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Thank you for your letter of 9 November seeking an update on the case of Al Saadoon and Mufdhi.

The Government was disappointed to learn on 3 October that the European Court of Human Rights Court (ECtHR) had not granted the UK permission to refer the Chamber judgment of 2 March to the Grand Chamber. The Government believes that the Chamber judgment deals with issues that were not properly before the Court and we had hoped to be given the opportunity to make further representations to the Grand Chamber. We were concerned, in particular, that the Court had not fully appreciated that the UK Government had no legal power or authority to detain individuals in Iraq beyond 31 December 2008.

Nevertheless, the Government accepts that the judgment of 2 March is final and, in respect of Al Saadoon and Mufdhi, the Government has continued to seek assurances, even before the judgment became final, that Al Saadoon and Mufdhi would not be sentenced to the death penalty if convicted of charges which attracted the death penalty. You will see at the Annex to this letter a list of the correspondence which has been sent to the Iraqi authorities seeking those assurances.

Although no written assurances have been forthcoming you may wish to know that the President of the Iraqi High Tribunal (IHT) stated, in a letter dated 31 August, to the British Ambassador in Baghdad that that no judge could, in any event, give an assurance prior to the outcome of the trial. British Embassy officials in Baghdad have continued to maintain close links with the IHT and Iraqi Ministry of Justice on progress with the Iraqi trial to ensure we are up to date with developments so we can continue to seek assurances as well as briefing the families of the two British soldiers that Al Saadoon and Mufdhi are alleged to have killed. The latest position (which we understand from the Iraqi authorities) is that, having completed the investigation phase, the trial, which was planned to take place today, has been postponed until 9 December pending further evidential enquiries. We will continue to watch developments.

As well as seeking assurances, FCO officials have also recently visited Al Saadoon and Mufdhi in prison in Iraq and were informed by the two individuals

Dr Hywel Francis MP
Chair, Joint Committee on Human Rights

that they were content with the general conditions and treatment by the prison authorities. Al Saddoon and Mufdhi confirmed they were allowed to exercise for one hour each day and said “they had everything they needed”.

Finally, you may be interested to know that Public Interest Lawyers (PIL) made a fresh legal challenge in the UK on 18 October, by way of further Judicial Review (JR) proceedings, alleging that the Government was failing to comply with the terms of paragraph 171 of the ECtHR judgment. The UK Divisional Court dismissed an interim application by PIL, which sought an order that the Government “take all possible steps to obtain assurance from the Iraqi authorities that the Claimants will not be subjected to the death penalty”, at an oral hearing on 20 October. On 4 November the Divisional Court refused permission in this JR claim. In making that order the Divisional Court stated that “both of the principal grounds upon which the Defendant relies to resist this claim are unanswerable. Article 46(2) ECHR provides the exclusive means of enforcing judgments of the Strasbourg Court and the UK has in fact done that which the which the Court required in the last sentence of paragraph 171 of its judgment – and continues to do so”.

I am copying this letter to William Hague given his interest in the matter and the steps taken by his officials on this case.

The Rt Hon Dr Liam Fox MP