

KING'S BENCH DIVISION

ADMINISTRATIVE COURT

BETWEEN:

THE KING

(on the application of Al-Haq)

Claimant

-and-

SECRETARY OF STATE FOR BUSINESS AND TRADE

Defendant

**SKELETON ARGUMENT for the SECRETARY OF STATE
for the hearing on 23 April 2024**

1. The Secretary of State submits that the appropriate course is for the Court to order a rolled up hearing.
2. So far as the process of decision making is concerned:
 - 2.1. The issues have been and continue to be considered, at the highest levels, with conspicuous care and thoroughness.
 - 2.2. The processes for considering Criterion 2.c (“C2.c”) of the Strategic Export Licensing Criteria have been honed and refined, including as a result of the two lots of litigation in the context of arms exports to the Kingdom of Saudi Arabia (“the *CAAT* litigation”).

- 2.3. The applicable principles and approach to C2.c have also been extensively considered and applied in the two Divisional Court and one Court of Appeal judgments in the *CAAT* litigation.¹
- 2.4. A short statement from Caroline Hurndall summarises the processes followed, and decisions made, since the Summary Grounds.
- 2.5. As Eyre J correctly concluded in his decision on the papers, the processes are robust and detailed – and on any view rational.
3. So far as the substance of the decisions are concerned, the standard is rationality. Moreover, as all of the *CAAT* judgments make clear, the decision maker (here the Trade Secretary on advice from the Foreign Secretary in particular) is to be accorded the broadest margin/respect on the very well-established bases considered in those judgments. The Secretary of State’s position is that those decisions have at all times been lawful and in particular rational.
4. This hearing was ordered on 10 April 2024 on the basis that it would take place before the end of April 2024. It is in fact taking place on 23 April 2024. As the Court will be well aware, there is very considerable pressure on resources and time as a result of the concatenation of recent and continuing international events. That pressure is particularly acute on two of the Departments of State most involved in matters relevant to issues of the kind raised by these proceedings.
5. The Trade Secretary and the Foreign Secretary have considered, in the short time available but with care, whether documents should be disclosed before inviting the Court to refuse permission for this claim. They have concluded that there are documents that should be disclosed including those underpinning recent and current decision making. Accordingly, the Secretary of State is not inviting the Court at this hearing to dismiss the claim as unarguable. It is recognised that such an invitation could be made only after such disclosure and after a fair opportunity has been afforded to consider those documents.
6. For obvious reasons, that cannot be done in the timeframe available. The Court is particularly invited to note the following:

¹ [2017] EWHC 1754 (Admin); [2019] EWCA Civ 1020; [2023] EWHC 1343 (Admin).

- 6.1. There will need to be a careful process of considering the sensitivity of all the material in those documents with a view to ensuring that steps are taken to ensure proper protection of sensitive information.
 - 6.2. There will need to be an application under s.6 Justice and Security Act 2013 for a closed material process. If successful, special advocates may need to be appointed; and will no doubt then consider any opening up issues.
 - 6.3. It is likely to be both necessary and appropriate for witness statements to be prepared explaining to the extent necessary the disclosed documents and dealing with other matters relating to the processes and the decisions taken.
 - 6.4. These steps were followed in the *CAAT* litigation. As that litigation indicated, they need to be done carefully and thoroughly given the importance of the proper protection of sensitivities and secrecy involved; and that takes time. In both sets of proceedings in the *CAAT* litigation, the Secretary of State was accorded the standard 35 days from permission to file Detailed Grounds and evidence.
7. It will be necessary to ensure that there is adequate time to complete the evidence including the disclosure process in this case. That is because of both the importance and complexity of the process of reviewing documents for sensitivity and secrecy. It is also to be recognised that there are currently extraordinary demands on the time of those Departments which will be centrally involved in this exercise, for reasons the Court will well appreciate. It is to be noted that at no stage has an application for expedition been made. A set of draft directions is included in the draft Order attached to this skeleton.

18 April 2024

Sir James Eadie KC

Jessica Wells

Kathryn Howarth