

It's fairly unusual for the MoD to "fess up" that it's dropped one. However, it's recently come clean about contingent liabilities for costs associated with the sale of Defence Aviation Repair Agency's rotary wing and components business units to Vector Aerospace International. However the George Washington impression has been tarnished a little as the information entering the public domain by laying an unnumbered Command Paper before the House of Commons. Such things aren't always easy to get one's hands on, but Defence Viewpoints has in this case. The full text is:

It is normal practice when a Government Department proposes to undertake a contingent liability in excess of £250,000 for which there is no specific statutory authority, for the Department concerned to present to Parliament a Minute giving particulars of the liability created and explaining the circumstances; and to refrain from incurring the liability until fourteen Parliamentary sitting days after the Issue of the Minute, except in cases of special urgency.

On 5 February 2008 the Minister of State for the Armed Forces made a written statement regarding the sale of the Defence Aviation Repair Agency (DARA) Rotary Wing and Components businesses (RW/C) in which he confirmed: "Following a period of extended consultation with a wide range of interested parties including local MPs and Trade Unions and successful negotiations with the preferred bidder, I am now able to announce the sale of these businesses to Vector Aerospace for £17m." Although sale was agreed, the written statement made clear that it was still subject to meeting a number of sale conditions: The sale of DARA's Rotary Wing and Components businesses was successfully completed with Vector Aerospace International limited (VAIL) on 1 April 2008. This Minute sets out two contingent liabilities that were created as a direct result of the sale and effectively incurred at the point of sale:

- a. An indemnity for future, currently undiscovered, environmental contamination.
- b. An indemnity for costs associated with potential claims made by agency workers; who remain within the business after VAIL assumed ownership, and claim that they have TUPE transferred and are permanent VAIL employees.

In the normal course of business the Department would have sought to lay the Minute before Parliament at least 14 days prior to their coming into effect, however given the significant uncertainty surrounding the Department's ability to conclude the sale transaction with VAIL due to the complex nature and the lack of Information and uncertainty surrounding the indemnities being sought, those conducting the sale concluded that it would not be appropriate to seek Parliamentary endorsement at that stage for indemnities that may have changed considerably prior to the final conclusion of the sale transaction. This was an error of judgement because of a lack of adequate consultation within the department at the time.

Whilst there were some uncertainties over the details, the Department should have notified our

best estimates of the expected contingent liabilities at the time. This error is regretted, and the department has taken steps to prevent a reoccurrence.

#### Environmental Liability

The Property Sale agreement Signed between the Ministry of Defence (MOD) and VAIL provides an indemnity that states MOD will cover costs associated with the remediation of currently unknown environmental contamination at the DARA Fleetlands site, in Gosport, Hampshire. MOD is responsible for associated remediation costs above £3million to a limit of £17million. The MOD has completed detailed Land Quality Assessments at the Fleetlands site, which identified minor contamination and as a result MOD has already begun a programme of remediation and further investigatory and monitoring work. It is not possible to quantify the likelihood of discovering any future contamination at the site beyond what has been established and the liability is therefore unquantifiable. MOD's environmental indemnity expires on the 10th anniversary of sale completion (31 March 2018) or earlier if sold to a third party.

MOD considered that as the investigative work conducted at the sites Identified only £600K remediation, further investigatory works and monitoring costs, it seems unlikely that if further contamination is discovered costs will exceed the £3 Million threshold. Therefore. weighing up the overall benefits of sale; and the potential VFM demonstrated in the business case and investment appraisal comparison to the Public Sector Comparator, MOD agreed to award the indemnity to VAIL.

#### Claims by Agency Workers Indemnity

Under the Sale and Purchase Agreement MOD has accepted liability for claims by any individual other than a Transferring Employee, that they were an employee of the Business who should have transferred to VAIL under TUPE terms on Completion.

The two main agency agreements are with SERCO and MPI. Four smaller agency contracts are being dealt with in the same way as SERCO. The MPI agency contract includes an indemnity by MPI that they will cover the cost of any agency workers claiming to be MOD employees and so no indemnity will need to be provided to VAIL by the MOD.

MOD has however agreed to indemnify VAIL against claims by any SERCO agency workers that:

they were an employee of the Business who should have transferred to VAIL by reason of TUPE on Completion;

they became employees of the Business as a result of termination by the Authority of the SERCO Agency Agreement prior to the Completion Date, and

they became employees of the Business as a result of termination by VAIL of any of the SERCO Agency Agreement within three months of the Completion Date.

Claims under the first indemnity are unlikely as the SERCO contract was terminated before completion on 28 February.

Due to the uncertainty surrounding the nature and scope of any potential claim, the number of likely claimants and any final arbitration assessment it is difficult to provide any realistic assessment of the likely value of this contingent liability.

If the liabilities are called, provision for any payment will be sought through the normal supply procedure.

The Treasury has approved the proposal in principle. Whilst the error of judgement in laying the Departmental Minute at the appropriate time is regrettable further justification of the position will be provided if required by any Member.

MINISTRY OF DEFENCE

7th October 2008