

**IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL
(INFORMATION RIGHTS) UNDER SECTION 57 OF THE FREEDOM OF
INFORMATION ACT 2000**

BETWEEN

(1) MINISTRY OF DEFENCE (EA/2019/0038)

(2) PETER BURT (EA/2019/0041)

Appellants

-and-

(1) THE INFORMATION COMMISSIONER (both appeals)

(2) PETER BURT (EA/2019/0038)

(3) MINISTRY OF DEFENCE (EA/2019/0041)

Respondents

WITNESS STATEMENT 3

PETER BURT

Appellant

1. This witness statement addresses issues relating to openness and transparency on nuclear safety, and demonstrates that it is in the interests of the Ministry of Defence, as well as being in the wider public interest, to publish the DNSR annual assurance report. In other respects, MoD has made a virtue of openness and transparency in military matters, arguing that steps to increase transparency reduce the risk of misunderstanding or miscalculation regarding the UK's military activity, and provide reassurance that no activities of concern are underway¹.
2. Prior to 2015-16, the DNSR annual assurance report was the only report published by the MoD reporting on and assessing its nuclear safety performance. With the suspension of publication of this report, there is currently no information available to the public to show how safe MoD's

¹ 'UK supports military transparency by hosting visit of 22 countries'. Ministry of Defence press release, 29 September 2019. <https://www.gov.uk/government/news/uk-supports-military-transparency-by-hosting-visit-of-22-countries>

'UK hosts Vienna Document visit'. Defence in the media blog. Ministry of Defence, 11 April 2017. <https://modmedia.blog.gov.uk/2017/04/11/uk-hosts-vienna-document-visit/>

nuclear propulsion and nuclear weapons programmes are, or to allow Parliamentarians to scrutinise these programmes.

3. Publication of the DNSR annual assurance reports show clearly that nuclear safety is seen as important by MoD and that the regulator is prepared to take a firm line where necessary. It is in the MoD's interests for the public to understand this. Publication of the DNSR report:
 - Indicates publicly, in a high profile way, the importance of complying with nuclear safety procedures and demonstrates that shortfalls will not be 'covered up'.
 - It holds employers publicly to account in maintaining safety to prevent a potentially high hazard accident.
 - It shows that personnel are doing their work effectively, demonstrating their professionalism in complying with nuclear safety policies and procedures, and publicly recognises and values this professionalism.
 - It helps in maintaining high safety standards, as there is an ongoing incentive to equal or beat previously reported performance.
 - If problems exist, public scrutiny adds to the pressure to fix these problems.
 - If independent information on safety is not published, there will be questions as to why it is not published and it will be harder to refute allegations that operations are not conducted in a safe and professional manner.
 - Publication of independent information, on the other hand, shows whether MoD is living up to its stated policies and standards for nuclear operations.
 - Evidence that safety performance is high is also evidence that systems are functioning as intended, and demonstrates that the UK's nuclear weapons are reliable and effective.
 - Publication of the report indicates whether the MoD's arms-length regulatory arrangements are working and whether the regulator is doing its job properly.
 - Repeated allegations that nuclear safety standards are poor will have a gradual impact on

confidence and morale if they cannot be refuted, with indirect knock-on effects on the retention and recruitment of nuclear personnel.

- Publication of information on nuclear safety helps in disseminating learning across the nuclear sector. Even if it is foreign navies which learn from this experience – including the navies of potential adversaries – there are benefits to the UK and the UK public if this contributes to the prevention of a nuclear accident.

4. Publication of this information also informs the nuclear debate at large by allowing people to discuss on an informed basis issues such as how safe nuclear weapons are; what risks they pose; whether safety is improving or deteriorating; and whether there is a need for the UK to have a nuclear weapons programme. These are important conversations on controversial issues that will not go away. It is essential to have factual information for these conversations to take place.
5. If the information in the two annual assurance reports relating to the defence nuclear programme indicated that there were indeed concerns within MoD over safety standards, this would be highly important in informing public debate on nuclear weapons. If the public felt that the MoD's nuclear programme posed unacceptable safety risks they might reasonably wish to rethink or renegotiate the terms under which the UK operates its nuclear deterrent. In particular, communities in the vicinity of defence nuclear sites have the right to be informed of and to understand any risks they may face from such sites. Parliamentarians should also be aware of such concerns in order to press the government to take corrective action.
6. Conversely, an indication that the programme complies with acceptable safety standards would help in reinforcing the status quo, helping to allay any public concerns, and demonstrating the virtue of current defence policy.

7. The government has published a regulatory code to set out how regulators should engage with those they regulate². In the Foreword to the code Sir Michael Fallon, at the time Minister of State for Business and Enterprise, states that the code seeks to promote regulation “through the development of transparent and effective dialogue” (page 2). The code itself states that “Regulators should ensure that their approach to their regulatory activities is transparent” (Paragraph 6, page 5) and as an illustration of transparency, goes on to say “Regulators should publish, on a regular basis, details of their performance against their service standards” (paragraph 6.5). This is exactly what DNSR's annual assurance report does.
8. The International Atomic Energy Agency has stated that “the public will only have confidence in the safe use of nuclear technology if regulatory processes are conducted and decisions are made openly”, and a number of international experts on nuclear regulation have made similar statements. Further detail is given in the Appendix below. These show that there is a global consensus on the importance of transparency with regard to nuclear safety and regulation.
9. If statements made by the Ministry of Defence on the safety of its nuclear programme are to be considered credible, they needed to be backed by impartial evidence such as regulatory reports. My view is that this argument is sufficiently strong, in terms of accountability to the public and provision of information to Parliament, to support the case that it is in the public interest to release the requested information, regardless of the case to the contrary which has been made by MoD.
10. Under the unusual circumstances under which the requested information has been withheld, some might draw the conclusion, rightly or wrongly, that MoD is attempting to conceal something – perhaps that its nuclear programme has not achieved acceptable safety standards to the satisfaction of regulators. This undermines confidence in the competence of both the MoD,

2 <https://www.gov.uk/government/publications/regulators-code>

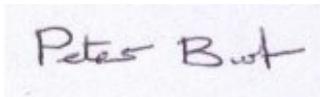
as managers of the programme, and the DNSR as its regulator, and weighs in the public interest of releasing the information.

Conclusions

11. There are good reasons to ensure that the regulation of nuclear safety is conducted in an open and transparent manner, over and above normal standards of openness and transparency in government affairs. Because of the sensitive nature of nuclear safety and the potential consequences of a nuclear accident, it is in the public interest that the public and their representatives have opportunities to scrutinise the safety performance of nuclear operators.

12.

Signed:

A handwritten signature in black ink on a light blue background, reading "Peter Burt".

Peter Burt

Date: 30 September 2019

Appendix

Regulatory views on openness and transparency

1. A series of comments from the International Atomic Energy Agency (IAEA) and nuclear experts from around the world highlight the importance of openness and transparency in the regulation of nuclear safety:

2. The International Atomic Energy Agency's guidelines for the staffing of nuclear regulatory bodies state:

“The public will only have confidence in the safe use of nuclear technology if regulatory processes are conducted and decisions are made openly”³.

and

“The regulatory body should be organized to provide public information concerning its activities, both on a regular basis and in relation to abnormal events. Information provided to the public should be factual and as objective as possible, reflecting the regulatory body’s independence. The regulatory body should be as open as possible while complying with national legislation on confidentiality.”⁴.

3. Mohammed El Baradei, former Director General of the IAEA, wrote an address to an international conference on nuclear regulation in 2006. In it he said that nuclear regulators must become more open:

“Around the world, civil society and the public at large are increasingly recognised as important stakeholders in the work of the regulatory body. They demand openness,

3 Organization and Staffing of the Regulatory Body for Nuclear Facilities, Safety Guide GS-G-1.1, IAEA, 2002 page 7

http://www-pub.iaea.org/MTCD/publications/PDF/Pub1129_scr.pdf

4 IAEA Safety Guide GS-G-1.1 page 16 http://www-pub.iaea.org/MTCD/publications/PDF/Pub1129_scr.pdf

transparency and input in how the regulatory body makes its decisions”⁵.

4. Laurence Williams, former Director of the UK's Nuclear Installations Inspectorate, told the same conference:

“Society has an input in the effectiveness of nuclear regulation. Regulation is effective if the public are engaged in the regulatory process and have confidence in the quality and independence of regulatory decision making. Effective regulators engage with society to determine how nuclear safety and security issues are understood, what society requires of the regulator, and how society should engage in the regulatory process”⁶.

5. The then German Environment Minister Wolfgang Renneberg said that regulators should encourage operators not to hide safety problems and that there should be greater international exchange between regulators:

“...We will only learn if we don't hide our problems, if we are self confident enough to openly communicate with each other even when it, sometimes, may be uncomfortable”⁷.

6. In a paper to the conference, the Nuclear Safety Directorate of the UK's Health and Safety Executive said that part of their mission was:

“...To further public confidence in the nuclear regulatory system by being open about what we do”⁸.

To achieve this, they set themselves the goal:

5 Independent Oversight: The challenges of effective nuclear regulation, Mohammed El Baradei, Director General IAEA

http://www-pub.iaea.org/MTCD/publications/PDF/Pub1272_web.pdf

6 Opening Address by Laurence Williams to the international conference “Effective Nuclear Regulatory Systems: Facing Safety and Security Challenges, Moscow, 27 February – 3 March 2006.

http://www-pub.iaea.org/MTCD/publications/PDF/Pub1272_web.pdf

7 Independence and effectiveness in licensing, inspection and enforcement, W Renneberg, Federal Minister for the Environment, Nature, Conservation and nuclear energy.

http://www-pub.iaea.org/MTCD/publications/PDF/Pub1272_web.pdf

8 Interacting with stakeholders: generating trust, confidence and influence through credibility, responsiveness and values, MW Weightman, P Storey & F Thorne, Nuclear Safety Directorate, HSE

http://www-pub.iaea.org/MTCD/publications/PDF/Pub1272_web.pdf

“To further public confidence in the UK nuclear industry regulatory system by providing information to our stakeholders, seeking their views and responding to them as appropriate.