



House of Commons  
International Development

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# Financial Crime and Development

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**Eleventh Report of Session 2010–12**

*Volume I: Report, together with formal  
minutes, oral and written evidence*

*Additional written evidence is contained in  
Volume II, available on the Committee website  
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## The International Development Committee

The International Development Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Office of the Secretary of State for International Development.

### Current membership

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Hugh Bayley MP (*Labour, City of York*)  
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The following members were also members of the committee during the parliament:

Mr Russell Brown MP (*Labour, Dumfries, Galloway*)  
Mr James Clappison MP (*Conservative, Hertsmere*)  
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The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume.

Additional written evidence may be published on the internet only.

### Committee staff

The current staff of the Committee are David Harrison (Clerk), Marek Kubala (Second Clerk), David Ash (Committee Specialist), Anna Dickson (Committee Specialist), Chlöe Challender (Committee Specialist), Anita Fuki (Senior Committee Assistant), Vanessa Hallinan (Committee Assistant), Paul Hampson (Committee Support Assistant) and Nicholas Davies (Media Officer).

### Contacts

All correspondence should be addressed to the Clerk of the International Development Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 1234; the Committee's email address is [indcom@parliament.uk](mailto:indcom@parliament.uk)

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## Summary

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On 5 February 2010 an agreement was reached between the Serious Fraud Office (SFO) and BAE Systems arising from the criminal offence of improper book-keeping, which BAE Systems admitted in connection with the sale of a military air traffic control system to the Government of Tanzania. The agreement, under which an ex gratia payment for the benefit of the people of Tanzania of £29.5 million (£30 million less court penalties) would be made by the company, became publicly known at the conclusion of the Court proceedings on 21 December 2010. Aspects of the agreement attracted critical comment and we decided to hold a brief inquiry.

We were appalled that the payment remained outstanding more than eight months after the Court hearing. The Government of Tanzania proposed that the sum be paid to its education budget to provide specified materials and improvements. This proposal, which included a requirement for external international audit, was endorsed by the UK's Department for International Development (DFID), but was initially rejected by BAE. We questioned BAE at an evidence session on the 19<sup>th</sup> July 2011 at which the company took a different view from the SFO of what had been agreed in the settlement agreement. Therefore we subsequently wrote to BAE Systems, urging the company in the strongest possible terms to accept the Government of Tanzania's proposals. Finally, the company agreed to accept the proposals.

The settlement agreement between the SFO and BAE Systems was deficient in a number of respects. We were astonished that it allowed the SFO and BAE Systems to hold different views about what would happen and when, and enabled BAE to believe that it could determine when the payment should be made. This undoubtedly contributed to the delay in making the ex gratia payment. Future settlement agreements of this type should be precise about what is required of those involved and include clear timetables.

The inquiry considered a number of other issues relating to financial crimes. We find that existing legislation provides sufficient scope to allow reparations to be made to developing countries in appropriate circumstances by British companies guilty of financial crimes. We recommend that, as in the BAE case, payments be proportionate to the offence. Changes are not required to the Bribery Act, 2010 at this very early stage in the Act's life.

The Ministry of Justice should address the SFO's recommendation that, in cases of financial crimes involving plea bargaining, the SFO and company involved could take a proposed resolution to a Judge before the criminal justice process has been engaged by a formal charge.

There is a need to provide more information to the public about the investigation and prosecution of transnational financial crimes. To help achieve this objective, the Government's Anti-Corruption Champion, the Secretary of State for Justice, should publish an annual report setting out the Government's plans for combating international corruption, including transnational financial crimes, and the progress made.



## Timeline of Events

| Event  | Date                          |
|--|-------------------------------|
| Govt of Tanzania invite tenders for new air traffic control system   | November 1992                 |
| Siemens Plessey Electronic Systems Ltd retain Mr Shailesh Vithlani, to assist with negotiations.   | 21 June 1993                  |
| BAE Systems group acquire UK operations of Siemens Plessey Systems group, including Siemens Plessey Electronic Systems Ltd, which was renamed British Aerospace Defence Systems Ltd (BAEDS)      | October/ November 1997        |
| BAE Systems agree an extension of the adviser agreement with Mr Shailesh Vithlani for a further 12 months  | 17 November 1998              |
| BAEDS- Vithlani relationship changed. Agreements between two companies controlled by BAEDS and two companies controlled by Mr Vithlani (Envers Trading Corporation and Merlin International Ltd) | 2/3 September 1999            |
| New contract for sale of radar system signed between Govt of Tanzania and BAEDS at a price of US\$39.97 million  | 10 September 1999             |
| Approximately US\$12.4 million paid to Envers Trading Corporation and Merlin International Ltd.  | January 2000 to December 2005 |
| The Serious Fraud Office (SFO) starts investigation into BAE Systems.  | July 2004                     |
| Settlement Agreement between SFO and BAE Systems. BAE Systems to make £30 million ex gratia payment , less Court penalties, for benefit of the people of Tanzania                                | 5 February 2010               |
| NGOs apply for a judicial review of SFO's plea bargain settlement  | 26 February 2010              |
| Mr Justice Collins, in the High Court, refuses to grant permission for a judicial review of the SFO's plea bargain settlement  | 24 March 2010                 |
| BAE Systems plead guilty to failing to keep accounting records at Magistrates Court. Case committed to the Crown Court for sentence  | 23 November 2010              |
| Mr Justice Bean, at Southwark Crown Court, imposes a fine of £500,000 on BAE Systems PLC   | 21 December 2010              |
| International Development Committee announces 'Financial Crimes and Development Inquiry'   | 9 March 2011                  |
| BAE Systems announce formation of an advisory board on Tanzania, chaired by Lord Cairns.   | 17 June 2011                  |
| Secretary of State for International Development advises BAE Systems to accept the Govt of Tanzania's proposal for ex gratia payment to be made directly to supplement education budget.         | 3 July 2011                   |
| International Development Committee (IDC) takes oral evidence from BAE Systems, SFO, DFID, and Ministry of Justice.  | 19 July 2011                  |
| IDC Chair writes to Chair of BAE Systems recommending that the company pays immediately the £29.5 million to the Govt of Tanzania.   | 20 July 2011                  |
| BAE Systems agrees to make payment to the Govt of Tanzania.  | 19 August 2011                |

# 1 Introduction

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## Financial Crime

1. Financial crime is a general term which covers unlawful activities ranging from improper book-keeping to bribery and embezzlement. Financial crimes can cross national boundaries, and the investigation and prosecution of such crimes often require authorities in a number of jurisdictions to work together to bring the alleged perpetrators before the Courts. One of the most prominent financial crimes in recent years involved the sale of an air traffic control system to the Government of Tanzania.

## Case of Regina v BAE Systems PLC

2. BAE Systems PLC pleaded guilty to an offence of failing to keep accounting records “sufficient to show and explain the transactions of the company” contrary to Section 221 of the Companies Act 1985, at the City of Westminster Magistrates Court, on 23 November 2010. The case was committed to the Crown Court for sentence. The offence related to payments of \$12.4 million made by two subsidiaries of BAE Systems PLC to two companies controlled by a marketing advisor, Mr Shailesh Vithlani. Mr Vithlani had originally been retained, by Siemens Plessey Electronic Systems Ltd, which BAE Systems subsequently acquired, to assist with the negotiation and sale of a radar system to the government of Tanzania.

3. A guilty plea by BAE Systems PLC followed a settlement agreement between the company and the Serious Fraud Office (SFO), announced on 5 February 2010. The agreement included provision for the company to make a payment of £30 million ‘for the benefit of the people of Tanzania less any financial orders imposed by the Court’. In return, the SFO undertook to terminate all its investigations into the BAE Systems Group and not to prosecute or take civil proceedings against any member of BAE Systems Group in relation to any matters they had investigated prior to the date of the settlement.

4. In agreeing to the settlement agreement, the SFO took account of an agreement between BAE and the United States Department of Justice under which BAE agreed to pay 400 million dollars as part of a global settlement covering offences in many countries. A key point is that the SFO were effectively duplicating the US investigations. Once agreement was reached in the USA, the SFO would have found it very difficult to bring charges against BAE in respect of those countries covered by the US settlement. Tanzania was not part of the US investigations so a separate agreement was possible between SFO and BAE.

5. The NGOs, Corner House and Campaign against Arms Trade, made an application for a judicial review of the decision by the SFO to make a plea bargain settlement with BAE Systems. The application failed in the High Court on 24 March 2010, when Mr Justice Collins refused to grant permission for a judicial review. He considered that the Director of the SFO had applied the guidelines on plea bargaining properly, and was unable to see that the decision to limit the charge to one under section 221 of the Companies Act was unlawful.

6. The outcome of the judicial review application meant that, when the case came before Mr Justice Bean at Southwark Crown Court on 20 and 21 December 2010, his discretion was restricted to deciding whether to accept the facts, agreed between BAE Systems and the SFO, on which BAE Systems had pleaded guilty, and then to the level of the fine he imposed on BAE Systems.. He could not vary or set aside the settlement agreement between the SFO and BAE Systems, and was unable to sentence for an offence for which the prosecution had chosen not to charge.<sup>1</sup>

7. In his sentencing remarks, Mr Justice Bean noted that, “although it is not alleged that BAE plc was party to an agreement to corrupt, there was a high probability that part of the \$12.4 million paid to Mr Vithlani would be used in the negotiation process to favour British Aerospace Defence Systems (BAEDS)”. He was sceptical of the suggestion that Mr Vithlani was merely a well paid lobbyist using his time to hold legitimate meetings with decision makers in Tanzania with no money changing hands.<sup>2</sup> He stated that “he could not, without hearing evidence, accept any interpretation which suggested that what BAE were concealing by the section 221 offence was merely a series of payments to an expensive lobbyist”. He added that neither side sought to call evidence, although he had indicated that he was prepared to grant an adjournment for them to do so.<sup>3</sup>

8. Mr Justice Bean said that he proposed to sentence on the basis that, by describing the payments in their accounting records as being for the provision of “technical services”, the defendants were concealing from the auditors and ultimately the public the fact that they were making payments to Mr Vithlani, with the intention that he should have free rein to make such payments to such people as he thought fit to secure the Radar Contract for the defendants. The judge added that the defendants did not want to know the details.<sup>4</sup> After taking account of mitigating factors offered by counsel for the defendants and the big payment agreed to be made for the people of Tanzania in the settlement agreement, Mr Justice Bean imposed a fine of £500,000 on BAE Systems PLC.

9. After the Court proceedings ended, various features of the settlement agreement between BAE Systems and the SFO, and related matters, began to attract critical comments. In particular, there was increasing concern about BAE Systems’ delay in making payments for the benefit of the people of Tanzania.

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<sup>1</sup> Sentencing Remarks made by Mr Justice Bean in the case of R v BAE Systems PLC, paragraphs 6 and 7

<sup>2</sup> Sentencing Remarks made by Mr Justice Bean in the case of R v BAE Systems PLC, paragraph 12

<sup>3</sup> Sentencing Remarks made by Mr Justice Bean in the case of R v BAE Systems PLC, paragraph 13

<sup>4</sup> Sentencing Remarks made by Mr Justice Bean in the case of R v BAE Systems PLC, paragraph 15

## The inquiry

10. Following the conclusion of Court proceedings against BAE Systems and in the light of concern about the case, we decided to conduct a brief inquiry into financial crime and development looking both at the BAE Systems case and other matters relating to financial crime, including general legal issues and the Bribery Act 2010.<sup>5</sup>

11. We received submissions from 14 organisations and individuals, including the SFO and BAE Systems, as well as copies of an exchange of correspondence between the Secretary of State for International Development and the Chairman of BAE Systems PLC. We held one formal evidence session on 19 July with representatives of BAE Systems PLC, the Director of the Serious Fraud Office, the Rt Hon. Alan Duncan MP, Minister of State for International Development and the Rt Hon. Lord McNally, Minister of State, Ministry of Justice.

12. The report looks first at the BAE Systems PLC payment for the benefit of the people of Tanzania in chapter 2. Chapter 3 then considers issues relating to the legislation pertaining to financial crimes. Government policies on transnational financial crimes are discussed in chapter 4.

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<sup>5</sup> The terms of reference of the inquiry are at Annex 1

## 2 Payment for benefit of people of Tanzania

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### Basis for the payment

13. Following BAE's agreement with the United States Department of Justice, BAE approached the SFO. The Director of the SFO told the company that settling the Tanzania investigations would require a payment. An agreement was reached for a voluntary payment to be made for the benefit of the people of Tanzania, leaving it as open as possible for BAE Systems and the SFO, with advice, to be able to find the right way of ensuring that money went to the people of Tanzania.<sup>6</sup>

14. Paragraph 5 of the Settlement Agreement between the Serious Fraud Office and BAE Systems PLC states:

The Company shall make an ex gratia payment for the benefit of the people of Tanzania in a manner to be agreed between the SFO and the Company. The amount of the payment shall be £30 million less any financial orders imposed by the Court.

### Level of payment

15. The settlement agreement provided that BAE would pay £30 million minus court penalties. After Mr Justice Bean had imposed a fine of £500,000 on BAE Systems on 21 December 2010 and ordered the company to pay £225,000 towards the prosecution's costs, BAE had a legal obligation under the Settlement Agreement to make a payment of £29.275 million for the benefit of the people of Tanzania. BAE Systems agreed to pay the prosecution's costs, leaving £29.5 million as the level of the ex gratia payment.<sup>7</sup>

16. The Director of the SFO told the Committee that he had arrived at the figure of £30 million by starting from the value of the radar systems contract. It had seemed to him that in policy terms BAE Systems should not derive any benefit from this contract and that "if they lost £30 million, that would be a good result".<sup>8</sup>

17. In contrast, BAE Systems told us that the figure for the ex gratia payment was not equivalent to the value of the contract to supply air traffic control systems to the Government of Tanzania, and that it did not relate to any estimate of overcharging on the contract.<sup>9</sup> The company said that the £30 million was a negotiated sum, which took account of the \$400 million paid to the United States Department of Justice as part of the

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<sup>6</sup> Q91

<sup>7</sup> Q74

<sup>8</sup> Q91

<sup>9</sup> Q29

global settlement, which covered many countries, and the overlaps between the US and UK investigations.<sup>10</sup>

### Ensuring payment is used effectively for development purposes

18. We wished to ensure that BAE Systems payment to Tanzania would be used effectively for development purposes in accordance with the settlement agreement. A problem in achieving this was the lack of precedents.

19. In June 2011, after this Committee had announced its inquiry, BAE Systems decided to establish an independent advisory board under the chairmanship of Lord Cairns to advise about expenditure in Tanzania. The company informed us that the Director of the SFO had agreed this was appropriate and that the Foreign and Commonwealth Office had been consulted about the broad approach.<sup>11</sup>

20. The SFO remained in contact with BAE Systems in relation to the payment, but believed that ensuring the payment to Tanzania was used effectively for development purposes was a matter for BAE Systems.<sup>12</sup>

21. The Department for International Development (DFID) informed us that it had not given any advice to BAE Systems on how the payment might be used, but had provided advice to the Director of the SFO and the Government of Tanzania.<sup>13</sup> From March 2010, DFID had worked with the Government of Tanzania to develop a proposal for spending the payment. The proposal, which the Government of Tanzania formally presented to the SFO on 16 November 2010, involved using the money to buy essential teaching materials and to improve classroom facilities and teachers' accommodation. The money would be allocated to the Government of Tanzania's budget line for the *Non- salary Education Block Grant*. The proposal included details of how the payment would be monitored and would be subject to independent evaluation and audit to international standards.

22. The Secretary of State for International Development wrote to the Chairman of BAE Systems on 3 July 2011 advising the company to adopt the Government of Tanzania proposal in full. The Secretary of State added that, as a lead donor in Tanzania, DFID would be in a position to help verify that the money was being used for its intended purpose.<sup>14</sup>

23. BAE Systems responded to the Secretary of State for International Development's letter on 15 July 2011,<sup>15</sup> stating that the company had not been informed of the discussions that other UK based organisations and the Government of Tanzania had been having in 2010, whilst the Agreement was *sub judice*. An impression had been created that the terms of the Settlement Agreement entitled the Tanzanian Government to receive payment direct from

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<sup>10</sup> Q30

<sup>11</sup> Q31

<sup>12</sup> Ev 35

<sup>13</sup> Ev 23

<sup>14</sup> Ev 28

<sup>15</sup> Ev 33

BAE Systems, but this was not the case. The company had received representations from many Tanzanian citizens, NGOs, and others opposed to a payment direct to the Tanzanian Government. These groups feared that the payment would not be used properly or in the best interests of the Tanzanian people.

24. The chairman of BAE Systems argued that the company should continue with its advisory committee, but said that he had asked Lord Cairns to consider the Government of Tanzania's proposal. Lord Cairns was minded to advise the company that, as a first step, the company make a payment to a third party, based on DFID's advice as to suitability, and acceptability to BAE Systems and the SFO. The company proposed that the operation of the scheme be reviewed after 12 months to determine whether the agreed objectives were being met

**25. BAE Systems acknowledges that it does not have the expertise to ensure that its ex gratia payment is used effectively for development purposes. Therefore, we were surprised that the company did not seek an early discussion with the Department for International Development, once the court proceedings had been concluded on 21 December 2010.**

**26. DFID has endorsed the proposal from the Government of Tanzania for the ex gratia payment to be used to top up the country's 'non salary education block grant'. Through providing essential teaching materials and improving classroom facilities and teachers' accommodation, this proposal would undoubtedly benefit the people of Tanzania. The inclusion in the proposal of a requirement for an external audit of the grants to be carried out to international standards will help ensure that the use of the funds for the benefit of the people of Tanzania can be demonstrated.**

**27. In any future payments of this kind, we recommend that DFID be involved in providing advice on the expenditure of the funds at an early stage.**

### **Timing and arrangements for making the payment**

28. An alarming feature of the BAE Systems case was the length of time it took to make the payments. BAE Systems explained that the Settlement Agreement with the SFO contained no deadline by which the sums had to be applied, no requirement that the funds be paid out for the benefit of any one class of beneficiary and no restrictions stipulating the payment of a single lump sum or multiple payments over time.<sup>16</sup>

29. We asked BAE Systems in July 2011 why it had not yet made any payment. The company had taken the view that although the Settlement Agreement was reached in February 2010, it was not appropriate to hold discussions before the Crown Court had passed sentence.<sup>17</sup> They had not held a discussion with the SFO to confirm that it was inappropriate to discuss the Settlement Agreement because both parties were working towards getting the matter before the Courts. There had also been an application for a judicial review, which could theoretically have set aside the settlement.<sup>18</sup> The Director of

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<sup>16</sup> Ev 32

<sup>17</sup> Q81

<sup>18</sup> Q82

the SFO confirmed that had been no detailed substantive discussions between BAE Systems and the SFO in the period between February 2010 and the Court hearing, but the question of what was going to happen to the payment was raised.<sup>19</sup>

30. After the fine had been imposed, BAE Systems set up a separate interest-bearing account in January 2011 to hold the funds set aside for the ex gratia payment.<sup>20</sup> In June, the company had established the independent advisory board, chaired by Lord Cairns, to take a responsible, measured and open approach to achieving the objective. In July, the company told us that it could be a matter of weeks before the first tranche of money was paid out,<sup>21</sup> but could not give a date for completion of the payments.<sup>22</sup>

31. The Director of the SFO accepted that the company could not have made a payment before December 2010 since the amount could not be known in advance of the Court hearing and because the judge could have said that he disagreed with the agreement. However, he did not agree with BAE Systems that the company were precluded from doing any preparatory work on possible mechanisms for disbursing the ex gratia payment between February 2010 and the final Court proceedings in December 2010.<sup>23</sup>

32. The Director of the SFO had expected the payment for the people of Tanzania to have been sorted out in the early months of 2011, by the end of March at the latest.<sup>24</sup> The Director accepted that there was a discrepancy between what BAE Systems and the SFO thought had been agreed as part of the Settlement Agreement. However, at a meeting with BAE Systems in February 2011, he had emphasised the need for speed, the need for transparency and the need to take the public with them. He thought that the sooner that BAE Systems made the payment in an open and transparent way the better.<sup>25</sup>

33. After the evidence In July we wrote to the chairman of BAE, urging him to accept the Secretary of State's proposals and indicating that we would call him to give evidence in person if he did not do so. In August he informed us that he would make the payments along these lines.

**34. The Settlement Agreement did not require BAE Systems to make the ex gratia payment by a specified date. We recognise that the payment could not have been made before the conclusion of the Court proceedings on 21 December 2010. Nevertheless, we are concerned that the payment for the 'benefit of the people of Tanzania' remained outstanding more than eight months after the Court hearing and that BAE Systems envisaged spreading payment over a period of years, describing the payments as 'our money'. Following our evidence session, we wrote to the Chairman of BAE Systems, urging the company in the strongest possible terms to pay immediately the full £29.5 million ex gratia payment to the Government of Tanzania in accordance with the**

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<sup>19</sup> Q102

<sup>20</sup> Q72

<sup>21</sup> Q35

<sup>22</sup> Q34

<sup>23</sup> Q100

<sup>24</sup> Q91

<sup>25</sup> Q94

proposals made by that Government and endorsed by DFID. Finally, the company agreed. We welcome this decision announced in a letter to the Committee Chair dated 19 August 2011 to make the payment to the Government of Tanzania and subsequent confirmation that it had made arrangements for the payment.

### Monitoring the Impact of the Payment

35. The Government of Tanzania made the following proposals for monitoring the payment. Routine monitoring of the support would be through the Government of Tanzania's public quarterly reporting on budget disbursements and expenditure and through annual audit reports produced at local government and national levels. An external, international standard targeted audit of the block grants would be undertaken within 18 months of the receipt of any funds. These proposals were endorsed by DFID.

36. Arrangements have been proposed to ensure that the objectives of the Government of Tanzania's proposal, funded by the ex gratia payment, are achieved. Nevertheless, we will monitor the situation to check that the promised additional textbooks, syllabi for teachers, desks for children, houses for teachers in remote areas and other materials have been delivered. To enable us to do this we recommend that DFID make periodic progress reports on their delivery.

### Proceedings against individuals in Tanzania

37. We were informed that corrupt payments might have been made by, or to, residents of Tanzania in relation to the sale of the air traffic control system.<sup>26</sup> We have asked the Government of Tanzania what action is being taken to bring those Tanzanians with a case to answer before the courts. The Tanzanian High Commissioner to the UK informed us that the Government of Tanzania had already stated its intention to ensure that individuals involved in the case face justice. **It is essential that all those involved in financial crime are dealt with appropriately, and that where there is a case to answer individuals are brought before the courts. We welcome the Government of Tanzania's plans to bring individuals before the courts and we will continue to monitor developments in relation to proceedings against individuals in Tanzania.**

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<sup>26</sup> Informal meeting between the Committee and representatives of the Parliament of Tanzania on 28 June 2011

## Future Settlement Agreements

38. The Settlement Agreement reached between BAE Systems and the SFO was the first time such an agreement had been reached in the UK. Deficiencies in the agreement were noted by the Crown Court judge, Mr Justice Bean, who observed that the agreement was loosely and perhaps hastily drafted.<sup>27</sup> This allowed the parties to hold different views on what had been agreed. Moreover, as we have seen, problems arose from the absence of specific timetables.

39. The Director of the SFO told the Committee that, if there were future agreements of the type agreed with BAE Systems, he would seek to put in more rigid timescales.<sup>28</sup> He noted that the judge was critical of the agreement, and that future agreements would need to be drafted more tightly. The SFO would learn from experience and would aim for better drafting of future agreements.<sup>29</sup>

**40. We recommend that future settlement agreements made by the SFO, on the basis of plea bargaining in relation to financial crimes, should be drawn much more tightly than the agreement concluded with BAE Systems. Specifically, the agreements should be explicit about what the those involved are required to do and include a timetable for the actions required of the company.**

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<sup>27</sup> Sentencing Remarks made by Mr Justice Bean in the case of R v BAE Systems PLC, paragraph 5

<sup>28</sup> Q91

<sup>29</sup> Q95

## 3 Legislation relating to financial crimes

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41. During this inquiry we considered whether changes to the law were required to ensure that British companies and individuals found guilty of financial crimes in developing countries are always required by the courts to make reparations to the developing country concerned. We also examined whether changes to legislation, including the Bribery Act 2010, were required.
42. NGOs were mainly concerned about the application of the Bribery Act 2010 and the implications of the statutory guidance which had been issued by the Ministry of Justice. Transparency International –UK<sup>30</sup> and Corner House<sup>31</sup> commented in detail on the reparations issue. No changes were sought to other legislation. The Government informed us that it had no plans to amend the Bribery Act 2010 or other legislation.

### Reparations to Developing Countries

43. Transparency- International – UK thought that there was nothing in existing anti-bribery laws and sentencing guidelines to prevent reparations being made to countries affected by financial crimes. It was concerned about transparency and clarity in some cases, and recommended that a review be undertaken, with a view to making the criteria for reparations payments more transparent. Corner House said that reparations should always be made to developing countries and emphasised that reparations must be seen as separate from other penalties imposed by the Courts. The SFO said that there were circumstances in which the law did not currently provide the Courts with powers to order reparations for financial crime involving developing countries, but did not recommend any changes to the law.<sup>32</sup>
44. **We did not receive proposals for changes to the law to facilitate the payment of reparations to developing countries by British companies found guilty of financial crimes. Existing legislation allows for reparations to be made in a number of circumstances and we note the SFO’s view that a reparations payment may not always be appropriate. We do not recommend any changes to the legislation at this point in time. We recommend that, as in the BAE case, payments be proportionate to the offence.**

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<sup>30</sup> Ev w48

<sup>31</sup> Ev w13

<sup>32</sup> Ev 36

## Bribery Act 2010

45. The Bribery Act 2010 came into force on 1 July 2011. The statutory guidance to commercial organisations on ways to prevent bribery, required under Section 9 of the Act, was issued by the Ministry of Justice on 30 March 2011, following a consultation exercise.
46. A number of NGOs criticised the Ministry of Justice’s guidance. Christian Aid was concerned that the Act would not apply to a UK company that only had a listing on the London Stock Exchange and no other operational activities in the UK.<sup>33</sup> Global Witness considered that the guidance had raised doubts about whether companies would be held responsible for the actions of their joint venture partners and subsidiaries.<sup>34</sup> Corner House felt that the guidance had created several loopholes that could allow companies to pay bribes.<sup>35</sup>
47. The Director of the SFO told us that the Bribery Act was a big improvement over the pre-Bribery Act legislation, which had required the prosecutor to prove that corruption had “emanated from the directing mind of the organisation... Basically, we had to prove that the company board or people very close to it were involved in the corrupt payments”. He saw no need for changes to the Bribery Act at this stage.<sup>36</sup> **We do not recommend any changes to the Bribery Act 2010 at this very early stage in the life of the Act.**

## Judicial Involvement

48. The Director of the SFO told the Committee that changes were needed because cases involving financial crime presented new issues which judges and prosecutors had not come across before. He believed that there needed to be earlier judicial involvement in the process.<sup>37</sup>
49. Reflecting on the BAE Systems case, the Director of the SFO had concluded that it was unsatisfactory that he had had to reach a settlement without judicial involvement. He informed us that that in cases of financial crimes involving plea bargaining, it would be helpful if the SFO and company involved could take a proposed resolution to a judge before the criminal justice process has been engaged by a formal charge.<sup>38</sup> He saw judicial involvement in reaching a settlement as a way of providing public confidence in the decisions.<sup>39</sup>

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<sup>33</sup> Ev w26

<sup>34</sup> Ev w30

<sup>35</sup> Ev w11

<sup>36</sup> Q105

<sup>37</sup> Q 98

<sup>38</sup> Ev 39

<sup>39</sup> Q99

50. We asked the witnesses from the Ministry of Justice about the Director of the SFO's proposals for judicial involvement in plea bargaining in cases of complex financial crimes cases. They told us that the kind of plea bargaining which was common in the United States was rare in the UK, and judges had vigorously opposed proposals which pre-empted the court process. The Law Officers were currently consulting on guidelines on plea discussions, including the possibility of involving the judiciary in plea bargaining cases at an earlier stage.<sup>40</sup> Lord McNally acknowledged that the SFO's evidence in support of earlier judicial involvement highlighted the need for the Government to come to a decision.<sup>41</sup>
51. **The Director of the SFO has proposed that, in cases of complex financial crimes involving plea bargaining, there should be the possibility of taking a proposed resolution to a Judge before the criminal justice process had been engaged by a formal charge. This is a matter which has been much discussed by legal experts and is beyond our remit. Nevertheless, we recommend that the Government respond to the Director of the SFO's proposal.**

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<sup>40</sup> Q131

<sup>41</sup> Q132

## 4 Government Policies on Transnational Crime

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52. NGOs had concerns about a number of aspects of the Government's policies on transnational crime. Global Witness argued that the BAE Systems case had demonstrated that Government needed a 'more joined up approach' to corruption and should adopt an anti-corruption strategy. The organisation drew attention to an Anti-Corruption paper published by BOND, which recommends the establishment of 'a cross- Whitehall anti-corruption framework' and an enhanced role for the Government's 'Anti-Corruption Champion'.<sup>42</sup>
53. Transparency International-UK argued that there was a lack of transparency in the process of investigating and prosecuting financial crimes. It recommended that the Secretary of State for Justice, as the Government's Anti-Corruption Champion, should produce an Action Plan for dealing with corruption and that annual progress reports should be published on the implementation of the Plan.<sup>43</sup>
54. Corner House was concerned about Article 5 of the OECD Anti-Bribery Convention, which holds that "investigation and prosecution of the bribery of a foreign public official..... shall not be influenced by the potential effect upon relations with another State or the identity of the natural or legal persons involved". Corner House argued that Article 5 could not be enforced in the UK and, as a result, UK prosecuting authorities might continue to be obliged to stop politically embarrassing investigations and prosecutions.<sup>44</sup>
55. We asked Lord McNally to comment on the Transparency International- UK proposals for a Government action plan and annual reports on corruption. He told us that he would discuss the idea with the Secretary of State for Justice. While the Government would not be in favour of formulaic annual reports, it was willing to look at how to strengthen anti-corruption activity.<sup>45</sup>
56. We asked the Ministry of Justice representatives about the Corner House claim that Article 5 of the Anti-Bribery Convention could not be enforced in the UK and that politically sensitive prosecutions of financial crimes could be blocked by the Law Officers or Government Ministers. They told us that under the Bribery Act 2010 the Director of the Serious Fraud Office or the Director of Public Prosecutions had to consent to a prosecution.<sup>46</sup> While they were unable to provide an assurance that the Law Officers would never issue advice against proceeding with a prosecution, they<sup>47</sup> assured us that the joint prosecution guidance on the Bribery Act 2010, issued by the

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<sup>42</sup> Ev w23

<sup>43</sup> Ev w35

<sup>44</sup> Ev w11

<sup>45</sup> Q 126

<sup>46</sup> Q 136

<sup>47</sup> Q 137

Director of the Serious Fraud Office and the Director of Public Prosecutions, referred specifically to Article 5 of the OECD Anti-Bribery Convention.<sup>48</sup> It was the Government's intention to abide by the convention.<sup>49</sup>

- 57. There is a need to inform the public about the investigation and prosecution of transnational financial crimes. We recommend that the Government publish an annual Anti-Corruption Report which lists what the Government is doing to combat international corruption, including transnational financial crimes.**

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<sup>48</sup> Q138

<sup>49</sup> Q139

## Conclusions and recommendations

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### Ensuring payment is used effectively for development purposes

1. BAE Systems acknowledges that it does not have the expertise to ensure that its ex gratia payment is used effectively for development purposes. Therefore, we were surprised that the company did not seek an early discussion with the Department for International Development, once the court proceedings had been concluded on 21 December 2010. (Paragraph 25)
2. DFID has endorsed the proposal from the Government of Tanzania for the ex gratia payment to be used to top up the country's 'non salary education block grant'. Through providing essential teaching materials and improving classroom facilities and teachers' accommodation, this proposal would undoubtedly benefit the people of Tanzania. The inclusion in the proposal of a requirement for an external audit of the grants to be carried out to international standards will help ensure that the use of the funds for the benefit of the people of Tanzania can be demonstrated. (Paragraph 26)
3. In any future payments of this kind, we recommend that DFID be involved in providing advice on the expenditure of the funds at an early stage. (Paragraph 27)

### Timing and arrangements for making the payment

4. The Settlement Agreement did not require BAE Systems to make the ex gratia payment by a specified date. We recognise that the payment could not have been made before the conclusion of the Court proceedings on 21 December 2010. Nevertheless, we are concerned that the payment for the 'benefit of the people of Tanzania' remained outstanding more than eight months after the Court hearing and that BAE Systems envisaged spreading payment over a period of years, describing the payments as 'our money'. Following our evidence session, we wrote to the Chairman of BAE Systems, urging the company in the strongest possible terms to pay immediately the full £29.5 million ex gratia payment to the Government of Tanzania in accordance with the proposals made by that Government and endorsed by DFID. Finally, the company agreed. We welcome this decision announced in a letter to the Committee Chair dated 19 August 2011 to make the payment to the Government of Tanzania and subsequent confirmation that it had made arrangements for the payment. (Paragraph 34)

### Monitoring the impact of the Payment

5. Arrangements have been proposed to ensure that the objectives of the Government of Tanzania's proposal, funded by the ex gratia payment, are achieved. Nevertheless, we will monitor the situation to check that the promised additional textbooks, syllabi for teachers, desks for children, houses for teachers in remote areas and other materials have been delivered. To enable us to do this we recommend that DFID make periodic progress reports on their delivery. (Paragraph 36)

## Proceedings against individuals in Tanzania

6. It is essential that all those involved in financial crime are dealt with appropriately, and that where there is a case to answer individuals are brought before the courts. We welcome the Government of Tanzania's plans to bring individuals before the courts and we will continue to monitor developments in relation to proceedings against individuals in Tanzania. (Paragraph 37)

## Future Settlement Agreements

7. We recommend that future settlement agreements made by the SFO, on the basis of plea bargaining in relation to financial crimes, should be drawn much more tightly than the agreement concluded with BAE Systems. Specifically, the agreements should be explicit about what those involved are required to do and include a timetable for the actions required of the company. (Paragraph 40)

## Reparations to Developing Countries

8. We did not receive proposals for changes to the law to facilitate the payment of reparations to developing countries by British companies found guilty of financial crimes. Existing legislation allows for reparations to be made in a number of circumstances and we note the SFO's view that a reparations payment may not always be appropriate. We do not recommend any changes to the legislation at this point in time. We recommend that, as in the BAE case, payments be proportionate to the offence. (Paragraph 44)

## Changes to Bribery Act, 2010

9. We do not recommend any changes to the Bribery Act 2010 at this very early stage in the life of the Act. (Paragraph 47)

## Judicial Involvement

10. The Director of the SFO has proposed that, in cases of complex financial crimes involving plea bargaining, there should be the possibility of taking a proposed resolution to a Judge before the criminal justice process had been engaged by a formal charge. This is a matter which has been much discussed by legal experts and is beyond our remit. Nevertheless, we recommend that the Government respond to the Director of the SFO's proposal. (Paragraph 51)

## Government Policies on Transnational Crime

11. There is a need to inform the public about the investigation and prosecution of transnational financial crimes. We recommend that the Government publish an annual Anti-Corruption Report which lists what the Government is doing to combat international corruption, including transnational financial crimes. (Paragraph 57)

# Formal Minutes

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**Tuesday 15 November 2011**

Members present:

Malcolm Bruce, in the Chair

Richard Harrington  
Pauline Latham  
Jeremy Lefroy

Mr Michael McCann  
Chris White

Draft Report (*Financial Crime and Development*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 57 read and agreed to.

Summary agreed to.

*Resolved*, That the Report be the Eleventh Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for placing in the Library and Parliamentary Archives.

[Adjourned till Wednesday 23 November at 3.15 pm]

## Witnesses

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### Tuesday 19 July 2011

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|--|-------------|
| <b>Bob Keen</b> , Head of Government Relations, and <b>Philip Bramwell</b> , Group General Counsel, BAE Systems and <b>Lord Cairns</b> , Chair, Advisory Board on Tanzania   | Ev 1        |
| <b>Richard Alderman</b> , Director, Serious Fraud Office   | Ev 10       |
| <b>Rt Hon Alan Duncan MP</b> , Minister of State, <b>Joy Hutcheon</b> , Acting Director General of Country Programmes, <b>Phil Mason</b> , Head, Anti-Corruption, Department for International Development, and <b>Rt Hon Lord McNally</b> , Minister of State, and <b>Rosemary Davies</b> , Legal Director, Ministry of Justice | Ev 16       |

## List of printed written evidence

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|   |   |                                   |
|---|---|-----------------------------------|
| 1 | DFID  | Ev 23: Ev 28                      |
| 2 | BAE Systems   | Ev 29: Ev 30: Ev 33: Ev 34: Ev 35 |
| 3 | Serious Fraud Office  | Ev 35: Ev 39                      |
| 4 | Letter from the Chair of the IDC to the Chairman, BAE Systems Plc                                   | Ev 40                             |
| 5 | Letter from the Chair of the IDC to the Chairman, BAE Systems Plc                                   | Ev 40                             |
| 6 | Letter from BAE Systems to Minister of Finance, Government of Tanzania                              | Ev 40                             |
| 7 | Letter from IDC to the Tanzania High Commissioner   | Ev 40                             |
| 8 | Letter from the Tanzanian High Commissioner to the Chair of the International Development Committee | Ev 41                             |

## List of additional written evidence

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(published in Volume II on the Committee's website [www.parliament.uk/indcom](http://www.parliament.uk/indcom))

|   |                               |                |
|---|-------------------------------|----------------|
| 1 | Campaign against Arms Trade   | Ev w1: Ev w3   |
| 2 | Cornerhouse                   | Ev w5: Ev w25  |
| 3 | Christian Aid                 | Ev w25         |
| 4 | Sir Edward Clay               | Ev w28         |
| 5 | Global Witness                | Ev w28         |
| 6 | Sarah Hermitage               | Ev w40         |
| 7 | Tearfund and CAFOD            | Ev w43: Ev w45 |
| 8 | Transparency International UK | Ev w46         |

## List of Reports from the Committee during the current Parliament

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The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

### Session 2010–12

|                |   |                 |
|----------------|---|-----------------|
| First Report   | Appointment of the Chief Commissioner of the Independent Commission for Aid Impact  | HC 551          |
| Second Report  | The 2010 Millennium Development Goals Review Summit   | HC 534 (HC 959) |
| Third Report   | Department For International Development Annual Report & Resource Accounts 2009–10  | HC 605 (1043)   |
| Fourth Report  | The World Bank  | HC 999 (1044)   |
| Fifth Report   | The Future of CDC   | HC 607 (1045)   |
| Sixth Report   | Scrutiny of Arms Export Controls (2011): UK Strategic Export Controls Annual Report 2009, Quarterly Reports for 2010, licensing policy and review of export control legislation | HC 686          |
| Seventh Report | The Humanitarian Response to the Pakistan Floods  | HC 615 (1435)   |
| Eighth Report  | The Future of DFID's Programme in India   | HC 616          |
| Ninth Report   | DFID's Role in Building Infrastructure in Developing Countries  | HC 848          |
| Tenth Report   | The Closure of DFID's Bilateral Aid Programme in Burundi  | HC 1134         |

# Oral evidence

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## Taken before the International Development Committee

on Tuesday 19 July 2011

Members present:

Malcolm Bruce (Chair)

Hugh Bayley  
Richard Burden  
Pauline Latham  
Jeremy Lefroy

Chris White  
Mr Michael McCann  
Anas Sarwar

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### Examination of Witnesses

*Witnesses:* **Bob Keen**, Head of Government Relations, BAE Systems, **Philip Bramwell**, Group General Counsel, BAE Systems, and **Lord Cairns**, Chair, Advisory Board on Tanzania.

**Q1 Chair:** Can I bid you good morning and thank you for coming to give evidence before the Committee? As you know, we are looking into the wider context of financial crimes and the implications of the Bribery Act, but specifically the issue of the Tanzanian contract for air traffic control systems. First of all, could you introduce yourselves for the record?

**Bob Keen:** Thank you Chairman. My name is Bob Keen, and I am the head of Government Relations for BAE Systems.

**Philip Bramwell:** My name is Philip Bramwell, and I am the Group General Counsel of BAE Systems.

**Lord Cairns:** I am Simon Cairns, Lord Cairns. I have taken on the role as the Chairman of the Independent Committee to advise on the distribution of the funds in question.

**Q2 Chair:** I will start by saying that BAE is a British company that pleaded guilty to an offence in the UK relating to improper record-keeping or improper accounting. Can you explain why this should result in what appear to be reparations of £29.5 million being paid “for the benefit of the people of Tanzania”, and indeed what calculation was made to establish the loss the people of Tanzania suffered as a result of what appears to be just a book-keeping offence?

**Bob Keen:** On the basis of the settlement that we reached with the Serious Fraud Office, the company, in discussion with the SFO, considered it appropriate to make a payment for the benefit of the people of Tanzania, based on the fact that the settlement referred to an offence that related to a contract in Tanzania. The quantum was discussed in negotiations with the Serious Fraud Office; I will ask Mr Bramwell to say a word about the quantum.

**Philip Bramwell:** The quantum from the company’s perspective bore no relation to the value of the contract in Tanzania, which at the economics of the time was around £24.5 million. Instead it was in relation to: the investigation that had been going on for some time by the SFO; the quantum of the US settlement; and the differential factor of circumstances underpinning the US settlement on the one hand, and the UK settlement on the other. The amount of £30 million was arrived at as a component part of the

global settlement of investigations on both sides of the Atlantic.

The second issue, of how that money should be applied, was a separate issue. There was no consideration given to reparation to any one group of people, and particularly not in relation to this contract.

**Q3 Chair:** Mr Justice Bean said he was “astonished” at the claim made by BAE that they were not corrupt. He said it was “naïve in the extreme” to believe that.

**Philip Bramwell:** Mr Justice Bean chose to draw an inference from the evidence put before him, which was not invited by the Serious Fraud Office, and certainly with which the company does not agree.

**Q4 Chair:** That basically is because it was a plea bargain, was it not? You pleaded guilty to a lesser charge because you had an agreement with the SFO.

**Philip Bramwell:** No, I do not think it was a plea bargain in that sense. It was a settlement that reflected the facts and the evidence available to the Serious Fraud Office and the company.

**Q5 Chair:** So in response to a simple book-keeping error, British Aerospace, in its magnanimity, decided to give £29.5 million to the people of Tanzania?

**Philip Bramwell:** No, I do not think I would characterise it that way. I should say that it is not British Aerospace—that company ceased to exist in 2000. I would instead say that BAE Systems, as part of a global settlement with both the SFO and the DOJ, paid an amount of £30 million to the Serious Fraud Office, or was willing to do so. The issue then arose as to whether or not the best use of those funds was to go to the UK Treasury or to be applied elsewhere.

**Chair:** We will come back to that.

**Q6 Hugh Bayley:** Was the decision to vire part of the penalty from the form of a fine to a payment to benefit the people of Tanzania first proposed by the Serious Fraud Office or by your company?

**Philip Bramwell:** We tried hard to recollect in a long and complex negotiation who first suggested that. I think on balance we cannot be certain whether it was proposed by the SFO or initially by the company in the middle of that negotiation. All I can say usefully

is that we agreed that that seemed like a good thing to do.

**Q7 Hugh Bayley:** It is nevertheless clear that the company made the offer as a mitigating factor in order to reduce the size of the fine that was going to be imposed on it.

**Philip Bramwell:** No, actually that was not the intent.

**Q8 Hugh Bayley:** With great respect, it is what the Director of the SFO and your company jointly said in the joint sentencing submissions. Perhaps you should remind yourself of what you said at that time.

**Philip Bramwell:** My recollection, and I was present at the negotiations, was that it was a settlement that we were paying to the SFO. What we could not do was prejudice or in any way fetter the sentencing discretion of the court. We were aware of other settlement discussions that had gone on and we were anxious to make sure that we had an amount of money, which was paid by way of settlement, from which a fine would be assessed. Until such time as the court was able to assess that fine—

**Q9 Hugh Bayley:** If I may interrupt you, in this document, which your company has put its name to as it is a joint sentencing submission, under the heading “Mitigating Features” it says that the company has agreed to make a voluntary payment “for the benefit of the people of Tanzania”. At the time you were in front of a judge in the court you accepted that the payment was intended to be a mitigating factor.

**Philip Bramwell:** Are you referring to the transcript of the hearing or the joint sentencing submission to the Crown Court?

**Hugh Bayley:** No, I am talking about the sentencing submission itself.

**Philip Bramwell:** If that is what was actually said in court, and that is what it says there, plainly, I do not dissociate myself from that. What was said in court subsequently by legal counsel on behalf of the company in mitigation was that the company sought, through making this payment, an opportunity to restore its reputation.

**Q10 Hugh Bayley:** Could I ask why your company paid Mr Vithlani 31% of the contract price?

**Philip Bramwell:** That was our contractual obligation having acquired Siemens Plessey radar company in 1998. The overall level of commission was actually reduced.

**Q11 Hugh Bayley:** But it was reduced to 31%, was it not?

**Philip Bramwell:** Yes.

**Q12 Hugh Bayley:** So the 31% figure is accurate is it not? It was reduced from 40% to 31%. What were you buying with the sum of £12 million—can you remind the Committee what the sum was?

**Philip Bramwell:** Ultimately it was £12 million, yes.

**Hugh Bayley:** What were you buying with that money?

**Philip Bramwell:** Complete in-country marketing representation.

**Q13 Hugh Bayley:** It says in the submission the Director of the SFO made to the court that the contract was for the provision of various services as required by your company, with regard to activities in Tanzania, including, if required, advice for financial and commercial aspects of doing such business. Is it normal to pay a £12 million commission for representation in a foreign country?

**Philip Bramwell:** I think that would depend on the length of programme and whether or not a company would at that time have a representation. It is certainly not something the company would do today.

**Q14 Hugh Bayley:** It says here that British Aerospace accepted, as part of their plea, that “there was a high probability that part of the \$12.4 million would be used in the negotiation process to favour British Aerospace Defence Systems Limited”. What does that phrase mean, “to favour”?

**Philip Bramwell:** To promote, to lobby and to do all that could be done in the competitive process to secure the contract for British Aerospace as it then was.

**Q15 Hugh Bayley:** Did the lobbying include payments being made to third parties?

**Philip Bramwell:** It did not.

**Q16 Hugh Bayley:** So what did Mr Vithlani use the \$12.4 million for?

**Philip Bramwell:** As we have said in the company’s most recent submission of evidence, Mr Vithlani received no retainer of any description. He alone assumed the risk of representing the company for a long period of time; there were seven years where he was without payment of any commission at all. I do not think the company today would invest that much risk in any one individual.

**Q17 Chair:** Would you be allowed to, given the Bribery Act?

**Philip Bramwell:** I do not think the Bribery Act itself would prohibit it, but the company’s own procedures would say that paying that level of commission is not something that we as a company believe we can responsibly do in this day and age.

**Q18 Chair:** Mr Justice Bean said that it was “naïve in the extreme” to think Mr Vithlani was simply a well-paid lobbyist. He said, “There was a high probability that part of the \$12.4 million would be used in the negotiation process to favour British Aerospace Defence Systems Limited”. What did that mean, “used in the negotiation process to favour”?

**Philip Bramwell:** I can only refer you to the SFO’s own case; I know Mr Alderman is appearing before you. The SFO was very clear before the court that it was no part of its case that any corrupt payments had been made in connection with this contract. After five years of investigation that was its factual conclusion.

**Q19 Chair:** That was the SFO’s case; the judge did not accept that.

**Philip Bramwell:** The judge chose to draw an inference at the time, which was no part of the SFO’s case and which the company does not accept. There

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19 July 2011 Bob Keen, Philip Bramwell and Lord Cairns

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were five years of investigation of this contract and the company provided, as we said in our evidence, many thousands of pages of documents in support, and that was the conclusion of the SFO.

**Q20 Hugh Bayley:** What evidence did you require Mr Vithlani to provide you with about where this money went?

**Philip Bramwell:** We required Mr Vithlani to enter into a contract that, amongst other things, had provisions making clear as to what his role was in support of marketing activities of the company and representation over the seven-year period prior to the contract and the 12-year totality of his representation. This had explicit business conduct requirements prohibiting the payment of bribes in any way.

**Q21 Hugh Bayley:** Is Mr Vithlani being investigated by the Tanzanian authorities?

**Philip Bramwell:** I am afraid we have no way of knowing that; it is a question you would need to direct to the Tanzanian authorities.

**Q22 Hugh Bayley:** Finally I wanted to ask what measures British Aerospace has put in place to prevent a repetition of this kind of event.

**Philip Bramwell:** Thank you for that question. We have summarised, in our first tranche of evidence, the steps that we have taken over the past four years in the most recent refresh of the company's policies. In 2007 we instituted a new Global Code of Conduct and at that time we terminated all of our existing international marketing adviser arrangements so as to reset them in accordance with new standards and new commercial terms. Shortly thereafter we commissioned Lord Woolf and a committee of experts to produce a report for the company on what steps it could take to ensure that the company achieved its aspiration of becoming publicly recognised as being a leader in business conduct. The committee reported the following year in May 2008 and made 23 recommendations, which the company had a year before it committed itself to implementing in full, irrespective of what they were. The committee also recommended that three years on from the publication of its report the company get an independent assessment of the extent to which the company had succeeded in implementing the 23 recommendations in full. That report was done by a company called the Ethical Leadership Group in Washington DC; it was a detailed and extensive view of the company's actions in the intervening three years since the Woolf Report recommendations were made. The Ethical Leadership Group's report, which is published on the company's website, confirms that the company has indeed implemented in full the 23 recommendations.

**Bob Keen:** Could I just make one specific additional point? In relation to Lord Woolf's report, he does make some specific comments about the company's policies and processes towards the engagement of marketing advisers and he sets out the principles on which those engagements would be met, including some of the red flags, as the company describes it, which would prevent the engagement of advisers in the future.

**Q23 Richard Burden:** My colleague Hugh Bayley quoted from paragraph 24 of the Note for Opening at the Crown Court where it said that, "There was a high probability that part of the \$12.4 million would be used in the negotiation process to favour British Aerospace Defence Systems Limited". However, it then goes on in paragraph 25 to say, "Accordingly, BAE has accepted that there was a high probability that the payments to Vithlani were intended to compensate him for work done in seeking to persuade relevant persons to favour BAEDS in respect of the radar project. It is not now possible to establish precisely what Vithlani did with the money which was paid to him." Does that paragraph just repeat the paragraph before or is it saying something else?

**Bob Keen:** It does re-emphasise what Mr Bramwell has already said, which is that our belief is that Mr Vithlani was operating in Tanzania seeking, in the way that business development people do in every walk of life, to persuade potential customers to acquire products and services from any particular company. So I think it was re-emphasising what Mr Bramwell has already said.

**Q24 Richard Burden:** Do you feel that Mr Vithlani was operating in a way that he would in any walk of life?

**Bob Keen:** What I was suggesting was that, as Mr Bramwell has said, he would be carrying out lobbying and other business development marketing activities in Tanzania.

**Q25 Richard Burden:** Why is the word "compensate" used? It follows on from the previous paragraph, and says there is a high probability that payments to Mr Vithlani were "intended to compensate him for work done".

**Philip Bramwell:** Compensation for work done is entitlement to reward under a contract for services performed.

**Q26 Richard Burden:** So when you get your fee from the company, do you describe that as receiving compensation?

**Philip Bramwell:** Yes.

**Q27 Richard Burden:** You do?

**Philip Bramwell:** So in the reports of a public company there is a directors' compensation report.

**Q28 Hugh Bayley:** Could I just follow that up? If this was an entirely legitimate business activity common in any jurisdiction, to use your words, why on earth was this mentioned in the opening submission to the court as something particular and worth noting, and which the judge ought to be aware of? Surely this was in the document to suggest that something improper might have been done with that money.

**Philip Bramwell:** I think it is an important fact associated with this contract and with the payment to Mr Vithlani, the amount of which was extraordinary by reference to today's standards. It is therefore only right that it should be brought before the court's attention.

**Hugh Bayley:** Thank you. I take that as a yes.

**Q29 Pauline Latham:** Can you tell us how the figure of £30 million for potential reparations was determined? You said it was not broadly equivalent to the value of the contract to supply the air traffic systems, so would you say the figure of £30 million relates to any estimate of the amount of overcharging in the contract?

**Philip Bramwell:** No, no.

**Q30 Pauline Latham:** Where did £30 million come from?

**Philip Bramwell:** It was a negotiated sum, actually by reference to the \$400 million paid to the United States Department of Justice in connection with the settlement as well. This was a wide-ranging negotiation about a global settlement, and the relative facts addressed on either side of the Atlantic, because there were some overlaps in the US and UK investigations, and the SFO was anxious to avoid a double jeopardy, double penalty situation, the company having settled on one set of facts, which included facts being investigated by the Department of Justice and therefore settled in Washington DC. On the UK side, the settlement therefore was covering different sets of facts—the remaining ambit, as it were, of the SFO investigation. So from the company's perspective, that was how the number was arrived at during the settlement discussions.

**Q31 Pauline Latham:** Earlier you talked about paying it to the Treasury. You have not paid it to anybody yet: the Treasury, the Government of Tanzania, nobody. Why not?

**Philip Bramwell:** I have a service to ensure above all things that we take a responsible, measured and open approach to achieving the objective that we agreed with the SFO, which was to make the payment for the benefit of the people of Tanzania. So we have been pursuing that path since the Crown Court passed sentence in relation to the accounting matter and we knew how much was in issue. We deposited the money in a Treasury account, separate and distinct from the company's working capital, it is accruing interest at LIBID and so there is no diminution in value of the funds.

I went to the Foreign Office in January saying what our broad approach was going to be. We are concerned that we should apply our responsible trading principles to this as we would to any other arrangement. We recognise we do not have international development expertise, so in February I went and saw the Director of the SFO and said that we intend to form an advisory board to bring to the company independent expert advice on international development. The Director agreed that that was an appropriate approach, and since then we have been systematically convening the advisory board, agreeing its terms of reference and proceeding towards our goal.

**Q32 Pauline Latham:** It is not benefiting any person in Tanzania whatsoever at the moment, whilst it is sitting in a bank account. How much is it costing for

this advisory board, and is that coming out of that money?

**Philip Bramwell:** No, the advisory board are giving their services entirely free of charge. To the extent that they incur travel expenses, for example in going to Tanzania if they intend upon doing so, the company would reimburse that, but none of that would come from the fund; the fund is ring-fenced.

**Q33 Pauline Latham:** Left to your own devices, how long do you think this might take, how many more years?

**Philip Bramwell:** In January we were hoping it was going to be a matter of a few months. Our priority, as we have said, is to get this right. Plainly we would like to do it as quickly as possible, but most of all, bearing in mind the various competing submissions that we have received unsolicited from interested parties, we recognise we have a difficult course to navigate to satisfy all those parties who have very strong views as to how this money should be spent to deliver a sustainable benefit to the people of Tanzania.

**Q34 Pauline Latham:** You have just said you had hoped it would be a matter of months; how many years do you anticipate it will be?

**Philip Bramwell:** I really cannot say. We have made an offer on the advice of Lord Cairns in recent days, to pay away an initial tranche of money. We have made that offer to DFID and we have yet to receive a response.

**Q35 Pauline Latham:** So it could be years?

**Philip Bramwell:** It could be weeks before the first tranche is paid out. What the company will do in paying away its shareholders' money, I should hasten to add—

**Q36 Chair:** Hang on, this was an agreement with the SFO in front of the court. Do people not find it extraordinary that you still consider this shareholders' money? This is money you paid away for a settlement, but you still regard it as shareholders' money.

**Philip Bramwell:** The company has no money other than its shareholders' money, Chairman.

**Q37 Chair:** You do not have any money if you have paid it away. It is no longer your money; it does not belong to the shareholders either.

**Philip Bramwell:** It is in a ring-fenced account, but its origins are from shareholders and it is to the shareholders and the general public that we must account responsibly for its expenditure.

**Q38 Chair:** Do you really find that a credible position for your company to take? I do not think many other people would.

**Philip Bramwell:** I would have thought that this Committee would recognise that above all things the company, given the context of this settlement, must ensure that it behaves responsibly and openly in every manner with regard to the discharge of these funds.

**Pauline Latham:** It is not very open.

**Chair:** This is an agreement that the company has entered into freely and signed up to.

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**Q39 Chris White:** Are you saying there is an opportunity to take back that money? So if the shareholders wish to abandon the £30 million—

**Philip Bramwell:** No, the company has entered into a binding agreement with the SFO.

**Q40 Chris White:** So you may wish to correct your previous response; it has no influence from shareholders.

**Philip Bramwell:** I did not say the company had influence from shareholders, I said the company had a duty to shareholders to act responsibly with regard to the application of their funds.

**Pauline Latham:** It is not their funds now.

**Q41 Chris White:** I would suggest, and I am sure other members of the Committee would also suggest, that it is no longer their funds.

**Philip Bramwell:** But the origin of the money is shareholders; that is the only place public companies get their money.

**Q42 Chair:** That is true of anything you pay out. If you go out and buy equipment to manufacture your products and you pay suppliers; once you have paid it to the suppliers it is no longer your shareholders' money.

**Philip Bramwell:** We are answerable to the shareholders for, for example, the manner in which we buy that equipment, and to ensure that appropriate processes are applied.

**Q43 Chris White:** To boil it down, you have been fined and presumably there is no way you could take back that fine.

**Philip Bramwell:** This is what we were anxious to clarify in our evidence to the Committee. Had the obligation to make a payment for the benefit of the people of Tanzania been a matter of the court's decision and direction that would be a different matter, but it is actually the subject of an agreement. So the court can say, "We impose a fine of £500,000 payable within 30 days. Thank you very much." Payment made. The agreement between the SFO and the company, as we said in our evidence, contains no such temporal limitation, no delineations as to who the beneficiary should be; it merely has an object. In achieving that objective the company is concerned only to ensure that it proceeds in a responsible manner, applying its responsible trading principles, as I know members of this Committee would want it to do.

**Chair:** I think members of this Committee would have a different view as to how it should be done.

**Q44 Pauline Latham:** You said a few minutes ago you had been in contact with DFID and had not had a reply.

**Bob Keen:** I think what Mr Bramwell was talking about was the exchange of correspondence between the Secretary of State for International Development and the company's Chairman. The Secretary of State wrote to the Chairman on 3 July and the Chairman responded last Friday.

**Q45 Pauline Latham:** Yes, so you would not really have expected by Tuesday to have received a considered response from DFID.

**Bob Keen:** Indeed, that is right.

**Q46 Pauline Latham:** So to say that you have not had a response and it might be a matter of weeks is slightly misleading.

**Bob Keen:** I think what Mr Bramwell was saying was that we have made a proposal and if we can find a way forward with DFID to meet the objectives of the payment and the scheme that had been proposed to us then that first payment could be made in a matter of weeks.

**Q47 Pauline Latham:** How much is that first payment proposed to be?

**Bob Keen:** We have not made it specifically clear but we have in mind a payment in the region of £10 million.

**Q48 Pauline Latham:** So a third of it; what would you do with the other two thirds?

**Bob Keen:** In the Chairman's letter to the Secretary of State we have said that we would review the operation of the scheme after a period of 12 months to make sure that it is meeting its objectives and that Lord Cairns, on the basis of that evidence, could advise on whether it is appropriate for further funds to be made available for that particular scheme, given the other representations we have had from other groups as to how the money should be used.

**Q49 Pauline Latham:** So you are not actually proposing to spend all of it in a matter of weeks, you are proposing to spend a third of it, if it is possible to get an agreement with DFID.

**Bob Keen:** Absolutely.

**Pauline Latham:** But that might not be the case

**Bob Keen:** We very much hope that it will be. As Dick Olver's letter makes clear, we think the approach we have proposed is a reasonable and considered one. We hope that collectively with DFID and the Government of Tanzania we can find a way forward to make the initial payment as soon as possible.

**Q50 Pauline Latham:** In the letter it says, "It really would be most unfortunate if they stuck to some of the threatening noises we have heard in recent weeks and spoiled a very good opportunity to help people see real benefit." What are these threatening noises?

**Bob Keen:** We have been made aware of media reports attributing comments to Tanzanian Government officials that talk about NGOs receiving money from BAE Systems as part of this approach not being welcome in Tanzania in the future. We hope that we won't reach that point. We are hoping that we are going to find an agreed way forward with both DFID and the Tanzanian Government that will enable us to fulfil the objective of the scheme, which is to find a payment that will benefit the people of Tanzania.

**Q51 Anas Sarwar:** Mr Bramwell quite rightly says that the company has a responsibility to its

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shareholders. Does the company not also have a responsibility to the court, the public and the people of Tanzania?

**Philip Bramwell:** Indeed, and it bears all of those responsibilities in mind in seeking to take a measured, balanced and open approach to the application of these moneys.

**Q52 Anas Sarwar:** Based on the response you gave around the question you have with your shareholders and the fact the money is ring-fenced, where does the principle of common good fit into BAE Systems?

**Philip Bramwell:** The common good in what respect?

**Q53 Anas Sarwar:** The common good in terms of the public and the impact of the company on the people it operates with. You tell me what you understand the common good to mean.

**Philip Bramwell:** It is not a phrase that we use in the corporate responsibility world as such. As with all public companies, the company has responsibilities to a whole variety of stakeholders, in the language of corporate responsibility. We recognise that there are many stakeholders with regard to this matter, the most important of which are the people of Tanzania, who we and the SFO agreed in February 2010 that we would like to benefit, and navigating the complexity of doing that in a responsible and open manner is something that we are addressing as a priority. We think we have made good progress in getting the right expertise on board, in the shape of Lord Cairns, so that we are able to account to the people of Tanzania, to the company's stakeholders, and indeed to the many people who have written to the company expressing passionately strong views about where the money should be spent. Some say it should be spent with NGOs rather than the Government, then some say one group rather than another, or one NGO rather than another NGO. We are trying to balance these things using the expertise of Lord Cairns. As I have said in the evidence, we would welcome Tanzanian representation on the advisory board. That is how we are proceeding, in what we believe is an open and responsible manner.

**Q54 Chair:** Can you explain what your discussions were with the SFO? They say it is difficult to always find the victims of corruption and fraud, but it is clear that society in the other country, in this case Tanzania, and the individual citizens of that country have suffered damage as a result of these offences. Do you not think it is in itself offensive for you, who admit that you have no experience of international development, to say that you will decide what is for the benefit of the people of Tanzania? You appear to treat with some dismissiveness the view of the Government and Parliament of the people of Tanzania, who might regard themselves as having more legitimacy to speak for the people of Tanzania than you do.

**Philip Bramwell:** I think that is unfair, and I think it is unfair because the company has been at pains from the outset to ensure that it creates an advisory board with people with an appropriate level of expertise and experience in these matters. I believe Lord Cairns'

credentials in this regard are impeccable. The company has committed itself to abide by the recommendations made by the Independent Chair and members of that Committee. So far from the company being the one that is laying down the road ahead, the company is working earnestly to put in place the means of getting the best available advice, including input from our own Government and that of the Government of Tanzania, into this independent advisory board.

**Q55 Chair:** But you are a company that has caused damage, according to the SFO, to the people of Tanzania; why should they have confidence in you?

**Philip Bramwell:** We would invite the Director to confirm what he said at the time of the settlement, that he had been impressed by the changes the company had subsequently made. The company is seeking to apply the values that it holds, and to behave responsibly. The company is not proud of, and indeed has apologised sincerely for, the events of the past. I do not believe that, 20 years on, that disentitles the company from applying new standards, which have been widely recognised as responsible, from trying to do the responsible thing in this case.

**Q56 Chris White:** I would not like to overstate the influence of this Committee, but you have very recently written to DFID and are apparently very soon going to make the first tranche of the payment. If we had met sooner and held this Inquiry sooner, would you have moved sooner?

**Philip Bramwell:** We are moving as fast as we reasonably can. All we can do is provide the evidence—which is why we submitted two tranches of evidence—that this is a fast-developing scenario.

**Q57 Mr McCann:** I don't think it is fast development—I think it is the complete opposite. I want to put this question to Mr Keen, but I want to comment on the words that Mr Bramwell used a few moments ago, because you said that you were anxious to clarify. Can I just tell you that, as a member of the International Development Select Committee, nothing has been clarified for me whatsoever, and I just want to give you time to explain why I have no clarification on any of the points. I think Mr Keen should answer this point, because it relates directly to the company. The settlement was reached in February 2010, which involved the ex gratia payment. The flaw seems to be that there was no mechanism in place to determine exactly how that money would be distributed; no deal took place on that at that time. So 16 months on, not one penny of that sum of money has been paid to benefit the people of Tanzania. Yet we have a letter from the Secretary of State to your Chairman at the start of July that says, "I promised to set out the details of the proposal that the Government of Tanzania prepared with the help of DFID's highly experienced development professionals in Tanzania." It goes on to make a proposal, which the Secretary of State recommends BAE should adopt in full, for which the results would be very tangible. It involves: 4.4 million text books, syllabi for teachers in every primary school; 200,000 desks for kids; and more than

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1,000 houses for teachers in remote areas. It goes on further to say, “In this way the payment would also be transparent, auditable and could be independently monitored. It would avoid the losses associated with multiple contributions via many intermediary organisations.”

Now it has been accepted that you are not development experts. DFID is held in the highest regard in this field across the globe, and this is a recommendation from the Secretary of State. However, just a few weeks ago—not 16 months ago but a few weeks ago—you set up an advisory board to tell you how to spend the money. Mr Keen, I want to put this question to you directly: is the advisory board not a complete sham, because you already have a mechanism to disburse the money in terms of what the Secretary of State has proposed to you?

**Bob Keen:** To address your last point first, I don’t think it is a sham. Lord Cairns has impeccable credentials.

**Q58 Mr McCann:** I am not questioning Lord Cairns’ credentials; I am questioning the fact that, 16 months on from when that deal was reached, not one penny of that money has reached the people of Tanzania. That is despite the fact that you have a recommendation from the Secretary of State from the Department for International Development, which tells you how you can spend it. You can stop all this waffle and just tell us this: are you going to do what the Secretary of State proposes?

**Bob Keen:** Let me just go back to the timeline. The company was not in a position to prejudge the outcome of the Crown Court’s consideration of the settlement, which did not happen until just before Christmas last year. So we were not in a position to make any progress while that matter was still subject to consideration by the court. We have put in place an advisory board based first on discussions with the Foreign Office and then discussions with the SFO as to whether that was the right approach to take, and we have appointed Lord Cairns in that capacity. The proposal from the Secretary of State came in on 3 July. We responded to it with what we consider to be a measured, considered response from our Chairman, and we now hope—

**Q59 Mr McCann:** Why is the response not yes? He has given you a method whereby you can account for the money; it is all set out in the letter. He has explained how it could tangibly help the people of Tanzania; he explains the problems they have with their education system; why do you not just say yes?

**Bob Keen:** Alongside the proposal we have had from the Secretary of State, we have also had many submissions from different groups and different individuals, including Tanzanian citizens, which take a different—

**Chair:** Of course you would, what do you expect?

**Q60 Mr McCann:** The Lottery winners who just got £161 million are getting begging letters as well, but I don’t think they will be treating them in the same way. It has already been said by Mr Bramwell that you do not have development expertise. This letter, signed by

the Secretary of State, tells you how you can spend the money, and it tells you how it can be accounted for. I just don’t understand, and you are not giving me any plausible explanation, why you don’t just say yes. It is nothing to do with Lord Cairns, I do not doubt Lord Cairns’ credentials; I doubt the credentials of BAE in just making a decision to spend this money properly.

**Bob Keen:** Lord Cairns might want to say a word about the sort of schemes that he has been considering in relation to all this. I will repeat what I just said: we had a letter from the Secretary of State dated 3 July, and we responded to that on the basis of advice we received from Lord Cairns.

**Q61 Chair:** I appreciate that this letter is dated 3 July, but you could have had this discussion six months ago. To this Committee, the logical thing for you to have done once the agreement was made was to go and talk to DFID in the first place. You went to the Foreign Office, you did not go to DFID, and that is an interesting point. You did not go to the experts and you did not ask them. They have now come up with a scheme. Incidentally, the Secretary of State suggests that you pay it in full, not in tranches. No disrespect to Lord Cairns, but I don’t think the Committee wants to hear about these schemes, it wants to know why you will not pay the money in full as soon as possible.

**Bob Keen:** We have established what we consider to be a reasonable mechanism for judging the various approaches that have been proposed to us. That is the basis on which the Chairman asked Lord Cairns to look at the proposal from the Secretary of State. We are absolutely not saying that we are not going to do it; what we are saying is that we would like to do it in a particular way, and we would like to review the progress of it after 12 months to establish that it is doing what we believe was the objective.

**Q62 Chair:** So you can judge DFID better than they can judge you?

**Bob Keen:** No, I think the letter says that DFID and the advisory board could review the scheme.

**Q63 Mr McCann:** There is a fork in the road. One is the DFID fork, and that says that you pay the money in full; it will be accountable, auditable and will make all these changes for children in Tanzania and have all of these benefits; and it will save you money, because you don’t put it through intermediary organisations. That is on one side, it is clean and you don’t get any more hassle from us. The other part of the road says that you continue with this advisory board and you are going to give out the money in tranches. We don’t understand it, and we are not buying it, and yet you are still choosing that fork. What is the underlying story that you are not telling us? It is just so clear that it is the wrong decision; there has to be something else going on.

**Bob Keen:** There is nothing else going on. We wanted to take a reasonable, considered approach to the agreement that we have reached with the Serious Fraud Office to make a payment for the benefit of the

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people of Tanzania. We wanted to take independent advice in achieving that objective.

**Mr McCann:** We will be speaking to the SFO shortly, so we will hear from them what they think about this.

**Q64 Anas Sarwar:** Mr Keen, do you recognise that you are not setting up a charitable trust, or a personal or private foundation, or some kind of outward branch for great super-duper positive campaigns that BAE will do to win friends in nice places and gain influence in nice places? You are paying a fine and taking a punishment. Do you accept that?

**Bob Keen:** We are making a payment that was agreed as part of the settlement with the SFO, which we consider to be a better approach than paying money to the coffers of the Treasury.

**Q65 Anas Sarwar:** No one is suggesting you pay it into the coffers of the Treasury, which is precisely the point the Secretary of State is making. He is saying do not give this money to us with our great huge deficit and all the problems we have with the country's deficit. He is saying that you should make this payment to the people of Tanzania and this is a way of doing it. It is a clean way that means that you have done your bit, you have paid the price, you have accepted that you did wrong and have taken a hit for it, and this is the benefit you are going to get out of it. He is not saying that you can use it as an opportunity to set up a charitable trust, or set up an independent panel or body, or make friends. He is saying, "Do not negotiate with NGOs or have people coming in begging for money from BAE so you can get a bit more influence." He is saying, "Pay the fine, take the punishment and take the hit." Do you accept that?

**Bob Keen:** We agreed at the outset that we would make a payment for the benefit of the people of Tanzania. We set up an independent advisory board to help us do that.

**Q66 Anas Sarwar:** How much is the independent advisory board costing you, and is that money going to be paid out of the £29.5 million?

**Bob Keen:** I think Mr Bramwell has already answered that.

**Q67 Anas Sarwar:** When you go back and assess the programme in 12 months' time with all the payments, all the assessment processes and all the people who are going to oversee these processes, is that all going to be paid out of the £29.5 million?

**Philip Bramwell:** I can answer that. Under DFID's proposal, the cost of audit would be deducted from the moneys provided to the people of Tanzania. That is one area where we might differ from DFID.

**Q68 Chair:** Are you saying that if you administer the fund you will add the cost of administering the fund to the £29.5 million, but if DFID does it you will not?

**Philip Bramwell:** I am sorry, that is not what I said at all.

**Q69 Chair:** That is what you implied

**Philip Bramwell:** No, it is not what I implied.

**Q70 Anas Sarwar:** What are you suggesting, Mr Bramwell?

**Philip Bramwell:** What I am saying is that, quite understandably, under the DFID proposal, which is actually a transmission of the Tanzanian Government proposal—which we did not have the opportunity to comment on before seeing for the first time—there is a proposal that part of the money, I think it is about £200,000, be applied to the cost of an audit. That £200,000 would be deducted from the overall funds to be applied. That would be conventional plainly in DFID's proposal and the way they operate. The costs of assurance, as the company would see them, would be borne by the company and not by the fund, as is the cost of the advisory board.

**Q71 Chair:** I fail to see how that differs from what I said. You are saying that if you administer it through your own mechanism the cost of audit will be borne by BAE Systems, not by the fund, but if you choose to hand it over to DFID you would expect the costs of audit to be carried by the fund.

**Philip Bramwell:** If that is what you said, I misunderstood you; yes, you were absolutely accurate.

**Chair:** It seems to me that you could add that to the contribution.

**Q72 Richard Burden:** You said that you set up a separate interest-bearing fund. When was that set up?

**Philip Bramwell:** January of this year.

**Q73 Richard Burden:** So you reached an agreement with the SFO in February 2010, the agreement is "to make an ex gratia payment for the benefit of the people of Tanzania in a manner to be agreed between the SFO and the company", and it takes almost a year for you to even put that into a separate account, let alone pay it to anyone. What is happening to the interest for that first year?

**Philip Bramwell:** There was no sum certain, because we had no sentence. The matter was sub judice for the best part of the year.

**Q74 Richard Burden:** It was not sub judice from yourselves.

**Philip Bramwell:** To be clear, the fine was to be determined by the court, not by the SFO or the company, so the amount of money available for the benefit of the people of Tanzania was not certain. Also to be clear, the amount of money the company was legally obliged to pay in the settlement agreement was £30 million, less the penalties imposed by the court. The penalty imposed by the court was a £500,000 fine, and I believe £225,000 or £250,000 costs. So the company is entitled to place on deposit £29.25 million in accordance with the agreement. That is not what the company did; the company grossed up the money for the costs, paid the costs itself and deposited £29.5 million, thus attributing, as it were, £250,000 of interest for the year 2010. It then put that £29.5 million in a ring-fenced Treasury deposit account accruing interest at LIBID.

**Q75 Richard Burden:** I am tempted to say, "Thank you, Sir Humphrey." The fact is that in February 2010

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a figure of £30 million was agreed—it is there in the document.

**Philip Bramwell:** Less the penalty imposed by the court, as yet undetermined.

**Q76 Richard Burden:** Actually, that is not what it says. You knew in February 2010 that you were going to pay £30 million.

**Philip Bramwell:** No.

**Q77 Richard Burden:** No? Why have I got a document in front of me that says “Settlement Agreement between the Serious Fraud Office and BAE Systems plc”, dated February 2010, that says in item five, “The company shall make an ex gratia payment for the benefit of the people of Tanzania in a manner to be agreed between the SFO and the company. The amount of the payment shall be £30 million less any financial orders imposed by the court.” So you knew that.

**Philip Bramwell:** It was the latter phrase, “less any financial orders imposed by the court”.

**Q78 Richard Burden:** You have made this big thing today of having set up a separate account. You could have put £30 million in an account then, and if you then found a bit later that you did not have to pay £30 million, you could have taken it out. I put it to you that you did not actually do anything to action this until this year.

**Philip Bramwell:** I really don’t think that is true at all.

**Q79 Richard Burden:** What discussions did you have? When did you have your first discussion with the SFO about the manner in which that is going to be disbursed?

**Philip Bramwell:** As soon as we were able to after the court had imposed the sentence.

**Q80 Richard Burden:** Why did you not have any discussions before then?

**Philip Bramwell:** It was not appropriate to do so, and it had not been approved by the court.

**Q81 Richard Burden:** What the court was going to approve or not approve was the agreement that you had already come to with the SFO. So presumably it would have made some sense, would it not, if you were going to go to the court and try to get them to endorse what you had agreed, to actually have some discussions about how that could work—are you saying you didn’t have any?

**Philip Bramwell:** We did not, because the matter was before the court and neither the SFO nor the company thought it would be proper to hold those discussions pending the hearing of the matter by the court.

**Q82 Richard Burden:** So did you have a discussion with the SFO that it was not appropriate to discuss what you had agreed between then and November 2010?

**Philip Bramwell:** We did not, because both of us would recognise that we were working towards getting the matter in court and there was an application for judicial review to try and set aside the settlement agreement during 2010. That made the settlement itself, pending the outcome of that application for judicial review, uncertain. The settlement itself could theoretically have been set aside.

**Q83 Hugh Bayley:** At the end of last year, your company was convicted of a very serious crime, so serious that you paid a £30 million penalty. If it had been an individual rather than a corporation that was convicted, the sentence could have included a jail sentence of up to two years. It is a serious matter. The mechanism discussed with the Serious Fraud Office to enable a large part of the penalty to be made over for the benefit of people in Tanzania was a device, I would suggest, created by the SFO and yourselves to enable justice to be done, because British law does not provide for penalties to be paid to third parties in other countries. Given all the arguments we have heard around this table today, do you think it would make sense for the law to be changed to provide in cases of a transnational financial crime that, if a court is so minded, as presumably it would have been in a case like this, the court could direct that funding should benefit people other than the Treasury or the court itself? Would you welcome that change in the law?

**Philip Bramwell:** I am not sure that a change in the law is necessary to achieve that objective. To be clear, £30 million is not a penalty in relation to Tanzania or in relation to the matter of failure to keep reasonably accurate accounts in the subsidiary involved; the penalty for that was a fine of £500,000.

**Q84 Hugh Bayley:** With great respect, from conversations I had with the SFO at the time, I am absolutely clear that without the mitigating offer of paying the value of £30 million to the benefit of Tanzania the fine would have been very substantially more. I cannot tell what the judge would have decided—this of course is speculation—but my speculation is that the penalty was £30 million and because of your offer of mitigation to benefit the people of Tanzania it was decided that in the interests of justice more widely that this would be a better way for your penalty to be dealt with.

That is my understanding; of course it is based on speculation, because the judge was presented with a mitigating plea by the two parties. However, for you to say that this was a minor offence that only attracted a £500,000 penalty is not the way I, as an interested observer, see it. I would have more confidence that you were acting in a way to put things straight and acknowledge your guilt if you were to say the same and say, “This was a serious series of errors of judgement by our company, we have put in place measures to stop them happening again, and we accept our guilt.”

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**Philip Bramwell:** I would adopt that remark in its entirety. The company has accepted its guilt, the company has apologised for what were, I would agree, a series of serious flaws in the way that contract was conducted. The company is very anxious, through this process, to demonstrate that it is currently a most responsible company and taking a measured approach. If I may return to answer your question: had the facts been different from what they were—not the law, but the facts—different remedies would have been available to the parties, so a criminal confiscation order might have been available, an order of compensation might have been available, and indeed, in other settlements you may have seen, Mabeey & Johnson and others where there was evidence and admissions of bribery, it was agreed between the SFO and the defendant in the context of settlement agreements that payments would be made to governments. That has occurred. So to answer your question on the law, I think there are enough legal tools available to regulators in this country to achieve the outcomes, provided you have the appropriate factual circumstances. I would agree with you that the overall penalty that this company agreed to pay in settlement discussions with the SFO was to an extent an attempt to synthesise a settlement which seemed right, appropriate and fitting and for which there was not necessarily a neat, orderly legal mechanism to achieve it.

**Q85 Hugh Bayley:** Can I just say one final thing to you and ask you to respond? After we have taken evidence today, the process is that we will draft a report over the summer, and I expect we will publish it in the early autumn. I think it would do your company a great deal of good if the entire £29.5 million was passed to a third party—DFID seems to me to be the most obvious one—before we write the report, because that would then be a material fact we would take into account. You will have heard that members of the Committee are very concerned about the length of time it has taken for this to happen. I just would like to leave that thought with you. Mr Bramwell, I am not a lawyer. You are suggesting that there are other and possibly better mechanisms that could have been used in a case of this kind to achieve the outcome of the guilty party compensating people in another country. I would be grateful if you would write a note to this Committee, as a bit of supplementary evidence, to explain that, so I can go through it with lawyers on our side and see if it makes sense to us.

**Philip Bramwell:** Thank you very much. Your point is duly noted.

**Q86 Chris White:** You have accepted that the organisation knows it did wrong. Mr Bayley referred to the views of the Committee. You must appreciate—I would be surprised if you did not—the long-term damage that this is doing to the reputation of your organisation. I suppose I would add to what Hugh said: has the discussion this morning made you think that you might go back and have any different thoughts?

**Philip Bramwell:** I certainly think it has given us great pause for thought and internal discussion, and each of us will commit to doing that. We are grateful for your input and the time you have taken to give it to us.

**Bob Keen:** I would agree with that, Mr White. The Committee's view is clear, and we will have to take that into account in our deliberations.

**Q87 Chair:** At the end of the morning we will be taking evidence from the Minister of State, but we have also had both an exchange of correspondence and conversations with the Secretary of State. He is clearly of the view that the best thing you could do is pay it in full by the mechanism suggested, and that that would do more good for your “new broom” approach in the company than anything else you could do. It is no disrespect to Lord Cairns, who has not been invited to contribute, for the very simple reason, which I think he already appreciates, that this Committee does not believe the advisory board even has legitimacy, and certainly not necessity, because if the money is paid in the circumstances as proposed frankly it would not be necessary. I would also ask you to reflect on the implications of saying that you have to defer to your advisory board when the objective of the agreement is the benefit of the people of Tanzania, which I would have thought the Department for International Development, in conjunction with the Government of Tanzania and independent international oversight, had a better capacity to deliver than BAE Systems.

**Bob Keen:** We understand the view set out by the Secretary of State and the statement you have just made, Chairman.

**Chair:** Thank you very much indeed for giving evidence.

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### Examination of Witness

*Witness:* **Richard Alderman**, Director, Serious Fraud Office, gave evidence.

**Q88 Chair:** Mr Alderman, thank you for coming to give evidence. I hope that you were here listening to the previous session. Perhaps you would formally introduce yourself.

**Richard Alderman:** I am Richard Alderman. I have been the Director of the Serious Fraud Office since April 2008.

**Q89 Chair:** Thank you, as I say, for giving evidence. You will have heard the discussion we have had. Obviously, questions arise from it as to what happened and what should happen. This was a serious investigation. There were accusations and allegations of more serious offences of bribery, corruption and so forth. The first question is, why was the SFO minded

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to broker what was effectively a plea bargain for a lesser offence than those which you were clearly pursuing with BAE Systems?

**Richard Alderman:** To put it in context, the main focus of our investigation after the closure of the investigation relating to Saudi Arabia was the matters concerning eastern and central Europe. There was a considerable amount of money involved in those contracts, and that was our priority area. Tanzania was less of a priority in the sense of the investigation. We had to prioritise our resource, and it was on eastern and central Europe. The position changed when the United States Department of Justice agreed with BAE on a settlement relating to their investigation, which paralleled ours, concerning eastern and central Europe, because once there is an agreement in another jurisdiction relating to the facts which gave rise to our investigation that would bring an end to any potential prosecution in this country, because if an individual or company has been acquitted or convicted in another country in relation to a certain state of affairs they cannot be prosecuted again in this jurisdiction in relation to the same affairs. That meant, therefore, that when we knew a settlement between BAE and the Department of Justice relating to eastern and central Europe was likely, we looked at the position and realised that if that settlement happened our investigation relating to eastern and central Europe would have to come to an end.

We therefore looked at our other areas of activity. Tanzania was obviously the next most important area. We looked at the state of the investigation and what we might be able to prove. It seemed to me that if we had the opportunity to seek a resolution of Tanzania as part of the global resolution that would be a satisfactory overall outcome in relation to these very serious matters. We looked at whether or not we had a corruption charge. BAE have never accepted corruption, whether here or in the United States. There were big difficulties for us, which perhaps I can expand on later if you wish, about the antiquated law under which we had to operate. We looked at whether we had a counterpart to the US charge in relation to Tanzania. We did not. All we had was a books and records charge, which, in my view, was one that we could bring. Although people think that it was a minor accounting error, when you look at what was actually said it was a very serious matter. For a major plc to be involved in that course of conduct seemed to me to be very serious. It seemed to me that that was the only charge I had available and that, on suitable terms, it was appropriate to bring this to an end.

**Q90 Chair:** In the past this Committee has expressed concerns about the adequacy of the law under which you were operating. Obviously, the law has subsequently been updated. Given that you were unable to pursue more serious charges, I think that to a lay person it is quite difficult to see that paying 31% of the value of a contract to an individual is just an accounting offence. It looks blatantly like corruption; indeed, Mr Justice Bean clearly took the view that it was, although he expressed frustration that he was presented with a plea bargain and was not able to adjudicate upon it. Do you not feel that if this situation

was to arise in the future, the law having been changed, you would have more success in bringing prosecution?

**Richard Alderman:** We ought to have more success in future under the Bribery Act. What I was at pains to bring out under the books and records charge was that this was not an accounting error in the sense of a few figures being transposed on one side of a page rather than another. The essence of what we were saying was that as a result of the failure to keep adequate books and records, payments were made that could have been used to provide a business advantage to BAE during the course of negotiations, and it was highly likely that that could take place. That seemed to me to be the essence of what we were alleging, and I thought it was really important to get that over. Indeed, the judge drew an inference from that, although on the day of the hearing he accepted during the course of argument that, on the basis of what we were able to allege under the law as it existed at that time, we could not have brought a charge of corruption. But he regarded it as very serious. He drew an inference in very trenchant terms, as judges are entitled to.

**Chair:** He certainly did, and we have taken advantage of questioning him on that. The Committee wants to explore the nature of the negotiations between the SFO and BAE and your understanding of the agreement, because where we are now is not where most people would have thought we would be when the agreement was first concluded.

**Q91 Mr McCann:** You will have heard the exchanges with the BAE representatives a short time ago. From the SFO's perspective, how did the figure of £30 million come about? Was it an omission or a flaw? As to how that money would subsequently be paid, was it something in which you could not be involved? You will have heard from previous questions that we were quite interested in that one.

**Richard Alderman:** Can I just say at the outset, I expected all of this to be done in the first month or two of this year. I thought that by the end of March at the latest the money would be paid; we would all know how it was being applied; and there would be public satisfaction because of a really good result for the people of Tanzania. If in future there are agreements of this nature—I would be very grateful for guidance on this—clearly we have to put in more rigid time scales. I did not expect to find myself sitting here in July with BAE not yet having reached agreement on how the money is going to be paid. That is very unsatisfactory and frustrating from my point of view.

As to the process, when we learned that BAE was going to reach agreement with the DOJ in relation to central and eastern Europe we did our contingency planning. We thought about what we would say if BAE asked us what would be needed to bring the other phases of the investigation to an end. It seemed to me that it was then up to BAE. They came to me and asked what it would take to be able to have a global settlement resolving all the issues. I told them what my terms would be for settling the Tanzanian investigation. That would involve a payment. At the

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time I envisaged that that would be a compensation or confiscation payment through our asset forfeiture legislation. I will explain in a moment why that was not possible. I had to take a view as to the amount. Fines in this jurisdiction in respect of corporate entities tend to be very low, and it seemed to me that a fine would not be a very considerable amount and a lot more would be needed to satisfy the public. I had to think about the appropriate amount. The only figure I had to go on was the amount of the contract, and it seemed to me that in policy terms BAE should not derive any benefit from this contract, and if they lost £30 million—I put that in a very loose way—that would be a good result. I was advised a few days after that that our asset forfeiture legislation did not cover this type of payment in relation to a books and records charge, so the option was either not to pursue the amount or to seek another vehicle.

Not to pursue that amount was unacceptable to me, and I said that in that case we would step outside the criminal justice system. It had to be a voluntary payment, and it had to be for the benefit of the people of Tanzania. I was very conscious of the fact that in some other cases there had been criticism of payments being made to governments. I wanted to leave it as open as possible for BAE and the SFO, with advice, to be able to find the right way of ensuring that money went to the people of Tanzania. This was new. This was a novel set of circumstances. I am certainly looking for guidance. I do not believe for one moment that what we did was right in every respect, because I think we need more guidance on lots of these issues. This Committee has an excellent opportunity to provide that guidance, which I would very much welcome.

**Q92 Chair:** We have a copy of the letter from Allen & Overy addressed to you on 14 July, in which BAE take issue with pretty well everything you have said. As of last week they said that your suggestion that society suffered was not true; that neither Tanzanian society nor individual Tanzanian citizens suffered any damage as a result of the offence; and that given that that is the case, it is irrelevant to the issue of the English Court's power to order reparations. They dispute a number of other issues; and then they say you have not given fair evidence to the Committee and you should resubmit it. Obviously, that letter was addressed to you, so what was your reaction to it?

**Richard Alderman:** I had to read it a few times.

**Chair:** So did I.

**Richard Alderman:** I rather thought they had missed the point, in that what we are trying to do is ensure that a payment is made in the right way to a society where there were irregularities, errors—call them what one might—in respect of the way the group of companies in the BAE empire operated. That is my concern. There are lots of legal points about all these issues which I very much respect, but I do not think they go to the heart of the matter, which is that this society bought a contract for more than was perhaps necessary. What should we do about it? That is my very simple approach to it. If you would like me to

submit a lengthy legal response to that letter, I would of course take up your invitation.

**Q93 Chair:** We would be interested in a written comment on it, but the point I am making is that you had clearly had an understanding of your agreement with British Aerospace in terms of both the seriousness of the offence and the reason you negotiated that degree of reparations. They are systematically trying to unravel it, saying they do not really accept the seriousness of the offence and, frankly, they will decide what to do and how and when they will do it.

**Richard Alderman:** Yes.

**Q94 Chair:** There is a huge disparity between what you thought you had agreed with British Aerospace and what they seem to think they had agreed with you.

**Richard Alderman:** I was and am very troubled by the lawyers' letter. I thought to myself, "Are they really getting what's needed here?", which is my point that I expected this to be dealt with during the early part of this year. When I saw Mr Bramwell in February I impressed upon him certain points: the need for speed, the need for transparency and the need to take the public with them on this so they understood what BAE were doing and were satisfied. I am still not sure we are in that position at the moment. The sooner BAE make this payment in an appropriate and transparent way and there is proper publicity about it, and we can say that it is a great result for the people of Tanzania, a big opportunity to do something innovative and perhaps is something we can follow in other ways in future, the better.

**Q95 Mr McCann:** Therefore, when the negotiation between the SFO and BAE was taking place, were you of the mind that once a figure for reparation had been agreed from the company's perspective it was in their interest to get it over and done with as soon as possible and put that chapter of history behind them, and therefore there was no need to have a specific clause within the agreement which said when the money had to be paid? In hindsight, I do not know whether BAE have been poorly advised, but from a political perspective that is exactly what I would have been saying they should have done. Are you, therefore, as baffled as we are about the position in which they are now faced? They have the funds set aside to deal with this problem. They have a letter from the Secretary of State from the Department for International Development which gives them a cast-iron way, as much as anything can be cast iron, for payment of the money to the Government of Tanzania, with checks and balances in place, to let the money do good work, as you have just suggested. Is that the reason why you did not feel it was necessary to put a clause in the original agreement, in that you thought the company would want to get it off their books as soon as possible? Mindful of the fact that we hope these things never happen again—but obviously we cannot know whether or not they will—are you now of the view that a clause is required in any such settlements in future?

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**Richard Alderman:** I would certainly put a specific clause in any future agreement about this. There are other cases, which is why I am looking for guidance, where these issues are likely to arise. The contract or agreement will need to be drafted much more specifically. The judge was critical of the way the agreement was drafted, for various reasons. We need to get that better in future. This was the first time. We will learn from experience. I expected it all to be finished by the first couple of months of this year. Although I was advised later in the day this was not possible, I expected this to come out in court in December. I expected BAE to be able to present their package. I also wanted the Government of Tanzania to be represented in the criminal court, so that their counsel could help the judge, if called upon to do so. I was told that, because of the nature of the agreement, it being voluntary, it was not possible to do that. I have to say, I have some regret about that. I think it would have been much more helpful if it had been possible to do that and the Government of Tanzania had been represented at the hearing and could have commented on these issues. In the next month or two, in January and February of this year, we could have put the final touches to it. That was what I hoped would happen, but we have not got there. We have learned.

**Q96 Chair:** Would that have made it an enforceable court order, as opposed to a private agreement?

**Richard Alderman:** It is enforceable. To me, it is inconceivable that BAE would ever turn round and say they are not going to pay £29.5 million but, shall we say, they are going to return it to shareholders. If they did that they would get a letter from me saying, "I am relisting it before the Crown Court judge for a hearing on whether or not there has been a contempt of Court."

**Chair:** We might want to come back to that point.

**Q97 Chris White:** Does the payment to the people of Tanzania indicate that the contract price itself included an amount for corrupt payments?

**Richard Alderman:** There is no recognition or acknowledgement in the contract that payments were corrupt. We had difficulties, as the judge explained during the course of his judgment, in knowing where those payments had gone, so we could not prove that payments were ultimately made corruptly to named officials in the Tanzanian Administration. That was one of our difficulties in terms of any corruption investigation. There was no acknowledgement or recognition that any of these payments—the payment of £30 million or £29.5 million—represented the return of corrupt payments; they didn't.

**Q98 Chris White:** Can I ask your view on that? Do you believe that is acceptable? Is that part of the contract, or do you think that is just where people decided to draw a line?

**Richard Alderman:** As I stand back, it seems to me that returning £29.5 million to the people of Tanzania in respect of that £30 million contract is a good result. I stand back and look at the overall result. I think we can all be very proud of that. But I also believe that

the system we have for dealing with these cases in this country is unsatisfactory and needs to be changed, because these cases are new; they present new issues that judges and prosecutors have not come across before. My view is that in order to be able to obtain better public satisfaction with these cases and more transparency there needs to be earlier judicial involvement.

**Q99 Pauline Latham:** You said that it was to go back to the Tanzanian Government and to benefit the people of Tanzania. You said you thought that all of it would be sorted out by the beginning of the year, or March at the latest. It is now nearly August. Given the way things are happening with their advisory group, there does not seem to be any possibility of anything happening this year. The problem is that the people of Tanzania are getting absolutely no benefit year on year, and children are not going to school. They do not have equipment, even desks at which to sit, because they are taking so long to make up their minds. They will all genuinely benefit in the end if that is the route they decide to go down, but the longer it goes on it will not benefit the children in school now who really deserve a decent education to help the people of Tanzania get themselves out of poverty and into income generation.

You are saying that the law should be changed. Do you feel there is any realistic way we can change the law, or recommend that it be changed, pretty soon, so this does not happen again and people in other countries do not have this delay and obfuscation? It does seem to me that they are deliberately delaying. To go back to Michael McCann's point, if I was found guilty of something I would want it to be sorted out as quickly as possible; I would not want it to go on and on. The worry is that the people of Tanzania will not benefit. We do need to look at changing the law. How best do you think we can do that?

**Richard Alderman:** We need to look at a number of areas in respect of the law. Some may require a change of legislation; others may require guidance to be given either by judges, or by judges to prosecutors. In terms of changes to the law, one that I am very interested in myself is this: having reflected on what happened on many occasions, it has always seemed to me that having to make that kind of settlement, even with a judge 11 months afterwards reaching a view, by myself or with advice, puts too much on the Director of the SFO. It would be far better in these very difficult circumstances, before agreement can be reached, to go and see a judge and ask the judge for a judicial view on it. It is not possible at the moment because with corporations these agreements must be reached before charges are brought. Under our current system, judges can be involved only after the charge. I want judicial involvement, because I believe that would provide public confidence in these decisions. We also need guidance. This may not be a matter of legislation. The SFO policy about trying to ensure that money goes back to other countries is quite controversial. There has been a lot of criticism of it. There has been criticism of money going back to other governments. I know of one government that has refused to accept the payment; and I know of criticism

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in other jurisdictions that there is a lack of transparency. What we are doing is trying to cope with these issues on a practical, pragmatic basis, but there is a need for guidance that represents the best policy views on all these issues; otherwise, we try to do it on the basis of a particular case. I think this has shown that that is undesirable. As part of that, guidance on the kinds of terms, in particular the length of time required for payments to be made, would be very valuable.

**Q100 Richard Burden:** You have been very clear about possible changes in the future. To take you back to what happened in this case when we dealt with the position as it was, I do not know whether you heard the questions I asked of the BAE Systems representatives about what happened between the agreement in February 2010 and the setting up of the special account and their development of proposals for a mechanism to disburse the money. If I understood them correctly, they felt precluded from doing any preparatory work on possible mechanisms, or even discussing with you possible mechanisms for disbursing the money, until January of this year. We will see what the record says, but I think they said, "We felt that was inappropriate"; in other words, you as well as they felt it was inappropriate. Is that your understanding?

**Richard Alderman:** I would not have thought it inappropriate. Indeed, what we were doing was taking advice, because I wanted to see whether we could resolve all of this before the court hearing. We took advice from DFID and the FCO. We are prosecutors; we are not in the aid business, and we are not diplomats. We take advice from the experts on these issues, so we naturally turn straight away to DFID for assistance. Clearly, BAE could not have paid an amount before the hearing, because we did not know what that amount would be, but I don't understand why they could not have made contingency plans about how this would be dealt with and talked about methods of ensuring the payment got back to the people of Tanzania. I think they could have dealt with all of those issues. All that would then have been needed would be almost to fill in the blank of the amount, because that was the only point that remained to be resolved. Of course, the judge could also have said, "I disagree totally with the whole thing." That is another reason it would have been inappropriate for them to pay over any part of the amount, but I don't see why they could not have made contingency plans as to what to do on various scenarios. I would have thought that would be a perfectly sensible thing for them to do, and nothing would have precluded them from doing that.

**Q101 Richard Burden:** In the period between February 2010, when the agreement was reached, and the court hearing, were there any discussions between you and BAE Systems about possible contingency planning or mechanisms, or was it your assumption that they would be doing the preparatory work?

**Richard Alderman:** There were some but limited discussions. Our energies went into the discussions with DFID and the help we wanted from them. We

wanted advice on the handling of this payment, and propositions and suggestions that we could put to BAE. I think there were discussions in the months leading up to the hearing, but they did not go very far.

**Q102 Richard Burden:** If I heard them correctly, BAE Systems said there were no such discussions at all.

**Richard Alderman:** There were no detailed, substantive discussions, but the question was raised: what is going to happen to this payment?

**Q103 Richard Burden:** By you?

**Richard Alderman:** My recollection is that we talked to them about that, yes.

**Q104 Hugh Bayley:** You said a moment ago that it was inconceivable that British Aerospace would decline to pay the £29.5 million, but that were they to do so, you would go back to the court and seek enforcement. At what point would delay on the part of British Aerospace trigger a decision on your part to go back to the court to enforce the payment of the £29.5 million?

**Richard Alderman:** I would have to form the view that the delay was tantamount to BAE deciding not to make the payment. Before we got to that stage, I would probably write them a letter requesting clarification, asking for an explanation, and saying that we were getting to the stage where, if I was not satisfied that the payment would be made within a reasonable period of time, I would have to move on to the next stage. We are not there yet, because they are doing various things, but I very much hope they will take up the invitation that the Committee offered to them during the course of the first session.

**Q105 Hugh Bayley:** You told us earlier this morning that you had great difficulty with the antiquated law under which this case had to be brought. You say in your written submission that you would not want to see the current Bribery Act amended. If you do not amend the Act what needs to be done to make the current arrangements for plea bargaining more transparent, and to enable payments of this kind, where a compensation payment is made to a third party, another country, more easily enforceable?

**Richard Alderman:** Perhaps I may take that question in two parts. First of all, the antiquated law was really about what was needed to be able to establish a charge of corruption. In those pre-Bribery Act days we needed to establish that what is called the directing mind of the corporation was involved in the illegal activity. Basically, that meant that we had to prove that the board of BAE, or people very close to it, were involved in the corrupt payments. I have made no secret of the fact that that test may well be suitable in terms of very small organisations but it is totally unsuitable for a modern globalised corporation. That is why the Bribery Act is such a big improvement. We no longer have to prove that the directing mind was involved in orchestrating and directing the corruption. We have to prove that there was a failure to prevent corruption and that there were not adequate procedures to prevent it. That is a very different test,

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and one that in my view is a very, very significant advance. Plea bargaining needs to retain and obtain public confidence if it is to be successful, and it must have judicial confidence. We are now dealing with a range of cases, particularly involving very large global corporations, where there are parallel investigations in other jurisdictions. The question arises: how are these cases to be brought to an end, given the particular issue of double jeopardy that I have mentioned? There are very difficult issues here. In my view, the corporations want certainty before the criminal justice system starts, and that is a legitimate request. On the other hand, we have to ensure that what we do has public and judicial support. My view is that that can be obtained only through having a judicial ruling before the agreement can be reached and charges are brought. If for one moment I take as an example the scenario of the BAE case, agreement was reached at about half-past 10 on a Thursday night, after lengthy negotiations. In the United States, the Department of Justice was going to go into court at about nine o'clock their time, two o'clock our time, to announce a settlement relating to eastern and central Europe and Saudi Arabia. That would have an impact on our case. My view has always been that if I had had the opportunity to take my agreement to a judge on the Friday morning it would have been a far better system.

**Q106 Hugh Bayley:** Forgive me; you have made this point twice. You are saying that the Bribery Act does not need to be changed but some bit of law does, I guess, in order to have the ability to go to a judge earlier in proceedings.

**Richard Alderman:** That is right.

**Q107 Hugh Bayley:** Could you possibly send us a note to explain which Act needs to be changed?

**Richard Alderman:** I can certainly do that. This is a criminal justice issue about the ability of a judge to be involved in a criminal case before any criminal charge is brought.

**Q108 Hugh Bayley:** Can I ask the question the other way round? When you, as the SFO, are involved in plea bargains, what impact does that have on mutual legal assistance between jurisdictions? We were told by Corner House, for example, that the Ghanaian Commission on Human Rights were deeply concerned about their inability to obtain documents from the Serious Fraud Office as part of their request for mutual legal assistance. Can you answer the general point and the specific one in relation to the Ghanaian case?

**Richard Alderman:** Nothing in a plea negotiation in any way fetters our ability to co-operate with another jurisdiction that wants assistance from us. Indeed, it is important that the other jurisdiction is able to take action against its own officials who allegedly have received bribes. If another jurisdiction wants help from us, we would be very pleased to give it. These issues are complicated, because they have to go through the mutual legal assistance procedure. We know from our own work that all of this takes time, because there can be litigation in other jurisdictions,

but we stand ready to provide assistance. If Ghana needs our assistance, we will give it. As with any jurisdiction, they have to comply with our legislation so we are in a position to provide that help. We talk to jurisdictions about what they need to do and how they need to phrase their request so we can provide them with assistance on that.

**Q109 Hugh Bayley:** In your written evidence to us you recorded that Government funding of your office had fallen from about £40 million in 2009–10 to about £29 million at the end of the triennial spending review period. Can you let us know what the cost of fulfilling your duties under the new Bribery Act is likely to be, or how much you will allocate to that, and make a more general comment about the resources available to your office?

**Richard Alderman:** At the moment, the amount of resource that we commit to dealing with bribery and corruption is about £4.9 million and we have about 80 staff dealing with this area of work. We have about 26 cases involving bribery. Clearly, at the moment all of those cases involve the pre-Bribery Act law. New cases will arise in due course, although the Bribery Act is not retrospective. The estimate is that Bribery Act cases are likely to involve a resource of about £2 million a year. It is not ring-fenced within the SFO; it is simply an estimate of the cost. We will in fact be devoting much more money to that. We have already devoted more than £4.9 million to this area of work. We have a very flexible workforce that we can move between different priorities to be able to deal with this particular area. In general terms, you have rightly pointed to the fact that our resource has been cut very considerably. Clearly, no head of a civil service agency or department will ever say they have enough money and do not want more. In view of Government cut-backs and the economic conditions, we live within what we have and what we are given, and the challenge for us is to ensure that we get the most that we possibly can from that money. We have been very successful at that. The SFO have been through a major process of transformation in the course of the last three years. We now do more cases than ever before; we do them more quickly; and we have a higher success rate in court than before. That is a tribute to the fact that we get on with our cases much more quickly. We are much better at using our reduced resource than we have ever been in the past.

**Chair:** We have two Ministers who have been waiting 20 minutes to give evidence to us. We need to wrap this up.

**Q110 Pauline Latham:** Do you think the Bribery Act will make it more difficult for UK companies to get business, or will it make it easier for them because they will be able to say, "We can't do that anymore because of the Bribery Act"?

**Richard Alderman:** It will level the playing field for UK businesses in a number of ways. For the first time, it will enable us in certain circumstances to take action against foreign corporations that are undermining good UK businesses, and it will also ensure that people are playing by the same rules. I very much

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welcome the Bribery Act, and I know a number of very good corporations that do as well.

**Q111 Chair:** We talked about the enforceability of this agreement and the timing and at what point justice delayed becomes justice denied. You also said you were concerned about BAE returning the money to the shareholders. You will have heard the exchange in which they said they still regarded it as shareholders' money, which I would not have thought you did. They now have an offer from DFID that would enable them to pay this in full under circumstances that seem to me to meet the spirit and letter of your agreement. If

they do not do it, can you give an undertaking that you will set a time limit by which you will take action? Indeed, will your statement of that perhaps help them come to the right decision sooner rather than later?

**Richard Alderman:** If they decline the offer from DFID without being able to put forward something that is convincing, I think it would be wholly appropriate for me to have discussions with them about what is going on, how we move this process further forward and the consequences if they do not do so. I will undertake to the Committee to do that.

**Chair:** Thank you very much indeed.

### Examination of Witnesses

*Witnesses:* **Rt Hon Mr Alan Duncan MP**, Minister of State, **Joy Hutcheon**, Acting Director General of Country Programmes, **Phil Mason**, Head, Anti-Corruption, Department for International Development, and **Rt Hon Lord McNally**, Minister of State, and **Rosemary Davies**, Legal Director, Ministry of Justice, gave evidence.

**Q112 Chair:** Thank you very much for coming in. I apologise for keeping you waiting, but you may not be surprised that the evidence took a little longer than we had budgeted for. For the record, perhaps you would introduce your respective teams.

**Lord McNally:** I am Tom McNally, Minister of State at the Ministry of Justice. It is a great pleasure to be under your chairmanship, Mr Bruce. I am accompanied by Rosemary Davies, the Legal Director at the MOJ. Tim Jewell, whom you were expecting, has been taken ill, so Rosemary has stepped into the breach.

**Mr Duncan:** I am Alan Duncan, Minister of State for International Development. On my right is Joy Hutcheon, our Acting Director General of Country Programmes, and Phil Mason is Head of the Anti-Corruption Team in DFID.

**Q113 Chair:** Thank you very much for coming in. Mr Duncan, I know that you are under some pressure of time, as I am sure is Lord McNally, but we will take the questions in that order. I appreciate that you have offered us a brief statement on the situation in Malawi, because clearly the ending of relationships in terms of ambassadors and high commissioners is a matter of concern. Perhaps you would deal with that briefly.

**Mr Duncan:** The Secretary of State for International Development, Andrew Mitchell, announced on 14 July that the UK Government would indefinitely suspend general budget support to Malawi. The Secretary of State took the decision after the Government of Malawi repeatedly failed to address UK concerns over economic management and governance. On governance, demonstrations have been suppressed; civil society organisations intimidated and an injunctions Bill passed that would make it easier for the Government there to place restrictions on opponents without legal challenge. On the economy, the UK is concerned that Malawi's overvalued exchange rate has created chronic foreign exchange shortages that are having a serious impact on the ability of Malawi's private sector to drive

future growth. There are now daily fuel queues; tobacco exports have deteriorated; and Malawi is off track with its IMF programme.

The Secretary of State wrote to President Mutharika on 12 May to set out these concerns in very clear terms. He received no adequate reply to his letter and has therefore taken the decision to suspend general budget support indefinitely. The Secretary of State's decision is in line with international concern over Malawi's current position. The World Bank, the European Union, the African Development Bank, Germany and Norway have all suspended or ended general budget support to Malawi. We will now do everything possible to ensure that the failures of the Malawi Government do not affect the poorest people. We will do our utmost to redirect funding through other channels as soon as possible. For example, DFID will continue to work through specific Government Ministries, like Health and Education, to help them build more classrooms, train more teachers and nurses, and buy essential drugs.

DFID will also continue to work with trusted NGOs to deliver better access to safe drinking water and improved sanitation; to increase the number of people with greater resilience to natural disasters and climate change; and to support smallholder farmers in expanding their exports and creating more jobs.

The UK has a long and deep commitment to the people of Malawi and is keen to see the country resume the good progress it has made in recent years. DFID remain willing to reconsider their approach as and when our concerns are addressed.

The decision on Malawi comes as the UK Government are reducing general budget support across the world by 43% and are tightening up the principles on which budget support agreements are made. All budget support is tightly monitored against a strict set of expected results and can be reviewed by the Independent Commission for Aid Impact at any time. We have applied this policy very rigorously in the case of Malawi.

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**Q114 Chair:** Thank you very much for that statement. We would not normally have asked you to do that, but given that the House is rising for the summer, it is important to put on record the quite serious development in Malawi. We are grateful that the people of Malawi are still at the forefront of the Department's commitments. There are issues in that statement about budget support to which we might wish to return. If the Committee will allow me, I think we will just accept as a matter of record the statement provided to us, which we very much appreciate.

Perhaps we may turn now to the specifics of financial crime, in particular the settlement, or lack of it, in relation to the British Aerospace agreement in the context of Tanzania. Mr Duncan, can you give us an indication of how DFID has been involved in this? We have had the exchange of letters, which includes Friday's reply to the Secretary of State from the company saying that they will consider the offer being made, although they have already qualified that in one or two ways. Why does the Department, not necessarily you, think discussions did not take place much earlier given that this settlement had been going on for a long period of time? What resistance does your Department have effectively to disbursing the money on behalf of the court, if I may put it that way, rather than BAE?

**Mr Duncan:** First, thank you for your understanding. I have to go to lunch with the Pakistan Prime Minister, and I appreciate your flexibility. DFID was asked by the SFO last year to advise on how, if there were some kind of reparation, it might be spent for the benefit of the people of Tanzania. Working in conjunction with the Government of Tanzania, we came up with what we thought was a really good proposal to be able to spend the best part of £30 million in the education sector. As you know, normally education or any programme needs consistency, so a one-off lump can be potentially indigestible, but we came up with what we thought was a very good proposal and put it to the SFO. We had not at that stage any direct link with BAE at all. The issue now is whether BAE should hand over £30 million or so to the Government of Tanzania for their capitation fund in the education sector, which would basically buy desks, books and extra bits of kit that the educational sector lacks.

I have to say that we are somewhat baffled by BAE's reluctance to do this. We find the supposed legal advice that they would be making a political donation, and therefore would have to submit it to shareholders, wholly unconvincing. Quite what that legal advice rests on is a mystery to us. We have said to BAE that we think this is a good proposal and they should follow its recommendations but, as you will appreciate, the court did not compel them to hand over immediate reparations as we thought the court procedures would so decide.

**Q115 Chair:** The SFO indicated they thought that was implied.

**Mr Duncan:** Yes. You had a witness from them this morning, but I was not privy to that. We think this would be the best solution. You also ask whether you think it should be channelled through DFID. We think

there would be nothing gained particularly by channelling it through DFID, because we are confident that the auditing and, if you like, follow-the-money procedures in Tanzania are up to the standards we would want to see. We are reluctant to assume the reputational risk of becoming a managing agent for something that could equally be done by the Government of Tanzania; but nor have we ever been asked even to consider it, let alone whether we would actually do it. This is broadly hypothetical, but for DFID to be sucked into the vortex of what BAE have done, as it were, is something we would be quite reluctant to assume.

**Q116 Mr McCann:** We had a robust exchange with BAE on this subject. You might be surprised to learn that I championed the proposal made by the Secretary of State in his letter of 3 July to Richard Olver, which sets out how one single lump sum can improve education. As you say, the specific point about 200,000 desks and 4.4 million textbooks is really good stuff. We attempted to question BAE on why they were reluctant to participate in such a proposal because it would put the whole chapter into history. They did not give an answer to this, but one thing you could potentially offer as a reason why they would not want to get involved would be the way the money would be used, how transparent it would be, and so on and so forth. You mentioned it a moment ago. The Secretary of State said in his letter to Mr Olver: "In this way the payment would also be transparent, auditable and could be independently monitored." Could you expand on how that would work? It strikes me that that would give more weight to the argument that that is the route we should be going down.

**Mr Duncan:** If I may, in a second I will turn to my official, Joy Hutcheon, to explain the monitoring procedures that are in place, but I have a couple of observations. One is that, if they are prepared to hand over £10 million, why not £30 million? They are still saying that they have to do it through a third party. I find this rather perplexing. I think we greeted that supposed legal advice with a deep dose of incredulity. Likewise, if they are not prepared to give it directly to the Government of Tanzania because they believe it would be a political donation, why don't the same rules apply to giving it to DFID? Their legal advice I think is extremely baffling, and no doubt you will want to ask to see it. We are confident—this is why we are quite proud of the proposal—that a supplementary £30 million to the educational sector in Tanzania would be of enormous benefit and would close down this issue, having benefited the people of Tanzania in a very tangible, measurable way. In terms of wanting to be able to be sure that the money is well spent and there is no reputational risk that might boomerang on BAE, if you like, perhaps I may turn to Joy Hutcheon.

**Joy Hutcheon:** We were careful, in advising the Government of Tanzania, to say that this should be very specific and measurable, so it is not training, which is more challenging to measure, but desks, textbooks and latrines. We are already very major donors in the education sector in Tanzania, where we

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provide sector budget support. We work very closely with the Government of Tanzania on monitoring expenditure in the education sector. They monitor their budget execution on a quarterly basis and publish data. We monitor that with them. They have annual audits at national and local level, and they have built into this proposal an independent international standard audit at the end of it, to make sure the money had gone to the outputs they were saying it would.

In addition, Tanzania has a very lively and independent Parliament, and a growing independent press, which we would expect to take a close interest in the execution of this proposal, particularly as this has now been headline news in Tanzania for a number of months. If this proposal is put into effect, there will be very interested parties in Tanzania looking at the individual level to make sure those desks and books are delivered. Tanzania does also have a system in place for publishing expenditure at the school level. We are working with them to strengthen that. Again, if this proposal is taken up, we think it will be possible to involve school committees and parents in monitoring the allocation at school level and making sure that those textbooks have been delivered. We would need to do more work with the Government of Tanzania on that, but if this proposal goes ahead, we think that would be possible.

**Q117 Pauline Latham:** My question is more about the law and is probably directed to Lord McNally. Obviously, BAE have been able to select more or less where they have been tried and found to be corrupt. Do you feel it is a good thing that they have been able to find the most acceptable jurisdiction for their plea bargaining, or should the double jeopardy rule go, because if they are tried in America we cannot do anything here? Is that a good thing, or not?

**Lord McNally:** In principle, we are supporters of the double jeopardy rule and would not want to see that weakened. Whether BAE shopped around, I simply do not know.

**Rosemary Davies:** I would not characterise it as “shopping around”.

**Chair:** That is not a legal term.

**Rosemary Davies:** It is probably more a question for the SFO on the particular facts of the case. Certainly, there were proceedings in America, and from memory a much higher penalty was paid. I am not sure that they would have chosen America as opposed to the UK, but I am really not qualified to comment on the detail of it.

**Q118 Pauline Latham:** To what extent do you think the agreement between the SFO and BAE weakens the deterrence of other potential wrongdoers because, as you say, £30 million is a fairly minimal sum?

**Lord McNally:** I am not a lawyer, so you may get terms like “shopping around”. Quite honestly, anybody who does not think BAE have suffered massive reputational damage throughout this saga is in cloud cuckoo land. It may be that the actual things of which they have been found guilty, and where they have been found guilty, are not what the purists would have liked to see, but in terms of sending a message

anybody who thinks that BAE got away with it is living in cloud cuckoo land, as I said. I think the saga has done enormous reputational damage to BAE. The fact that there have been legal processes will, I hope, make others think twice before they believe that is an option, and the fact that we now have the Bribery Act in place underpins that point.

**Q119 Chair:** I am conscious of the fact that Mr Duncan has to go. If BAE were to do as they propose, which is to set up a programme over several years, administered by their advisory board and so forth, handing out money to NGOs across Tanzania, how would British Aerospace competing with DFID apparently as a generous alternative donor impact on what DFID is doing in that country?

**Mr Duncan:** I do not think we would see it in terms of competition, but we would have questions to ask as aid and development professionals about the value for money that would result from it. As a Department, in all we do we are determined to secure value for money and results. What risks being a less professional approach to the distribution of aid may not reach the same standards, which is not in any way to criticise the NGOs; it is to say that we try to look at a country overall and look at its pathway towards reaching, for instance, the MDGs. I think that inevitably it would be a less effective outcome than the one we have proposed. It would not be totally without merit, but I just do not think it would stack up as well against the solution. There is also the timeline. Our proposal is taking as a settlement £29.5 million or £30 million into the educational sector to meet a clear deficiency in provision within the country. To be able to address educational need on that scale in a way that is understood, measurable and effective is, I think, the best option we could design. I think the architecture of our proposal is unlikely to be beaten by any alternatives. Is that right?

**Joy Hutcheon:** Absolutely.

**Mr Duncan:** “Word perfect, Minister”?

**Q120 Chair:** A slightly different point is that one gets the impression BAE have some idea that this will present them as a source of largesse and good will to the people of Tanzania. Having heard the views of the parliamentarians of Tanzania, I have to say I am not sure they or the people of Tanzania would share that view. Could it have a negative impact on what DFID is doing?

**Mr Duncan:** Possibly. If I may, I will turn to Joy more seriously about what we think would be the impact and efficacy of this if it was done only through NGOs over a much longer period of time. We have our scrutiny here; likewise, Tanzania has its scrutiny there, and they do have a lively Parliament. I am not sure that it would be as well received as the proposal we have put together, which I think is a real quality option.

**Joy Hutcheon:** Undoubtedly, there is extremely good work done, and to be done, by NGOs in Tanzania, but there are value-for-money issues about setting up a funding channel for a one-off payment. There are also issues of legitimacy. The people of Tanzania, for

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whose benefit this payment is made, have a democratically elected Government that is taking a great interest in this and would expect to have a voice in how the money is to be spent for the good of the people of Tanzania. There is a question about whether we would in any way undermine that accountability, which we want to build in Tanzania. There is perhaps a broader question about the wider UK relationship with Tanzania and whether that might be affected if this reaches a conclusion which is very unsatisfactory to the Government.

**Mr Duncan:** I think tidiness is one of the great qualities of the option we have designed.

**Q121 Chair:** Minister, thank you.

**Mr Duncan:** Would you like my officials to remain?

**Chair:** Yes, if you will allow them and they are willing to do so, just in case there are any issues on which they can assist.

**Lord McNally:** I would be extremely grateful if they did.

**Q122 Pauline Latham:** You say that it has caused BAE a lot of bad publicity and has not been good for their business. If they had got on with this and paid it in full by now would it not have been better to get it all out of the way and then they could have drawn a line under it and moved on, instead of this procrastination where they seem to be saying they will do a bit now and a bit later but they have to be advised? It seems to me that that will not do their reputation any good whatsoever.

**Lord McNally:** I can only agree. In my old trade of public relations, my advice would certainly have been to get this out of the way and enable the company to move on with a clean sheet. I just don't understand. Companies now spend a great deal of time and money on reputation; reputation is quantified in the balance sheet. To me, this constant prevarication is inexplicable.

**Q123 Hugh Bayley:** One of the villains in this case is Mr Vithlani, who took some £12 million. Nobody in the court or elsewhere had any explanation about how that money was used. The judge speculated that it might have been used to pay Government officials or Ministers in Tanzania to influence their decision. Is Mr Vithlani still living in Tanzania? Is he still in business in Tanzania? Is he being pursued by the Tanzanian legal authorities?

**Lord McNally:** I am now even more relieved that Joy has stayed.

**Q124 Hugh Bayley:** Is there anything the British Government can do to help a case to be brought against him?

**Joy Hutcheon:** I am not aware of the current whereabouts of Mr Vithlani. The Tanzanian Government have not been able to find sufficient evidence to bring any prosecutions in Tanzania in relation to this case. As major budget support donors to Tanzania, we are in regular dialogue with them about the progress they are making in tackling grand corruption, the systems they need to strengthen and

the political will they need to demonstrate. That is a regular part of our dialogue. In relation to this particular proposal, we are absolutely satisfied that we know where the money would be going, so we do not have concerns about any money under this proposal having anything to do with individuals who were involved in the last case.

**Q125 Hugh Bayley:** That is understood—thank you for that—but it was not the implication of my question. My questions are probably for Lord McNally. Following the report from the Africa All-Party Group a few years ago, the previous Government established a Government anti-corruption champion, and that is something the new Government have continued, with the Secretary of State in your Department fulfilling that role.

**Lord McNally:** Indeed.

**Hugh Bayley:** It has been suggested by Transparency International UK and others that it would be useful if the Secretary of State published an action plan or made an annual statement of the tasks he was undertaking in that role and perhaps provided an annual report to Parliament on steps that the Government had taken. Is that something he might be prepared to do?

**Lord McNally:** I would certainly be willing to take back to him that idea. I am not sure how enthusiastic he is for the concept of static annual reports that tend to get formulaic with box-ticking.

**Q126 Hugh Bayley:** We would not want a formulaic report.

**Lord McNally:** I will take the idea. The Lord Chancellor and Secretary of State for Justice, Ken Clarke, has espoused the champion's role with great enthusiasm. The fact that we brought the Bribery Act into being was partly due to his drive and his determination to have that as part of his championship this area. I am also his deputy on the international relations side of the MOJ, where we are looking for activities that can strengthen Governments in their anti-corruption activity.

**Q127 Hugh Bayley:** As one of the authors of the original idea, I welcome that very strongly. We talk about the need for openness, transparency and accountability to Parliament. Indeed, earlier this morning Government officials were saying that one of the reasons why reparations should be made through the Government of Tanzania was that they were accountable to the Parliament of Tanzania. Obviously, the same principle applies here. As a Member I could table a parliamentary question every year to ask what the Minister's goals are for the year, but it would seem to be better for the Government to publish information on their own terms once a year. Do you agree that recent events in this country have heightened the public interest in anti-corruption work? One thinks of some of the international sporting bodies that have come under criticism; one thinks of matters under investigation about a newspaper paying inducements to police officers to part with information. You have

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kindly said you will take the idea back to the Secretary of State.

Can I ask one other thing? The budget for the Serious Fraud Office has been greatly reduced from the start of the triennial review period to the end; it has gone from over £40 million to under £30 million a year. Is that a signal that the new Government take investigating and prosecuting serious fraud less seriously than was previously the case?

**Lord McNally:** No. I think it is part of the reality that right throughout Government we have had to trim budgets, but the fact that the SFO have remained as a distinct authority with a distinct role is I think a signal that we do intend to treat these matters seriously. To go back to your earlier point, it is right to realise that corruption is not just a matter for far-away countries. It debilitates any country. One of the things we are trying to promote both nationally and internationally is the concept that corruption can be faced up to and can be defeated. It is not easy. We are dealing with complex and cross-national jurisdictions and a whole variety of problems, but unless you keep pointing the ship into the wind and take these issues to the various fora where they can be addressed, you become cynical and say, "Well, everybody's doing it. Why not me?" That is corrupting and debilitating of both corrupting and corrupted countries. In the year or so that I have been working on this with Ken Clarke, I have been encouraged in all the international fora. I have just come back from a meeting of Commonwealth Ministers of Justice. In the Commonwealth, G20, OECD and EU these issues are being taken seriously. We have been part of the lead in arguing that they should be taken seriously; and of course the basis of being able to take them seriously is putting our own house in order.

**Q128 Chair:** In their evidence to us, the SFO acknowledged that they were brokering new arrangements and were on a learning curve. For example, on the agreement with BAE in relation to Tanzania their view about how this would happen was clearly different from BAE's. They said that it would all be done and dusted and paid out by February or March rather than running on the way it is. They also said their difficulty was that, before they could broker a deal and bring charges, they were unable to bring a judge into the process. They said that it would be extraordinarily helpful for them to get that kind of guidance and enable them to formulate those agreements so they stood up better and were clearer, and both parties would know what they were, and they were enforceable. What we have seen is that the SFO have said they thought they had an agreement, that money would be paid over sharply in full and delivered for the benefit of the people of Tanzania, probably in consultation with DFID, and BAE Systems said that this was really shareholders' money and they were really maintaining their accountability and responsibility for it. Do you have any thoughts on how you could look into the way this is being dealt with and give the SFO a clearer steer, and the courts a clearer role, so we do not have a situation like now, where the two parties to the agreement have

fundamentally different views about where it is heading?

**Lord McNally:** Rosemary will now go pale, because I will go slightly off message by giving you the view that, in many of these cases, to get results we are going to be a bit like the Americans who got Al Capone on his income tax. Sometimes we will not be able to play strictly by narrow rules; we will do settlements and deals. The difficulty is that we have very clear lines of law and responsibility—I must now go back on message—and the kind of thing that the SFO are talking about will have to be cleared with the judiciary, who may not be too keen on being brought in, as it were, to rubber-stamp deals before they are presented to court. There is a separation of powers—

**Q129 Chair:** The problem appears to be that the SFO feel they have brokered a plea bargain where BAE said they would plead guilty to a lesser offence—if you like, the Al Capone solution—but a penalty would be imposed as if they had pleaded guilty to the more serious offence, and they would expect it to be applied. The problem is that BAE are turning around and saying they do not accept that they did any damage to the people of Tanzania and that they therefore have to make reparations. They will not use that term and do not accept that they should not be the determinant of the benefit to the people of Tanzania. The problem is that without a judge brokering that agreement there is a gap between two lay parties, if you will.

**Lord McNally:** I will ask Rosemary to come in. I think that is a Catch-22, it really is, and we will have to talk to the judiciary about it. I understand that the Law Officers are looking at these issues, but they are deep water. In our system, it is not common to have the kind of plea bargaining that is common in the United States. Judges in the past have become very annoyed and made their views extremely clear about what they regard as pre-empting the court process.

**Rosemary Davies:** There is arguably a gap, certainly in the BAE case, because it was not possible to make a compensation or confiscation order.

**Chair:** That was made clear to us.

**Rosemary Davies:** For reasons you probably explored this morning, because of the conviction for accounting offences, there was not an obvious victim and someone who had obviously benefited financially from that offence. Therefore, it was a voluntary arrangement, and that leaves an enforcement problem. The Law Officers, the Attorney and Solicitor General, are consulting now on their guidelines on plea discussions, and there will be further work in the context of the new National Crime Agency and the Economic Crime Command, which will look at new powers and will include things like deferred prosecutions.

**Q130 Chair:** Making that the sanction for the agreement?

**Rosemary Davies:** It is an alternative to a conviction. There are lots of different ideas under the general heading of plea bargaining and deferred prosecutions. As Lord McNally said, there are difficulties in fitting

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that into the British system. In the case of Innospec, Lord Justice Thomas was very disapproving of the judiciary being presented with a deal, as it were, and asked to rubber-stamp it.

**Q131 Chair:** The judge in this case was as well, but he accepted that was the situation.

**Rosemary Davies:** Yes. The possibility of having the judiciary involved at an earlier stage is all under discussion.

**Q132 Chair:** It just seems that you get a better legal agreement and greater enforceability if you can do that.

**Lord McNally:** I think that the fact the SFO have given that evidence to you puts some pressure on us to make a proper response. Indeed, we would be very interested to know the conclusions of the Committee on that. It is moving into slightly deep waters in terms of our established legal procedures. On the other hand, we also fully recognise—we may get to this under the Bribery Act—that not all of this will be neat and tidy, but if we can get things moving in the right direction, that is all to the good.

**Q133 Chris White:** This question may have been partially answered already, but in light of all we have discussed, not just with you but throughout the morning, are you concerned that as a result of the Bribery Act businesses will cease to operate in certain overseas countries? Moreover, do you think they will be able to compete with companies that still do not follow our legislation?

**Lord McNally:** No. As you will know, the Bribery Act went through in the last Parliament with all-party support. From the very beginning we have taken the view that this is good for British trade and for Britain's reputation, and it is the way the world is moving. I hear things like, "If we don't do it, others will." When we were consulting before we published our guidance, Ken Clarke and I met the chairmen of some of the biggest multinationals operating in this country. I recall one of them saying to us that 20 years ago this would have caused them real problems, but now this is the way the terms of trade are going, and it was too much for their reputation. They were cleaning up their act and they could live with this. I do not think that it will be damaging. I hope that one of the benefits for Britain trading abroad is that people know we trade to the highest standards, not the lowest.

**Q134 Chris White:** Those are great aspirations. You say the world is moving, but from what I heard this morning it is moving pretty slowly.

**Lord McNally:** There are cynics who say that everybody else does it, but my experience has been that countries like the United States, the UK and a number of others are pushing this forward. At the G20 both Russia and China have responded in looking at corruption in their own trading arrangements. A few weeks ago I spoke at Chatham House at a joint meeting with the Indian CBI. India is looking at bringing a bribery Act and at our Act perhaps as a template for what they want to do. It is easy to be put

off by wizened old traders who have seen and done it all, but if we have a champion in this area of the status of Ken Clarke and put in place a Bribery Act, of which I think we can be genuinely proud, and our companies follow the law, they will not suffer unduly in trading with the world. The direction of travel in terms of international agreements and individual country initiatives is towards what we are doing rather than simply throwing up hands and saying we cannot get away from corrupt trade. Corrupt trade is a distortion of trade and is a tax on the countries concerned. I was at a meeting of Commonwealth Ministers of Justice where most of the interest was from the developing countries around the table who knew darned well that endemic corruption was debilitating and a very high cost to the countries concerned.

**Q135 Hugh Bayley:** I hear what you say, that big corporate bosses are happy with the guidance issued for the Bribery Act, but in the evidence we have received from a number of anti-corruption NGOs concern was expressed that the guidance would limit the scope of the Act and strengthen defences that those being investigated or prosecuted might deploy. To what extent do you think those criticisms are justified?

**Lord McNally:** I always welcome criticism. Part of the job of NGOs and pressure groups is never to be quite satisfied. I think they have a great victory with the Bribery Act, but they will never do a lap of honour and say that is it; they will keep pressing us, and it is right that they should. We keep links with Transparency International and other groups on these issues. I do not know whether recent domestic events will make us drop down the table, but post-Bribery Act we hope to go up the table in terms of transparency and good practice, and we want to build on that.

For what reason I will never know, I think the *Evening Standard* and *The Daily Telegraph* started to run stories about the massive cost of the Bribery Act to employment in the country—if you took a client to a Fulham game on a Saturday the police should be waiting for you outside the ground. There was also quite a big cottage industry growing up of consultants who contacted companies to say, "Pay us a large fee and we will tell you how to avoid being prosecuted under the Bribery Act." Partly for that reason and partly because of the fact the Act itself put a responsibility on us to publish guidance, we have tried to publish guidance that we hope is commonsensical in terms that it will not catch those who are providing the kind of hospitality that helps smooth and promote business but will stop bribery. In some ways where those lines are is a matter of judgment.

Ken Clarke posed a question that I think is covered in our guidance. If a mining company, trying to win a contract with an African country, flew the Minister of Mines to look at their Australian mine to demonstrate to him their safety record, involvement with the local community—all the kinds of good practice that would help them win the contract—would that be bribery? Our judgment was that it would not be. If he was also

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invited to bring his wife with him and, after the visit to the mine in Western Australia, he was flown on to Sydney and his wife was given a gold card to go shopping, that would be bribery. There are things we understand. What the guidance hopes to make understood is that in business there are promotional activities. I worked in public relations for 15 years and saw good promotional activity by companies that was absolutely legitimate, but I also worked for two companies that decided they would make it a firm rule not to pay bribes to get business.

**Q136 Hugh Bayley:** To beat up my own side, some years ago there was great controversy when the then Director of the Serious Fraud Office decided, having received guidance from the Attorney, not to proceed with the Saudi Arabian-British Aerospace case. Understandably, Opposition politicians, quite rightly in my view, said that this was a political direction. It was hoped that the Bribery Act would avoid circumstances in which Government Ministers or Law Officers would be required to give their authority for cases to proceed. Corner House claim that article 5 of the OECD bribery convention cannot be enforced in the UK, meaning that politically sensitive prosecutions of this kind can be blocked by the Law Officers or Government Ministers. Is that your understanding of the situation? If so, would it not be better to allow somebody independent of Government, like the Director of the SFO or the DPP, to take a decision on whether prosecutions should go ahead?

**Lord McNally:** First, the Act is the Act. It went through Parliament, and responsibility should lie with Parliament's judgment. I do not entirely rule out cases where one would have to intervene. In the case you refer to, the House of Lords, as it then was, upheld that intervention.

**Rosemary Davies:** There are several issues tied up in your question, Mr Bayley. The Act provides that it is the Director of the Serious Fraud Office or the DPP who consents to prosecution, not the Attorney in this case, although in the case to which you refer, where Corner House challenged it, I recall that it was the Director of the Serious Fraud Office, not the Attorney, who made the decision.

**Q137 Hugh Bayley:** My understanding was that the Attorney expressed an opinion that if a prosecution were to take place it would not be in the public interest, which rather tied the hands of the Director of the FSO. You have clarified to me that the new Act says it is the Director of the FSO or the DPP who has power to initiate proceedings, but are you able to give me an assurance that the Law Officers will never issue advice against proceeding with prosecution?

**Rosemary Davies:** No.

**Lord McNally:** Me neither.

**Q138 Hugh Bayley:** Do they have authority to issue such advice under the new Act?

**Rosemary Davies:** They have issued guidance under the new Act, which answers one of your other points,

about compliance with article 5 of the OECD convention. The joint prosecution guidance from the Director of the Serious Fraud Office and the DPP, not the Attorney—my mistake—refers specifically to article 5 of the OECD convention and says that, “The investigation and prosecution of the bribery of a foreign public official shall not be influenced by considerations of national economic interest, potential effect on relations with another state, or the identity of the people involved.” Therefore, the people consenting to prosecution are reminded of that obligation.

**Q139 Hugh Bayley:** Will the UK fulfil that obligation?

**Rosemary Davies:** This is in the guidance to Crown prosecutors and it is issued by the Director of the Serious Fraud Office and the DPP who have to consent.

**Lord McNally:** It is part of the guidance to this Act. As much as a Minister of State and his official can do, our intention is to abide by that.

**Q140 Chair:** We are in danger of losing our quorum. Thank you very much for the evidence you have given us. I think you have made clear your view about the reputational impact of what this is about. You might not have expected to be in front of this Committee. The point is that we have a particular interest because we have an interest in Tanzania as an important partner in development with the UK. You will recognise, nevertheless, that what has arisen out of this particular undertaking has much wider implications, much of which will affect other developing countries in other circumstances. It may well be that we have a continuing interest in both the outcome of this settlement and possible future cases. We will certainly be keeping an eye on it, because if bribery and corruption charges are coming up and they are to be brokered into out-of-court settlements, then how effectively this will deliver the expectations and the reparations is something this Committee will want to monitor very carefully.

**Lord McNally:** It is timely and apt. Although your interest was Tanzania, and perhaps the historic case of BAE, I can assure you that the Lord Chancellor will pay very close attention to your views on how we take this forward and some of the legal issues we have raised. Perhaps I may say to Mr Bayley that I was not being dismissive of annual reports; I am just petrified that when I get back to the MOJ Ken Clarke will say, “What have you let me in for?”, whereas I will coax him into the benefits of it. When I was first invited, I thought, “Why?” I now see that it is a very full part of our mission and yours, and I hope we can work together closely on this, because corruption is a tax on developing countries, and the more we can squeeze it out of the trade system, the better.

**Chair:** I hope you look at the evidence we received from both British Aerospace and the SFO because it will be instructive in what your role could be in the future. Thank you very much.

# Written evidence

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## Written evidence submitted by DFID

### INTRODUCTION

1. This memorandum addresses the points in the Committee's Terms of Reference relevant to the Department for International Development, Home Office, Ministry of Justice, Treasury and the Department for Business, Innovation and Skills.

*What advice DFID has given to BAe and other bodies about how this money might be used*

2. The Department for International Development (DFID) has not provided any advice to BAe Systems Plc, nor had any correspondence with the company in relation to the Serious Fraud Office (SFO) investigation and settlement agreement.

3. DFID has provided advice to the Government of Tanzania and to the SFO as detailed below.

4. The Director of the SFO, Richard Alderman, wrote to DFID's Permanent Secretary on 5 February May 2010, informing DFID about the agreement SFO had reached with BAe Systems in conclusion of its investigation into BAe's activities in Tanzania and elsewhere. This agreement—to be put to a Crown Court judge for consideration—included the payment by BAe Systems of a sum of £30 million (less any fine imposed by the court) for the benefit of the people of Tanzania. The agreement stipulated that any payment by BAe to Tanzania should be for the benefit of the people of Tanzania. In his letter, the Director of the SFO sought DFID's advice on an appropriate mechanism for ensuring that the money was used for the benefit of the people of Tanzania while ensuring propriety and transparency.

5. DFID accordingly advised the SFO:

- about developing a suitable draft proposal to be discussed with BAE;
- about the nature of DFID's support to Tanzania, DFID's country strategy and areas of focus;
- that it would be desirable for any one-off payment to be used in a way that was sustainable;
- about the Tanzanian Government's development strategy, and how best practice would normally require that any funding of development activities should support this;
- that it was not appropriate to channel private funds through DFID for disbursement;
- about the need, if the funds were channelled through NGOs, for an administrative mechanism to manage the funds and to monitor their use;
- that the Government of Tanzania was expressing a strongly held view that the proposed ex gratia payment should be made to the Government of Tanzania rather than to NGOs, because, in its opinion, the money was due back to the Government because it believed it had been overcharged by BAe; and
- that DFID was best able to offer technical advice in those sectors where the DFID Tanzania office already had a strong engagement (for example the education sector).

6. There followed a number of discussions between the SFO and DFID with the result that DFID's Tanzania office was asked to approach the Government of Tanzania in order to offer help to develop a proposal for how any payment might be used. The Head of DFID Tanzania with the British High Commissioner met with the Tanzanian Minister of Finance on 17 March 2010 to offer assistance. This offer was accepted.

7. On 11 May the SFO also wrote to the Tanzanian High Commissioner in London further encouraging the Government of Tanzania to develop the proposal. The then Tanzanian High Commissioner to the UK paid calls upon DFID Director General, Mark Lowcock and Parliamentary Under-Secretary of State, Stephen O'Brien on April 6<sup>th</sup> 2010 and June 9<sup>th</sup> 2010 respectively. In discussion the High Commissioner asked how the BAe payment to Tanzania would be made. The Minister and the DFID Director General advised the Government of Tanzania to make direct contact with the SFO for information about its agreement with BAe. They restated that DFID officials were ready to help the Government of Tanzania develop a proposal, if that assistance was wanted.

8. DFID offered guidance to the SFO and the Government of Tanzania in the preparation of the proposal as follows. DFID:

- advised of the benefits of a proposal that would ring-fence the payment for the achievement of specific and measurable development objectives (in the education sector);
- facilitated exchanges between SFO and the Government of Tanzania in order to reach agreement on such a proposal; and
- provided technical advice to the Government of Tanzania as they developed the proposal, on what might constitute a good quality proposal.

9. DFID offered technical advice to the Government of Tanzania on a number of iterations of the proposal. As Chair of the Education Sector Working Group in Tanzania, DFID was well placed to offer technical advice.

10. The proposal, which the Government of Tanzania formally presented to the SFO on 16 November 2010, was to use the money to boost the resources available to schools to buy essential teaching materials and to improve classroom facilities and teachers' accommodation. The money would be allocated to the Government of Tanzania's budget line for the *Non-salary Education Block Grant*. The proposal also set out how the payment would be monitored and subject to independent evaluation and audit to international standards. SFO confirmed to DFID on 22 November that it had received the proposal from the Government of Tanzania.

11. DFID's advice was that the proposal submitted by the Government of Tanzania if implemented as described, could make a real difference to the learning experiences of millions of children. The Government of Tanzania has not managed to pay the full budgeted Non-Salary Education Block Grant to schools in recent years and this additional funding would increase the sums that schools receive.

12. A copy of the draft proposal is at Annex A.

*Whether the law needs to be changed to ensure that British companies and individuals found guilty of financial crimes in developing countries are always required by the court to make reparations to the developing country concerned.*

13. Where a British company or individual is found guilty by a UK court of a criminal offence and a confiscation order is made, the UK government can, in appropriate cases, already share the recovered proceeds with other countries without the need for further legislation.

14. Asset sharing or return and repatriation following confiscation can be addressed administratively on a case by case basis, guided where relevant, by provisions in international agreements. Article 14 of the UN Convention against Transnational Organized Crime and Article 57 of the UN Convention Against Corruption provide that confiscated money can be paid to other countries as compensation or restitution to the victims of such crimes. Where necessary, prosecutors and the courts can also explore alternative methods of transferring money if confiscation following conviction is not an option in any individual case.

15. Where a foreign court has convicted a British company or individual of a financial crime, it is for that court under the relevant municipal law to decide what sanctions that company or individual will face. The UK does not have extra-territorial jurisdiction merely because the companies or individuals involved are British.

16. Section 109 of the Anti-Terrorism, Crime and Security Act 2001 gives the UK courts extra-territorial jurisdiction over bribery and corruption offences committed abroad by UK nationals and companies. UK Courts could therefore prosecute a British company found guilty of carrying out financial crimes in developing countries. This could result in confiscation action and reparations being made to the developing country.

17. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions underpins national action on bribery. Countries which are signatories, such as the UK, are required to put in place legislation that criminalises the act of bribing a foreign public official and 38 states parties have now done so.

<sup>1</sup> The OECD does not implement the Convention; its Bribery Working Group monitors implementation by participating countries. Countries are responsible for applying laws that implement the Convention and actively enforcing them. The UK takes an active role in the OECD Bribery Working Group and has also undergone two phases of peer evaluation to assess the extent to which the UK has implemented the Convention and enforced the legislation.

*Whether further changes to the Bribery Act 2010 or other legislation are required.*

18. The Bribery Act 2010 reforms the criminal law of bribery to provide for a new scheme of bribery offences covering bribery both in the UK and abroad. The Act will provide a robust response to the threat posed by bribery which causes immense damage to economic development, particularly in the emerging and developing world. The Act will also help the UK to collaborate more effectively with our international partners in combating foreign bribery. The Act will put beyond any doubt that the UK complies with its international obligations including under the UN Convention against Corruption, the OECD Convention on Combating Bribery of Foreign Public Officials and the Council of Europe Criminal Law Convention on Corruption.

19. The importance of tackling foreign bribery is reflected in several provisions in the Act. The provision on extra-territorial jurisdiction allows bribery committed abroad by UK corporate bodies to be prosecuted here, as well as bribery allegedly committed by UK nationals and persons ordinarily resident in the UK. The Act also creates a new offence of failure by commercial organisations to prevent bribery. The offence will address widespread criticism that corporate liability for bribery under existing legislation is difficult to prove and therefore fails to provide an effective and dissuasive deterrent. The Act has increased the maximum penalty to 10 years imprisonment for all offences, except the section 7 offence relating to failure by commercial organisations to prevent bribery, which will carry an unlimited fine.

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<sup>1</sup> Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, UK & US.

20. The Act is the product of a long process of policy and legislative development commencing in the late 1990s. Throughout this process the scope of the legislation was given careful consideration. The framework of offences established by the Act is complemented by existing powers of the courts in relation to compensation and confiscation and civil recovery powers under the Proceeds of Crime Act, which play a very important role as part of the UK's efforts to address bribery effectively.

21. The Government therefore has no plans to amend the Act to include specific powers in relation to these matters. It is important to note that the Act does not come into force until July 1 2011 and the Ministry of Justice consider it premature to look at its possible amendment. As with all such legislation the Act requires time to bed down and for the courts and prosecutors to test its provisions.

*Whether the UK prosecuting authorities have the resources and powers they need to prosecute transnational financial crimes, particularly when there are also criminal proceedings in another jurisdiction in respect of the same issue.*

22. With regard to powers, the UK has ratified the UN Convention on Transnational Organised Crime and the UN Convention against Corruption and has put the necessary domestic legislation in place to implement those Conventions. The Proceeds of Crime Act 2002 (POCA) can also be used to recover criminal assets following the prosecution of transnational financial crimes. Even where there is no criminal prosecution, the civil recovery provisions (non-conviction confiscation) under Part 5 of POCA allow prosecutors to seek action against property in the UK if it represents the proceeds from a crime which would be an offence in the UK, even if the criminality happened abroad.

23. With regard to resources, the Government allocates funding to public prosecutors as a whole and decisions about the use of resources are made locally. The individual prosecution agencies are better placed to judge need and prioritise resources accordingly.

24. Transparency International recognises the leading role of the UK in the prosecution of foreign bribery. The UK is listed as one of only seven active enforcers<sup>2</sup> in 2010 and 2011 in their annual OECD Bribery Convention progress report.

25. The UK has prosecuted individuals and companies for foreign bribery using the Prevention of Corruption Acts and has also taken action on offences against United Nations sanctions. The Proceeds of Crime Act has been used recently to recover over £7 million generated through foreign bribery by third parties. In the short time since the UK's first foreign bribery prosecution in 2008, the UK has become a major contributor to fight against corruption.

26. In consultation with the Law Officers and other relevant colleagues, the Home Secretary is currently considering options for delivering the Government's commitment to improve capability to tackle economic crime. This work continues in close conjunction with the development of the National Crime Agency.

27. As part of that work the Ministry of Justice is considering whether a stronger suite of powers to supplement those already existing would aid prevention, improve the effectiveness of current sanctions and their deterrent effect and improve efficiency, allowing a better response within constrained resources. This consideration includes whether we need to improve the framework for enforcing the law against serious economic crime across international boundaries, for example by developing new ways of working with other jurisdictions.

*How the Government co-ordinates its policy against transnational financial crime*

28. Financial crime, both national and transnational, has been identified as a key threat affecting the United Kingdom and described in the annual United Kingdom Threat Assessment. This is an authoritative strategic assessment drawing on intelligence from local, national and international levels. Action is co-ordinated at both national and international levels through the Control Strategy developed in response to the UK Threat Assessment.

29. Nationally, the response to the threats is coordinated through a group of programme boards, some dealing with specific crime types (eg fraud, drugs etc) and some addressing cross-cutting issues. One of the cross-cutting boards deals with criminal finances (Programme 4).

30. Each programme of activity has its own multi-agency action plan, deliverables and governance arrangements. The overarching aim of the Control Strategy is to achieve tangible and lasting reduction in the harm caused to the UK by organised crime. It seeks to do this through effective information sharing and collaborative working by using criminal justice and other measures to make sure the UK is a hostile operating environment for organised criminals, and by targeting criminal profits. The oversight and assurance for the Control Strategy is provided to the National Security Council, Officials, Organised Crime Group through the Home Office Strategic Centre for Organised Crime.

31. Programme 4 has representation from the Association of Chief Police Officers, Her Majesty's Revenue and Customs; the Serious Organised Crime Agency; the UK Border Agency and the Serious Fraud Office; the

<sup>2</sup> Denmark, Germany, Italy, Norway, Switzerland, UK & US

Crown Prosecution Service, Ministry of Justice, Treasury, Bank of England, Financial Service Agency and the intelligence agencies.

32. Internationally, the Home Office chairs the International Group on Organised Crime, a cross-government and multi-agency group which addresses international organised crime issues. Along with the law enforcement and criminal justice agencies listed above this group has representation from the Foreign and Commonwealth Office, DFID and the Ministry of Defence. This group also reports to the National Security Council (Officials) (Organised Crime).

33. The global standards on anti-money laundering and terrorist finance are set by the Financial Action Task Force (FATF), the inter-governmental body responsible for standards in this area. The UK—via the Treasury and law enforcement partners—participates fully with other international partners and in many respects, leads the development of these standards.

34. In 2010, UK leadership on transnational financial crime led to the UK responding to G20 calls to strengthen international standards on corruption. FATF are responding by providing guidance on the application of its standards to corruption and are currently strengthening standards on “Politically Exposed Persons” and beneficial ownership.

35. The UK is committed to implementation of these global standards and of the EU Money Laundering Directives that flow from them. The Treasury, Home Office, DFID and other departments work closely together and with law enforcement agencies to co-ordinate policy in this area.

36. Further to this, the Government has a co-ordinated programme of activity that aims to make the UK a hostile environment for corrupt Politically Exposed Persons (PEPs). In order to achieve this aim, Government departments, public sector bodies, law enforcement agencies and supervisors are already working towards the following objectives:

- To establish an effective deterrent against PEPs money laundering through improved intelligence
- To optimise PEPs Suspicious Activity Reports.
- To maximise the recovery of stolen assets in the UK

To maintain an effective and proportionate legal and regulatory environment.

This requires working closely on an ongoing basis with our international partners at strategic and operational level.

## **Annex A**

### **PROPOSAL FROM THE GOVERNMENT OF TANZANIA FOR THE USAGE OF ANY FUNDS AWARDED AS PART OF THE BAE/SFO SETTLEMENT**

1. This annex sets out a proposal detailing, should any ex gratia payment be made by BAE, how it would be used by the Government of Tanzania (GoT).

2. Further, as it is proposed that, should these funds become available, they are used to supplement the GoT’s budget for primary education, a brief summary of the current status of primary education in Tanzania appears below.

3. The GoT’s proposal is consistent with Her Majesty’s Government (HMG)’s provision of development assistance to Tanzania through the Department for International Development (DFID). DFID is the UK government department that manages Britain’s aid to poor countries and works to get rid of extreme poverty. The UK through DFID is one of the largest bilateral donors to Tanzania and a leading provider of advice and funds to support the development of Tanzania’s education sector.

4. It is expected that any ex-gratia payment made by BAE would be made in a manner that provided resources to the GoT’s own development efforts, as supported by HMG.

#### **Status of Primary Education in Tanzania**

5. Tanzania introduced education reforms in 1995 to address problems facing the primary education sector. These included:

- low enrolment rates;
- crowded and poorly furnished classrooms;
- A shortage of teaching materials; and
- an inadequate number of qualified teachers.<sup>3</sup>

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<sup>3</sup> Education and Training Sector Development Programme (ESDP)—Primary Education Development Programme II p1

6. The Education and Training Policy (ETP) was formulated in 1995 with a desire to improve the provision of education and training delivered in the country. The major objective of this policy is to achieve increased enrolment, equitable access, quality improvement, expansion and optimum utilisation of facilities throughout the education system.<sup>4</sup>

7. In 2001 the GoT embarked on the Primary Education Development Programme (PEDP) to ensure that every eligible child received the best education.<sup>5</sup>

8. The PEDP still faced a number of challenges after the first phase (2002–2006) was completed. These included the following:

- inadequate in service teacher training;
- inadequate qualified teachers for pre-primary classes and primary schools;
- undesirable book to pupil ration of (1:3);
- shortage of teachers leading to an undesirable teacher to pupil ratio (TPR) of 1:52;
- inadequate classrooms, toilets and furniture; and
- inadequate teachers houses discouraging new teachers from joining the profession.<sup>6</sup>

9. The second phase of the PEDP (2007–2011) (PEDP II) aimed to address a number of these outstanding challenges.

10. By November 2006 in excess of 40,000 primary school teachers have been recruited. However, the TPR stood at 1:52 far short of the target ratio of 1:40. Additional funding will help attain the desired TPR.<sup>7</sup>

11. There remained a need to construct classrooms for primary schools to make the school environment conducive for effective learning and teaching. This included the construction and renovation of classrooms, teachers' housing, sanitary facilities and the supply of furniture.<sup>8</sup>

12. Building new schools and/or classrooms would reduce overcrowded classes and help attain a class size of 40. Additionally, renovating dilapidated classrooms would enhance the learning environment.<sup>9</sup>

13. The PEDP recognised that to attract teachers to join the profession, and in particular to remote areas, it was necessary to construct housing for them. The PEDP contained a plan to provide housing to half of new recruits to teaching.<sup>10</sup>

14. Adequate toilet facilities are essential to maintain sanitation and hygiene in primary schools. Improving these facilities would improve the health and attendance at schools, reduce the drop out rate and could increase learning outcomes, especially of girls who are disproportionately affected by lack of adequate sanitation.

15. A number of primary schools in Tanzania do not have access to clean and safe water. Funding to enable access to safe water would be of significant benefit in improving hygiene and tackling childhood diseases.

16. The quality of education is enhanced by the availability of relevant and quality teaching and learning materials. Appropriate textbooks are a crucial factor in successful learning. Additional funds could result in the current average of book to pupil ratio falling from 1:3 to the desired 1:1.<sup>11</sup>

#### PROPOSED USE OF ANY EX-GRATIA PAYMENT

17. In the budget for 2010/11, the GoT has allocated TZS 80 Billion (£40 Million) for primary capitation grants. These grants are the sum that schools receive per pupil in order to fund non-salary costs in the classroom. Under GoT policy, primary schools should receive TZS 10,000 (£5) per pupil per year. However, it has historically not always been possible to provide schools with a full allocation at the level set out in the policy<sup>12</sup>. For example, in order for each primary school pupil to receive the targeted TZS 10,000 (£5) in 2010/11, the GoT would need to allocate a total of TZS 85 billion (£45 Million) in the budget, and actual disbursements to schools would need to rise significantly from the historical levels.

18. In addition to these capitation grants, local government also manages development grants that can be used for basic school construction (including classroom, teachers' houses and latrines). The total of this funding through capitation and development grants can be described as the "non-salary Education Block Grant".

19. In the event that additional financing arose from the BAE/SFO settlement it could be used to increase this non-salary Education Block Grant as a way of directing additional resources to schools. Solely for

<sup>4</sup> Ibid p4

<sup>5</sup> Ibid p7

<sup>6</sup> Ibid p8

<sup>7</sup> Ibid p14

<sup>8</sup> Ibid p14

<sup>9</sup> Ibid p15

<sup>10</sup> Ibid p15

<sup>11</sup> Ibid p22–23

<sup>12</sup> In recent years, a figure nearer TZS 5,000 (£2.50) per student has been received by schools.

illustrative purposes, each additional £10 million in 2010/11 (TZS 20 bn) would equate to about £1.20 (TZS 2,400) per pupil for the 8.44 Million primary school students in Tanzania.

20. Tanzania has made great strides in increasing access to primary education, with a Net Enrolment Rate (NER) of 96%<sup>13</sup>. The GoT is now working to improve the quality of teaching. The efforts include the provision of more qualified teachers and basic equipment such as textbooks, desks, sufficient numbers of classrooms, sanitation facilities, and accommodation for teachers, particularly in remote areas. For example, the average class size in Tanzania is 54 compared with 26 in the UK; on average, 65 pupils share one pit latrine, with girls in particular put off attending school because of the lack of these facilities. An acute shortage of basic accommodation for teachers means that some rural areas have a teacher:pupil ratio of 1:75.

21. Additional funds in Tanzania's 2010/11 budget would enable schools to make investments to meet some of the basic needs. For example, if the court was to endorse the making of an ex-gratia payment, these funds could enable schools to:

- provide 4.4 million additional textbooks for grades 1 to 7;
- provide 192,000 syllabi for 12 subjects to teachers in all 16,000 primary schools;
- provide 200,000 desks for pupils in rural, remote and hard to reach schools and overcrowded classrooms;
- construct 1196 teacher's houses in rural, remote and hard to reach areas, including in each of the 132 councils;
- construct 2900 additional latrines, and rehabilitate classrooms and existing buildings to bring them up to an acceptable standard; and
- provide additional teaching and learning materials.

22. The GoT therefore proposes that any funds being awarded as part of the BAE/SFO settlement would be used for this one-time addition to the non-salary education block grant to primary schools.

23. Regarding audit, the GoT acknowledges the need to show that the funds are used for the benefit of the people of Tanzania. The GoT provides public quarterly reporting on budget disbursements and expenditure as well as annual audit reports produced at local government and national levels. Routine monitoring of this support will use this general information, as well as sector specific reporting. Furthermore, if this additional support were to be provided, it is agreed that an external, international standard targeted audit of the primary school block grants would be undertaken within 18 months of receipt of any funds. The costs of this audit would be funded from the settlement award in an amount not to exceed £200,000.

27 April 2011

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#### Further written evidence submitted by DFID

I promised to set out the details of the proposal that the Government of Tanzania prepared with the help of DFID's highly experienced development professionals in Tanzania. The proposal attached suggests that a one-off payment be made to top up the "education capitation" grant. In the Government of Tanzania's budget for 2010 the capitation grant was £40 million, the equivalent of £5 per student. However, this budget line has been consistently underfunded in recent years, so that only around £2.50 per student has actually been paid.

It is my firm belief that BAE should consider adopting the proposal in full. Far from being a political donation to a party (the Government of Tanzania is freely elected by the people of Tanzania), the proposal would use government financial systems to buy specific benefits for Tanzanian school children. It is entirely in keeping with spirit of BAE's settlement with the Serious Fraud Office when it said the payment should be "for the benefit of the people of Tanzania". The results would be very tangible: 4.4 million textbooks, syllabi for teachers in every primary school, 200,000 desks for kids and more than 1,000 houses for teachers in remote areas.

In this way, the payment would also be transparent, auditable and could be independently monitored. It would avoid the losses associated with multiple contributions via many intermediary organisations. As a lead donor in Tanzania, DFID would be in a position to help verify that the money was being used for the intended purpose, as we do with the utmost rigour when it comes to British taxpayer routed through Tanzania's budget. And because it enjoys the support of the Government of Tanzania, it is likely to enable the episode to be concluded Swiftly, justly and without needless acrimony between the UK and Tanzania.

It would also underline your successful credible "new broom" approach and enable us to support and praise BAE for drawing a line under all this.

3 July 2011

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<sup>13</sup> The NER is the proportion of the relevant age group who are in full-time education.

## Written evidence submitted by BAE Systems

### INTRODUCTION

1. The Committee invited a submission from BAE Systems in relation to its short inquiry plan to make a payment of £29.5 million for the benefit of the people of Tanzania. The Committee also indicated that it would welcome BAE Systems's view on the Bribery Act, and an assessment of the company's compliance processes, which are aimed at ensuring responsible business conduct.

### TANZANIA

2. As the Committee is aware, on 5 February 2010, BAE Systems reached a settlement with the Serious Fraud Office (SFO), under which the company pleaded guilty to an offence under section 221 of the Companies Act 1985 of failing to keep reasonably accurate accounting records in relation to its activities in Tanzania.

3. Under the settlement, it was agreed that BAE Systems would pay £30 million, comprising a financial order to be determined by a Crown Court judge with the balance paid by the company as an ex gratia payment for the benefit of the people of Tanzania. It was no part of the SFO's case that the company was involved in the making of payments that were improperly used nor was it any part of the SFO's case that the company was party to any agreement to corrupt in Tanzania.

4. On 21 December 2010, this settlement was endorsed in Southwark Crown Court before Mr. Justice Bean, and BAE Systems received a fine of £500,000. That meant that the ex-gratia payment would be £29.5m.

5. As a result of this, the sum of £29.5m has been deducted for accounting purposes from the BAE Systems Group's stated net debt at 31 December 2010. With effect from 1 January 2011, this sum is being held by the company as a fund in a notional deposit account. It is accruing interest, the sum of which would also be paid to recipients selected to receive payments from the fund.

6. We should point out that it was the company's proposal that a payment should be made to benefit the people of Tanzania as part of the discussions leading to the settlement reached with the Serious Fraud Office last year. The amount of the payment was not set by reference to the value of any contract or contracts relating to Tanzania. The company's proposal was agreed by the Director of the SFO.

7. In order to give effect to the company's commitment, BAE Systems is now engaged in creating an advisory group to counsel the company on how best the money should be disbursed to ensure it meets the underlying objective of benefitting the people of Tanzania. The group will comprise company executives together with people from outside the company with acknowledged independence and integrity. In making a final decision on any payments, the company will have to ensure that it is made fully in accordance with the company's policies in relation to responsible business conduct, and charitable donations.

8. BAE Systems will undertake to inform the committee when the Group's membership and terms of reference are determined.

### *The Bribery Act 2010 and BAE Systems responsible business conduct*

9. BAE Systems fully supports the Bribery Act. We made this support clear during the passage of the Bill through Parliament, and gave evidence to the Joint Scrutiny Committee. The company believes that it is entirely appropriate that the UK should have modern anti-corruption legislation which makes clear the responsibilities of British companies in pursuing business both in the UK and overseas. We were involved in the consultation on the guidance issued by the Ministry of Justice to accompany the Act, which was published last month, which we considered to be especially necessary for smaller companies operating in international markets.

10. From a BAE Systems perspective, the company has done a huge amount in the past 3–4 years to put in place robust and leading edge business conduct practices. In 2008, the company asked Lord Woolf to establish a committee to:

- (a) identify the high ethical standards to which a global company should adhere
- (b) identify the extent to which the company may currently meet these standards
- (c) recommend the action that the company should take to achieve these standards.

11. BAE Systems undertook to implement the Committee's recommendations in full before the Review began. Since the report was published, the company has fulfilled that commitment, and BAE Systems' performance in relation to its compliance processes and procedures in the 3 years since the report's publication is being audited, and a final report on this will shortly be published.

12. Against this background, BAE Systems is confident that it is in a position already to comply fully with the Bribery Act—and other anti-bribery legislation, for example the US Foreign Corrupt Practices Act. The company's robust position in this respect was acknowledged by the Serious Fraud Office, and the US Department of Justice, when the global settlement with both authorities was reached last year.

13. The company's commitment to responsible business conduct and the activities it has undertaken and continues to undertake in furtherance of this objective are described in detail in the company's Annual Report. I attach the relevant extracts, and will arrange for full copies of the Report to be sent to the Committee.

21 April 2011

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#### **Further written evidence submitted by BAE Systems**

The International Development Committee announced its intention to undertake a brief inquiry looking at aspects of BAE Systems plans with regard to Tanzania, following the settlement reached with the Serious Fraud Office.

I should first explain that the idea of creating an opportunity for future benefit for the people of Tanzania was proposed by the company in discussions with the SFO, and accepted by the Director. This was a voluntary proposal, and was not as a result of an undertaking requested from the company.

Following Court approval of the terms of its settlement with the SFO, the sum of £29.5 million has been deducted for accounting purposes from the Group's stated net debt at 31 December 2010 and, with effect from 1 January 2011, is being held by the company in a notional deposit account accruing interest, which would also be paid to the group or body selected to receive the payment.

The company is now engaged in the process of creating an advisory group comprising suitably qualified and experienced individuals to guide the company as to the best possible approaches to the realisation of the overall objective underlying the proposal. All payments made by the company will be made in accordance with the relevant company policies, including those relating to business conduct and the making of charitable donations. When the advisory group is established and payments are made, the company will describe in its publicly available reports to shareholders how the funds are being applied towards the realisation of the company's objective.

I hope that this addresses the points into which the Committee have indicated they wish to inquire.

29 March 2011

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#### **Further written evidence submitted by BAE systems**

I wrote to the Committee on Thursday 21 April 2011, with a submission from BAE Systems, and on Friday 17 June 2011 to inform the Committee of the establishment of the chairman and deputy chairman of the Advisory Board, established to advise the company on how best to achieve the objective of ensuring that an *ex gratia* payment is made to the benefit of the people of Tanzania. In the light of further developments in the Company's plans, and some recent media reporting, we thought it would be helpful to send the Committee a further statement on the background to the radar contract, and the plan to make an *ex-gratia* payment. This is attached.

The Committee has also indicated its desire to speak to a director of BAE Systems with "executive responsibility" for the radar contract with Tanzania. This may be the result of a misunderstanding of the situation. The radar contract with Tanzania was under negotiation from 1993 to 1999. Once the contract was signed in 1999, work began and the radar system was commissioned in December 2002.

The events in question, therefore, go back between ten and twenty years. In 1999, British Aerospace merged with Marconi Electronic Systems, leading to substantial management re-organisation. In the intervening decade, BAE Systems as a Company has changed considerably and no current directors of BAE Systems have had any substantive involvement with or responsibility for the radar contract in question. In those circumstances, there is no serving director who could sensibly address the Committee.

Philip Bramwell who is the Group General Counsel of BAE Systems, took up his post in 2007, and is a member of the Executive Committee of the Company. He had responsibility for the SFO settlement. He will attend the hearing with me. Lord Cairns has also agreed to be present, should the Committee wish to discuss his role as the chairman of the Advisory Board. In that capacity he does not, of course, speak for the Company, and it is important to stress that his role is independent.

#### **SUPPLEMENTARY EVIDENCE**

Thank you for inviting BAE Systems plc (the Company) to submit evidence to and appear before the Committee. Since the Company submitted its initial summary evidence, there have been a number of material developments in relation to the Company's plans to make an *ex gratia* payment for the benefit of the people of Tanzania. In addition, a number of speculative media articles have been published and it is clear from some of these that there is a degree of confusion, both as to the basis of the Company's settlement with the Serious

Fraud Office (SFO) and as to the Company's plans to fulfil its obligations under that settlement. The Company is therefore submitting this additional briefing in order to provide members of the Committee with further information by way of background as well as an update on recent developments.

The following summarises the background to the radar contract and the *ex gratia* payment that the Company has agreed to make for the benefit of the people of Tanzania.

## 1. THE RADAR CONTRACT

1.1 In 1991–92 (ie nearly 20 years ago), the Tanzanian Government invited bids for a radar system. What was then Siemens Plessey Electronic Systems Ltd (Siemens Plessey) put in a bid and was successful in competition with four other bidders in April 1993. Siemens Plessey was then entirely independent of BAE Systems or its predecessor British Aerospace.

1.2 Extensive negotiations followed between the Tanzanian Government, Siemens Plessey and various financing banks, in the course of which there was, in 1995, a change in government in Tanzania. In September 1997, a contract was signed, under which the radar system was to be purchased and installed for US\$88 million, subject to certain conditions precedent. The conditions were not met and as a result the contract did not come into effect.

1.3 In autumn 1997, what was then British Aerospace agreed to purchase Siemens Plessey, together with some of its affiliates. The acquisition was completed in April 1998. Siemens Plessey was renamed British Aerospace Defence Systems Ltd (BADSL).

1.4 Further negotiations then took place with the Tanzanian Government. Eventually, in September 1999, well over a decade ago, a new contract for the supply of two land-based radars and associated communication equipment was entered into, under which the radar system was to be purchased and installed for US\$39.97 million (£24.5 million) ie less than half the previously agreed price.

1.5 At this stage, both the Tanzanian Government and BADSL publicly expressed their belief that the contract represented good value for money for Tanzania. Indeed in December 1997, the World Bank had recommended that the contract be entered into. It was expected that the Tanzanian Government would use the Watchman radar system to track aircraft flying through Tanzanian airspace and levy air space utilisation fees upon them. Watchman radar systems are in operation at many airports across the UK and internationally, including Heathrow, Gatwick, Stansted, Manchester, Edinburgh, Rome and Majorca.

1.6 The radar system, therefore, had an upfront cost, but was expected over time to be a tool for generating revenue for the Tanzanian Government. The Tanzanian Government estimated at the time that the annual revenue would be in the order of US\$2–5 million. Work began on providing the radar and an export licence was granted by the UK Department of Trade & Industry in December 2001.

1.7 The Watchman Air Traffic Control Radar was supplied to the Tanzanian Civil Aviation Authority (TCAA) in 2002; the radar achieved full CAA (Civil Aviation Authority) acceptance in early 2003 and continues in service today to provide Dar es Salaam Airport with a Control Approach and Area En-route service, critical to aviation safety in the country. The system gives very effective service in Dar es Salaam Instrumented Air Space and the TCAA receive revenue for the services provided. Utilising the Tanzanian Government's own estimates in 2001 economics, revenues of US\$16–40 million should have been generated by the system since its acceptance, ensuring that the system has already, or will in due course, have paid for itself whilst delivering critical air safety capability.

## 2. THE ROLE OF THE MARKETING ADVISER

2.1 To assist it in a market in which it had no established business presence, Siemens Plessey had engaged a marketing adviser called Shailesh Vithlani in Tanzania in 1993. The use of marketing advisers by companies with no in-country staff was common across many industrial sectors and offered a lower cost base for long lead time programmes. As far as we can now tell, throughout the 1990s, Mr Vithlani regularly participated in meetings with the Tanzanian Government with or on behalf of Siemens Plessey, so that it was quite clear for whom he was acting. There were no legal restrictions upon the use of marketing advisers in Tanzania.

2.2 British Aerospace inherited the relationship with Mr Vithlani at the time that it acquired Siemens Plessey in 1998. Its standard processes for dealing with marketing advisers were applied to Mr Vithlani at that stage and contracts with him, or companies associated with him, contained express warranties as to his business conduct including that that he had not, and would not, pay bribes. The percentage commission payable to Mr Vithlani was also substantially reduced to 31% of the radar contract price.

2.3 Mr Vithlani was paid on a commission-only basis, investing his personal time, money and resources in representing Siemens Plessey and its successors over an extended period. He assumed the business risk that Siemens Plessey would be unsuccessful in winning the radar contract in competition with other bidders and he received no commissions between 1993 and 2000, when the first payment for the radar was made by the Tanzanian Government. In accordance with his contract with the Company, the final payments to him in respect of the radar contract were made in December 2005 and were subject to express confirmation from him and

from relevant employees that no bribes had been, or would be, paid. In total, approximately US\$12.4 million was paid to Mr Vithlani or companies associated with him over a period of 12 years.

2.4 All relationships between the BAE Systems group and Mr Vithlani were terminated by April 2007, when BAE Systems undertook a very wide-ranging further review of its relationships with all marketing advisers. This pre-dated the Woolf Committee report, published in May the following year, which led to further efforts by the Company to become recognised as a leader in standards of business conduct.

### 3. INVESTIGATION AND SETTLEMENT

3.1 As is well known, the SFO began investigating allegations against what had by then become the BAE Systems group in July 2004. That investigation included the sale of the radar system to Tanzania. In the course of the ensuing five years or more of that investigation, the Company provided hundreds of thousands of documents to the SFO and made every effort to preserve documents and make relevant employees available to the SFO, at a cost to the Company of tens of millions of pounds. As far as the Company is aware, the SFO obtained documents from others, both in the UK and abroad. The SFO also conducted a number of interviews of individuals.

3.2 In February 2010, over five and half years after the investigation had started, the SFO and BAE Systems agreed the basis upon which the investigation should be terminated. The key points of that settlement were as follows:

- (a) BAE Systems plc agreed to plead guilty to one charge of failing to ensure that the books and records of its UK subsidiary BADSL were reasonably accurate, contrary to s221 of the Companies Act 1985, in that the commissions paid to Mr Vithlani were described in certain of BADSL's accounting records as being for "technical services", rather than the marketing services actually provided by Mr Vithlani. This offence does not involve any allegation of dishonesty or corruption, and neither was alleged by the SFO nor accepted by BAE Systems plc. Equally, this offence did not take place in Tanzania nor does it expressly or by implication suggest that the radar system supplied by the Company to Tanzania was anything other than fit for purpose and value for money.
- (b) The SFO would terminate all of its investigations against the BAE Systems group and would take no other proceedings against the group for matters arising from its investigations. (The SFO remained free to take proceedings against any individual.)
- (c) BAE Systems plc agreed to make an *ex gratia* payment for the benefit of the people of Tanzania in a manner to be agreed between the SFO and BAE Systems plc. The amount of the payment was to be £30 million, less any financial orders imposed by the court pursuant to the guilty plea. The figure of £30 million was arrived at by negotiation and not by reference to the value of the radar contract in Tanzania or indeed to any other contract.

3.3 At the same time, the Company also reached a settlement with the US Department of Justice in relation to certain statements made to the US Government and certain export control violations. These did not involve the Company pleading guilty to any offence of bribery.

3.4 Between February 2010 and 21 December 2010, pending the outcome of the court proceedings, the matter was *sub judice*. In the UK, BAE Systems plc pleaded guilty in Westminster Magistrates Court on 23 November 2010 on the agreed charge. The matter was transferred to Southwark Crown Court for sentencing and on 21 December 2010, Mr Justice Bean handed down a sentence of £500,000, plus an agreed sum of £250,000 representing the SFO's costs. This was paid in January 2011.

3.5 Under the terms of the agreement with the SFO, the Company was then due to pay £29.25 million for the benefit of the people of Tanzania. However, the Company decided to pay the element of the SFO's costs itself and so preserve the full amount of £29.5 million to be applied as an *ex gratia* payment.

### 4. APPLICATION OF THE EX GRATIA PAYMENT

4.1 Once the amount to be paid had been fixed by the Court, the Company took steps to put in place a mechanism to discharge its obligations under the Settlement Agreement with the SFO. The wording of the Settlement Agreement reflects accurately the nature of the Company's offer during discussions with the SFO. It contains no deadline by which the funds have to be applied, no requirement that the funds be paid out for the benefit of any one class of beneficiary and no restrictions stipulating the payment of a single lump sum or multiple payments over time.

4.2 The Company is, above all, concerned to ensure that a measured and thoughtful approach is applied such that the funds are used in an open manner to create a sustained benefit for the people of Tanzania. To the extent that such benefit can be enhanced by the *pro bono* contribution of some of the Company's significant technological capability, the Company has indicated its willingness in principle to make such a contribution.

4.3 To ensure that the Company had available the necessary expertise in international aid and development to achieve its objectives, the Company decided to establish an independently-chaired Advisory Board. In January 2011, soundings were taken in a variety of quarters, including the Foreign and Commonwealth Office, as to the range of individual experience the Company should look for in its independent Advisory Board

members. In February 2011, the Company sought and obtained confirmation from the SFO that it approved the Company's approach.

5. From March 2011 onwards, the company sought to identify candidates to assume the leadership of the advisory board. The company is delighted to have secured the services of Lord Cairns and Philippa Foster Back as independent chair and deputy chair respectively of the Advisory Board. Following a distinguished career in the City, Lord Cairns served as chairman of the Commonwealth Development Corporation, where he was heavily involved in Tanzania and other African countries and he is currently a board member of the Mo Ibrahim Foundation, which seeks to promote good governance in sub-Saharan Africa. Philippa Foster-Back has 30 years of business experience and has been the director of the Institute of Business Ethics since 2001. She was also a member of the Woolf Committee which looked at ethical business practices in the Company.

5.1 The Advisory Board is actively seeking further independent members. It would, in particular, welcome Tanzanian representatives.

5.2 The Company understands that Lord Cairns is presently consulting representatives of government, the legislature of Tanzania, and non-governmental organisations who have an interest, and we have received representations and proposals from a number of individuals and NGOs with an interest and involvement in Tanzania. It has become apparent to the Company in light of a meeting with members of the Tanzanian Parliament in recent weeks that the Tanzanian Government may have been led to believe that the terms of the Settlement Agreement between the Company and the SFO entitle the Tanzanian Government to receive payment from the Company. The payment of £29.5 million is an *ex gratia* payment from shareholder funds and the Company intends to apply it as it considers appropriate having taken advice from those with appropriate expertise and subject to agreement of the SFO and adherence to the law and to its corporate policies and processes.

5.3 BAE Systems plc does not owe money to the Tanzanian Government, but has agreed to apply the sum of money in question for the benefit of the Tanzanian people. Moreover, there is real doubt, in the Company's view, as to whether it is appropriate for the Company to make payments directly to the Tanzanian Government. This is for a variety of reasons including the fact any such payment may be characterised (and indeed is being treated in certain quarters in Tanzania) as a political contribution as defined by the Companies Act 2006 and it is the Company's expressed policy not to make such contributions.<sup>14</sup> That is not to say that the Company is unwilling to ensure that the Government of Tanzania contributes fully to the considerations of the Advisory Board, should it agree to do so, nor that the Company would not consider fully schemes proposed by the Tanzanian Government. The Company would welcome the involvement of the Government of Tanzania in its deliberations, and Lord Cairns will, we are sure, continue to make that clear in his consultations with them.

5.4 For the avoidance of doubt, the Company has formed no view as to how the money should be applied and is awaiting the outcome of the deliberations of the Advisory Board.

5.5 Pending payment, the money has been placed in a designated account within the Company's corporate treasury department and interest is being accrued to it.

14 July 2011

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### **Letter from the Chairman, BAE Systems to the Secretary of State for International Development**

Thank you for your letter dated 3 July, following our conversation earlier that week.

As you know, BAE Systems' settlement with the SFO included an agreement that the company would make an ex-gratia payment for the benefit of the people of Tanzania in a manner to be agreed with the SFO. The company intends to achieve its objective in an open, measured and responsible manner. We were fortunate to secure the services of Lord Cairns and Philippa Foster-Back as the independent chair and deputy chair respectively of an advisory board containing the expertise necessary to enable the company to make informed decisions as to the application of its shareholders' funds. In particular, it is part of Lord Cairns' role to consult widely in government and beyond before making recommendations to the company and he has for some weeks now been occupied in doing so.

It has become apparent from Lord Cairns' initial consultations that the Tanzanian Government has been wrongly led to believe that the terms of the settlement entitle them to receive payment from the company direct. This is unfortunate, since BAE Systems had not been engaged in discussions with them, nor had we even been informed of the discussions other UK-based organisations had apparently been having in 2010, whilst the matter of the Settlement Agreement was sub judice.

Naturally, the resulting confusion has generated a more difficult background to the independent consideration of how an initial payment should best be made. Moreover, it has led to the company receiving representations from many Tanzanian citizens, NGOs and others opposed to any payment being made directly to the Tanzanian Government, for fear on their part that it would not be used properly or in the best interests of the people.

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<sup>14</sup> The company does request and receive consent from its shareholders to make political donations, but these are subject to a maximum limit of £100,000.

Nonetheless, I asked Lord Cairns to consider the proposal attached to your letter to me, and he is minded to advise the company that, as a first step, the company makes a payment to a third party, based on your Department's advice as to suitability, and acceptability to BAE Systems and the SFO. The third party would be responsible for administering the payment.

We would also ask that DFID assist in assuring over time that the money is indeed used for demonstrably useful purposes enhancing rural education in Tanzania in a sustainable manner. your Department might wish to consider the very interesting work of the British Council in this regard.

Were this offer to be acceptable to your Department, we would propose that the operation of the scheme is reviewed after 12 months by the Advisory Board and DFID, which would enable the Advisory Board to determine whether the agreed objectives had been met, and that it was appropriate for further funds to be made available.

I hope you will agree that this is a reasonable and considered response to your proposal. It is intended to meet our overriding objective of creating sustainable long term benefit for the people of Tanzania. I also hope, as the handwritten comments in your letter suggest, that you will publicly lend your support to the company's approach to DFID.

I am sure that the Tanzanian Government will need some persuading that this approach is the right one, given what they think they have been promised. But I hope you and the Department will be able to help us, and Lord Cairns, in this regard. It really would be most unfortunate if they stuck to some of the threatening noises we have heard in recent weeks, and spoil a very good opportunity to help their people see real benefit. Of course we will need to talk through the detail of all of this, so perhaps you can nominate a representative with whom the company can engage and agree the way forward.

15 July 2011

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#### **Letter from the Chairman, BAE Systems to the Chairman of the International Development Committee**

Thank you for your letter dated 20 July, which followed the evidence session of the International Development Committee the day before.

You asked for an update, before the return of the House on 5 September, on BAE Systems' further consideration of the DFID proposal to top up the education capitation grant of the Government of Tanzania. Perhaps I can explain what we have done in the intervening period.

First, I wrote to the Secretary of State for International Development on 20 July, agreeing to make the payment of £29.5 million fully in support of his proposal, and proposing that we should adopt the suggestion made by one of the members of the Committee that the payment should be made to DFID. We made clear that we were ready to make the payment immediately on receipt of the necessary banking details.

The Secretary of State responded, making clear that his preference was that the payment should be made direct to the Government of Tanzania.

On receipt of that letter, we wrote to the Director of the Serious Fraud Office, seeking his approval to the making of the payment direct to the Tanzanian Government, as well as his confirmation that the payment would end the company's obligations under the Settlement Agreement reached between the two organisations in February 2010, and endorsed by the Court last December. Mr Alderman has indicated his agreement to both.

I have now written again to the Secretary of State, indicating our readiness to remit a Banker's Draft payable to the Government of Tanzania. We are ready to do that as soon as DFID indicate their agreement.

In taking this action, we are mindful of the Committee's unequivocal support for the scheme proposed by the Government of Tanzania and developed with DFID. We have also taken full account of the clear view expressed by the Committee, including your own personal comments, that the company should have no role in the operation or oversight of the scheme proposed by DFID.

As we agreed with the Committee, we do not have experience or expertise in the administration of international aid. We are content to leave to DFID the task of implementing the scheme with the Government of Tanzania, and of ensuring that its operation is properly monitored and transparent. I have no doubt that the Committee would want to ensure in due course that the scheme achieves its objectives.

I hope you will agree that BAE Systems has responded quickly following the evidence session, and that the Committee will feel able to support the company's position in drawing this matter to a speedy conclusion

19 August 2011

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### Further written evidence submitted by BAE Systems

As I indicated in my letter dated 19 August, we have told DFID that we are ready to remit a Banker's Draft now, which can be used for payment to the Government of Tanzania when DFID and the GoT have agreed the details of the implementation and the monitoring of the education scheme proposed. DFID have indicated that they want first to have in place a Memorandum of Understanding, to which BAE Systems and the Serious Fraud Office would also be party, and we are awaiting a draft MOU from DFID for this purpose.

In the meantime, and for the avoidance of any doubt about the company's intention to pay, we are placing the full sum plus accrued interest in a separate, interest bearing bank account, designated "DFID Tanzania".

14 September 2011

### Written evidence submitted by the Serious Fraud Office

#### INTRODUCTION

The SFO welcomes this inquiry by the International Development Committee. The SFO regards the issues to be considered by the Committee as being very important. A number of these issues arise during the course of the casework of the SFO. They have been relevant to cases we have been bringing to Court and they will be relevant in future as well as we continue to develop this area. The SFO view is that these issues need further consideration both from a policy and a legal perspective in order to provide a satisfactory framework for future cases.

The SFO will comment on the various questions raised by the Committee. The Committee may also find it helpful to have for background purposes a fuller note of the BAE case in order to understand how these issues arise. This note is at Annex A. A further note at Annex B sets out what has happened in other relevant cases. The Committee will find at Annex C a note that sets out the role of the SFO to put these issues in context.

*Question 1: How BAE will ensure that its payment to Tanzania is used effectively for development purposes?*

While this is a question for BAE, it is appropriate for the SFO to explain its approach and why the SFO asked for payment to be made.

The SFO focus is on the victims of crime irrespective of the nature of the criminal activity. The SFO seeks to obtain justice for victims through prosecution together with asset forfeiture and the payment of compensation to victims.

The notion of who is a "victim" is much easier to understand in connection with fraud than it is in relation to corruption or the type of offence for which BAE was charged in this case and to which it pleaded guilty. In the case of fraud, there are usually readily identifiable victims and those victims will usually have a legal right to seek redress against the fraudsters to recover the amount they lost.

The position is much more difficult in talking about corruption or the books and records offence to which BAE pleaded guilty. There are no identifiable individual victims in such circumstances who have some legal right to obtain restitution from the defendant in the proceedings. Nevertheless, it is clear that the society in the other country and the individual citizens in that country have suffered damage as a result of these offences.

The issue from the SFO's work in this area is to find an appropriate way in which society in that other country and the citizens of that country in particular can receive compensation in a way that ensures that the compensation goes to poor members of the society (ie those who in reality usually suffer the damage) and not to the rich and powerful. We also want to be sure that there is public support for the payment to be made in this way and full transparency. All of these issues are very difficult and this Committee meeting will be the first opportunity to discuss these issues publicly.

The alternative to trying to compensate victims in the other society is simply to require payment of a suitable amount to the UK Treasury. In the BAE case this would have had to be by way of a voluntary payment by BAE of £29.5 million to the Treasury (or a lesser amount if the Judge had imposed a higher fine). There is an important issue of principle here. The SFO has been seeking to compensate the victims of society but there is also an argument that the UK Exchequer should benefit from these payments. Ultimately, this is a question of policy for the Government and for Parliament and the views of the Committee will be important in this connection.

The SFO remains in contact with BAE in relation to the payment of the sum to the people of Tanzania, although the SFO recognises that this is the responsibility of BAE. BAE will be keeping us informed as this develops.

*Question 2: What advice DfID has given to BAE and other bodies about how this money might be used?*

This is a question for DfID and not for the SFO.

*Question 3: Whether the law needs to be changed to ensure that British companies and individuals found guilty of financial crimes in developing countries are always required by the court to make reparations to the developing country concerned.*

Changes in the law are for Government and Parliament. As will be seen though from the SFO's answer to Question 1 above, the SFO supports reparations made to citizens of the other country. The BAE case shows that there are circumstances in which the law does not currently provide the Courts with the power to order this. The result of this gap in the law is that the payment has to be made by way of agreement between the SFO and the defendant on a voluntary basis. In the absence of agreement (and a recognition by the defendant of its responsibilities) then there is nothing that the SFO or the Court can do other than consider a higher fine with the money to be paid to the UK Treasury.

One of the issues to be considered here though would be whether it is always appropriate for the money to be returned to the citizens of the other country, particularly in circumstances where it is not feasible for the payment to be distributed except through a Government which may not distribute the money or may not distribute it fairly. In such circumstances (and no doubt in others), it may be that there are alternatives such as requiring the money to be given to international causes such as anti-corruption or to international institutions with the remit (and a successful track record) of directing money for the benefit of poor citizens of society.

All of these are very difficult issues. These issues are policy as much as legal.

*Question 4: Whether further changes to the Bribery Act 2010 or other legislation are required.*

The SFO would not advocate changes to the Bribery Act 2010. The issues discussed in this Memorandum and by this Committee go wider than corruption and it is relevant that the BAE case concerned a books and records charge and not corruption. These issues are for wider Criminal Justice legislation.

Question 5: Whether the UK prosecuting authorities have the resources and powers they need to prosecute transnational financial crimes, particularly when there are also criminal proceedings in another jurisdiction in respect of the same issue.

The SFO's Resource Budget (including the period to be covered by the Comprehensive Spending Review) is as follows:

| SFO'S RESOURCE BUDGET 2008–09 TO 2014–15 |                            |
|--|----------------------------|
| <i>Year:</i>                             | <i>Resource Budget £m:</i> |
| 2008–09                                  | 53.025                     |
| 2009–10                                  | 42.963                     |
| 2010–11                                  | 39.575                     |
| 2011–12                                  | 33.859                     |
| 2012–13                                  | 32.130                     |
| 2013–14                                  | 30.365                     |
| 2014–15                                  | 29.282                     |

The way in which the SFO's total budget was arrived at in earlier years was complex and included core funding, modernisation funding, funding for specific cases, funding for overseas corruption work and end of year flexibility. Over the years to date these additional sources have been steadily withdrawn (with, for example, specific case funding being discontinued when the case ends or costs being absorbed by the core budget if the case continued).

Although there has been a very significant cut in resource budget, the SFO has been through a very intensive process of change since the arrival of new management in 2008. The focus has been on much more effective ways of working and producing much more for less resource.

The SFO is much more effective now than it ever was before. For example we are dealing with approximately 100 cases whereas in 2008 we had 65. We are dealing with those cases more quickly and effectively than ever before. The average time for historic SFO investigations was approximately five years; for investigations taken on since 2008 it is about 15 months.

Clearly, there is more that the SFO could do with more resource but there are wider Government considerations about how much money is to be allocated for law enforcement and to the SFO, in particular. The task of the SFO is to produce the maximum possible from the resource voted to it by Parliament. The view of SFO Management is that there is more we can do. This is our focus.

The SFO's view is that the powers that are available to the SFO for dealing with complex financial crime, particularly when another jurisdiction is involved are inadequate. This has become an increasingly pressing issue.

One particularly difficult issue concerns plea discussions involving multi-national corporates where other countries (particularly the US) also have jurisdiction over the corporate and the alleged criminal activity. This was the scenario in the BAE case as well as in one other case (Innospec). It is likely to recur.

The issue arises because large corporations can have a choice of jurisdiction in which to plead guilty. They could agree to plead guilty to some charges in the US and to some in the UK or they could decide to plead guilty to all charges in the US. No charges could then be brought in the UK because of the operation of our double jeopardy rule. This decision by the corporate will be guided by an assessment of potential outcomes in each jurisdiction and the need for as much certainty as possible. This decision will be taken before any charges are brought.

The courts have criticised some aspects of SFO plea agreements because the courts have considered that the SFO has encroached on judicial discretion. The corporates are though looking for a degree of certainty at the pre-charge stage concerning the UK outcome. At present this is not something that the UK system can provide. This could make it more likely that the corporate may seek to resolve all issues with the US authorities. The SFO would not wish to see this because there is a UK public interest in dealing with appropriate parts of the case in UK courts.

Consideration needs to be given to how to provide greater certainty to corporate defendants at the pre-charge stage so that they can decide where to plead and to what and in which jurisdiction. There are a number of potential options (such as earlier judicial involvement or more detailed guidance). These raise difficult legal and policy issues that will need to be considered.

*Question 6: How the Government co-ordinates its policy against transnational financial crime*

This is for the Government and not for the SFO to comment on.

**Annex A**

**NOTE ON THE BAE CASE BY THE SERIOUS FRAUD OFFICE**

The Committee may be assisted by a note on the different aspects of the BAE case in order to put the issues in this area in perspective. There were a number of aspects to this.

**A. SAUDI ARABIA**

This was the initial focus of the SFO investigation. The then Director of the Serious Fraud Office (Robert Wardle) terminated the investigation on national security grounds on 14 December 2006. This decision was challenged by the Campaign Against the Arms Trade and The Corner House (two non-Governmental organisations). The case went to the House of Lords. The decision was that the then Director had acted properly in bringing the investigation to an end.

**B. OTHER COUNTRIES**

When the new Director of the Serious Fraud Office (Richard Alderman) arrived in the SFO in 2008, enquiries were proceeding in respect of Central and Eastern Europe, Tanzania and South Africa. The US Department of Justice (DOJ) was also conducting investigations into BAE's activities in those countries and others (including Saudi Arabia).

The main focus of the SFO's investigation concerned Central and Eastern Europe. The investigations relating to Tanzania and South Africa were less advanced. There came a stage when BAE decided that it wanted to reach a settlement on the allegations with the Department of Justice and the SFO. BAE negotiated a settlement with the DOJ relating to Saudi Arabia and Central and Eastern Europe. This settlement included pleas of guilty to non-corruption offences by BAE. BAE agreed to pay \$400 million and to agree to monitoring in the future.

The BAE settlement with the DoJ relating to Central and Eastern Europe had an immediate impact on the SFO investigation. This is because the law relating to double jeopardy in criminal cases differs between the UK and the US. In the UK, prosecuting authorities cannot bring criminal charges arising from a set of facts where the defendant has already been in jeopardy in another jurisdiction. What is key here is that the charge arises from the same factual situation; it does not matter if the charge itself is a different one. The US law on this is different and the US do not recognise decisions of other Courts for the purposes of the law on double jeopardy.

What this meant was that as soon as the settlement was reached between the DOJ and BAE, it became impossible for the SFO to continue with the investigation (and potential prosecution) of BAE in relation to any offences involving Central and Eastern Europe.

Tanzania was not specifically mentioned in the plea documents between the DOJ and BAE. The SFO made it clear to BAE that the investigation relating to Tanzania would continue in the absence of satisfactory settlement terms. It was agreed between BAE and the SFO that there would be a plea of guilty to an offence under section 221 of the Companies Act 1985 of failing to keep accurate books and records. The substance of the charge was that, by failing to keep accurate books and records, it was highly likely that payments would be made in Tanzania to secure a business advantage to BAE.

The books and records charge did not involve an allegation of corruption and BAE has never accepted corruption whether in the UK or US proceedings. The SFO's Counsel explained to the Judge why it was not

possible to prove corruption. Counsel also explained why no further action was possible in relation to Central and Eastern Europe following BAE's agreement with the DoJ. All of this was accepted by the Judge.

There was a difficult issue concerning asset forfeiture. In the discussions, BAE and the SFO looked to see if the asset forfeiture provisions, relating to criminal confiscation could be used to deprive BAE of the benefit of the criminal conduct. The parties also looked at the new civil recovery powers for recovering property that represents the proceeds of crime.

There were technical issues relating to the application of the criminal and civil legislation in the case which meant that BAE could have continued to enjoy the benefits of the criminal conduct.

The SFO's position was that BAE should, subject to the views of the Court, suffer a financial penalty equivalent to the value of the Tanzanian contract. This was approximately £30 million. The SFO wanted this amount (minus the amount determined by the Judge as being the appropriate fine) to be paid for the benefit of the people of Tanzania. The SFO requirement would ensure that BAE obtained no benefit from the unlawful conduct in Tanzania.

BAE agreed to this proposal and agreed that this would be an ex gratia payment because the Criminal Justice legislation gave no powers for the Court to order this payment.

The investigation concerning South Africa was still at a very early stage. The SFO took the view that this was unlikely to progress further and that the overall global settlement involving Central and Eastern Europe and Tanzania produced the right outcome subject to the final decision of the court.

There was criticism of the plea agreement by the trial judge (Mr Justice Bean) who thought that the SFO had agreed not to conduct any further investigation in relation to any other activities by BAE, even if they had not been known at the time of the settlement. The SFO accepts the criticisms made by the Judge of the way in which the agreement was drafted. The intention of the parties, however, was to leave the SFO free to investigate conduct unknown at the time and not disclosed, if necessary. This remains the parties' position.

## **Annex B**

### **NOTE ON OTHER CASES BY THE SERIOUS FRAUD OFFICE**

The SFO has also reached agreement with defendants in other cases about how money should be returned for the benefit of the countries affected by the criminal offences. These cases are as follows:

#### **A. MABEY & JOHNSON LTD**

The corporate defendant pleaded guilty to offences of corruption relating to public officials in Ghana and Jamaica. The company also pleaded guilty to breach of UN Sanctions as they applied to contracts in the UN Iraq Oil for Food Programme. The company agreed to make reparations of the following amount—

- Ghana £656k.
- Jamaica £139k.
- Iraq £618k.

In respect of Jamaica and Ghana the company undertook to offer the sums described above to its customers in Jamaica and Ghana. The undertaking by the company included a provision dealing with the possibility that the company would be unable to reach an agreement with its customers within six years or if it became evident at a prior date that no such agreement was likely to be reached. In those circumstances the payment would be made to the SFO or any successor body.

The SFO's understanding is that the reparation payment has been made to the customer in Jamaica. The company has been unsuccessful, however, in its attempts to reach agreement with its Ghanaian customer. It is understood that the issue here concerns the reluctance of the Ghanaian authorities to accept that any corruption was involved.

A different scheme is in operation relating to Iraq. A Development Fund for Iraq was set up internationally and payments in Oil for Food cases are made to that fund. There is therefore an international mechanism for compensation.

#### **B. INNOSPEC**

This investigation was carried out by the SFO in the UK and, in the US by the DOJ, the Securities and Exchange Commission (SEC) and the Office of Foreign Asset Control (OFAC). There was a complex agreement between the company and all the relevant authorities. This agreement had to have regard to the financial constraints on the company. Part of the agreement in the UK (subject to the court's ultimate decision) was that the company would make a payment to the Iraq Development Fund.

During the hearing the judge was very troubled by the constraints on his powers imposed by the company's financial position. The judge wanted to maximise the fine in order to express the gravity of the offending. He therefore invited the SFO to agree that the payment to the Iraq Development Fund should not take place and

that the money should be added to the amount of the fine. The SFO accepted this invitation and the money was dealt with in this way by the judge.

#### JULIAN MESSENT

Unlike the cases above, this involved an individual. Mr Messent was a senior Director of British re-insurance broker Pearson Webb Springbett. Mr Messent pleaded guilty to corruption involving a contract in Costa Rica.

Mr Messent pleaded guilty to offences of corruption. He agreed to pay £100k in compensation to the “Government and people of Costa Rica”. There were a number of practical problems involved in the transmission of the payment to the authorities in Costa Rica. There has been discussion as well as to which organisation in Costa Rica should benefit from the funds.

#### OTHER CASES

The SFO also has a number of other cases involving corruption or other offences that are currently being investigated. Some of these will give rise to these issues but they have not yet come before the courts.

#### Annex C

#### NOTE ON THE SERIOUS FRAUD OFFICE

The Serious Fraud Office was set up by the Criminal Justice Act 1987 in order to deal with the most complex cases of financial crime. The three areas of work that it covers are as follows:

- Financial crime in the City of London either by or involving the financial sector.
- Corruption and in particular corruption involving corporate defendants.
- Mass-marketed fraud—ie frauds directed at very many thousands of individual investors.

The SFO’s remit is both to investigate and to prosecute these cases. This is because the very complex cases of this nature require a joint approach involving lawyers and investigators right from the outset. These cases present very particular difficulties in view of their complexity and the vast amount of documentation. The investigations have to be managed from the outset having regard to potential criminal offences and what is triable before a jury. Investigations led by lawyers prove to be the most effective way of doing this. In this, the Serious Fraud Office operates in the same way as the US DOJ and the New York District Attorney’s Office which are regarded as the most effective organisations worldwide in dealing with complex financial crime.

The SFO is a small organisation. Details of the budget are at paragraph.... of the memorandum. The SFO has about 300 employees. In addition the SFO brings in specialist expertise as and when needed to deal with the complex cases that it deals with.

The SFO’s conviction rate has risen in the last two years from the historic average of 62%. In 2009–10 the conviction rate was 91%. In 2010–11 it was 84%. In addition the SFO has obtained a conviction in every case that it has taken last year.

References have been made on a number of occasions to the US DOJ. This is the SFO’s closest partner. The DOJ also deals with very complex financial crime and in particular has a dedicated unit dealing with corruption. The SFO and the DOJ have a number of joint investigations and work together very closely in this area.

5 May 2011

#### Further written evidence from the Director, Serious Fraud Office

#### HEARING ON TRANSNATIONAL CRIME

I am very grateful for the opportunity given to me by the Committee to write with my views on the question I was asked by Mr Bayley concerning the appropriate legislative vehicle for the change that I was suggesting. This change concerns a new power under which Judges would be given jurisdiction to become involved in plea negotiations in these difficult cases prior to a criminal charge being brought. This would allow them to give a view on a proposed resolution agreed by the SFO and the corporation.

I explained the reasoning behind this proposal to the Committee. I am very concerned about the difficulties in the BAE and indeed other cases where a company is seeking a resolution of an SFO investigation but where it needs certainty, or as much certainty as possible, before reaching agreement. The SFO cannot provide that certainty. Under the US system that certainty is provided by very detailed guidance in the form of a published sentencing framework and the ability of the prosecutor (often the US Department of Justice) to negotiate a fine with the corporation. Neither of these features is present in the UK system.

What I was suggesting to the Committee was that it would be very helpful if the SFO and the corporation could take a proposed resolution to a Judge before the Criminal Justice process had been engaged by a formal charge. A Judge could then give a view on the proposed agreement. In the BAE case, for example, that would

have meant that we would have had a judicial view before the Tanzanian case was lodged in Court. I would have found that particularly helpful.

Changes of this nature are general criminal justice issues and the Bribery Act might not be an appropriate vehicle for any amendments. My view is that other criminal justice legislation might be appropriate for this. Such a change could be put forward in one of a number of Bills. However, I need to stress that these decisions are for Government and for the Government's Business Managers and not for me.

I hope that this provides the assistance that the Committee needs. Please let me know though if there is anything further you need.

*10 August 2011*

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**Letter from the Chair of the International Development Committee to the Chairman, BAE Systems Plc**

At the evidence session on 19 July, the International Development Committee questioned Mr Bramwell and Mr Keen at length about the proposal outlined in the letter to you dated 3 July from the Secretary of State for International Development, namely that BAE Systems PLC make a one-off payment to top up the education capitation grant of the Government of Tanzania. Following the session I am strongly of the opinion that you should accept DFID's proposal as early as possible. Please could you let me know before the House returns on 5 September if you intend to proceed in the manner proposed by DFID and, if so, when you intend to do so.

Should the situation not have been resolved, I will ask the Committee to call you, as Chairman, and your Chief Executive, to give evidence to us on this most important matter.

*20 July 2011*

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**Letter from the Chair of the International Development Committee to the Chairman, BAE Systems Plc**

Thank you for your letter of 19 August which the Committee has now considered. I am pleased that you have decided to make the payment of £29.5 million directly to the Government of Tanzania. Please could you confirm as quickly as possible that the money has been paid to the Government of Tanzania.

*9 September 2011*

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**Letter from BAE Systems to the Minister of Finance, Government of Tanzania**

You will be aware that, as part of a Settlement Agreement made last year between BAE Systems and the UK's Serious Fraud Office, and endorsed by the Court, the company has committed to the payment of £29.5 million for the benefit of the people of Tanzania.

You will also be aware from the publication last week of a letter from the Chairman of the company, Dick Olver, to Malcolm Bruce MP, Chairman of the International Development Select Committee of the House of Commons, that BAE Systems has decided to take the advice of the Committee, and the UK Department of International Development (DFID), that the money should be paid in full in support of the education plan developed by the Government of Tanzania, together with DFID.

This letter confirms formally our intention to do that.

DFID have made clear that they would help the Government of Tanzania implement the plan, and put in place appropriate arrangements to monitor its operation. They have also proposed that the arrangement should be the subject of a Memorandum of Understanding. BAE Systems has made clear that the company's part in that arrangement would be to make a Banker's Draft available for payment to the Government of Tanzania.

Against that background, DFID have informed us of their intention to contact you to put these arrangements in place to the satisfaction of all the parties.

*19 September 2011*

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**Letter from the International Development Committee to the Tanzania High Commissioner**

You will be pleased to know that following our evidence session on 19 July, BAe has agreed to make a payment in full to the Government in Tanzania.

The Committee is pleased with this response and will continue to monitor developments which will bring important educational improvements to the people of your country.

Now BAE has agreed to make the payment, it is essential, as I am sure you will agree, that Tanzanians involved in corruption are brought to trial. Could you let the Committee know what progress is being made in bringing them to trial?

*10 October 2011*

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**Letter from the Tanzanian High Commissioner to the Chair of the International Development Committee**

I thank you for your letter of 10 October 2011, in which you kindly informed me of the BAE's decision to make a payment in full to the Government of Tanzania.

I have subsequently communicated that decision to the relevant authorities in Dar es Salaam. I also agree with you that all those involved in corruption surrounding the BAE radar sale to Tanzania be brought to face justice. I believe this will serve as an assurance to our people that our governments are committed in tackling the scourge of corruption worldwide.

On our part, the Government of Tanzania has already stated its intention to ensure that individuals involved in this case face justice. None the less, I have taken upon myself to inform the relevant authorities in Tanzania of your concern given the crucial role played by your Committee on this matter.

*17 October 2011*

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