

SEVENOAKS ACTION FOR PEACE WITH JUSTICE

Chamber's of H.M. Attorney-General
20 Victoria Street
London
SW1H 0NF

71 Pilgrims Way West
Otford
Sevenoaks
Kent
TN14 5JH

13 August 2018

Dear Attorney-General,

I am a member of the above named group involved in an action that was subject to decisions made by your predecessor Jeremy Wright. I believe that a miscarriage of justice has occurred as a result of his decisions and I am requesting that you review the matters raised in this letter to determine whether you agree that some remedial action is necessary.

The action was initiated by a number of groups acting under a project named the Public Interest Case Against Trident (PICAT). The project sought a citizen's prosecution of the Prime Minister and the Secretary of State for Defence for conspiring to commit a war crime by the continuous deployment at sea of the Trident nuclear weapon system. The action required the consent of the Attorney General, which was first requested back in February 2016. On 10 November 2017 the Attorney General declined to give his consent on the basis that he considered that the material provided by PICAT was insufficient to show that any offence had been committed.

On 26 January 2018 one of the PICAT groups applied to the High Court of Justice for a judicial review of the Attorney General's decision. The main purpose of its submission was to set out the lawful grounds for seeking a judicial review, as these are not clearly defined. The Attorney General's lawyers responded on 7 March 2018. They rejected the legal grounds in a single sentence but did not develop the argument because they stated that PICAT's substantive claim was inarguable in any event. This is where the miscarriage of justice occurred. PICAT's claim was totally misrepresented by the Attorney General's lawyers. As a consequence the Judge refused permission for a Judicial Review and awarded costs against PICAT.

PICAT submitted nearly 90 pages of detailed legal argument and analysis to the Attorney General. The point at issue, however, can best be explained by reference to the draft Indictment provided by PICAT. This states that PICAT's alleged war crime is the "*excessive incidental death, injury, or damage by continuing and/or agreeing to a policy to maintain the capability to launch a nuclear attack on targets in and around Moscow ...*". Elsewhere in PICAT's submissions reference is made to attacks on centres of civilian population. The Attorney General's lawyers however stated that PICAT were alleging that any actual use of the UK's nuclear deterrent is criminal. This is not PICAT's position and it was not in any way contended in its submissions to the

Attorney General. This was confirmed by the Judge himself who noted in his refusal letter that the "*contention has not been made out in the papers before me, even on an arguable basis*".

The Attorney General's lawyers also stated in its submission to the High Court of Justice that it has been the continuous policy of successive Governments for many years to maintain a nuclear deterrent and that PICAT's arguments would preclude this. They also said that these arguments cut across the will of Parliament, which in 2016 voted for the renewal of Britain's nuclear deterrent. These are not legal points but reflect general political opinion. If they were intended to be legal points then the implication is that the public have no right of redress against anything decided by Parliament - an unsustainable position I hope you would agree. To be plain PICAT was not asking for a judicial review of the legitimacy of government policy but of the commissioning of a criminal offence under UK statute. If the Attorney General thought otherwise then it places a large question mark against the validity of his original decision to decline consent to PICAT's prosecution.

The Attorney General is required to act independently of government and to exclude any advantage or disadvantage that may assist or beset his own political party. Clearly his lawyers have breached this requirement and placed the office of the Attorney General in disrepute.

It cannot be in the interests of justice if the Attorney General fabricates a straw argument to deny nearly 400 prosecutor informants forming part of the PICAT project the right to bring a case in the public interest to court and/or acts in a party political manner. You oversee the Government Legal Department, who are responsible for this state of affairs.

I therefore request that you investigate the matters raised in this letter and to let me know whether you are prepared to review the decisions made by your predecessor? You may also want to consider whether it is reasonable to keep the costs of £4,635 paid to you by PICAT. I look forward to receiving a substantive response to this letter at your earliest convenience.

Yours sincerely,

Jim Pragnell

for Sevenoaks Action for Peace with Justice

2 - Reply from Attorney General



Attorney
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Mr Jim Pragnell

By email only to jim.beryl@virgin.net

30 August 2018

Dear Mr Pragnell

Subject: Request by Sevenoaks Action for Peace with Justice for the Attorney General to review the decision of his predecessor not to give his consent to the prosecution proposed by the PICAT Project

I write in response your letter dated 13 August 2018 in which you requested the Attorney General review the decision of his predecessor not to give his consent to the prosecution proposed by the PICAT Project.

On 17 October 2017 the former Attorney General, the Rt Hon Jeremy Wright QC, declined the request of the PICAT Project to give his consent to prosecute the Prime Minister, the Rt Hon Theresa May MP, and the former Secretary of State for Defence, Sir Michael Fallon MP, for conspiring to commit a war crime contrary to section 51(1) of the International Criminal Court Act 2001 and section 1(1) of the Criminal Law Act 1977.

The former Attorney General gave his careful consideration to the PICAT Project's request for his consent and concluded that the material which it had provided was insufficient to show that any offence had been committed.

On 25 April 2018 the High Court upheld that decision and found that it was not arguable that there was any error of law in it. The PICAT Project brought the proceedings before the High Court and was able to challenge the arguments made on behalf of the Attorney General in them.

There has not been any significant change in the allegation made by the PICAT Project and accordingly we consider that there is no basis on which to invite the Attorney General to review the decision of his predecessor not to give his consent to the proposed prosecution.

Yours sincerely

Julia Crouch
Head of Public Law and Litigation Team
Attorney General's Office

3 - 2nd Letter of Complaint to AG

Complaints Officer
Attorney General's Office
5-8 The Sanctuary
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71 Pilgrims Way West
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25 September 2018

Dear Complaints Officer,

I am writing as a member of the Sevenoaks Action for Peace with Justice, a group involved in a project named the Public Interest Case Against Trident (PICAT). You may recall that another PICAT group wrote to the Head of Business Support on 24 July 2017 complaining about the length of time it was taking the then Attorney General, Jeremy Wright, to reach a decision. Nicol Harlow replied to that Group on 11 August 2017. I am writing this time to complain about the behaviour of the Attorney General's staff in dealing with PICAT's case, in particular its refusal to forward a letter of mine to the new Attorney General, Geoffrey Cox.

I wrote to the new Attorney General on 13 August 2018 and in a covering email I specifically asked that my letter be seen and answered by him. In a reply dated 31 August 2018 the AG's Office (AGO) stated that its role is to filter matters that are put before the AG and because PICAT's position had not changed since the AG had considered PICAT's case there was no basis on which to put the matter before him again. In taking this position the AGO ignored the main point in my letter of 13 August 2018, which is that the Government Legal Department had fabricated PICAT's position in a submission to the High Court of Justice, thereby placing the AG's Office into disrepute. I enclose a copy of my letter of 13 August 2018 so that you can judge for yourself the validity of this comment.

Ever since PICAT referred its case to the Attorney General on 20 February 2016 the AGO's behaviour has not been at all constructive. It asked for information that in some cases was not strictly necessary in order for the AG to reach a decision. It took far too long for the AG to make his decision, a point accepted by the Deputy Director of the AGO, Julia Crouch in a letter to PICAT dated 13 September 2017. When the AGO eventually published the AG's decision on 10 November 2017 its letter gave no substantive reasons for the decision. When PICAT requested a more comprehensive explanation of the decision, the matter was taken up by the Government Legal Department (GLD). They responded on 24 January 2018 by stating that it was not for the AG to provide detailed advice on PICAT's case. However, it accepted that the AG had to provide brief reasons for his decision, which the AG failed to do. All that the AG said is that the material provided by PICAT is insufficient. This is a statement not a reason.

The GLD's letter went on to propose a reason for the AG's decision. It is a reason repeated by the GLD in a letter to the High Court of Justice dated 7 March 2018. Both letters state that PICAT's case appears to be based on the premise that any actual use of nuclear weapons would cause excessive civilian losses regardless of the circumstances. This is a fabrication of PICAT's position, which is specifically based on the government policy of maintaining the ability to launch a nuclear strike on targets in and around Moscow, the circumstances of which are described in a letter by Counsel acting for PICAT dated 1 October 2016 as resulting "in massive and disproportionate death and injury to civilians, damage to civilian objects and/or environmental damage".

I asked the AGO in an email dated 3 September 2018 whether they agreed with the GLD and if so to provide a reference to any PICAT document in which their allegation is stated. I received a reply today in which the AGO backs up the GDA's position but without providing any evidence to support it. If the AGO genuinely believes the GDA's allegation then it raises serious doubts about the validity of the AG's initial decision, based as it was on a false premise.

As stated in my letter to the new AG dated 13 August 2018, the AG is required to act independently of government and to exclude any advantage or disadvantage that may assist or beset his own political party. In performing his duties the AG is required to act in the public interest. Clearly the AGO and their lawyers have breached these requirements and in my opinion by doing so they have placed the office of the AG in disrepute.

This is a serious allegation and one that the new AG should be made aware of. He can then decide whether any action is necessary concerning PICAT's case and the AGO's reputation. It is certainly not appropriate for the AGO to try and sweep my complaint under the carpet on the basis of an administrative procedure. It seems to me that all they are trying to do is to protect their own flawed behaviour with regard to its dealing with PICAT's case.

Would you please investigate my complaint . The only redress that I am seeking is to have my letter dated 13 August 2018 and this letter put before the new AG for his consideration. This remedy ought not be too difficult for you to arrange, which I hope you will do at your earliest convenience.

Yours sincerely,

Jim Pragnell

for Sevenoaks Action for Peace with Justice .

4 - Reply from Attorney General



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Mr Jim Pragnell

By email only to jim.bery@virgin.net

18 October 2018

Dear Mr Pragnell

Subject: Complaint by Sevenoaks Action for Peace with Justice

I write in response to your letter dated 25 September 2018 in which you raise a complaint about the conduct of Attorney General's Office (AGO) officials, and specifically the decision not to invite the Attorney General to review his predecessor's decision not to give consent as per your letter dated 13 August 2018.

The AGO responded to your letter of 13 August on 30 August 2018 explaining that the Attorney had not been engaged as there was no significant change in the PICAT Project's allegation and accordingly no basis on which to invite him to review his predecessor's decision. Further email correspondence reconfirmed your letter had not been brought to the attention of the Attorney. In your letter dated 25 September 2018 you state GLD lawyers fabricated the PICAT Project's position to the High Court thereby placing the AGO into disrepute; and that AGO lawyers did not act independently. In addition, you repeat your request that your letter dated 13 August be placed before the Attorney for his personal consideration. These allegations are of serious professional impropriety and I consider both in the following paragraphs, along with your request to place your August letter before the Attorney.

The PICAT Project sought the permission of the High Court to bring proceedings for judicial review. It was responsible for setting out its own position in its pleadings. The GLD lawyers acted on the instruction of AGO lawyers, after taking the advice of senior Counsel specialising in public law. They set out the AGO's interpretation of both the legal and logical consequences of the PICAT Project's application in its pleadings. As noted in the AGO letter of 30 August, the PICAT Project was able to challenge the arguments made on behalf of the Attorney in the proceedings. The High Court considered both sets of pleadings and reached the independent decision that the claim being made by the PICAT Project was not legally arguable. Therefore, I am satisfied there is no basis for your allegation that GLD lawyers acting on behalf of AGO fabricated PICAT's position or brought the AGO into disrepute.

During the process of considering the PICAT Project's application for the Attorney's consent to prosecute and presenting it to the Attorney, AGO lawyers took the advice of senior Counsel specialising in criminal and public international law, making their own assessment of the legal merits of the PICAT Project's request as part of their obligation in advising the Attorney. Ultimately, he concluded that the material it provided was insufficient to show that any criminal offence had been committed and accordingly declined to give his consent to the proposed prosecution. Your suggestion that the Attorney reached his decision on a false premise is unfounded and the High Court, as explained in the paragraph above, found that the

5 - 3rd letter of Complaint to AG

Director
Attorney General's Office
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25 October 2018

Dear Director,

I refer to the Head of Business Support's letter dated 18 October 2018, which replied to my letter of complaint dated 25 September 2018. My letter asked the Head (Nicol Harlow) to investigate a complaint that I had previously made in a letter to the Attorney General dated 13 August 2018, which was answered by the AGO in a letter dated 30 August 2018. I also asked the Head to refer both of my letters to the new Attorney General, Geoffrey Cox QC.

I am writing under your Complaints Procedure to formally express my dissatisfaction with the Head's answer. Nicol Harlow has copies of all the correspondence referred to in this letter, but for convenience I enclose copies of my two letters quoted above.

The background to my complaint is set out in the letters I have enclosed. Briefly it is my opinion that the AGO's lawyers placed the AGO into disrepute by fabricating the basis of PICAT's claim to the High Court of Justice. Furthermore I believe that the adoption of this false premise about PICAT's claim raises a large question mark against the validity of the AG's original decision to refuse his consent to PICAT's action. The lawyer's premise was accepted by the AGO in an email to me dated 25 September 2018, a copy of which I also enclose. These are serious complaints.

Nicol Harlow accepts that my complaint alleges serious professional impropriety but she decided not to refer this to the new AG for a reason she did not attempt to justify. All she did was to refer to a separate issue set out in the High Court's decision.

To keep matters simple I request that you ask the AGO to show you just one document that specifically states that PICAT's claim is based on the premise that any actual use of nuclear weapons would be criminal regardless of the circumstances. Such a premise is thoughtless given that a nuclear weapon could be aimed at a large empty desert for warning purposes. I asked the AGO to show me such a document in an email dated 3 September 2018 but in its emailed reply dated 25 September 2018 it refused to do so for a simple reason - there is no such document. I referred to this exchange of emails in my letter to Nicol Harlow but she too did not identify a PICAT document that contains the AGO's allegation.

Because there is no PICAT document that states that any use of a nuclear weapon would be criminal, it follows that the AGO's allegation to this effect must be false. In other words the allegation was fabricated.

The legal arguments backing up PICAT's claim are set out in a letter drafted by senior Counsel dated 1 October 2016. In refusing to give his consent to PICAT's action the AG simply said that the material provided by PICAT is insufficient. The AG is required to give brief reasons for his decision but he did not do so. He could have explained, for example, why one or two of the legal arguments presented by PICAT would fail in court. I suspect that he did not do this because it is now known that his decision was based on a false premise. I also suspect that his actions were based mainly on political not legal considerations.

Please review my complaint and advise if you agree that the serious matters that I have brought to the AGO's attention should be put before the new AG for his consideration. If so would you please arrange for this to be done.

Yours sincerely,

Jim Pragnell
for Sevenoaks Action for Peace with Justice

6 - Reply from Attorney General



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Mr Jim Pragnell

By email only to jim.beryl@virgin.net

13 November 2018

Dear Mr Pragnell

Subject: Complaint by Sevenoaks Action for Peace with Justice

I write in response to your letter dated 25 October 2018 invoking the final stage of the AGO Complaints Procedure.

Your letter makes serious allegations and I have considered all of the correspondence relevant to your complaint very carefully. Having done so, however, I am satisfied that there is no evidence to support your allegations of professional misconduct by lawyers at either the AGO or GLD by fabricating the basis of PICAT's claim to the High Court of Justice.

The matter you complain of is contained in the GLD pre-action response of 24 January 2018. The action was PICAT's challenge to the Attorney's decision not to grant consent. That action was heard in the High Court and on 25 April 2018 the High Court, having considered the material, upheld the decision to refuse consent and found that it was not arguable that there was any error of law in the Attorney's decision.

This is the final stage of the AGO Complaints Procedure.

Yours sincerely

Michelle Crotty
Director and Deputy Head of Office
Attorney General's Office

