

Public Accounts Committee

Oral evidence: The Nuclear Decommissioning Authority: the Magnox contract, HC 461

Thursday 23 November 2017

Ordered by the House of Commons to be published on 23 November 2017.

Watch the meeting

Members present: Meg Hillier (Chair); Geoffrey Clifton-Brown; Martyn Day; Chris Evans; Shabana Mahmood; Layla Moran; Bridget Phillipson.

Sir Amyas Morse, Comptroller and Auditor General, Adrian Jenner, Director of Parliamentary Relations, National Audit Office, Michael Kell, Director, NAO, and Richard Brown, Alternate Treasury Officer of Accounts, HM Treasury, were in attendance.

Questions 1-176

Witnesses

I: Simon Bowen, Chief Executive, Cavendish Nuclear Ltd.

II: Alex Chisholm, Permanent Secretary, Department for Business, Energy and Industrial Strategy, John Clarke, former Chief Executive, Nuclear Decommissioning Authority, David Peattie, Chief Executive, Nuclear Decommissioning Authority, and Mark Russell, Chief Executive, UK Government Investments.



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Reports by the Comptroller and Auditor General

Cabinet Office: Transforming government's contract management (HC 269)

Departments' oversight of arm's-length bodies: a comparative study (HC 507)

Examination of witness

Witness: Simon Bowen.

Chair: Welcome to the Public Accounts Committee on Thursday 23 November 2017. We are here today to look at the National Audit Office Report on the Nuclear Decommissioning Authority's botched Magnox contract, which had a value of £6.2 billion. That makes it one of the largest ever contracts let by Government.

The Report shows a catalogue of failures that have plagued the contract from the start. We want to understand what processes and problems happened at NDA level—why the Government's nuclear experts got so much wrong—and also at what happened; why there were not proper assurances through various other Government structures, including the Department, to make sure that there was proper oversight; and why the problems weren't picked up at an earlier stage. We are really hoping to get to the bottom of this.

We have two panels today. We have Mr Simon Bowen, chief executive of Cavendish Nuclear, which is the current contractor that won the contract but will finish work on this in September 2019. I will ask Geoffrey Clifton-Brown to kick off. For anyone following on Twitter, our hashtag is #Magnox.

Q1 Geoffrey Clifton-Brown: Mr Bowen, I am really grateful that you have come before the Committee this morning, because you will be able to help us with a lot of the detail that we need to know before we can investigate what went wrong. When you bid for this whole process, how far was it known what the state of the various sites were? When you first started investigating, did you or NDA really know what the state of these sites were?

Simon Bowen: The bid documentation is what we had to rely on. At the time of the bidding that was the only information we had available to us. We had no other knowledge that we could bring to bear.

Q2 Geoffrey Clifton-Brown: How far were you allowed to make investigations before you put in your £3.8 billion bid?

Simon Bowen: Obviously, we forensically took apart the bid documentation. There were a series of visits and interviews, but these were more to test the bid strategies rather than to do any detailed due



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diligence. There was no opportunity to do detailed due diligence because that is not the way the competition was designed.

Q3 Geoffrey Clifton-Brown: Were you allowed to visit any of the sites?

Simon Bowen: Yes, there were managed visits of the sites.

Geoffrey Clifton-Brown: Managed?

Simon Bowen: Yes. Because there were four bidders, it was a lot for the sites to deal with because they had their operations to conduct at the same time. We did not get a chance to get on to the sites and have a good look at the state and condition of the sites. All we had a chance to do was look broadly at what the sites were doing, whether or not our bid strategies would work, and ask a limited number of questions.

Q4 Geoffrey Clifton-Brown: So broadly speaking, when you put your tender in, you were really relying on the documents supplied by NDA.

Simon Bowen: Correct.

Q5 Geoffrey Clifton-Brown: Getting on to the actual bidding process, it had 700 evaluation criteria in it. Would you not say it was more or less set up to fail, because how could you possibly evaluate those 700 items if you had not been allowed a prior inspection?

Simon Bowen: It was a very complex bid. On pre-qualification what you are doing is testing whether a contractor is capable or not capable of doing the task. The tender documentation is more focused on who is best to do it. In our opinion a number of those 700 criteria you referred to were a mix between what we would deem as pre-qualification and tender documentation. That added a significant amount of complication to the bid and it made the task of the NDA much more difficult.

Q6 Geoffrey Clifton-Brown: Knowing what you know now, was it not more or less set up to fail? Obviously it was not deliberate, but was it not almost impossible for you or anybody else to have really succeeded in this whole process?

Simon Bowen: Had the bid documentation been an accurate reflection of what was on the sites, the style of contract that was put in place would have worked.

Q7 Geoffrey Clifton-Brown: Okay. So your bid was accepted in 2014. At what stage did you start to become aware—presumably at the start of the consolidation process—of the significant variation between what you thought might be on the sites, because otherwise you would have bid higher than £3.8 billion? At what stage did you become aware that there was a significant difference?

Simon Bowen: When we started on site we were shadowing the existing contractor, basically doing a lot of training from late April and May through to September, but we really did not get any access until around September 2014. In the conversations we had with the Magnox team, clearly their loyalty was to the previous contractor, so they were fairly

guarded about what they said. From September 2014 onwards we got access to the sites in an unrestricted way. The Magnox staff started to open up to us a lot more about the condition of the site. During that period from probably October through to Christmas, we started to see that the scale of the changes, compared to the bid documentation, was materially bigger than we thought. We first raised that—probably not as strongly as we should have, because we were quite new—in the first quarterly performance review that we had with the NDA in November.

Q8 Chair: Do you think there is anything that you could have done as a bidder to be smarter about the questions you asked, about the information you needed? Were you at fault—well, not at fault; we have had a legal case on this. Were you a smart enough contractor in this client-contractor relationship?

Simon Bowen: What the NDA did very well was having a level playing field for all the contractors, to make sure that we were all bidding against the same scope. It was a fair process in terms of the competition, so I do not think there is anything more that we would have done in the bidding process. We would not have changed our approach, because when we concluded, after we had put our final documentation in, we felt that we could not have done any more in how we had handled that bidding process. Therefore, if we ended up losing, we would not challenge it.

Q9 Chair: Earlier you said that you could ask a limited number of questions. I thought that was careful phrasing. Was that limited by the NDA? What was the limit on those questions?

Simon Bowen: I believe it was more a limit of scope, rather than specifics.

Chair: Do you want to expand on that a bit?

Simon Bowen: I am afraid I don't have that level of detail.

Q10 Geoffrey Clifton-Brown: Whatever you knew, the NDA clearly knew something else. Did they ever tell you that they thought there was an additional £1 billion of costs involved, above what you had bid for?

Simon Bowen: No, because I don't think they realised the scale of it. Only when we started looking in detail at the work that had to be done did we start to realise the difference between what we had put in for in the bid and what was there. For example, when we took over, in the first seven months of operation 50% of what we did was work that we had not planned to do. Immediately, we found work that we were not expecting.

Q11 Geoffrey Clifton-Brown: Did you say 50%?

Simon Bowen: Yes, over the first seven months. That was because work that we thought had been completed, and was planned to be completed by September 2014, had not been. At that point, we knew that something was different. For the process that we were in, we realised that we needed more money for 2015-16. As a result, we had to put a lot of effort into making the plans fit the annual funding limit that was available in 2015-



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16. The first six months were really about discovering what was on the sites, and then planning for the following financial year. Does that answer your question?

- Q12 **Geoffrey Clifton-Brown:** It does. Let's move on to the consolidation process, which presumably took place from September 2014, when you started to know what was going on. It still was not completed by the time of your termination notice, was it?

Simon Bowen: No, it wasn't.

- Q13 **Geoffrey Clifton-Brown:** Do you think that process was your fault, or was it the NDA's fault? Why did it take so long for both of you to establish the state of the sites, and therefore what the cost was to manage them?

Simon Bowen: The contract simply did not foresee the magnitude and scale of change that we discovered. The work that had to be done to establish exactly what the baseline plans were for the work that needed to be completed was a substantial undertaking. To give some context, previously it had taken Magnox 10 months to do one site. We had to re-baseline all the plans for the 12 sites, and we did that in 12 months. Without those baseline plans we could not cost. It would take us a 12-month period to make those long-term plans.

At the same time as doing that, we had all our bid strategies to put in place, so we committed a different organisation to save the taxpayer money. We committed to take about a third out of the workforce by taking a different approach to the organisation. We had to put that in place at the same time to save the taxpayer money. Getting that done was worth about £80 million a year to the taxpayer. We combined two site licences into one, and when you put all of that together, we overlaid the long-term plans. A substantial amount went on in that first period.

Then we started on the detail of the change controls. Those change controls, which were related to all the long-term plans, were substantial documents—30 to 50 pages per change control, and in excess of 100 change controls required. This was a substantial piece of work. Because of the scale of what we were dealing with, there was another extension to get the documentation in, and we got it in to the revised timescale. There was then a period of the NDA looking at what we had put in and us getting into a commercial negotiation about what was a fair and reasonable settlement.

- Q14 **Geoffrey Clifton-Brown:** I ask you to be candid in your answer to this question. In your view, did NDA have people with sufficient expertise to deal with you to sort this consolidation process out?

Simon Bowen: They certainly did not have the numbers that were required, and I think there were a number of areas where they were short on some of the capability.

- Q15 **Chair:** What particular areas do you think there were gaps in?



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Simon Bowen: Naturally, when you are contracting this out to specialist contractors like ourselves and Fluor, you do not have the level of technical expertise that we would have had, so clearly some of the technical capability was lacking. I think the level of commercial capability required, simply because of the scale of the changes, was also an area of concern.

- Q16 **Geoffrey Clifton-Brown:** May I ask one more candid question? I asked about NDA. You quite rightly say you couldn't possibly have foreseen the scale of the contract when you won it. Did you have sufficient numbers of people with expertise to deal with it?

Simon Bowen: We had 300 people working on consolidation. We went back into our parent organisations to increase the number of people involved, and we drew in extra people from Magnox to make sure we did it. In terms of lessons learned, could we have started that a bit earlier? Yes, we probably could, but it was a very substantial piece of work.

- Q17 **Chair:** Did the lack of expertise in the NDA slow down consolidation? Was that an issue?

Simon Bowen: It certainly limited the pace at which we could get the change controls approved, simply because there were not the numbers of people there that were required.

- Q18 **Layla Moran:** Following on from the theme of the skills base, when you did the consolidation and you realised there was a gap, were the 300 workers the same 300? How many people did you have to bring in once you had done the consolidation?

Simon Bowen: We had to increase the size of the team. I am a bit sketchy on the exact numbers, but we had to increase the number from something like 100 up to 300. The vast majority we brought in from the Magnox team, because they had a lot of the local knowledge.

- Q19 **Layla Moran:** From the Magnox team, who were already in situ?

Simon Bowen: Yes.

- Q20 **Layla Moran:** And where are those workers? Are they all still part of it now?

Simon Bowen: It will vary. It is down to individuals. Some people will have left; as I say, we did reduce the numbers in the workforce quite considerably. Some will have left on voluntary redundancy and others will have been redeployed, but the vast majority will still be within Magnox.

- Q21 **Layla Moran:** So they will still be around and in the ecosystem. One of the themes we are exploring is how saleable these people's expertise is. How easy is it for them to transfer to other organisations that do similar work? Is there a lot of churn in the number of people working for you?

Simon Bowen: No. There is very limited turnover in the industry, actually, though with nuclear new build it will start to increase. But they are very transferable. What is a little bit different about these types of sites is that they tend to be very community-based, so many people



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become settled where they are and are not particularly mobile. In terms of skill base, though, they are highly transferable.

- Q22 **Layla Moran:** Moving on to cost, for the 700-odd criteria that were part of this bid, paragraph 1.11 of the NAO Report states: "The NDA told us that the evaluators believed they had the discretion to amend the scores". Were you aware that they had that discretion?

Simon Bowen: No, I wasn't aware of that.

- Q23 **Layla Moran:** So when the bids came through, were you surprised to be the winner, given the information after the fact?

Simon Bowen: No, we weren't surprised, but we were very pleased because we knew that it was going to be a very tight competition. On the gentleman's previous question, the way the procurement was structured naturally meant that everybody was going to have similar scores, because of the level of dialogue and the type of scoring mechanism, so it was going to be pretty difficult to differentiate between the bidders. We thought it was going to be a pretty tight race. We were delighted to win it, but we were not surprised, because we put 100 of the best people that Fluor and Babcock and Cavendish have into it, with the aim of winning it.

- Q24 **Layla Moran:** And how much pressure were you under to make sure that it was a low-cost bid?

Simon Bowen: As Babcock and Fluor we have well defined processes that we use as part of our bidding and governance processes, and we put in bids that we believe are competitive but are always bottom-up built. So if you look at the way in which we produced the bid for this contract, we had got all of that expertise together; we bottom-up built it to make sure we fully understood how we were going to deliver; we built in all the opportunities that we could see that were possible; and we put the bid together. So that is the way it was done.

- Q25 **Chris Evans:** Mr Bowen, costs were raised to £6 billion in March this year. Your original bid was £3.8 billion, £0.3 billion of which was for work you should have identified while performing site visits. What was that work, and why did you overlook it in the original contract, bearing in mind your next nearest bidder bid £4.1 billion?

Simon Bowen: The opportunity to look at that level of detail, as I said, on the site visits, was not there. As I said, it was a bottom-up build, so the bottom-up build and the differential between ourselves and the other contractors was a matter of fact.

In terms of the £300 million that the NAO Report talked about in relation to bid omissions—I think that is the way it refers to it—we would split that into two. There was about £100 million of that which we would see would be subject to future contract change for various reasons. That could be contaminated land or it could be a pension contribution. Then there were about £200 million-worth of assumptions that we had made, that we then saw, once we got into the contract, that we could not deliver. It would be

things such as recyclates; we bid on a cost of a commodity pricing of recyclates and the proportion we could recycle. That did not transpire.

We made a couple of arithmetic errors in the bid document—and this is a huge undertaking. There are a number of other examples of how that money is built up, but we were in this for 14 years and we knew that there would be opportunities for us to perform and to operate more efficiently, and therefore with this level of omission or incorrect assumptions we believed that over the 14 years we would be able to recover at least some of that.

- Q26 **Chris Evans:** It is standard practice, then, to make omissions like that. I mean, £300 million is not an inconsiderable amount of money, which, as we have seen, could be used for other things in government. So has that happened in other contracts that you have been involved with?

Simon Bowen: There have been bid omissions in other contracts, particularly of this complexity. I think that if other contractors had been involved, with the complexity of what we are dealing with, over 12 sites, then other people would have the same challenge.

- Q27 **Chris Evans:** I have one last question. Some £700 million was overspent on asbestos and other waste. Did you factor that into the contract? I understand from the NAO Report that that could have been anybody, but did you factor that in?

Simon Bowen: Yes, we made a number of assumptions, but if you take something like a turbine hall in Anglesey, in Wylfa, it is almost impossible to be able to project or predict what the volume of asbestos is. There was a particular store in Hinkley Point that we did not get access to before. We believed it was a clean store, but it wasn't—it was probably one of the most contaminated stores in the fleet. As a result, the whole reason for having an allowance in the contract for asbestos and waste volumes is because you cannot possibly predict the exact volumes as part of the bidding process. Therefore there has to be an allowable contract change as time goes on and as you find more—as you get closer to, and find, exactly what is on the ground, if that makes sense.

See footnote correction made by witness

- Q28 **Chair:** Presumably that is well documented after the event, because you would have proof of the asbestos that had been removed.

Simon Bowen: Yes, absolutely.

- Q29 **Chair:** So it would be difficult to do anything wrong on that one, because there would be clear evidence.

Simon Bowen: Yes.

- Q30 **Geoffrey Clifton-Brown:** This was a target cost incentive fee contract—a so-called TCIF. At the time of bidding, based on the knowledge you had then, did you expect to make money out of that form of contract? How much more money did you expect to make by reducing your cost and

therefore getting the incentive?

Simon Bowen: The contract is structured so that you can make, in broad numbers, 5.4% on fee and then an additional 1.6% on target fee. It makes no sense to bid low, because you have to pick up 25% of anything that you basically underestimate. That immediately comes off your fee, so there is absolutely no incentive to go in low; if you go in low, you make less money, not more.

- Q31 **Geoffrey Clifton-Brown:** Was this one reason why you were so difficult over the consolidation process? It must have dawned on you that your bid was too low and therefore you had to make up some money somewhere. Was that part of why the consolidation process was so difficult—the difficulty of agreeing between you and the NDA what the true state of affairs was?

Simon Bowen: Our bid was not too low. We believed that across the period of the 14 years we would be able to make a suitable amount of money for this type of contract, so it wasn't that the bid was too low at all.

- Q32 **Geoffrey Clifton-Brown:** Right. So you went on through the consolidation process. It became obvious during that process that there was likely to be a legal problem with material change. At what point did the NDA start to discuss that aspect of the consolidation process with you?

Simon Bowen: We were not aware of the material change until pretty late on in the contract. There were informal conversations about the level of material change, but we were working with the NDA consistently, because if you take a number of the authority's assumptions on things like waste and asbestos, our view was that it would not get close to whatever threshold people determine is material. So we were aware it was an issue, but we were not aware it was a major risk.

What we were more concerned about was how we would get through consolidation and how we would get a fair and reasonable number agreed, in accordance with the contract. The reason why we were not prepared to agree quickly was that we wanted to make sure that the work was covered contractually. I don't think there was any scope in consolidation to increase the amount of money you would make. It was all about making sure there was fair recompense for the work to be done.

- Q33 **Geoffrey Clifton-Brown:** Given all that constructive work, were you surprised when the NDA terminated your contract?

Simon Bowen: Yes, we were. Obviously we are incredibly disappointed. Towards the end of last year, following the court case and the NDA's change of risk appetite, it started to become apparent not that the contract was at risk, but that we had a lot more work to do to ensure that we were doing consolidation in accordance with the contract. If you look at the work that was done in quarter 4 last year, that was all about trying to make sure that the consolidation was in accordance with the contract. It was probably only at the end of the year—December and January time—that we realised that termination was a possibility.



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- Q34 **Geoffrey Clifton-Brown:** Is it your view that if there had not been the court case, you would still be running the contract, or rather you would still have the contract, because you are still running it now?

Simon Bowen: Absolutely.

- Q35 **Geoffrey Clifton-Brown:** I would like to move forward. You are running the contract now for the next two years. Knowing what you know now, how will that proceed and how will you end the contract, having done the work that you are specified to do?

Simon Bowen: We, as the parent body, are determined that we are going to finish as strongly as we possibly can, so we will keep the strongest people we can on it to make sure that we deliver to the highest standards, because decommissioning is going to be a business for the long term and we are determined to finish this on a high.

How are we ensuring value for money? We have what I think is a robust termination agreement, which gives the NDA cost, schedule and scope certainty. These are the lessons of what has happened previously, where scope was not clear. It is now absolutely clear, because of the work we did on the long-term plans and how we fitted those long-term plans to the work to be done between now and the end of August 2019. So it is absolutely clear what the scope is. We have a number of milestones and performance-based incentives that will ensure that we deliver to a standard, and if we don't, we don't get a fee. And on top of that there is a termination or a good leaver payment at the end, which ensures that the NDA is well set up to operate the contract after we finally terminate.

- Q36 **Geoffrey Clifton-Brown:** Do you expect or hope to have any involvement post 2019?

Simon Bowen: Yes, if we can.

- Q37 **Geoffrey Clifton-Brown:** But that will be subject to a separate bidding process.

Simon Bowen: Yes, absolutely. From a personal perspective, I believe that outcome-driven incentivised contracts are an essential part of things like decommissioning, where you are trying to get the maximum value for money for the taxpayer.

- Q38 **Geoffrey Clifton-Brown:** So as far as UK plc is concerned, that goodwill aspect of you wanting to have a continuing involvement in this decommissioning, which is a very important job and requires huge expertise, is the real confidence building factor that we can have—you will continue to do the job properly until 2019.

Simon Bowen: Yes, absolutely. There is a bigger opportunity through things like the industrial strategy where we can further develop the UK capability and export. As a company, and as Babcock—and I know for Fluor as well—we are absolutely committed to continuing decommissioning.

- Q39 **Geoffrey Clifton-Brown:** Having been through all this convoluted



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consolidation process and having got to where you have got to, how is the relationship with NDA, and do you think it now has sufficient staff with sufficient skills in place to manage this whole decommissioning contract going forward?

Simon Bowen: I think it is a very professional relationship with the NDA. We have been through a pretty torrid time together, on either side of the contractual boundary, but it is a solid professional relationship. I think the new team under the new chief executive are looking to recruit, and are looking to recruit in the right areas. Our input will be to say that we have got about 45 people from Cavendish and Fluor in Magnox, and the focus needs to be on replacing those people because—as we talked about skills earlier—those sorts of skills are not readily available in the market.

Q40 **Geoffrey Clifton-Brown:** Just to test the governance, did you or anybody in your organisation ever appear before the NDA board to be asked about this whole process?

Simon Bowen: Not that I am aware of.

Q41 **Geoffrey Clifton-Brown:** Were you ever asked to produce reports directly for the board? Did the board ever ask you direct questions?

Simon Bowen: No, we never had a direct interface with the board. The only area where we did interface directly with one of the board's sub-committees was on safety. We had a safety conversation as Magnox.

Q42 **Geoffrey Clifton-Brown:** So throughout the whole consolidation process you never had any direct interface with the NDA board.

Simon Bowen: Not that I can recall.

Q43 **Chair:** If you find afterwards that you do recall or your organisation has evidence of that, could you let us know, because it is important that we have the record correct?

Simon Bowen: Yes, we will check that.

Q44 **Chair:** To be clear, even with this problem since the court case, apart from talking to the National Audit Office, are you talking to any other organisations, in Government or elsewhere, about what lessons have been learnt, or is this the first time you have been questioned about it?

Simon Bowen: The Holliday review is clearly—

Q45 **Chair:** You are talking to them, but other than that is there—

Simon Bowen: Not through any formal process. There is the regular business conversations that we have through our interfaces with BEIS, and there is quite a bit of work that we are doing from a decommissioning perspective as part of the nuclear sector deal, where a lot of these lessons are being pulled together on a much broader perspective across the nuclear estate.

Q46 **Geoffrey Clifton-Brown:** One final question just occurred to me. Given your experience of all this, is there any recommendation that you can



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make to us and that we can make to the Government that would actually help to stop this whole process and excessive amounts of taxpayers' money going into something that did not achieve what it was supposed to achieve? Is there any recommendation on how the procurement process and the consolidations process were run? Is there any advice that you can give us?

Simon Bowen: I guess there are two things. First—it is so obvious—it is critical that you understand the scope before you go for a target-based incentive contract. It is absolutely an appropriate contract mechanism, if you have that in place. Getting the scope right and getting it independently verified is probably one of the most important lessons. Secondly, from a procurement perspective, complex does not make it more robust, so have a simple procurement process with an organisation that has the capability to deliver on that, therefore delivering a sustained contract that is not terminated nine years early.

Geoffrey Clifton-Brown: Thank you.

Chair: Thank you very much, Mr Bowen, for coming and being candid with us. The transcript of this session and the next session will be up on the website in the next couple of days. It is uncorrected when it goes up, so do keep an eye on it in case you feel that there is anything you need to correct. You said a couple of times that you couldn't exactly recall something; if you find that someone in your organisation recalls it differently to how you described it, it is very important that you correct that as quickly as possible.

Simon Bowen: I will do that, Chair.

Chair: Our report on this will be out in due course. You are very welcome to stay for the next session.

Examination of witnesses

Witnesses: Alex Chisholm, David Peattie, John Clarke and Mark Russell.

Q47 **Chair:** Welcome to the Public Accounts Committee. We are looking at the Magnox contract, which has now been terminated by the NDA, and how that was led. I will introduce the witnesses. Alex Chisholm is the Permanent Secretary, and therefore accounting officer, at the Department for Business, Energy and Industrial Strategy. He joined the Department—this is relevant for this hearing—in September 2016 and so was in post for very little of the time of the actual detail of the contract. David Peattie has been the chief executive and accounting officer at the NDA since March 2017—some of us met you when we went to Sellafield in March, Mr Peattie, when you were just new in post. John Clarke has been in front of the Committee before. He was the NDA chief executive and accounting officer until February this year, so during the period of this contract being let. Mark Russell is chief executive of UK Government Investments, which, for regular followers of the Committee, was the



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Shareholder Executive. I think I am right in saying that it has changed its name but does the same thing.

Mark Russell: That is correct.

Q48 **Chair:** A machinery of government change that we never quite understand. I will hand over to Mr Geoffrey Clifton-Brown.

Q49 **Geoffrey Clifton-Brown:** Good morning, gentlemen. Perhaps I could start with you, Mr Clarke, and then go on to Mr Chisholm. Given what we have just heard—I think you were in the room—who do you think was responsible for the failure of the Magnox contract?

John Clarke: I was the chief executive of the NDA for the duration of this contract and I accept full responsibility for the actions of the NDA during that period. We set out with the best intent, to do the best job we could. We worked hard to achieve that outcome, but I think it is clear that it did not go according to plan. I think the system of the NDA, and indeed the Government system outside the NDA, clearly did not pick up some of these issues. We need to learn lessons from that, but ultimately I accept responsibility for the actions of my organisation.

Q50 **Geoffrey Clifton-Brown:** Thank you for that candid answer. Mr Chisholm?

Alex Chisholm: It is true that the NDA was the contracting authority, but it is also fair to note that it had considerable external challenge and assurance from our Department, from the UKGI, from the Treasury and from the IPA as well, so it is a shared responsibility. Although John was the accounting officer for this, I am the principal accounting officer so, again, I have ultimate responsibility for the disbursement of public funds.

Q51 **Geoffrey Clifton-Brown:** Do you think that the governance structure was so complicated that actually everybody shuffled responsibility on to everybody else? The Treasury was involved. UKGI was involved. Your Department was involved. The NDA was involved. There were various boards involved. Do you think it was too complicated and that we need to think about simplifying governance in the future?

Alex Chisholm: I think that very likely we need to think about simplified governance in the future. Certainly, there were a lot of parties involved in that. I didn't detect for myself looking at the record that there was a shuffling of responsibility. I think that the intention was very much that the NDA had a responsibility, but given the very large sums of money involved, it was absolutely right that my Department and the Secretary of State should have to approve that, and ditto the Treasury.

The role of UKGI is interesting in this. There is a particular model that we had in mind there. When the NDA was set up some 12 years ago, it was recognised that it needed to be a bit different from a standard Government Department. It had a particular function in procurement, so it needed commercial expertise, and it needed to have lots of private sector people working there. It was different from a typical Government Department. UKGI was there to try to make sure it had an appropriate



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structure for its board and had access to the right kinds of expertise within the organisation. That explains its role, but we can explore that further if you like.

- Q52 **Geoffrey Clifton-Brown:** So UKGI—I will come to you in a minute, Mr Russell, and ask you about this—are experts in corporate governance and procurement, but they are not experts in the actual technical aspects of these matters. All of you—whatever one's view of the corporate governance—relied on technical expertise from the NDA, didn't you?

Alex Chisholm: The NDA certainly had the expertise in procurement. Just to clarify, UKGI certainly had expertise in corporate governance, but not particularly in procurement. To the extent that they are experts within Government on procurement, they would be more within the Infrastructure and Projects Authority.

- Q53 **Geoffrey Clifton-Brown:** We will come on to that in a minute. Mr Clarke, they all relied on your organisation for the technical expertise. You heard the previous witnesses. When you put the whole contract out to tender, your organisation didn't really know the state of these sites. Isn't that quite an indictment of your organisation, which had been managing the sites for many years and had had contractors in there? Was it the fault of those contractors, or was it your fault for not knowing what they were doing and what the state of your sites were?

John Clarke: I think a combination of those factors. When we set out with this competition—as I said the last time I was at this Committee on a different topic, but this matter came up—the reason why we felt we were able to conduct a target cost incentive fee competition was because we believed we had a good grasp on the scope of work, we had a good plan in place for delivering that scope of work, and the performance was proceeding largely in accordance with that plan. On that basis, we felt the TCIF competition was the right thing to do.

It became apparent, to some extent during the competition and certainly after the competition, that the performance against the extant plan was not as good as we thought it was. Several sites were behind schedule. It is that that caused, as Mr Bowen just said, the significant gap between the amount of work we expected CFP to do and the amount of work they had to do. Again, I have to accept that it was our responsibility to understand the state of our sites, and we believed our level of understanding was somewhat better than it was.

- Q54 **Geoffrey Clifton-Brown:** I accept your candour on this, but isn't it extraordinary, when you have lots of technical people working for you, that you didn't at least have an idea, given the scale of what was discovered during the consolidation process, of the difference between your understanding at the time and what actually proved to be the case?

John Clarke: Well, we did. There are two factors. First, we are a small organisation. There are only 200 people in the NDA, so we don't have an army of people. We are deliberately set up to be a small organisation, and we rely very much on auditing the performance of our contractors. There



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are 16,000 people working on the sites. We don't have 16,000 people checking the performance of those 16,000. That is not to say we shouldn't do a good job—we set out to do that—but we are a small organisation.

Equally, it is not the case that we didn't know that there was a difference between what we asked the bidders to bid for—the assumptions we gave to the bidders—and the state of the sites. We were aware of significant differences between predicted performance and actual performance. I will give you a couple of examples. At Wylfa, we asked them to bid on the basis that Wylfa had ceased generation.

Chair: Wylfa in Anglesey?

John Clarke: Wylfa was, at the time, the one remaining operational Magnox station on Anglesey. We had predicted that that site would be closed, that it would have finished generation by the time that the winning bidder arrived, and that all bidders should bid on that basis. Through some phenomenally successful work, we were able to extend generation by a year, generating 100-plus million pounds of income for the taxpayer, but that meant that the decommissioning work had been delayed, so there was more work for the incoming bidder to do.

By contrast, there were some technical difficulties with one particular aspect of work at Bradwell in Essex—a site that was closed down many years ago. Work was going much slower than expected, and therefore the amount of work that needed to be done when the new contractor arrived was significantly greater than we asked them to assume. We were aware of some significant differences, but I have to acknowledge that we were not aware of just how big some of them were.

Q55 Geoffrey Clifton-Brown: Could that lack of knowledge ever have been a public safety issue? Given the seriousness of these nuclear sites, could there potentially have been a public safety issue through your lack of knowledge?

John Clarke: Absolutely not. Our prime focus at all times on these sites is the maintenance of safety and security, and we will not compromise on that at all. Neither will any of the operators of the site-licensed companies, because they are primarily accountable. Under no circumstances was there a risk.

Q56 Geoffrey Clifton-Brown: Thank you for that answer. That is loud and clear. I will ask you the same question that I asked Mr Bowen: given the 700 criteria the contract was lined up against, was it not almost set up to fail, being far too complicated for anybody to satisfy?

John Clarke: I don't think so. When we set up the contract we took extensive advice from within and outside Government, and we used what was deemed best practice at the time. With hindsight, the competition was perhaps more complex than it needed to be. We need to wait for the outcome of the Holliday inquiry to see to what extent that did or did not contribute to the situation we found ourselves in. At the time we set out with good intent. It is not necessarily the case that a large number of



evaluation points leads to the problems we had, but we need to wait and see with the Holliday inquiry.

- Q57 **Geoffrey Clifton-Brown:** So the procurement process went ahead. You had four groups bidding, as my colleague said; CFP bid £3.8 billion and the next bid was £4.1 billion, so the CFP bid was considerably cheaper than the other bidders. Why were you so determined to give it to CFP? Was it purely on price, or did you measure other criteria such as technical competence and so on? What was it about CFP that made you so determined to award them the contract?

John Clarke: We were not. We were not determined to award the contract to anybody. We were determined to run a straight, clean process, and award it to the team that offered the most economically advantageous tender, through a combination of price bid and a range of technical factors. In our view, when we did the evaluation, CFP had the highest score. It so happened that it had the lowest price, but that need not have been the case, because it was a combination of price and other factors. We had no interest in whether it was CFP or anybody else in the competition. They were all credible bidders, because they passed the PQQ.

- Q58 **Geoffrey Clifton-Brown:** My colleague wants to come in, but given what we have heard from the previous witness, with hindsight, was the actual tender process fair? In other words, was the information that you gave to the tenderers satisfactory? With hindsight, shouldn't you have allowed them to have much more time to inspect the sites so they had a better idea of what they were tendering for?

John Clarke: When we set out with the competition, we were absolutely scrupulous in our intentions and activities to make sure that it was a level playing field. We made sure that all bidders were given exactly the same information.

- Q59 **Geoffrey Clifton-Brown:** With respect, that is a different question. A level playing field is one thing; knowledge and the opportunity to gain knowledge is another.

John Clarke: Indeed, but what we had done was give them a set of documentation and assumptions on which to base their bid. We then invited all the bidders to visit all the sites. Mr Bowen used the phrase "controlled visits". They were controlled, but they were controlled to achieve two things: first, to make sure that safety and security were maintained on the site—you cannot have people wandering around aimlessly on the site—and secondly, to make sure that all bidders saw exactly the same things. We could not have a situation where bidder A had seen something and bidder B had seen something different. We had to make sure it was controlled.

- Q60 **Geoffrey Clifton-Brown:** I accept the level playing field point. With hindsight, did all of them have enough opportunity to really delve into the detail of the state of your sites before they tendered?



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John Clarke: Possibly not. At the time we felt there was sufficient opportunity given to supplement the documentation we had given them. It may well be the case, with hindsight, that—

Q61 **Chair:** Did any of them raise with you at the time that they would like to have more access?

John Clarke: I beg your pardon?

Chair: Did any of the bidders at the time ask for more access than they were being given?

John Clarke: I don't believe so. That is not my recollection.

Q62 **Layla Moran:** Mr Clarke, you just said something that strikes me as not being backed up by what the High Court judge said about the process. You assert that it was scrupulously fair, or words to that effect, and yet the judge said that it had been actively manipulated and fudged so that CFP would—

Chair: Can we just point to the reference in the Report?

Layla Moran: I will read it to you. Paragraph 1.11 of the NAO Report states: "The Court found that the NDA's evaluation team realised that the effect of applying the threshold criteria would be to exclude CFP from the competition. Therefore, the team manipulated the scores to avoid that outcome. The NDA told us that the evaluators believed they had the discretion to amend the scores lawfully at the time." How do you square what you have just said with that statement? Do you disagree with the statement?

John Clarke: I accept that that is the statement the judge made based on the extremely limited number of nodes that the judge looked at. The judge looked at less than 40 evaluation nodes altogether out of 2,800: 700 x 4 bidders. I accept that that is the conclusion that he made. I do not accept and do not agree with the fact that we took action in order to consciously favour or disfavour any particular bidder. I accept that what he saw on that particular node may have led him to that conclusion. I am absolutely convinced that what was done was done with the best intent and with the intention of being completely unbiased to any organisation.

Alex Chisholm: Can I comment? I have not had a chance to read all the judgment. It is a long judgment—334 pages—but it is very rich in learning for us. I think the NDA felt that they had a margin of appreciation in how they interpreted and evaluated bids and that it was legitimate for them to lean against any of the parties being disqualified. I think what the judge found—it is also an important law for us all now—is that the margin of appreciation did not extend to flexible interpretation of past failed thresholds. One of the features of the design of the competition was that of the 717 criteria, 300 of them involved past failed thresholds. So when we go back to think about how we design competitions in the future, that is very important.

Q63 **Layla Moran:** To clarify, Mr Clarke, at the time the NDA felt that that



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discretion did exist on past failed thresholds and it was employed in the case to favour CFP.

John Clarke: That is correct. The actions that they took were consistent actions across the piece and were not intended to favour or disfavour any individual organisation.

Q64 **Layla Moran:** So what exactly were you favouring? Judgments were made that were different for one reason or another. I appreciate it may not be a specific bidder that you were favouring. Was it the low cost that you were favouring?

John Clarke: No. Two observations have been made in the judgment. One is about the potential for us to have made errors on evaluation, and one is the accusation that you referred to. I accept that there may have been errors made. On the earlier point in terms of the number of evaluation points, one of the things that would in future push you away from a large number of evaluation points is the increased possibility of error. I accept that. So while there may have been some errors made, which I accept, I think they were made with good intent.

On the issue about changes to scores, I will repeat what I have said. The team employed believed that within the arrangements that were applied for the setup of this competition, they were within their rights to use a degree of latitude on some of these evaluation points, and they did that. But I stress again they did not do that with the intention of favouring any individual organisation.

Q65 **Layla Moran:** I want to get to the bottom of why they did it. What was their motivation for doing it?

John Clarke: I don't know for certain, but I suspect the answer is that when you see that we had 300 threshold criteria, there was the potential that it would end up with no competition. If all bidders nudged themselves out on one of 300 criteria, we would have run a very expensive competition with no bidders. So I suspect their motive was that where there was a judgement on whether they were just about on the margin, they would err on the side of upwards rather than err on the side of downwards—for all bidders; not in order to favour one bidder over another.

Q66 **Layla Moran:** Mr Peattie is nodding his head. Do you agree?

David Peattie: I agree that that is a possible explanation. Of course, I wasn't there, so I cannot make any judgment, but it is plausible.

Q67 **Geoffrey Clifton-Brown:** Mr Clarke, alarm bells must have rung somewhere, because before we got to the court case you twice took legal advice from Burgess Salmon. Did you follow that legal advice to the letter?

John Clarke: We listened carefully to legal advice. We had advice throughout this entire process: the setup of the competition, the running



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of the competition, and the lodging of a court case by Energy Solutions. At which point are you referring to?

Q68 **Geoffrey Clifton-Brown:** I am simply saying you took legal advice.

John Clarke: We did.

Q69 **Geoffrey Clifton-Brown:** You got advice from Burgess Salmon.

John Clarke: We did.

Q70 **Geoffrey Clifton-Brown:** Did you follow that advice to the letter?

John Clarke: Largely, yes.

Q71 **Geoffrey Clifton-Brown:** Not largely—did you or did you not? Let me turn the question around: what bit of the advice did you not follow?

John Clarke: I am not sure I can answer that. The issue is that we took legal advice throughout the process and we acted on it, but during the whole process, the legal advice changes as new information comes in. We are constantly making decisions about what we do. The best answer I can give you is that we followed the legal advice that we were given. Whether I can say that on absolutely every occasion, we followed the legal advice to the letter, I do not know, but we certainly did not ignore it or act contrary to it at any point.

Alex Chisholm: I think the two events you are referring to are the letters of assurance that were given. They were not in the way of advice. They were more in the nature of comfort letters, saying, "We are satisfied as the legal advisers that the NDA is acting correctly." That was the nature of those two letters.

Q72 **Geoffrey Clifton-Brown:** With some caveats. We then get to the court case. You were probably very fortunate in two respects that the actual compensation you ended up paying was not bigger than it was. First, you took the issue of whether damages were to be paid through the High Court and then to the Supreme Court. Luckily for you, the Supreme Court averred that because the claim had not been made through the standstill period, you were not obliged to pay the full damages. That was pretty fortunate, wasn't it?

John Clarke: That is what the law says and it was what the judge upheld: that bidders have the opportunity to bring a claim during the standstill period. They did not do that—they brought it afterwards—and our view was that the law is clear that they have no rights. The Supreme Court upheld that.

Q73 **Geoffrey Clifton-Brown:** You then had to negotiate a compensation package. You managed successfully to negotiate with Energy Solutions on the first compensation package. You then negotiated the second compensation package with Bechtel. They were the bigger part of that consortium, were they not? So how were you able to negotiate such a low fee with Bechtel?



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John Clarke: As was pointed out, I was the chief executive to a certain point. I did not lead the negotiations on settlement. That was Mr Peattie's area.

Q74 **Geoffrey Clifton-Brown:** Sorry, I should probably address that question to you, Mr Peattie. How were you able to negotiate such a favourable settlement with Bechtel, given that they were the bigger part of the consortium?

David Peattie: Thank you for the question. Just as background for the Committee, when I joined as CEO in March this year, my first task was to reach a commercial settlement. I have extensive experience of complicated commercial negotiations, and this was particularly complicated because we had to deal with not only the two parties separately—Energy Solutions and Bechtel—but the material variation risk in parallel and the discussions with CFP over the termination of the contract. It was a complex set of parallel and urgent commercial negotiations.

On the settlement with Energy Solutions, let me remind the Committee that their original claim was £180 million. We had lost in the High Court and were facing a quantum hearing under the same judge within a few months, with an expectation that the figure would be much closer to the Energy Solutions number than the number that we felt was fair. As you rightly say, the consortium included Energy Solutions, which had 40% of it, and Bechtel, which had 60%. You can do the arithmetic. The exposure to the taxpayer was close to £500 million. Obviously, I wanted to settle as low as possible and deal with Energy Solutions first. Bechtel did not bring their claim in the same time period that Energy Solutions did, but had Energy Solutions been successful in a quantum hearing, my sense was that Bechtel would have come in right behind and made their own claim.

We had separate discussions. By this time, Energy Solutions had been sold and the liability was rested with a US private equity firm, which was only interested in a pay cheque, whereas Bechtel wanted to continue to work across the British Government—for the MoD and the NDA and in other parts. That was a separate style of discussion. My sense was that they did not quite feel the strength of the case in their minds that they could pursue it as aggressively as Energy Solutions could. As a result, it was very much, "Let's settle with Energy Solutions for the lowest possible figure," which I think we did, "and then reach an agreement with Bechtel that will allow a continued relationship with them."

Q75 **Geoffrey Clifton-Brown:** You must have done all those calculations that up to half a billion pounds of taxpayers' money was at risk. Why did you take the whole thing to the High Court in the first place? Why did you not just settle with the two parties?

David Peattie: When I joined in March, that was the hand I was dealt.

Q76 **Geoffrey Clifton-Brown:** Yes, I know you were not there, but you must



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have read all the legal papers and legal advice. Why did your predecessors take it to court?

David Peattie: That is a question for them.

John Clarke: I am happy to answer that. We believed that we had run a good, straight, compliant process. We had had assurance and letters of comfort, which Mr Chisholm has referred to, from our independent legal advisers. We felt, together with Government Departments we had spoken to, that we had a good case to defend and that we should run that case.

Q77 **Chair:** You say Government Departments: was that the Treasury and BEIS?

John Clarke: DECC originally, subsequently BEIS, UKGI and Treasury.

Q78 **Geoffrey Clifton-Brown:** When you accepted CFP's bid, Mr Clarke, your organisation knew that there was likely to be at least another £1 billion-worth of costs. Why did you accept the tender when you knew it was so far out of reality?

John Clarke: The consolidation process is an integral part of any competition like this. You are asking people to bid against an assumed set of conditions, two years into the future.

Q79 **Geoffrey Clifton-Brown:** I understand that, but £1 billion out of a £3.8 billion tender price is a pretty high percentage.

John Clarke: It was a significant amount, and I have explained a couple of the reasons for that. We have also made reference to the £700 million for unknowns, typically around waste, with asbestos as a key element of that. We knew there would be some growth in that. The same would have applied to whoever had won the bid. They would all have been faced with the same uncertainties. That was part of the process. The issue that caught us out was the extent of that growth, which became the issue that ultimately led to the termination of the contract.

Q80 **Geoffrey Clifton-Brown:** Is it the case that you had already got clearance from the Treasury before you accepted that bid of £600 million, and because it was a TGCI contract you expected to reduce the cost anyway, that the cost pressures from the Treasury and the Department were off you, and you thought, "It doesn't really matter, because I've already got clearance for £600 million," and therefore you were prepared to accept that? I cannot think of any organisation that would accept a tender, knowing that it was so far out of reality. Did you inform the Treasury that it was a long way below what you expected to eventually have to pay?

John Clarke: The cost elements of the bids we received were all around the cost we expected to receive. We were not surprised to get the cost estimates from all four bidders. There was a relatively narrow band between them, because of the way we had designed the process. We thought the cost that was bid against the scope we had defined was a reasonable cost. You are right that we had a target from Treasury on



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reducing the overall cost. Clearly, we set out to run this to produce better value for money for the UK taxpayer. Despite what has gone on, I think that, had this contract run, it would still have delivered upwards of £900 million of overall benefit to the taxpayer. We were aware that costs were growing, and we informed people at various points through the process about that cost growth. The total extent of cost growth did not become apparent until the middle of 2016, and it was only at that point that we started to more formally raise that throughout the Government system.

- Q81 Geoffrey Clifton-Brown:** Sorry, Mr Clarke, but I'm not getting this. Your organisation had thought there was another £1 billion worth of work to be done when you accepted that contract.

John Clarke: Correct.

- Q82 Geoffrey Clifton-Brown:** So you must have thought there was a significant amount of work that the tenderers had not actually tendered for. It just doesn't make sense.

John Clarke: Repeating myself, we had asked all bidders to bid on an assumed set of states for the 12 sites. We knew that those sites were not all in those states when we reached the point two years into the future—as when the new bidder arrived. So all bidders would have had to have had additional—our estimate was £1 billion worth, but it turned out to be rather larger—work included in their bid. It was not unexpected that you would have large growth; what was unexpected was just how large it was.

- Q83 Geoffrey Clifton-Brown:** Nevertheless, you had thought that £1 billion was not accounted for in the bids. Did it ever occur to you that the consolidation process might be so large that you would get into a problem with any meaningful change?

John Clarke: We had not appreciated—and I think Mr Bowen referred to the fact that neither Cavendish nor Fluor had appreciated—that an increase in the cost of that magnitude put us at risk of a material variation.

Geoffrey Clifton-Brown: Sorry, “material variation” was the phrase I was looking for.

John Clarke: We had received legal advice suggesting that that was not an issue, but we subsequently received legal advice suggesting that it was. We believed that it was more binary—if you get past a certain number, you have a difficulty, but if you don't, you're okay, and we were below that number. Subsequently, from mid to late summer 2016, when we had additional legal advice, it became clear that it was not a binary issue and that actually we were significantly exposed. Having lost the court case, as I think is referred to in the NAO Report, the NAO and the broader Government risk appetite was reduced, and that led to the unravelling of this contract.

- Q84 Geoffrey Clifton-Brown:** Just tell us why and at what stage through the process that legal advice about material variation changed?



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John Clarke: I cannot remember the precise date, but around July or August of 2016, that sort of period—post the July announcement that we had lost the substantive court case with Energy Solutions. We took some additional independent legal advice from a different author, and we had an additional, different QC involved—we had had tier 1 law firms involved to start with, and top-notch QCs as well, but then we had additional ones—and the advice was that we were exposed to a material variation.

Q85 **Chair:** That was the second set of lawyers?

John Clarke: Correct.

Q86 **Chair:** So the first set of lawyers' advice was trumped by the second? You had two different, completely opposite opinions.

John Clarke: Ultimately, yes, but I think the first law firm's view had changed as well, as we had lost the court case. This was about, what is the risk? We were advised initially that the risk was low. We were subsequently advised that the risk was much higher.

Q87 **Chair:** It depends where you buy your legal opinion. You can shop around for legal opinions—I wonder whether that was part of it. You are saying that the first firm, Burgess Salmon, changed their view but only after the court case.

John Clarke: Views did change after the court case.

Q88 **Geoffrey Clifton-Brown:** So Burgess Salmon advised you on both aspects: running up to the tendering process, which we have already been through in detail, and after the court case on the possibility of the material change. What led you to get a different set of lawyers? You obviously were not happy with that advice.

John Clarke: First, as I said, we picked Burgess Salmon as a tier 1 law firm for this sort of activity, and they ran us through the competition process. When we got into litigation, given the complexity of this, we chose to stay with Burgess Salmon to help us through that litigation process. With hindsight, bringing in a fresher set of eyes from another law firm earlier on may well have been advantageous. We subsequently did bring in a clean set of eyes and, as often is the case, a clean set of eyes gives you a slightly different view.

Alex Chisholm: If I can comment, because I was involved at that stage and have lots of experience in litigation, when people lose in the High Court the first reaction of the losing party is often to feel very upset and to say, "We're going to appeal it." That is often the case for the law firm advising them, especially when it has been working the whole way through the process, giving the advice. So we felt that it was appropriate, and so did NDA, to bring in a new set of legal advisers to assess it totally neutrally and to ask, "Looking at the facts of the case and the judgment, are you actually going to win on appeal?" The view we took after that careful consideration in the second half of last year was, "Quite possibly not." That is what moved us more towards the settlement. That same set of legal advisers, looking at other risks, came to the view that the material

variation risk, which had always been there, was again unacceptably high at that point. That is what led us towards the termination conclusion.

- Q89 Geoffrey Clifton-Brown:** A previous witness told us the consolidation process started in earnest in September 2014, but it was not until late 2016, almost two years later, that you decided there was a risk of material change. Why did it take so long?

John Clarke: The advice we received, or at least the advice we understood we had received, was that there was not a significant risk of material variation, given the scale we are talking about. While it was a substantial change, it did not represent a material risk.

In terms of the duration of consolidation, while we were disappointed that it was taking longer, our prime objective was to make sure we got the right number—an accurate number. There is no point in us accepting a number that is too high. Conversely, there is no point in us trying to drive a number down to one that is too low. Nobody will win on that. We wanted to make sure we got an accurate estimate that would form the basis of the remainder of the 14 years of the contract.

We were pretty much at the point of achieving that in the middle of 2016. It had taken almost a year longer than we had hoped, but we were much more concerned about getting it right than getting it quick. Also at that time, we were pleased with the performance of the Cavendish Fluor Partnership on the sites, maintaining safety and security, making progress and delivering reduced costs against the plan. Performance on the ground was good. We were not suffering as a result of it taking longer, and we were really keen to get the right answer.

- Q90 Chair:** I am going to bring in Sir Amyas Morse. I remind witnesses and Committee members that we need to keep the pace up, or we could be here all day—I am sure the witnesses would be willing to do that. I am sure Amyas will set an example with a short question.

Sir Amyas Morse: I will. To come back to your decision not to appeal, Mr Clarke, you said earlier that you thought the judge's judgment had been based on not looking at all the evaluation notes and so forth, but you must have looked back at that and concluded that the judgment was likely to be upheld. When his judgment was that what you had done had been prejudicial in the contest, you must have concluded that there was at least a pretty good chance that that view would be upheld subsequently and that if you went and said, "They didn't read their notes," that would not persuade a higher court. You must have gone through that process. Is that not right?

Alex Chisholm: That is true, yes. There are quite a number of findings in the judgment, and some of those show mistakes—straightforward inconsistent scorings. The judge was very clear about his expectations about the duty of equality and transparency, so there were quite a number of ways in which the judgment could be upheld on appeal.

- Q91 Geoffrey Clifton-Brown:** Just to finalise this legal bit, we have the



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Holliday inquiry coming up, but given that this has been subject to a court case that has now concluded, is it possible for the Committee to see this legal advice and have a report from you, Mr Clarke, as to whether you acted in total on it?

John Clarke: Sorry, is it possible to see which report?

Geoffrey Clifton-Brown: The legal advice that you got leading up to the court case and whether you acted on that advice.

John Clarke: I believe all of that legal advice is being made available to the Holliday inquiry, and I see no reason why—

Q92 **Geoffrey Clifton-Brown:** If it is being made available to the Holliday inquiry, can we see it?

John Clarke: I no longer have a role, so I will pass that on.

Alex Chisholm: I will take a look at that. I am conscious that the NDA during the court proceedings claimed legal professional privilege, and that claim was part of the proceedings and was upheld as part of it.

Q93 **Geoffrey Clifton-Brown:** I understand that, but given that this is taxpayers' money, that this has been subject to a court case and that we all want to be transparent about all this, so that we learn lessons for the future, is it not important that we—Parliament and this Committee—can see that legal advice?

Alex Chisholm: We will certainly take that away.

Chair: You can waive privilege. That is not a reason not to answer a question in this place, so it is possible for you to do that. We have been getting some legal advice ahead of and during the meeting to make sure we are clear on that, and we can provide that to you, if that is helpful.

Q94 **Layla Moran:** Looking backwards in time, would you agree, Mr Clarke, that had you had the skills and the people to better prepare the baselines for the bid, some of this might not have happened?

John Clarke: Had we had a better grip on the baseline of the sites and a better assessment of the plan, certainly the extent of consolidation would have been much smaller and therefore the material variation risk would have been significantly reduced.

Q95 **Layla Moran:** Okay. Given that, who was sitting on your board at the time? Do you feel that they had the skills necessary to lead this process through at the level of detail that was necessary?

John Clarke: The board consists of people with a range of independent skills. They are all individually experienced. The prime accountability for running this operation rests with the executive. The prime skill set rests within the executive. The duty of the board in respect of this particular thing is to assure itself that the process is being well run. It supplied governance over the process, rather than look at the detail of the process.

Q96 **Layla Moran:** That clearly failed in this case, didn't it? In the case of the



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executive, then, same question: did the executive have the skills necessary to lead this properly?

John Clarke: I think we did. The question is whether we had the capacity. I think we had the capability, but with hindsight we didn't have sufficient capacity to do that. We could have done with more of the skills that we had, but I don't think we were lacking—

Q97 **Layla Moran:** Including the commercial director? Did you feel that they were absolutely on it and understood everything to do with it?

Chair: They have left the organisation. You no longer have a commercial director.

John Clarke: Yes, the commercial director was accountable for this competition up to the end of calendar year 2013. The competition by that point had largely run its course. I took a decision to dispense with the services of the commercial director, because I wanted to amalgamate the operational side of the contract and the commercial side of the contract under a chief operating officer with operational and commercial experience. I recruited someone who had operational and commercial experience to do that role. I took a decision in late 2013 to dispense with the commercial director, and he left the organisation.

Q98 **Layla Moran:** So that is a consolidation, but at the same time you are saying that there were not enough people. For this not to have happened, what more did you need?

John Clarke: In consolidation, I think we could have done with some additional commercial capability—not necessarily at the commercial director level, but certainly at the operational level.

Q99 **Layla Moran:** Can we dive into that a bit? What do you need?

Chair: Where was the gap?

John Clarke: In the numbers of people able to process. We received 97 substantive change control documents. As Mr Bowen said, that was provided by a team of 300 people. Many of those people were paid for by us—they came out of the Magnox budget. If we had had a larger team on our side and more people with programme capability, commercial capability and estimating capability, we may well have been able to process these things faster. As I say, though, the NDA is a small organisation—consciously kept small. With hindsight, we may have moved a bit quicker had we had more people.

Q100 **Layla Moran:** Small is indeed beautiful, but it also needs to be functional.

John Clarke: It does.

Q101 **Layla Moran:** Did you at the time realise that this gap was there, and did you alert the Department?

John Clarke: I felt that there was sufficient capability to do the job. We had concluded the consolidation phase for all intents and purposes. We



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had reached a point with a number we were content with. It had taken longer than we expected, but as I said we were content that work on the ground was safe, secure, making good progress and delivering value for money. While we could have gone quicker, we didn't believe it was causing us a fundamental problem. In that respect, I felt we were sufficiently resourced. With hindsight, we could have gone quicker, and we may well have done a more thorough job had we had some more capacity.

Q102 Chair: Can I just go back to the board? Mr Chisholm, the NDA is a creature of the Department, in a sense. Have you looked at the skill sets at the executive level and the board level to make sure the right skills are in there to give the right sort of oversight and to question these sorts of decisions in the right way? They are much closer to it than the Department is going to be. Do you think there is a lesson to be learned there?

Alex Chisholm: Yes. Perhaps I will bring in my colleague, Mark Russell, here, because UKGI advised particularly on the composition of the board. The board's current members—with one exception, I think—were all appointed after the end of the competition, so they are a new group of people. We have also just made, this summer, a further new appointment through UKGI.

Q103 Chair: It is not about when they were on; it is about the skills that they had then, and the skills that the new members have. What are the criteria for appointing a member of the board of the Nuclear Decommissioning Authority?

Alex Chisholm: In terms of the assessment of whether they have the right skills, that is very much part of what the Holliday inquiry will look back over. Mark, you might have been involved in the original appointments. Do you want to comment on that?

Q104 Chair: Mr Russell, do you want to give us some insight into the skills on the board?

Mark Russell: If you look at the directors on the board in the lead-up to the award of the competition, there is quite a range of commercial expertise. Some of it is oil industry, but there is some nuclear industry, some contracting experience and some procurement experience. A continual and important function that we perform is to advise the Department on appointments. Of course, you never start a board completely fresh. It is a question of, as people come off, what sort of skill sets need to go on. We think it is an absolutely vital part of—

Q105 Chair: We think so too, which is why I am asking the question. Were the right commercial skills there? You say there is a mix and so on.

Mark Russell: I would say that the real question is whether the skill was there to challenge what we thought was a competent executive. The answer to that is an unqualified yes. Did it have a full range of skills? No. But we thought it was certainly experienced enough to be able to challenge the executive in an intelligent way.

Q106 **Chair:** Mr Clarke, as someone who was in the hot seat at the time, do you agree with that?

John Clarke: Certainly, there are the skills on the board to challenge on programme management, commercial activity etc. Any information that the board wants is available to them; we make all information available to the board.

Q107 **Chair:** Do they know which questions to ask? Providing the information is one thing, but that is the point.

John Clarke: In answer to your specific question about whether I think there are the right skills on the board, I personally think there is a gap on the board.

Q108 **Chair:** What sort of gap do you think there is?

John Clarke: I do not think there is anybody on the board in a non-executive capacity with any operational experience of any hazardous material or hazardous operation, and there is certainly nobody with any nuclear experience. I find it slightly odd to have an organisation with ultimate accountability for safety and security on nuclear sites with no knowledge of that.

Q109 **Chair:** What about overseas? Are there examples of where decommissioning is happening elsewhere in the world, and do we know what governance skills they have? Do you have any examples?

John Clarke: My personal view is that it is normal, among non-executives on a board, to have at least somebody who knows something about the activities that the board is engaged in looking after.

Q110 **Layla Moran:** I have one final line of questions. We heard earlier that one of the recommendations for improvement would be to have independent verification of the processes. Mr Clarke, would you agree that an independent verification, particularly of the baselines, from someone outside the organisation would have helped?

John Clarke: It did help us. We had external independent verification; we used a number of external firms with skills in that area to help us do that work. The lesson we have to learn is why, despite the amount of work we did and the amount of external assistance we had from highly skilled, highly competent external companies, we still did not have the grip we thought we had. I sincerely hope that the Holliday inquiry will shine a light on that. I have no doubt that its findings will be acted on by Mr Peattie and the team now in place.

Q111 **Layla Moran:** Mr Peattie, what is different now?

David Peattie: Since I took over in March this year, I have made some substantial changes to the NDA. If I could just briefly describe those, I have appointed—

Q112 **Chair:** Not really. We can talk particularly about the questions Ms Moran is asking. We have been out to visit and we know about some of those



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changes—although it was the previous Committee, it is in our institutional memory. We are aware of what you are trying to do, particularly on the board. If you have changes to the board, that is what we are interested in.

Layla Moran: The board, assurance and that sort of thing.

David Peattie: We now have a new committee of the board, which looks at those major programmes and projects.

Q113 **Layla Moran:** How were they appointed?

David Peattie: They were appointed by our current chair to serve in a capacity to create a new committee to give much deeper—

Q114 **Layla Moran:** Identifying the gaps that Mr Clarke had identified?

David Peattie: And to provide more internal scrutiny in a committee than the board can when it meets in plenary.

Q115 **Layla Moran:** Yet it still has this gap, correct?

David Peattie: The safety and security subcommittee has appointed an adviser with nuclear operational experience.

Q116 **Chair:** An adviser—so not actually a member of the board. Why do you not have somebody with direct experience of the industry?

David Peattie: My job is to run the NDA and the executive team. Matters of composition of the board—

Q117 **Chair:** Do you agree with Mr Clarke that it might be helpful to have someone with those skills on the board?

David Peattie: I am comfortable with the arrangement of having an adviser to the committee who can also advise the board. It would be a strengthening step to have a non-executive with nuclear experience.

Q118 **Chair:** Is this food for thought for you, Mr Chisholm?

Alex Chisholm: Yes, it is. It is important that the advice is available to members of the board. I welcome the fact that the NDA have now appointed a senior counsel—a general counsel—and a commercial director. I think they are also getting a nuclear expert in at the beginning of next year.

Q119 **Chair:** Mr Russell, it is you who appoints or makes recommendations on appointing the board. Do you have anything to say on what we have heard from the current and former chief executive?

Mark Russell: I think I was asking at the time of the competition whether there was sufficient expertise on the board to challenge the executive, and I felt there was. Mr Clarke's point about nuclear experience is very well made. Indeed, if we go back five years, there was somebody with deep nuclear experience. This is absolutely something we are addressing at the moment.



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Q120 Chair: It is interesting. In other spheres of Government you would have people with expertise. I used to be responsible for oversight of the animal licensing group, and a range of experts were brought in for their expertise on that subject matter. It seems that the people on the NDA board have skills in certain areas but not necessarily anything at all to do with nuclear or, as Mr Clarke broadened it to, wider hazardous waste.

Mark Russell: We accept that.

Q121 Chair: Is that common across Government, or is this a peculiarity of the NDA board, in your view?

Mark Russell: Typically, if there is an arm's length body with a specific technical role, there will be a technical board member. We look carefully at both the board composition and how the board uses advice directly, because that is the other way you can accommodate this, but I fully accept your point.

Q122 Geoffrey Clifton-Brown: Mr Russell, you are the Government's adviser on corporate governance. With hindsight, given the damning evidence from the previous witness—which was that the board never asked for any reports from CFP and never asked any of its representatives to appear before them—does this not amount to a failure of corporate governance by the board, the chairman and the directors in not inquiring as to what was going on during that consolidation process?

Mark Russell: Are you talking about the time of the award or the consolidation?

Geoffrey Clifton-Brown: Subsequently.

Mark Russell: From what we can see, there was engagement of the board in the consolidation process, as Mr Clarke and colleagues have explained. This process was expected. What was not expected was the time it was going to take and the extent of it. Certainly, what we have seen of board minutes and what we have heard in discussion is that the board did get increasingly concerned about that. Indeed, I think they commissioned their own reports from internal audit in order to get into that. Could they have done it sooner? In hindsight, maybe yes, but we always knew the consolidation process was a feature of the letting of the contract and it would take a year; that was not a surprise. When it became clear that it was going to take longer and that the numbers could be quite significant, the board did take some action. Was it fast enough, and was it enough? I am not sure.

Q123 Geoffrey Clifton-Brown: It definitely wasn't. The consolidation process started in earnest, as we have heard, in September 2014. It was not until March 2017 that a Minister finally made a decision to terminate this contract. The decision-making timescale was very clunky, wasn't it?

Mark Russell: It absolutely took time, but remember that there are two parts of consolidation. One part, as we have heard in detail, is fairly granular analysis of what needs to be done on the 14 sites and so on. The other part of it is the negotiation. Change controls will be put forward, but



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they will need to be negotiated back again. That takes time as well. Again, I am not necessarily excusing it, but I am trying to explain why it has happened.

Q124 **Chair:** Just on that point—I will probably go back to Mr Clarke on this—when you decided on the contingency and the extra £1 billion for these adjustments, you must have had some detailed information about that by then. Was that only internal to the NDA, or is that document more public?

John Clarke: That was our estimate of what we thought the state of the sites was at the time, in comparison with what we had asked the bidders to bid against.

Q125 **Chair:** Once the consolidation had gone on and you saw the full detail, there must have been some evaluation of that by you. Will those documents be available to us, or indeed to the National Audit Office?

John Clarke: I am sure they are available. To the best of my knowledge, none of them is—

Q126 **Chair:** I will bring in the Comptroller and Auditor General on this point.

Sir Amyas Morse: I just want to understand. You had a provision for £1 billion, which is a big number—and quite a round number, too. Just how much did you know? Was this something that was made up of components that you had actually had? Had somebody given you reports that said they think it all adds up to £1 billion, or is it, more or less, an in-office estimate?

John Clarke: Ultimately, it is an estimate based on the information we receive about current rates of performance on the site and our assessment after comparing that against what we had expected. It is not £1 billion because we plucked £1 billion out of the air; it is £1 billion based on the information we have that it adds up to about £1 billion. It would be wrong to say that we had done the analysis and the answer was 981; it is not that. However, we have looked at it and, broadly, our view was that it would be about £1 billion, which we were expecting, plus the £700 million of waste that left an additional quantum that we were not expecting.

Sir Amyas Morse: I am sorry—this is an inevitable question—but you didn't consider doing a site examination yourselves or getting representations about the state of the site? Did you get representations from the outgoing contractor about the state of the site?

John Clarke: The outgoing contractor reported their performance on the sites. We audited that performance against the sites and were content that what they described they had done was what they had done. What we are talking about here is the estimate of the ongoing work over the remaining 12 years and the extent of that work going forward.

Our view was that we were best served by getting the new contractor in to do their review and us assuring that process, rather than us doing another review. That is the basis and purpose of consolidation. At the end, we reached a point where, at a number of about £6 billion, we believed we



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had an accurate and acceptable baseline upon which we could go forward and which would represent a fair basis of work for both the NDA and CFP.

Q127 Chris Evans: Mr Clarke, you just said you were pleased with the CFP's work, so why did you cancel the contract?

John Clarke: My observation was that their performance on the ground over the first two years has been good. Certainly during my tenure they were delivering in accordance with the plan and delivering value for money. The reason for the termination, as I understand it—I will hand it over to those who are accountable—was not to do with their performance but with the legal difficulty we found ourselves in. I will hand that over.

Alex Chisholm: Yes. If a material variation has occurred, it means the contract is actually illegal.

Q128 Chris Evans: You were always sailing close to the wind with this contract anyway. It was signed in the light of a High Court case and you then had problems with an illegal contract. What actually went wrong?

Alex Chisholm: In which part?

Chris Evans: Why did the consolidation take so long?

Alex Chisholm: In the consolidation? That is the answer that my colleague has been trying to give.

John Clarke: It was the amount of work—

Q129 Chris Evans: Why didn't you re-tender if it was going so wrong?

Alex Chisholm: Following the termination, we will need to re-tender. David, do you want to describe the plan?

David Peattie: We had legal advice earlier this year to terminate. I made the recommendation to the board that we should have a sensible time period for that two-year period, which itself was a choice, before the clocks stopped ticking.

Chair: It makes sense to have a time period long enough to tender in.

David Peattie: Indeed, but also because it was really important that CFP kept the sites in really good shape, kept the teams in place and motivated, and maintained safety and security, so we chose September, with a two-year run-off period.

Q130 Chris Evans: What really concerns me about this contract, as a taxpayer rather than as a parliamentarian, is that we accept the variation on sites; you have accepted that but you also said that was down to previous contractors not performing the work that they should have done. There is a suggestion that they got paid for work they did not do. Is that true?

David Peattie: The reason for the unexpected changes—the misunderstanding of the baseline; the possible contractor underperformance—is that at the time of the previous contractor—



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Alex Chisholm: Sorry, but perhaps I could help. I think that you are referring to the part of the NAO Report that quotes, “The internal audit”—

Q131 **Chris Evans:** Your internal audit function concluded that one of the possible explanations was the underestimated work in the contract, and it looks like previous contractors have not actually performed some of the work they claimed fees for. Are you arguing with your own internal audit function?

David Peattie: No, not at all.

Q132 **Chris Evans:** So they were paid for work they did not do.

Alex Chisholm: It is a risk that they refer to.

David Peattie: It is a risk.

Q133 **Chris Evans:** Tell me straight. Were they paid for it: yes or no? Did they do the work they were paid for? It is quite simple.

David Peattie: The contract type, before CFP took over in 2014, was cost reimbursable, so there would have been audits and inspections that work done by the previous contractor would have been paid with the right amount of oversight. I think it is unlikely that the NDA has paid for work that wasn’t done, but I have initiated a review that will conclude in the spring and I will act on its findings. I further add that there is nothing in the settlement agreement that precludes us from taking action should we decide to.

Q134 **Chris Evans:** So action will be taken if—

David Peattie: If we can—

Q135 **Chris Evans:** Mr Peattie, with all respect, you have just wasted £122 million of taxpayers’ money and you can’t tell me whether or not you have paid for work that hasn’t been done.

David Peattie: I have initiated a review and I will act on its findings.

Q136 **Chris Evans:** When will that review be completed?

David Peattie: In the spring of next year.

Q137 **Chair:** Who is doing that review? Is it an internal NDA review?

David Peattie: It is independent, with our audit function.

Q138 **Chris Evans:** Mr Russell, in your capacity as UKGI, were you aware of this problem: that potentially work had been paid for that had not been done and had caused delays in the contract?

Mark Russell: No, not at the time.

Q139 **Chris Evans:** Okay. It is my understanding from the Report that you were not aware of the full changes to the cost of the contract until the summer of 2016. Why was that? Was it because the NDA had a good reputation for managing contracts, or was it simply an oversight by the Department?

Mark Russell: It was because the NDA was not aware of the full scale of the amount until the summer of 2016.

Q140 **Chris Evans:** What was UKGI doing at the same time? If you had oversight of the contract, what was UKGI doing?

Mark Russell: We didn't have oversight of the contract; we were reporting the consolidation process into Government. We were aware at the start of 2015 that the consolidation process was taking longer and was likely to result in a larger amount than had been expected. That was reported in. But in terms of when we actually knew the final figure—that was not until the summer of 2016, at which time the NDA really understood that as well.

Q141 **Chair:** This is a really huge contract. It is something that, if I were a Minister, I would want to have some oversight of. Presumably, you had to report in periodically to Ministers? When I was Minister, I met with the shareholder executive quite often about areas of my responsibility. When were you able to tell Ministers that there was an issue?

Mark Russell: It was flagged fairly early on, as part of the ministerial sign-offs, that there would be a consolidation process, so it was expected.

Q142 **Chair:** Consolidation processes are fairly normal, so yes. The fact that there was a consolidation process is not particularly extraordinary.

Mark Russell: Correct, and as for the time it would take, it was later in 2014 or early 2015 that we started to understand that it was not going to plan and it was going to take longer. That was reported into the Department; actually, the dashboards, which is our mechanism for reporting into the Department, went to Ministers at that time. If Ministers had read those, they would have appreciated that.

Q143 **Chair:** The dashboards would have showed that but then there would be advice to Ministers in the submissions, so were you also advising, or were you expecting the Department to analyse the dashboard and give advice to Ministers about the issues?

Mark Russell: We went into the Department; there were several discussions in the Department and I think that the view was that, although this was taking longer and the amounts might be larger, we didn't know where it was going to land.

Q144 **Chair:** It was a risk, though—a political risk.

Mark Russell: There was a definite risk.

Q145 **Chair:** If I were a Minister in that Department, I would want to know that this might be heading down the track. Was that flagged up to Ministers?

Mark Russell: I think early on, yes it was. I think they understood—

Q146 **Chair:** Mr Chisholm, I know you weren't there, but you must have read into the papers.



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Alex Chisholm: Yes, I have certainly seen those dashboards, and they do flag up those risks, but the point at which the risk really became clear was only in summer 2016. That was when the figure for consolidation was clear, and I think within two weeks of hearing that news, a full submission, which I have seen, went to Ministers, saying, "This is what has happened."

Q147 **Chair:** But my point is exactly that: it is rather late in the day. This has been going on for a couple of years. There were flags along the way, as you say, Mr Russell. Dashboards are all very well, but it depends on which level of Minister and how new they are. A dashboard on its own, without advice, is not always as helpful, depending on the Minister's skills and background, frankly. We are all amateurs in the end—well, most of us. So it was not until 2016 that Ministers really knew that this was a big problem.

Alex Chisholm: Looking back at the record, I can see there was concern about that. That was one of the reasons why the NDA tried to bring the consolidation process to a head. One of the things that has not come out yet in the evidence is that it was actually the release of a draft defect notice in January 2016 that produced from CFP 67 of the ultimate 95 change requests over the next two months. So that's only the first quarter of last year.

Q148 **Chair:** Are you sure about those figures, Mr Chisholm?

Alex Chisholm: Sixty-seven of 95; that's what I have, yes. This was in February and March. I think a final defect notice was issued in April. That brought it all to a head. There was then the negotiation process that Mark talked about. All this was with a view to trying to manage the risk of this continuing consolidation and to get costs back under control.

Q149 **Chair:** It is absolutely right that people manage the risk, but if you were a Minister in the hot seat, in the "Today" programme studio or on the Floor of the House, being asked questions about this, you would need to know that there was a risk, even if it was being managed—even if you were content it was being managed well. What you are saying is that, really, this was not flagged in that sense, as a big concern, until summer 2016.

Alex Chisholm: I think it was flagged as a risk; we didn't know the quantum of it. And Ministers—again, from looking at the records—were certainly kept informed about that, about the actions being taken.

Chair: Yes, but there are ways and ways of keeping Ministers informed. A note saying, "It's all fine; it's in hand," is different from saying, "Big red flag on this, Minister. It's something that could blow up." So what level of importance was attached, what level of risk was flagged?

Q150 **Layla Moran:** Mr Chisholm, was there expertise in the Department to understand fully that risk? Do you feel that the Department entirely understood what the dashboards were telling them and would know when to flag it with the Minister?

Alex Chisholm: So far as I can see, yes; I think people did absolutely understand that there was a risk there, but there was no additional action



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available, other than trying to bring the consolidation to a timely and safe end, which is what the NDA was trying to do. That is absolutely the case. Also, once we had that figure, that obviously got everyone's full attention, and there was a lot of effort to discuss with the NDA, legal advisers and so on how best to manage the risk that that had come to a head.

Q151 Layla Moran: I think we are struggling to understand, given the level of the failure, why this was not flagged much, much sooner. Early in 2015, of course, there was the election. Was that part of it?

Alex Chisholm: In early 2015—looking at the record of the PAC discussions in March of that year, it did talk about the consolidation figures, I think. The Chair actually mentioned—a figure of perhaps £700 million was mentioned in the evidence at that time, so it was very well understood by the PAC and the NAO and by the NDA and the Department that this consolidation process was going on and was likely to be quite expensive. There was no lack of attention or concern about it.

Chair: I think we have made our point. We may want to probe you further on that outside the meeting.

Q152 Chris Evans: Mr Chisholm, this is a huge amount of money. By August 2016, you knew it was over £2 billion. What evidence is there that the NDA spoke directly to the Department or that UKGI was involved? It is concerning that UKGI did not know this till August 2016. Did you speak to each other, or did you keep this to yourself? What happened?

Chair: Who are you directing your question to, Mr Evans?

Chris Evans: All four. I want to know how you arrived at £2 billion; £2 billion was not reported.

Chair: I think that is really for Mr Clarke.

John Clarke: As we improved our understanding of the extent of change, we kept UKGI and others informed as we went along, but as has been said, it was not until we received the totality of the change controls from CFP, and had a chance to look at them, review them and come to our own conclusions, that the scale of it—around £6 billion—became clear. That was in late June of 2016, at which point we more formally informed the Department and UKGI. There had been discussions prior to that, but it was only at that stage that we had the totality of the picture.

Q153 Chris Evans: Two billion pounds.

John Clarke: I accept it is a large number—

Q154 Chair: Half the value of the contract.

John Clarke: But our aim was, as I said earlier, to make sure that we had the right number. We had flagged up that there were some big changes. We didn't know the extent of them until late in June 2016, at which point we made our board, the Department and UKGI aware, and subsequent briefing was undertaken I believe quite quickly after that.



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Q155 Chris Evans: I want to go back to one thing that we touched on before: the commercial director. Once you were aware of the Government review in the light of a number of major projects going wrong and you were advised to expand the role of the commercial director, your commercial director left the company—he was removed from the company. Why did you do that? Why did you think you could go into a major contract—the biggest contract—without a commercial director? It is like going to sea without a captain.

John Clarke: I removed the individual who was the commercial director and at the same time I removed the specific post of commercial director.

Q156 Chris Evans: Why didn't you replace him?

John Clarke: I did that because, as I said earlier, I wanted to bring together the operational and commercial contract management aspects of the contract. I previously had a chief operating officer looking at performance on the ground—on the sites—by the contractor and a separate commercial director looking at performance of the contract, and I felt that was unhelpful. I brought them together. I recruited a chief operating officer with extensive nuclear operations experience and extensive private and public sector multibillion-pound commercial experience. While I did not have someone with the title commercial director, I was absolutely content that on my executive team I had someone with extensive commercial experience fulfilling those roles—the operational and commercial roles together. That was my rationale at the time.

Q157 Chris Evans: Mr Chisholm, that flies in the face of central Government advice. Was the Department aware that the commercial director had been dismissed and that the NDA had decided to go down this route? Had they made any comment on that before the contract was signed?

Alex Chisholm: Both UKGI and DECC would certainly have been aware of those decisions at that time.

Mark Russell: Yes, indeed, and I have to say that we understood the rationale. Remember, John, before becoming the chief executive, was the commercial director of the NDA, so in terms of somebody being qualified to make that judgment and adjustment, we thought that was sensible.

Alex Chisholm: It is also worth mentioning that since 2013 the NDA has done 39 procurements that have been of a size sufficient to go into the *Official Journal of the European Union*. This one has ended very badly; the other 38 have not. You have to look at it a little bit in the round in terms of what the evidence was.

Q158 Chris Evans: That leads on to my final question. Obviously, after a failure of this nature, oversight is going to have to be tightened up. Are you concerned in any way that oversight will be so tight that the NDA cannot function properly?

Alex Chisholm: That is an excellent question. One of the things that we have to make sure of is that we react very strongly and appropriately,

which is why we wanted to have the Holliday inquiry. We have already had the interim findings, and we have accepted those, and I am sure he will write some final ones.

Q159 **Chair:** Have you accepted them in total?

Alex Chisholm: We are very happy with the advice given—

Q160 **Chair:** And Mr Peattie, you have as well?

Alex Chisholm: Similarly, yes. What we do not want to do is to get into a situation where so much attention is paid to process that the underlying activity of nuclear decommissioning is slowed up. If you look at it in the round—some of you, like the Chair, have been involved for a long period of time here—the NDA, over its 12-year history, has actually made excellent progress on this fundamental task of decommissioning these nuclear sites, to such an extent that there may be opportunities, as referred to by the witness earlier, in exports associated with industrial strategy. We do not want to lose sight of that. In correcting the errors made here and tightening up on process, oversight and assurance, we must make sure that the NDA and the 16,000 people working across the estate are still able to make the progress that they need to make in this vital task.

Q161 **Geoffrey Clifton-Brown:** A final question, which is more for you, Mr Chisholm. There seems to be a multiplicity of people having an input into the governance of this whole matter—so much so that the whole thing was so complicated in terms of corporate governance that it allowed the whole matter to slip through. Have you any recommendations for this Committee as to how this sort of procurement exercise should be managed differently in future from how it was managed before?

Alex Chisholm: Again, thank you very much for the question. I actually agree with the recommendations made by the previous witness, who said it is very appropriate to use this type of contract—this target cost-type model—so long as you have a very good understanding of the baseline.

Geoffrey Clifton-Brown: The scope?

Alex Chisholm: One of the key things is certainly to make sure you really have the scope clear. He also made the observation, which, again, I agree with, that its being complex is designed to make sure it is very objective and gives very differentiated results for the bidders, but does not necessarily make it more robust.

The competition took nearly two years. Forty people were engaged in assessing a very large amount of documentation; when it came to the discovery phase in the litigation, 2 million documents were compiled. It is very hard, just humanly, to keep track of that level of information. That is one of the key learnings here: the burden of work for people involved. It was very complex, and I am sure that when the NDA looks to do it differently again, they will look to construct something that is simpler and more manageable.



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Q162 Geoffrey Clifton-Brown: My question was much broader than the NDA and this specific contract. It was about the governance of this type of Government procurement, when there were so many different organisations involved. It was not as if the Government were not aware of things going wrong, because there was a major structural projects review warning in 2014 that things were going wrong. What will your recommendation be to the Holliday committee as to how governance of these type of procurements should be improved in future?

Alex Chisholm: I think it is the other way round: the Holliday inquiry is looking at all the evidence and will give recommendations to us. However, you are absolutely right that there were eight reviews of this whole process—two internal and six external by the Government's best experts—which passed either green, amber/green or amber, so they did not spot the flaws within it.

The actual design of the competition—the so-called black box method—did not have lots of other people involved. The actual scoring was done by subject matter experts and was all put into a computer system very diligently and carefully. That was the best possible approach for this type of project, but I think when we look back we will see that it was perhaps also unmanageable in its complexity.

We will have to look at the assurance applied to that and at the governance arrangements, which is absolutely within the scope of the Holliday inquiry, as well as the management of the consolidation and litigation process. We stand ready to act on the recommendations that he comes to when he produces his report.

Q163 Chair: Are you actually implementing the interim recommendations at this moment? You say you accept them, but are you actually implementing them?

Alex Chisholm: Absolutely.

Q164 Chair: I go back to you on this point, Mr Russell. UKGI was the body overseeing this for the Department, but you are really a body that has more experience on governance. Do you think you had the relevant commercial, contracting, legal and procurement skills to know and understand a contract of this complexity?

Mark Russell: We don't pretend to have procurement or contracting skills; we are corporate financiers and civil servants. What we are trying to do is provide an intelligent shareholder function for Departments.

Q165 Chair: So was there a gap there, in your view? If you didn't have that, and you were the body overseeing this for the Department, where was it?

Mark Russell: Our very clear view is that, on an expert body like this, it is about getting the right skills within the organisation. When issues like this happen, we naturally turn to what we can do in terms of better governance. Actually, we should start first of all with what we do with the capability of the executive. Although I think it has been a capable



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executive, I think it is very much a focus of Mr Peattie's at the moment to bolster that.

I think we then need appropriate governance on top of that, and I think the expert governance needs to come from the board. It is then our role and the Department's role to make sure that that board is performing the task. To the extent that it is technically incapable or technically weak, it is then about bringing in the right resource, but I do not think it is a function of central Government to be doing that.

Q166 **Chair:** Would UKGI be able to identify whether the board was technically weak?

Mark Russell: One of the things the Holliday inquiry is trying to get to is that, although we know what went wrong, we don't quite know why it went wrong. We don't quite know why the scoring went the way it did. Would we have been able to spot that? No, we would not have. Indeed, we found the governance bodies hadn't either.

Q167 **Layla Moran:** But earlier you gave us an absolute assurance that you had confidence that the board was able to manage this. What you are saying now does not quite match what you said earlier.

Mark Russell: We had confidence in the non-executives on the board, to the extent that the design of the system was limited—as you know, only seven people were able to see everything. Were we satisfied at the time that there was sufficient non-executive skill on the board to be able to challenge the executive at appropriate moments? Yes, we were, but it is a big leap then to say that they could necessarily spot issues that were happening in the system that had been constructed.

Q168 **Chair:** Mr Clarke is nodding; do you agree with that analysis?

John Clarke: I don't know what the answer is. As Mr Russell says, I hope the Holliday inquiry shines a light on that. But when you have designed a process that, by its inherent design, stops people from outside—board directors, myself as the chief executive—interfering in the individual evaluation, specifically to stop us from saying, "We don't like this company. We do like that company," you run what is called a black-box process. I don't know what the answer is to maintaining that confidentiality and black-boxness while assuring yourself that what is going on inside the black box is right. I do not have an answer to that.

Q169 **Chair:** Because of the limited number of people with the expertise to do that. Can I just check what your position is now? You are retired, but are you still doing any work for the NDA?

John Clarke: I am not.

Q170 **Chair:** Not at all?

John Clarke: I have finished all links with the NDA.

Q171 **Chair:** So you are now a pensioner? Are you working anywhere else?



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John Clarke: I am doing some work elsewhere, but not for the NDA.

Q172 **Chair:** And not for the Government?

John Clarke: Not for the Government, no.

Q173 **Geoffrey Clifton-Brown:** Mr Peattie, I have two important questions for you. Having gone through this whole process and cost the taxpayer a staggering £122 million, it would be wrong not to ask you whether you have absolute confidence in this. You are the accounting officer to Ministers and to Parliament for the proper expenditure of money and proper functioning. Are you absolutely confident that the organisation is now fit for purpose?

David Peattie: It needs to improve and bulk up. If I may say so, it is a privilege and an honour to have this role, and I take it very seriously indeed. I have appointed a general counsel, who was not in place before I joined, and a commercial director. I want to strengthen the commercial function and simplify how the organisation works. The NDA needs to grow its skills in other areas as well—legal, commercial and procurement. An operations director will join us early in the new year. The NDA is in good shape, but I want it to be in even better shape for the challenges we face in this important endeavour for the country.

Q174 **Geoffrey Clifton-Brown:** So we can have absolute confidence that, going forward, you are managing the contract to decommission these sites in a proper and safe way?

David Peattie: I am determined to learn the lessons of the past and not to repeat them, and to get the NDA in the right shape to deliver the important legacy challenge.

Q175 **Geoffrey Clifton-Brown:** And to give that answer, are you absolutely confident that you know the state of all these sites now?

David Peattie: They are 17 of the most complex sites in the world, going back 70 years, with nuclear material and hundreds of buildings, where the records from the cold war simply do not exist. I don't think it is reasonable for me to say that I know the status of all these sites—certainly not personally. What I can be confident in is the quality of the team across the NDA. There are 17,000 people who are dedicated to this mission and concerned for health and safety and the communities in which they work.

Q176 **Geoffrey Clifton-Brown:** Given your caution in that answer, how can we be absolutely confident in your organisation's management going forward until you know what the current state of play is?

David Peattie: In the last 18 months we have brought Sellafield in as a 100% subsidiary. It was previously run through a PBO. That has been an important step and has allowed us to get much more insight and to focus on the big risks that we see. We have two years to prepare for Magnox and they are at the other sites as well. I hope you see that my caution comes from a confidence in the team, but I cannot give a 100% guarantee.



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Chair: To conclude, I would say that those of us who have visited Sellafield—I have had the privilege of doing it twice, as have other members of the Committee—it is an object lesson in public policy failure over many decades, as different policies have been laid on top of others, with poor record-keeping and so on. Nevertheless, we would never excuse you, Mr Peattie, or the NDA, or the Department for not being as rigorous as possible, even with the unknowns on that site. There are a lot of known unknowns, which helps the analysis. This Committee and my predecessor began to delve into the NDA's spending and approach, and we will continue to do so. It is one of the biggest spends of taxpayers' money. This has been a bad contract and has cost the taxpayer dear, and like you, we do not want to see it happen again. Be warned: we will be watching you very closely.

Thank you very much for coming along. As ever, our transcript will be up on the website in the next couple of days, uncorrected, so please have a look if you wish to correct it. Our Report will be out in due course. Thank you very much.

Footnote: Re: Q27 – Witness states that the first line of his response is factually incorrect. They did not make assumptions on initial pricing of asbestos and other waste, they based their pricing on the information provided in the bid documentation.