



**In the High Court of Justice
Queen's Bench Division
Administrative Court**

CO Ref: CO/1306/2016

In the matter of an application for Judicial Review

The Queen on the application of

CAMPAIGN AGAINST ARMS TRADE

versus

THE SECRETARY OF STATE FOR BUSINESS INNOVATION AND SKILLS

**Application for permission to apply for Judicial Review
NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)**

Following consideration of the documents lodged by the Claimant and the Acknowledgement of service filed by the Defendant

Order by the Honourable Mrs Justice Andrews DBE

Permission is hereby refused. No protected costs order or reciprocal costs capping order is to be made at this stage; the matter can be reconsidered if the Claimant renews its application to an oral hearing.

Reasons: Licences for the export of arms and military equipment to the Kingdom of Saudi Arabia will not be issued if there is a clear risk that the licensed items might be used in the commission of a serious violation of International Humanitarian Law. C contends that the decision of the Secretary of State that no clear risk exists is irrational and/or based on inadequate information and that he should have invoked the "suspension mechanism".

In the light of the information provided in the AoS there is no realistic prospect of establishing that the Secretary of State has failed to ask the right questions or conduct sufficient enquiries. As to the *Tameside* duty, the Secretary of State was entitled to conclude that he had sufficient information to enable him to decide whether or not to invoke the suspension mechanism. The Government has its own policy which implements EU law and the Secretary of State has applied that policy and taken into account the key factors identified in the EU Guide. The suggestion that the Secretary of State cannot properly form a view on the risk without knowing the results of KSA investigations makes no sense.

The fact that NGOs and other respected bodies have expressed views on the risk does not make the conclusion reached by the Secretary of State irrational, if those views have been taken into account as part of the decision making process, which they have. The fact that those other bodies disagree does not mean the Secretary of State's decision is *Wednesbury* unreasonable. It is said in reply to the AoS that the Secretary of State has failed to engage with the Claimant's evidence; however the decision is being challenged on grounds of rationality or absence of sufficient enquiry, and unless that evidence trumps all the other information on which reliance was placed by the Secretary of State, which the Claimant would find it well-nigh impossible to establish in the light of the fact that the other information includes material of a sensitive nature, it takes matters no further.

Even if I had been persuaded that there were sufficiently arguable grounds for challenge, I would not have granted expedition. In any conflict, hostilities may continue even in the face of attempts to de-escalate; but given that such attempts are being made in Yemen the claim does not bear the same degree of urgency as one where hostilities are ongoing and escalating or where there is overwhelming evidence in support of the claim that the decision is irrational. It is not enough to warrant expedition to contend that this case might have a bearing on the Government's approach to licensing of arms in respect of other conflicts in future.

- The reasonable costs of preparing the Acknowledgment of Service are to be paid by the claimant to the defendant, to be the subject of a detailed assessment unless agreed. Where the claimant seeks a reconsideration, costs are to be dealt with on that occasion.

Signed *Gouldrie M Andrew* 15th April 2016

The date of service of this order is calculated from the date in the section below

Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendant's, and any interested party's solicitors on (date):

Solicitors:

Ref No.

18 APR 2016

Notes for the Claimant

If you request the decision to be reconsidered at a hearing in open court under CPR 54.12, you must complete and serve the enclosed FORM (86B) within 7 days of the service of this order. A fee is payable on submission of Form 86B. **For details of the current fee please refer to the Administrative Court fees table at <http://www.justice.gov.uk/courts/rcj-rolls-building/administrative-court>**. Failure to pay the fee or submit a certified application for fee remission may result in the claim being struck out. To form to make an application for remission of a court fee can be obtained from the Justice website <http://hmctsformfinder.justic.gov.uk/HMCTS/Form Finder.do>