NUCLEAR DECOMMISSIONING AUTHORITY - REVIEW OF LEGAL DOCUMENTS RELATING TO THE MAGNOX CONTRACT

Following the evidence session of 27 November 2017 in relation to the Nuclear Decommissioning Authority’s (NDA) failed Magnox contract, the Committee requested that the NDA share the legal advice it had received from its advisors, Burges Salmon, during the procurement and consolidation phases of its contract to decommission 12 Magnox sites. I agreed subsequently to review this material and report back to the Committee as to whether the NDA had acted in accordance with the legal advice it received.

The NDA have confirmed their willingness to share the legal advice, but they have indicated that the documents (around 25,000) are subject either to legal professional privilege or contain confidential information protected by court order that prohibits the disclosure of designated material. They have therefore requested that the NAO sign an agreement to protect the confidential nature of the documents we would review.

My own legal advice has concluded that, in order to move ahead with this work, it would be appropriate for me to sign NDA's proposed confidentiality agreement. I have been advised that I can access these legally privileged documents and material protected by a court order if the NDA and the court respectively are agreeable. In addition, I should not take steps that would cause the confidentiality associated with this information to be lost. To do otherwise could be viewed as acting outside my statutory remit with the potential for legal exposure that would bring.

The consequence of such conditional access is that I can only report the results of my review to the Committee in a way that does not cause legal privilege to be waived or the confidentiality restrictions imposed by court orders to be breached. In practice, I anticipate that this would be likely to comprise a high level overview of whether the NDA acted consistently with the legal advice it received. I would not be able to disclose the specifics of the legal advice that the NDA received.

A possible alternative to the above would be for me to report in private to the Committee. If we were to pursue this approach then I would need, with the agreement of the Committee, to engage further with the NDA to put arrangements in place.

I understand that the ongoing Holliday Inquiry into the Magnox contract failure has already been provided with NDA’s legal advice, so another option would be to wait until the Inquiry has reported later this year and take a view as to the merits of any further review by the C&AG at this point.
I hope the above is helpful in setting out my understanding of the options available and would be very happy to discuss these with you further to ensure we can best meet the Committee's needs while operating within any legal constraints.

AMYAS C E MORSE