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14 October 2009

MOST URGENT

The Right Honourable John Bercow
Speaker of the House of Commons
House of Commons
London
SW1A 0AA

Carter-Ruck

Dear Sir

Trafigura Limited and Trafigura Beheer BV

We represent Trafigura Limited and Trafigura Beheer BV ("Trafigura") and we write this letter on their and this firm's joint behalves.

Trafigura is the subject of a question by Paul Farrelly, MP for Newcastle-under-Lyme, submitted on 12 October on the Parliament website, for written answer by the Ministry of Justice today:-

Paul Farrelly (Newcastle-under-Lyme): To ask the Secretary of State for Justice, what assessment he has made of the effectiveness of legislation to protect (a) whistleblowers and (b) press freedom following the injunctions obtained in the High Court by (i) Barclays and Freshfields solicitors on 19 March 2009 on the publication of internal Barclays reports documenting alleged tax avoidance schemes and (ii) Trafigura and Carter-Ruck solicitors on 11 September 2009 on the publication of the Minton report on the alleged dumping of toxic waste in the Ivory Coast, commissioned by Trafigura.

As you will be aware, Mr Farrelly's question was then the subject of an article published on The Guardian's website on the evening of 12 October and on the front page of the hard copy edition of yesterday's newspaper under the headline "*Guardian gagged from reporting Parliament*". As you are also aware, that in turn led to substantial further media coverage both in The Guardian and elsewhere. Furthermore, it was referred to by a number of Members in the Chamber yesterday afternoon and again today.

Unfortunately, much of the media coverage – both in The Guardian and elsewhere – has been highly misleading, and we are concerned that this has, in turn, led to Members of Parliament being misinformed. Accordingly, the purpose of this letter is to make clear the correct position, so that any future consideration of the matter by Parliament can take place on an informed basis.

The Injunction Order

It is the case that, since 11 September 2009 an Order has been in place against The Guardian and Persons Unknown. It should also be stressed that, since 18 September 2009, The Guardian has consented to that Order remaining in place pending resolution of this matter.

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Until that resolution, it is not appropriate to comment on the substance of the Order, other than to make clear that we and our clients are in no doubt that it was entirely appropriate for us to seek the injunctive relief in question; and that it was correctly consented to by The Guardian and granted by the High Court according to established legal principles.

Clearly, the question of whether this matter is *sub judice* is entirely a matter for your discretion, although we would observe that we believe the proceedings to have been and to remain "active" within the definition of House Resolution CJ (2001-02) 194-195 of 15 November 2001 in that arrangements have been made for the hearing of an application before the Court.

It is important to stress that, contrary to the clear impression given by The Guardian's article, there has never been any question of Trafigura applying for an injunction that had as its purpose the prevention of publication of any matter arising in Parliament. No such application has ever been made.

Furthermore, when the Order was made (and endorsed by the High Court) none of the parties or the Court had in contemplation the possibility of this matter being raised in the UK Parliament. If they had, then the Order may well have been formulated in such a way as to allow for such reporting.

Be that as it may, as in fact formulated (and as The Guardian apparently accepted) reporting on the Parliamentary Question which had been tabled for answer today would have placed The Guardian in breach of the Order.

We should stress that the very first occasion upon which Mr Farrelly's Written Question came to our attention was when The Guardian faxed it to us on the afternoon of 12 October, indicating (among other things) that they intended to publish information about Mr Farrelly's Written Question that night.

In response we pointed out that the threatened publications would breach the terms of the injunction Order and indeed that, absent a variation to the Orders, would place The Guardian in contempt of Court. That being the case, we sought The Guardian's confirmation that they would not so publish.

The correspondence culminated in us confirming, that evening, that we would take instructions from our clients on The Guardian's request to vary the terms of the undertakings/Order, and that we would revert "as soon as possible tomorrow" (Tuesday 13 October). Given that the Written Question was not due to be answered for another two days, and given that The Guardian had only raised the matter earlier that afternoon, we believe that response was entirely reasonable.


Despite (or perhaps because of) that response, later that evening The Guardian chose to publish their article online and subsequently on the front page of yesterday's hard copy.

The following day, the parties duly agreed an appropriate amendment to the injunction Orders stating that nothing in those Orders would prevent reporting of UK Parliamentary Proceedings.

As is demonstrated by the subsequent media and Parliamentary reaction to it, the clear implication of The Guardian's coverage is that an injunction had been obtained for the purpose of restricting publication of a report of proceedings in Parliament. As we hope is clear from what we say above, that is simply not

correct. We trust that we have made the position clear; needless to say, please do not hesitate to contact us should you require any further information.

Yours faithfully

Carter-Ruck


Copied individually to:

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