attorney’s Chambers, to brief him on what was happening in the investigation. It was decided to begin a Shawcross exercise.

15. The Attorney General and I decided that it would be appropriate to invite the views of other Government ministers, in order to acquaint ourselves with all the relevant considerations, so as to enable us to assess whether it was contrary to the public interest for the investigation to proceed. As the Court will know, prosecutors have a discretion whether to prosecute, even where there may be sufficient evidence to do so successfully, if public interest factors outweigh the interest in proceeding with a prosecution.¹ This is a test that is usually applied at the conclusion of an investigation, but I was satisfied that it can be appropriate for it to be considered at an earlier stage. We also discussed Article 5 of the OECD Convention as a matter to which we should have regard.

16. The well established practice by which views about the public interest can be sought from other government Ministers is sometimes referred to

¹ Para 5.10 of the Code for Crown Prosecutors lists “Some common public interest factors against prosecution” and it is relevant that at sub-para. (i) the Code refers to the risk that “details may become public that could harm sources of information, international relations, or national security.” [RW3/12-13]

as a 'Shawcross exercise', after the classic statement by Attorney General Sir Hartley Shawcross in Parliament in 1951:

"The true doctrine is that it is the duty of the Attorney General, in deciding whether or not to authorise the prosecution, to acquaint himself with all the relevant facts, including, for instance the effect which the prosecution would have upon public morale and order, and with any other consideration affecting public policy. In order so to inform himself, he may ... consult with any of his colleagues in the government, and indeed ... he would in some cases be a fool if he did not ... The responsibility for the eventual decision rests with the Attorney General, and he is not to be put, and is not put, under pressure by his colleagues in the matter." [RW3/50]

17. Accordingly, Jonathan Jones at the Attorney General's Office wrote to the Cabinet Secretary on 6 December 2005 seeking views. The letter was copied to the Prime Minister's Office, the Foreign and Commonwealth Office, the Ministry of Defence, the Department of Trade and Industry, the Home Office, Her Majesty's Treasury and the Treasury Solicitor (as well as to me), informing them of BAE's public interest representations and of the MOD's support and inviting their views. The letter drew attention to Article 5 of the OECD Convention and made it clear that the final decision would be a matter for the Attorney General and me, both acting independently of government [RW2/1-3].

18. On 16 December 2005, the Cabinet Secretary replied to Jonathan Jones at the Attorney General's Office, enclosing a note in response to the Shawcross exercise [RW2/4-8]. I received a copy of that letter and the note which stated that it had "been seen by the Prime Minister, the Foreign Secretary and the Defence Secretary, and has their support". The note raised various public interest concerns to which the investigation gave rise, including in respect of the commercial importance of the Al Yamamah programme.

19. The note also referred to the role of Saudi Arabia in combating terrorism, and the possibility that cooperation with the UK might be endangered. Although this was, in my view, the most powerful of the representations made on the public interest, and I considered it carefully, at that stage I was not convinced that the danger referred to was imminent.

20. I attended a meeting on 11 January 2006 with the Attorney General and the Solicitor General, along with my case team, Counsel and others. The Shawcross representations were discussed and I gave my view to the Attorney that at that stage, on the materials then available, the balance of the public interest was in favour of continuing the investigation, at least to the extent of enforcing the Notices. I recognised that the matter would need to remain under review both as to the evidential and public interest factors requiring consideration under the Code for Crown Prosecutors - as would be the case in any investigation and prosecution by the SFO.

21. Following that meeting, the Attorney General also concluded that, despite the public interest issues raised by other Ministers, the investigation should continue. On 25 January 2006, Jonathan Jones wrote to the Cabinet Secretary, informing him that the Attorney and I had considered the representations and that the Attorney had concluded that the public interest required the investigation to continue, although the evidential strength of the case and the public interest factors would be kept under review [RW2/9-10].

22. No further public interest representations were made until September 2006.

Public interest representations – second stage – 2006

23. On 29 September 2006, the Attorney General's Office received further representations from the Cabinet Secretary, regarding the public interest in the light of more recent developments [RW2/11-12]. Amongst other matters, this letter raised the possibility that Saudi Arabia's cooperation with the UK on counter-terrorism would be prejudiced if the investigation continued. The Attorney General showed this letter to me at a meeting on 30 September 2006.

24. The Attorney considered these further representations, but concluded that, if the case was soundly based, the investigation should continue. Nevertheless, he was understandably concerned, in the light of these

further representations, to ensure that the case was in fact soundly based. He considered that, if it was not, it should be dropped before the consequences threatened, or by then occurring, took effect.

25. The Cabinet Secretary was informed by letter dated 3 October 2006 that the Attorney was of the view that, if the case was in fact soundly based, the investigation should continue [RW2/13]. The letter also explained that the SFO was reviewing the evidential and legal basis of the case.

26. As a result of the meeting with the Attorney on 30 September 2006 (and several further meetings during October and November) further work was undertaken.

27. Following a meeting on 27 November 2006 with the Attorney, Counsel instructed by the Attorney (Mark Dennis QC) and the case team, I agreed that the SFO would try to obtain evidence from the Kingdom of Saudi Arabia to address the issue of principal's consent. Although I had some reservations about seeking such evidence, I agreed to explore this issue with HM Ambassador to the Kingdom of Saudi Arabia, Sir Sherard Cowper-Coles.

28. On 30 November 2006, I had the first of three meetings with the Ambassador. A range of people attended the meeting including the Permanent Under Secretary of State for the Foreign and Commonwealth Office. We discussed the practicalities of seeking evidence from relevant persons in Saudi Arabia. At the same time, the Ambassador directly confirmed to me that the threats to national and international security were very grave indeed, and were as represented by the Cabinet Secretary's letter of 29 September 2006. As he put it to me, British lives on British streets were at risk.

29. At the beginning of December 2006 my case team and I contemplated the viability of approaching BAE with a view to exploring whether they might consider entering a plea of guilty to corruption on a limited basis. At a meeting on 5 December 2006, I discussed this possible approach with the Attorney. Shortly after the meeting, his Office confirmed that he had

no objection to our approaching the company. We arranged to visit the solicitors for the company the following afternoon.

30. On the evening of 5 December 2006, Jonathan Jones at the Attorney General's Office telephoned me. In view of the Shawcross representations that had been made, he was concerned that we ought to brief the Prime Minister before approaching the company. The Prime Minister was under the impression that the next step we were considering was an approach to the Kingdom of Saudi Arabia via the Ambassador. Jonathan Jones did not want the Prime Minister to be misled.

31. I agreed that we should brief the Prime Minister. On the morning of 6 December 2006, Jonathan Jones and I agreed what he should say to the Prime Minister's Private Secretaries.

32. Later that day, Jonathan Jones telephoned me to confirm that he had approached the Prime Minister's Office and had been told that the Prime Minister would wish to make further representations to the Attorney before the approach to the company. The Prime Minister was due to fly to Washington shortly and so was not able to make his representations that day. The Attorney and I decided that we should put off the SFO visit to the company to enable the Prime Minister to make representations.

33. On Friday, 8 December 2006, Jonathan Jones telephoned me at 9.30am to confirm that the Prime Minister had written to the Attorney, although the letter had not yet been delivered, and wished to speak to him. As the Prime Minister and the Attorney would only be returning to London later that day from Washington and the Hague respectively, it was clear that no decision would be made that day, so I arranged to attend the Attorney General's Office on Monday, 11 December 2006. I understand that the Prime Minister's meeting with the Attorney also took place on 11 December, although I did not attend that meeting [RW2/30-31].

34. Also on 8 December 2006, I had a further meeting with the Ambassador, at which he again confirmed the serious damage to national security that any continuation of the investigation would inevitably cause. He had no

doubt about the gravity of the sanctions in respect of political relations and counter-terrorism co-operation that would be imposed by Saudi Arabia if the investigation continued. He made it clear that in his opinion the Authorities in Saudi Arabia would simply cease to cooperate on the intelligence and security issues. The effect of withdrawing such cooperation was also likely to be serious. It would mean such a significant loss of information and cooperation on counter terrorism that, again, lives would be put at risk.

35. As arranged, on 11 December 2006 I attended a meeting with Jonathan Jones at the Attorney General's Office and was shown a personal minute from the Prime Minister, Tony Blair, to Lord Goldsmith QC, dated 8 December 2006 containing representations on the public interest, including in particular by reference to the risk to national security. At RW2/14-20 is a typed up version of this minute, parts of which, as explained in the ministerial certificate referred to above, have been redacted on public interest grounds.

36. The Prime Minister's assessment of the public interest in the minute was stated to be endorsed by the Foreign Secretary and the Secretary of State for Defence and to have been formed with the benefit of advice from the Government's most senior national security official advisers. The Prime Minister's minute was accompanied by a detailed note from Sir Richard Mottram, Permanent Secretary Intelligence, Security and Resilience, on the importance of our links with Saudi Arabia on counter-terrorism and a further note from Sir Peter Ricketts, Permanent Under Secretary of the FCO, addressing the role of Saudi Arabia in promoting peace and stability in the Middle East. The typed up versions of these notes are at RW2/21-26 and RW2/27-29 respectively. Again, parts of these documents have been redacted on public interest grounds.

37. In his minute, the Prime Minister expressed the view that continuation of the investigation would give rise to a real and immediate risk of a collapse in UK/Saudi security, intelligence and diplomatic cooperation, which was likely to have seriously negative consequences for the UK public interest in terms of both national security and the UK's highest priority foreign

policy objectives in the Middle East. I had no doubt, having read the Prime Minister's minute and the accompanying notes, that he and the Defence and Foreign Secretaries were convinced that there was an imminent risk of endangering the national security of the UK in a very serious manner, if the SFO investigation continued. I also had no doubt, in the light of these documents and the direct briefings I had received from the Ambassador, that this risk manifested itself both directly in relation to intelligence cooperation in relation to counter-terrorism in the UK and elsewhere (and the discontinuation of which would place at risk British), and indirectly, in that it would directly impede in a substantial way the UK's major foreign policy goal of promoting the search for peace and stability in the Middle East, again as part of a strategy to lessen the tensions and ideological factors leading towards adoption and promotion of terrorism directed against (among others) the UK by Islamist groups.

38. Put shortly, I understood that the assessment of the Government was that the Saudi Arabian Government was extremely serious when it had given warnings to the UK about its withdrawal of co-operation with the UK in relation to these matters, should the SFO investigation continue. The practical importance of Saudi Arabian goodwill and co-operation in these areas, for safeguarding the UK's national security and the safety of nationals, was also clear to me.

39. Later on 11 December 2006, I was asked to prepare and send to the Attorney the evidence that had been acquired to date on the corruption allegations and to ensure that the case team were available to take him through it. Some 20 lever arch files were duly prepared and delivered. The Attorney decided that he should himself now review the case in detail, with the benefit of full briefing from SFO investigators and lawyers, sight of the underlying material and advice from leading Counsel. His review took place over the period 12-14 December 2006. On 12 December, I attended a meeting with the Attorney and the case team to discuss the evidence.

40. Later on 12 December 2006, I had a third meeting with the Ambassador. This meeting was also attended by, amongst others, the Solicitor General

and Jonathan Jones. Once again, the Ambassador made it very clear that the risk that Saudi Arabia would withdraw its cooperation with the UK on counter-terrorism was real and acute. He expressed the view that there was a real threat to UK lives. It was also made clear that we could not pursue any approach to relevant persons in Saudi Arabia to seek evidence from them, nor could the SFO pursue any attempt to prosecute without endangering UK national security.

My decision to discontinue the investigation

41. On 13 December 2006, I attended a meeting with the Attorney General, the Solicitor General, Jonathan Jones and Helen Garlick. We discussed whether there was sufficient evidence available or likely to be available to support any prosecution and the public interest representations that had been made by the Prime Minister and by the Ambassador. The Attorney was very concerned that, ultimately, we would not be able to prove our case. He asked me for my view. I accepted that the evidential issues which concerned him were important points that we would need to address, but I indicated that, at that stage, I would not discontinue the case on merits grounds. It is fair to say that the Attorney was not persuaded by my view on that point, but he accepted that the decision how to proceed was one for me.

42. However, I told the Attorney that, having regard to the views of the Prime Minister, the Foreign and Defence Secretaries and the Ambassador as to the public interest, my conclusion was that it would not be in the public interest to continue with the investigation. I believed that continuing the investigation risked real and imminent damage to the UK's national and international security and would endanger the lives of UK citizens and service personnel. We agreed I would reflect on the matter overnight.

43. Having thought about the matter overnight, the next morning (14 December 2006) I confirmed to Jonathan Jones at the Attorney General's Office that my conclusion applying the public interest test remained the same, and that in my view continuing the investigation would risk serious damage to the UK's national and international security. I

considered that the public interest in investigating possible corruption by a major arms company, strong as it is, was outweighed by the need to protect national security and to protect lives.

44. In reaching my decision, and throughout my consideration of the issues in the case, I had well in mind that the United Kingdom is a signatory to the OECD Convention. In particular, I had in mind Article 5 of that Convention, which states:

“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 person involved.”

45. I was (and remain) of the view that discontinuing the investigation was compatible with Article 5 of the OECD Convention. Article 5 expressly ensures that prosecutorial discretion is maintained, subject to three express limitations. In reaching my decision on grounds of national security, I was not influenced by any of those three considerations.

46. I was not influenced in making my decision by considerations of national economic interest. As I have explained above, during the course of the earlier stage of the Shawcross exercise (referred to in paragraphs 17-21 above), some representations were made about commercial factors. However, in view of the nature of the prosecution, I regarded such representations as irrelevant, and I did not attach any weight to them.

47. I was also in no way influenced by the identity of the natural or legal persons involved.

48. Nor was I influenced by the potential effect upon relations with another state, *per se*. I understood, of course, that continuing the investigation would damage the UK's relations with Saudi Arabia, but, in and of itself, that consideration did not concern me. What did concern me was that continuing the investigation would risk an immediate cessation of cooperation in relation to national and international security which might have devastating effects on the UK's national security interest - both

locally in the UK and in the wider international field in the Middle East. I believed that withdrawal of co-operation would seriously weaken the UK's counter-terrorism capability and weaken the chances of improving our security by promoting peace and stability in the Middle East. On the representations made to me, I considered that a compelling case had been made out that the UK's national security and innocent lives would be put in serious jeopardy if the SFO investigation continued.

49. I did not (and do not) believe that Article 5 of the OECD Convention prohibited me from taking this into account when deciding how to proceed.

50. Nevertheless, in light of the compelling case which had been made out, I should emphasise that my understanding of the effect of Article 5 was not a critical or decisive matter for me. I appreciated that Article 5 is not incorporated into domestic law. In light of the representations which had been made, I considered the threat to the UK's national and international security to be of such compelling weight that it was imperative that I should halt the SFO investigation at this point, in the public interest. It was this feature of the case which I felt left me with no choice but to halt the investigation. This was not a conclusion which I arrived at lightly; far from it.

51. Thus, although I did not specifically consider the question at the time (because there was no doubt in my mind that what I was doing was compatible with Article 5 of the OECD Convention), even had I thought that discontinuing the investigation was not compatible with Article 5 of the Convention, I am in no doubt whatever that I would still have decided, by reason of the compelling public interest representations which I have described above, that the investigation should be discontinued. The threat which I considered existed to UK national and international security if the investigation continued was so great that I did not believe there was any serious doubt about the decision I should make.

52. The SFO issued a press release on 14 December 2006. It was drafted as a press release, and was not intended to be and did not purport to be in itself a detailed and fully reasoned decision. It said that no weight had been given to commercial interests or to the national economic interest, but did not comment on the other two limitations contained in Article 5. As I have explained above, I was not influenced by factors falling within the other two limitations. My recollection is that, at the time, the press was focusing on the commercial interest and so, for that reason, the press release expressly stated that no weight was given to it. The press release was prepared in some haste in order to ensure an announcement could be made that day. It was of course price sensitive information and might affect the share price of the company.

53. Also on 14 December 2006, after meeting the heads of the security and intelligence agencies and the Cabinet Office Permanent Secretary for Intelligence, Security and Resilience, and after completing his own review of the evidence, the Attorney General made a statement to Parliament. The relevant extract from Hansard is at RW3/51-54. The Attorney read out the SFO's press release, told the House that I had decided to discontinue the investigation and stated that he agreed with my decision to discontinue the investigation. The Attorney also agreed with my reasons, albeit he had an additional reason, namely, he considered that there were evidential obstacles to a successful prosecution such that it was not likely to go ahead.

The Claimants' grounds

54. In addition to the question of construction of the Convention, I understand that the Claimants refer to three matters which they suggest are relevant considerations which I failed to take into account.

55. First, it is suggested that if Saudi Arabia withdrew its cooperation it would be in "breach of numerous binding international law obligations, and of assurances repeatedly given by Saudi Arabia at the highest levels". I do not know whether this would be the case, but in my view it is beside the point. What mattered was whether Saudi Arabia would cease to co-

operate with the UK on matters of counter-terrorism and the UK's Middle East strategy or not. I accepted the assessment that was made by those who were in a position to judge these matters that the threats to withdraw co-operation were made with serious intent to follow them through.

56. Secondly, the Claimants suggest that no consideration was given to the risk that discontinuing the investigation might lead to a perception that Britain easily caves into national security threats from other states and so might damage national security in that way.

57. I understand that this contention is based upon the evidence that I gave to the Constitutional Affairs Committee on 27 June 2007, in particular, my answer to question 269 [RW3/59-60]. I believe it is clear from my response to Q.269, that what I understood David Howarth MP to be asking was whether discontinuing the investigation increased the risk of people thinking they could act corruptly with impunity. My view was, when I took the decision, and remains, that this case was so exceptional that it was unlikely to have any appreciable effect on other corruption cases.

58. I have, of course, now seen David Howarth's question in print, and I can see that he was putting a slightly different point. As I made clear to the Committee, I was speaking from recollection, without sight of the relevant papers (see my answer to Q.267) [RW3/59]. Now that I have had a chance to look back at the papers, it is clear to me that, in fact, this consideration was taken into account as part of the national security analysis. In particular, I note that on 11 December 2006, in a meeting with the Attorney, the Prime Minister expressly acknowledged that "it was important that the Government did not give people reason to believe that threatening the British system resulted in parties getting their way" (see the note of the meeting, at RW2/30-31). Notwithstanding that consideration, the overall assessment by reference to the UK's national security interest was overwhelmingly in favour of the view that, in the exceptional circumstances which presented themselves in this case, there were strong public interest reasons tending in favour of a decision to

discontinue the SFO investigation. I did not see the note of the meeting between the Attorney and the Prime Minister at the time I took my decision. However, as set out above, I was briefed about the overall national security assessment made by the Prime Minister and others, and based my decision upon that assessment.

59. I would add that I still think the main point I made in answer to David Howarth is relevant here: this was a highly exceptional case, which for that reason seemed unlikely to have significant wider ramifications.

60. The Government has recently had reason to consider this matter further, in the context of a request for Mutual Legal Assistance ("MLA") in relation to investigations by US authorities concerning the Al Yamamah contract. It is the Home Office that is responsible for dealing with this request. Under the relevant treaty arrangements between the UK and the US, the details of the request are required to be kept confidential. However, I can say that an extensive consultation has taken place across Government Departments, in a manner closely similar to the Shawcross exercise which took place in relation to the SFO's investigation. The representations prepared by the Cabinet Office, in consultation with the Ministry of Defence and the Foreign and Commonwealth Office, were submitted to the Home Office in October 2007. Jonathan Jones sent me a copy of the response from the Ministers who responded to the consultation, and I note that they concluded that there is no evidence to suggest that the actions taken in respect of the SFO investigation have damaged the UK's national security in the way suggested by the Claimants.

61. Thirdly, the Claimants contend that the risk of information about the alleged involvement of Prince Bandar bin Sultan (National Security Adviser to the Kingdom of Saudi Arabia) in the payment of bribes becoming public was not taken into account by me. That information has in fact now been published.

62. I was, of course, well aware that there had been a considerable degree of press interest in the investigation, as were those who provided me with

advice on the public interest. It was well understood that it was well nigh inevitable that press interest and reporting would continue into the future. It was also obvious that a decision to discontinue the investigation would provoke further press interest. I regarded it as impossible to predict with accuracy what press reporting there might be, and what matters might be published. I did not think it worthwhile to speculate about the detail of what might be published in future, or what additional information might be put into the public domain.

63. The Claimants' contention is again based on answers I gave to the Constitutional Affairs Committee (Q. 267 and Q. 268) [RW3/59]. The question I was asked related to information about Prince Bandar. It is true that, having regard to my knowledge of the state of the investigation and as I told the Committee, I had not expected any such further press reports to include speculation as to Prince Bandar's alleged involvement in the payment of bribes.

64. I find it hard to understand why my failure to predict with precision the allegations that would be made in the press should render my decision somehow defective. The general likelihood of future press reporting on the matter was taken into account. In general terms, I expected that one way or another additional information about the affair would be likely to be published by the press, though I did not know or have any precise expectations of what it might be.

65. The significant point, so far as I was concerned (and based on the assessment of those advising me on the public interest), was that the Saudi Arabian Government would regard the continuation of an official UK criminal investigation into what it considered as having been agreed between the UK and Saudi Arabia to be confidential matters as involving a serious breach of trust on the part of the UK authorities. This was a matter on a completely different level, so far as the Saudi reaction was concerned, from adverse reports appearing in the press. I understood that, whilst members of the Saudi royal family might not welcome adverse press reports, such reports would not be regarded by the Saudi Arabian Government as involving a breach of trust on the part of the UK

authorities. It was this assessment of the strength of the reaction of the Saudi Arabian Government to the continuation of the SFO investigation which was the basis for my decision to discontinue that investigation. Even if I had correctly anticipated the specific allegations that have been aired in the press, I would not have considered that they diminished the risk to the UK's national and international security of the SFO continuing its investigation.

66. Furthermore, the Government has again recently considered, in the context of the recent internal consultation on the MLA request, whether the public interest is affected by the extent to which substantial additional information (including that about Prince Bandar) has come into the public domain through press reporting. The assessment of the departments responding to that exercise has been, once again, that there is, from the Saudi perspective, a major difference between press reporting and official investigations conducted by or with the assistance of the UK authorities into matters regarded by the Saudis as covered by an agreement of confidentiality between the Saudi and UK Governments. It is only matters falling within the latter category which are regarded by the Saudi Government as involving a serious breach of trust by the UK Government, such as to warrant the withdrawal of Saudi co-operation on the UK's counter-terrorism and Middle East strategies. This reaction is assessed to be unaffected by the press reporting which has occurred.

Statement of Truth

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

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Robert Wardle

Date: 17 December 2007