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OPEN LETTER

I have read the BIS/FRC consultation on the Reform of the FRC

While I do not wish to comment on the detail, I do want to say that with regard to Consultation Question 6, it seems to me essential that the professional conduct of the accounting profession should be dealt with by the FRC and not by any accounting institute.

For example, I know the FRC have launched (even if belatedly on 25 October 2010) an investigation by the [AADB investigating auditors' conduct in relation to BAE Systems plc](#) Which mirrors my own personal experience at GPT Special Project Management Limited, an EADS subsidiary company, which is registered in the UK.

It is essential for public trust and confidence that the regulatory and disciplinary activity should be in an entirely separate regulator for all matters of professional conduct by the accounting profession. I do not understand why there should be any narrowing in the FRC scope as at Q.6. by Edward Davey MP, the BIS Minister - as the signatory to this joint BIS/FRC consultation. I believe that the proposed HMG policy position should be the reverse.

As a matter of record, despite the widespread publicity and public interest during 2011 the FRC have not made any contact with me to discuss or begin an investigation of the KPMG role in their audit or my whistleblowing complaint at this UK subsidiary of EADS. Moreover, I believe that the current corrupt practices discovered in GPT have history throughout the lifetime of the project – which calls into question the validity of audits carried out by the auditors of Cable and Wireless and GEC Marconi as well who were the predecessors as Prime Contractors for the Project since 1978.

You will see my letter of today which follows to the Business Secretary Dr Cable MP in which I raise this specific Consultation item and a number of other regulatory matters

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Dr Vince Cable MP
Business Secretary
Department of Business, Innovation and Skills
1 Victoria Street
London
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9th January 2012

Dear Dr Cable,

Whistleblowing in the Saudi Arabian National Guard Communications (SANGCOM) Project

Background. You may be aware that I am the whistleblower on bribery and corruption being practiced by GPT Special Project Management Limited, a UK subsidiary of EADS, who is the Prime Contractor under a UK MoD contract to the Saudi Arabian Communications (SANGCOM) Project. You will be aware that this is especially pertinent since the UKTI DSO who also supports this project is part of your department.

One year ago, I reported my allegations to the Serious Fraud Office (SFO), supported by significant documentary evidential material and witness statements. In order that you might better understand the background to this matter, I enclose a copy of my initial reporting document to the MoD, SFO and EADS Compliance Unit, which became the subject of a Ministerial Briefing in to SoS Defence and Henry Bellingham MP, Minister at the FCO in January 2011.

I understand that, in August 2011, the Director of the Serious Fraud Office sought guidance on the appropriate use of SFO resources from the current Attorney General, Dominic Grieve MP, in view of the previous Attorney General's disinclination to prosecute a significant SFO investigation of the similar Al Yamamah case against British Aerospace (BAe). I think it is unfortunate that people in my position with serious allegations are not afforded the courtesy of being told that an investigation is proceeding or has been suspended, but I further understand, from indirect sources, that guidance has now been given by Her Majesty's Government and that a full SFO and other agencies' investigations are underway. ***Please could you confirm that this is indeed the case?***

Insufficiency of legislation. You may also be aware from newspaper publications that I made a claim for unfair dismissal on the grounds of my whistleblowing against GPT Special

Project Management Limited in the Employment Tribunal in London in August 2011. A copy of the judgment is attached. In summary, it found that the Employment Tribunal had no jurisdiction and that, even though the cause of the dismissal may have been whistleblowing, there was no statutory position to support such a claim. Thus, the Employment Tribunal could not deal with this genuine whistleblowing and regulatory matter because of an insufficiency in current British Law. The recent Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2010 permits referrals by an Employment Tribunal to the relevant UK regulatory agency but contains no provisions for how the UK should make international referrals – such as to the Securities Exchange Commission (SEC) in the USA.

To exacerbate the issue, the current legislation provides at Section 43B “ **(2)For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.**” Plainly therefore referral to a regulatory body should have occurred especially given that the contract is between a corrupt UK registered Company, not Saudi Arabian, and the UK Government under the terms of an International Memorandum of Understanding between the governments of the United Kingdom and Saudi Arabia. But even with this referral, there is no whistleblowing protection for a UK citizen. Surely this cannot be what HMG and Parliament intends and very certainly needs to be changed and properly reflected in the upcoming changes to the Employment legislation sponsored by your party and ministerial colleague, Mr Davey MP. ***Please confirm to me that these matters will be addressed in future legislation so that no UK citizen is ever faced with this again.***

Prejudice for future employment. Since declaring the company’s bribery and corrupt practices, I have been dismissed from my appointment within GPT as Programme Director and have been unable to find equivalent employment within the defence sector. I attended DSEi in London in November and spoke with a wide range of former colleagues and contacts across the whole of the Defence Industry. Whilst there was much sympathy for my position, and support for my actions as a whistleblower in an affair that was most relevant to all of them, I was left with no doubt that it would be impossible to find equivalent further employment in the Defence sector. In effect, it would not be politic to employ me due to my experience and public position as a whistleblower.

I have had no compensation opportunity because of the Employment Tribunal ruling and its perceived lack of jurisdiction, a finding which I believe was purposely used by the Company to protect itself from publication of its criminal practices and from claims from whistleblowers such as myself. In essence, it is neither fair nor just that an honest employee who refuses to succumb to company pressure to participate in corruption should be severely prejudiced for ‘doing the right thing’. Equally, if it is current English Law that allows such a situation to occur, then it is high time that it was changed.

In the last few months I have spoken to one or two other whistleblowers of major and important cases (viz. Mr Paul Moore – HBOS, and last week a Mr Brian Little – Magellan

Aerospace), who have mirrored my own experience but in other business or related aerospace sectors. It is apparent that it is very improbable that any of us will ever find future employment within our areas of expertise. This cannot be the result of lack of expertise or application and thus the only common experience is that of having been a voluntary whistleblower. One is left with few other options other than writing a book such as 'The Devil's Excrement' as an exposé of corporate and governmental corruption, or lecturing on the experiences of a whistleblower!

Whistleblowers are NOT supported in this country: there is muted applause for integrity and honesty of a brave man but, in reality, corporate business reverts to snide sniggering at the naïve foolishness of those who do not understand 'hard nosed commercialism'. Whilst the moral support is most welcome it does not pay the bills! I did not assume the position of a whistleblower out of any need for public acclaim or compensatory money, but neither did I do it to be left bankrupt and destitute for the future! Current legislation needs changing and we, the whistleblowers, are looking to you and your parliamentary colleagues to do so. In the USA there is the Frank-Dodd Act which allows whistleblowers to be compensated from the fines levied on those who are found guilty of corruption, why cannot the United Kingdom have a similar process?

Wilful Blindness. A significant element of my allegations of corruption, supported by the documentary evidence, points quite clearly to the acquiescence of the MoD SANGCOM Project Team to the practices of the Company and clear knowledge of their wrongdoing for the past five years. Since this could not have been practicable without the endorsement of UKTI DSO, it points also to the inescapable conclusion that UKTI DSO was also knowledgeable and acquiescent to these corrupt practices. Since all monies and payments within the SANGCOM Project were effected through MoD bank accounts, administered by the Business Manager within the SANGCOM Project Team, it is apparent that the MoD were either negligent, acquiescent or downright complicit to the corrupt payments. The former possibilities show a 'wilful blindness' by the MoD and UKTI DSO whilst the latter possibility indicates active criminal participation. In each case, two major Government departments have fallen seriously short of the integrity and proper practice that is expected of them. Given the precedent of the Al Yamamah scandal, it is incredible that not only were such practices allowed to continue after 2007, but that the same corrupt processes were initiated by GPT when the new LOA3P3 contract was signed in February 2010. It could be proposed that the failure to prosecute the Al Yamamah case was taken by the Defence Sector as a carte blanche to carry on their corrupt practices because the British Government lacked the moral fibre to see through awkward and embarrassing prosecutions that would reflect badly on British companies and its own government departments. There is a danger that in the current recession, there will be no change to this situation.

You should be aware that I fully intend to publicly expose the MoD's part in allowing GPT to practice its corruption and will seek to show that not only has it been doing so since 2007 but that historically it has been doing so since the beginning of the SANGCOM Project in 1978. It will also not be difficult to prove that the parallels within the defence procurement processes used within the Al Yamamah Project are so close that the conclusion, hitherto

not voiced in public, is that the MoD (and thus UKTI DSO) was also acquiescent, negligent or complicit in their wilful blindness in that project also.

I have had first hand experience of the pernicious effects of corruption. My father was a high ranking civil servant who was convicted of corruption in defence procurement in the 1980s and pursued by the MoD Solicitor for a further 22 years. I have felt personally the malign secondary effects of corrupt practices and am only too aware of the harm that it has brought not only upon my father but also upon the remainder of our family – four of whom, including myself, were serving Army officers with active service records in the Falkland Islands, Northern Ireland and Bosnia. The effects of my father's case had a direct impact upon our service careers and were a major reason why three of us took early retirement from the service. You can well understand therefore, why I would have no part in supporting, condoning or participating in the corporate bribery and corruption that I found practiced in the SANGCOM Project. You may also imagine my utter horror and repugnance at the rank hypocrisy of the MoD's obscene participation in similar corrupt practices throughout the whole period whilst relentlessly pursuing my father until 2002. Here is an organization whose officers are taught from the outset at RMA Sandhurst that the foundations of their profession rest on honesty, integrity and moral courage, yet which so duplicitously condones and complies with corruption for commercial gain. Are the civil servants and military officers who allowed such events to occur, or practiced 'wilful blindness' in the SANGCOM and Al Yamamah Projects, also to answer publicly for their actions, or does this Government operate with a dishonest double-handedness that allows corruption 'in the national interest'? ***Please clarify whether the Cooper Directive of 1977¹ under which government officials were ordered not to ask the commercial contractors for further details regarding payment of 'commissions' and to avoid "over-extensive inquiries" is still in place, or, if it has been superseded by a more appropriate policy directive, then what is the current policy and why has the SANGCOM Project team not ensured that its Prime Contractor has followed it?***

Regulatory Control. Furthermore, it is apparent from the evidential documentation that KPMG, who were the auditors of GPT Special Project Management Limited, were also aware of the corruption and did not declare it to the Financial Regulatory Council and other proper governance bodies. Even though it can be shown that they have been clearly aware since 2007, a note observing inconsistencies in GPT's accounts did not appear until GPT's company financial report was published in April 2011 – which was only after the company, and its EADS parent, were aware that I had made my declaration to the SFO. Thus, I believe that the FRC should look carefully at both KPMG's auditory and EADS Compliance roles in this affair to assess whether they too are guilty of willful blindness in their auditing and reporting of GPT's accounts. Given the wide publicity that this case was afforded in last year, it is highly surprising that the FRC has NOT made any effort to contact me at all in order to ascertain the part that KPMG played in the audit of the company and whether they are culpable. Moreover, I believe that the current corrupt practices discovered in GPT have history throughout the lifetime of the project – which calls into question the validity of audits carried out by the auditors of Cable and Wireless and GEC Marconi as well who were the predecessors as Prime Contractors for the Project since 1978.

¹ Sir Frank Cooper, PUS , MoD 1976-1982. Reference: <http://www.guardian.co.uk/world/2007/jun/08/bae10>

It should also be noted that the movement of monies for these corrupt payments occurred through the UK and international (US) branches of HBSC. Movement of corrupt payments through the USA constitutes 'money laundering' under the FCPA and therefore there are banking regulatory issues that should be investigated as well. **How do you believe this should now be progressed now that the Employment Tribunal is no longer in a position to refer that matter to them?**

Request for Action. I believe that, as the Business Secretary, these matters should be brought directly to your attention for ministerial investigation and subsequent action. I ask that you seek clarification on:

1. The role and participation of UKTI DSO in the knowledge, endorsement or wilful blindness to irregular payments made by GPT Special Project Management Limited.
2. The role and participation of UK MoD SANGCOM Project Team in the knowledge, endorsement or willful blindness to irregular payments made by GPT Special Project Management Limited.
3. The role and correct practices of the Compliance Department of EADS, Astrium and Paradigm Services Limited in the knowledge, endorsement or wilful blindness to irregular payments made by GPT Special Project Management Limited.
4. The role and correct practices of KPMG as regulatory auditors of GPT Special Project Management Limited and especially their correct and thorough investigation and reporting of financial inconsistencies in their company accounts between 2007 and 2009.
5. How the FRC can ensure that auditory bodies such as KPMG may be better policed in order to ensure that their reporting of financial irregularities and accounting inconsistencies may be regulated.
6. What the Government can do to better protect whistleblowers in international regulatory environments.

I look forward to hearing from you in the near future.

Yours faithfully

Ian Foxley

Distribution:

Mr David Cameron MP Prime Minister
Mr Nick Clegg MP Deputy Prime Minister
Mr Dominic Grieve MP AGO
Mr Philip Hammond MP – Defence Secretary
Mr Edward Davey MP - BIS Minister
Ms Anne McIntosh MP – our correspondence of June 2011 as my constituency MP refers
Mr James Arbuthnot MP Chairman Defence Select Committee
Mr Jeffrey Donaldson MP
Mr Patrick Mercer MP
Baroness Hogg Chairman Financial Reporting Council
Mr John Griffith-Jones Joint Chairman and UK Senior Partner, KPMG LLP
Mr John Coombe Chairman Group Audit Committee, HSBC Holdings
Mr Richard Alderman Director Serious Fraud Office
Mr Paul Moore
Mr Brian Little / Mr Jim Shannon MP

Enc:

Probity in the Saudi Arabian National Guard Communications (SANGCOM) Project, Jan 2011 (notal)

Foxley v GPT Employment Tribunal Judgment, 3rd September 2011