Dear Mr Cooke,

The Nuclear Decommissioning Authority – Magnox Contract
Public Accounts Committee (PAC) hearing on 23 November 2017

Thank you for your letter dated 28 November 2017.

I note your request for copies of all legal advice provided to the NDA by Burges Salmon relating to the procurement, litigation, settlement and consolidation. The advice you have requested covers a period of over 5 years, from 2012 until the date you have specified, which is 28 November 2017. During this period, Burges Salmon worked very closely with the NDA and provided large volumes of advice in relation to the Magnox competition, the subsequent litigation and the consolidation process.

As a result of the close working relationship between the NDA and Burges Salmon, the legal advice received from Burges Salmon was often provided via emails, telephone conferences and face-to-face meetings. The practical effect of this is that the documents recording the advice provided by Burges Salmon are extremely voluminous. Although we do not have a precise figure available at present, based upon the volume of material made available to the Holliday Inquiry, we estimate that the Committee would have to review approximately ten thousand documents in order to gain an understanding of the advice provided by Burges Salmon throughout this period.

Should the Committee wish to be provided with copies of the documents relating to advice provided by Burges Salmon, it would be necessary to obtain appropriate assurances from the Committee and the National Audit Office to protect the legal privilege and confidentiality in those documents. These arrangements are necessary as further litigation could emanate from the Magnox procurement and subsequent events. Certain documents are also the
subject of Court orders restricting the people who may view those documents, so steps would also have to be taken to add relevant Committee members / representatives of the NAO to the Court ordered confidentiality ring before these documents could be provided. This would require an application to Court and agreement from relevant individuals that they will observe the relevant confidentiality undertakings in the same way as all other members of the confidentiality ring. Further, consideration will have to be given to the practicalities of sharing such large volumes of confidential data, the vast majority of which is currently stored in electronic format on the NDA’s secure network.

All of the documents requested by the Committee have been provided to the Holliday Inquiry team, who will undertake a thorough review. The documentation was provided to the Holliday Inquiry team in full with agreement that the legal professional privilege in the material is not waived. Equally the Holliday Inquiry has agreed to maintain the confidentiality of the material, with appropriate statutory information security measures, so that privilege is not inadvertently lost. With the benefit of all the paperwork relating to legal advice received by the NDA, the Holliday Inquiry is interviewing witnesses from the NDA, Burges Salmon and the NDA’s Counsel team.

Given the practical difficulties outlined above, and the work currently being undertaken by the Holliday Inquiry, the Committee may find it more helpful to consider the outcome of Mr Holliday’s investigations before deciding whether or not it would benefit from receiving a copy of the full suite of advice received from Burges Salmon during the relevant period. Should the Committee consider it would be beneficial to see copies of the relevant documents now, we would welcome the opportunity to discuss this issue with you further to see how we can best work through the practical difficulties outlined above.

Yours sincerely

David Peattie
Chief Executive Officer
Nuclear Decommissioning Authority

Copy:
Alex Chisholm