

PRIVATE AND CONFIDENTIAL

Public Accounts Committee
House of Commons
London
SW1A 0AA

FAO:

Legal Department: pubaccom@parliament.uk
Ms Jessica Bridges Palmer: bridgespalmerj@parliament.uk

Our Ref: MB/HH/EC/R0282/004

Date: 14 September 2022

Dear Sir or Madam

Our client: Randox Laboratories Limited

1. We write further to previous correspondence regarding the Committee of Public Accounts' (the "**PAC**") Seventeenth Report of Session 2022-2023 on the "*Government's contracts with Randox Laboratories Ltd*" (the "**Report**") and accompanying press release ("**Press Release**": Together, the "**Documents**"). We understand from your email dated 26 July 2022, that the Report cannot be withdrawn or amended, but that our correspondence has been passed to the Speaker's Counsel.
2. We explained at the outset that the correspondence on behalf of our client was necessarily non-exhaustive as our client had only been provided with a copy of the Documents less than 48 hours prior to publication and at the same time as the media. The initial correspondence was written in an attempt to mitigate the damage caused by your publication of the Documents and we reserved our client's right to follow up substantively in due course.
3. The circumstances surrounding the PAC's investigation and preparation of the Documents amounted to a grave failing of natural justice. The consequence of that failing was publication of the Documents that purported to make numerous findings relating to our client's conduct and the assertion of serious and unsubstantiated criticisms of that conduct. Those assertions were designed to and did make national headlines. The Documents were published without our client having been notified that it might be subject to criticism, without our client being asked to give evidence and without being provided with an opportunity to rebut any of the evidence that the PAC relied upon in criticising our client. As a consequence, the Report and Press Release were not only highly damaging but also riddled with inaccuracies and misunderstandings that have misled the public.
4. The purpose of this letter is to explain why the PAC's investigation was procedurally unfair and to elaborate on the inaccuracies and misrepresentations contained within the Documents.

A. BREACH OF NATURAL JUSTICE

5. The principle that a person has a right to answer the case against him is one of the most fundamental principles of our constitution. Mr Justice Fortescue observed in 1723 that,

*“The laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man upon such an occasion, that even God himself did not pass sentence upon Adam, before he was called upon to make his defence.”*¹

6. It has long been recognised in law that this principle extends to reports issued by official bodies that can damage the reputation of those subject to criticism. In *Maxwell v Department for Trade and Industry*², Lord Denning MR accepted that a person had the right to respond to evidence collected from other persons adverse to its interests before criticisms were published in a report of investigators. He explained that the obligation is not onerous, nor does it extend to every point of detail, but it includes a basic requirement of fairness:

*“It must be remembered that the inspectors are doing a public duty in the public interest. They must do what is fair to the best of their ability. They will, of course, put to a witness the points of substance which occur to them—so as to give him the chance to explain or correct any relevant statement which is prejudicial to him. They may even recall him to do so.”*³

7. In *re R*⁴, Mr Justice Collins stated in relation to an investigation of a company by the Treasury, that the *Maxwell* case confirms that “the individual who may be criticised should be given [an] opportunity to deal with the potential criticisms against him”⁵. It did not require more than one opportunity for a person to do so, but they had to be given an opportunity.
8. As noted previously, no such opportunity to clarify, corroborate, or rebut any of the PAC’s conclusions was afforded to our client. The first time Randox had sight of either the Report or Press Release was on the morning of Monday 25th July 2022, when an embargoed copy of the Documents was issued to the media. Referring to your letter of 26 July 2022, it is no answer for the PAC to rely upon the fact that a general call for evidence was issued for this investigation. Such a call for evidence does not enable a person or company to be aware of potential lines of adverse criticism, nor does it provide an opportunity to respond to evidence obtained from other witnesses. This is what basic principles of natural justice demand.
9. Instead, the PAC failed to engage with Randox throughout the investigation or seek any submissions from it at any stage in the process. While the PAC has said that it will consider further representations, plainly the PAC would be unable to consider those representations with an open mind given it has already reached its findings and therefore pre-judged the case against Randox. In *Miller v Health Service Commissioner for England* [2018] EWCA Civ 144, a report of an ombudsman, although expressed to be “draft” and “provisional”, was held to give rise to an appearance of predetermination where it set out a series of conclusions and redress before affording a person an opportunity to comment. The

¹ *R v Chancellor of the University of Cambridge (Dr Bentley’s Case)* (1723) 1 Str 557 at 567 [93 ER 698 at 704] cited by Lord Reed in the Supreme Court in *Osborn v Parole Board* [2013] UKSC 61, [2014] AC 1115 §69

² [1974] QB 523

³ 536 B-C

⁴ [2001] EWHC Admin 571

⁵ (§17)

present situation is clearly a step further than this as the Documents were both produced and published.

10. Notwithstanding this, our client wishes to address in further detail the inaccuracies and misrepresentations contained in the Documents. Those matters should not go unanswered simply because of the PAC's failure to observe the basic principles of natural justice.
11. If the Report cannot be amended or withdrawn, then a copy of this letter should, at the very least, be appended to the Report so that anyone provided with a copy of the Report may consider it and, if required, report on it fairly and accurately within the context of our client's response.

B. MISREPRESENTATIONS

12. As a result of the PAC's failure to conduct a procedurally fair investigation, numerous material inaccuracies and misleading information were published. These are set out below along with the true factual position.

Misrepresentation 1: Randox "profiteered" hundredfold

13. The Report incorrectly states in its summary that: "*Randox benefited from substantial capital investment which was included in the price the Department paid for its first contract with Randox, and the company saw a hundred-fold increase in its profit in the year to June 2021*".
14. Furthermore, the Press Release states: "*Randox reported a profit of £177 million in the year to 30 June 2021, more than a hundred times greater than its £1.2 million profit for the 18 months to 30 June 2020*".
15. Similar claims regarding Randox making hundredfold profits are included throughout the Documents.

True Position

16. The '*hundredfold*' figure is a wholesale misrepresentation of the true factual position for the following reasons:
 - 16.1. It incorrectly suggests a 10,000% increase in profits. A review of Page 15 of Randox's 2021 accounts (see [Appendix 1](#)) shows that the actual profit in the preceding 18 months (taking administrative and cost of sales exceptional items into account,) was £46.5m and not £1.225m. Therefore, the hundredfold claim made in the Report is grossly misleading. In reality, please also note that Randox was paid £469m from government contracts. The £776.9m figure quoted was the maximum possible contract value.
 - 16.2. By way of further explanation, within the accounts referenced by PAC turnover increased by a factor of 3.03 and 'Profit + Exceptional' increased by a factor of 4.63. The percentage increase in Profit + Exceptional' relative to turnover is therefore 53% - a significant difference from the PAC position of over 10,000%. In addition, the profits generated were inclusive of Randox's classical and private

testing businesses as well as the government contracts. It is inaccurate to infer that these profits derive from government contracts only.

- 16.3. The Report also fails to factor in any consideration of the risk that Randox assumed at that time. There was no guarantee of an extension beyond the first £133m contract. However, it was necessary for Randox to incur significant investment costs at the outset of the pandemic which included building the registration/reporting IT infrastructure that facilitated wide-spread testing.
- 16.4. Financial accounts need to be properly understood and assessed for accurate conclusions to be drawn. The PAC is a highly influential and cross-party body that is responsible for scrutinising Government expenditure and examining the value for money of Government projects, programmes and service delivery. The conclusions of the PAC in this regard are naturally afforded an authority and credibility by the public. With such recognition comes a responsibility on the PAC to ensure that its investigation and conclusions are fair and accurate. That responsibility appears to have been abandoned in this case.

Misrepresentation 2: Randox may have been fast-tracked through ‘VIP’ or ‘priority’ routes as a result of Ministerial interference

17. The Report incorrectly insinuates that Randox may have been prioritised as a supplier due to ministerial interference because the DHSC did not show evidence that it took sufficient care over potential conflicts of interest when awarding government contracts to Randox.

True Position

18. As far as Randox is aware it was not placed on any VIP supplier route and did not benefit from any such priority treatment. As you acknowledge, there is no evidence to allege or insinuate otherwise.
19. The National Audit Office (“NAO”) acknowledged in its report⁶ into the government’s contracts with Randox that officials had explained to the NAO that ‘...they do not consider Randox came through the test and trace procurement high-priority entry routes created early in the pandemic to deal with supplier referrals from ‘high-ranked’ individuals such as minister, MPs and the Prime Minister’s Office’⁷. There is no evidential basis for imputing that our client was awarded Government contracts as a result of any political connections as opposed to its capabilities.
20. The inaccurate reporting around ‘VIP routes’ also fails to acknowledge the fact that at the start of the pandemic the DHSC issued an open ‘call to arms’⁸ to all laboratory providers. All operational laboratories with adequate capabilities were provided with the same opportunity to contribute to the delivery of services and goods arising from the COVID-19 pandemic. Our client is not aware that any particular organisation was identified with a better capacity to deliver at the outset. Nor does the PAC suggest that any such organization existed.

⁶ [NAO Report dated 24 March 2022](#)

⁷ Para 1.13 of NAO Report [Investigation into the government’s contracts with Randox Laboratories Ltd \(nao.org.uk\)](#)

⁸ para 1.9 of the NAO Report: [Investigation into the government’s contracts with Randox Laboratories Ltd \(nao.org.uk\)](#)

21. Lastly, a presumption of falsity is embedded as a fundamental principle of law where a person or organization is the subject of allegations. The burden of proving an allegation is on the publisher and can only be discharged with evidence. The absence of evidence does not – and cannot – discharge this burden. As such, the PAC’s reliance on the absence of evidence to support its claims is an affront to this basic principle of law and natural justice. The PAC should have taken reasonable care to verify this matter with Randox; it failed to do so.

Misrepresentation 3: Randox were awarded a lucrative contract extension in October 2020 without competition despite underperformance.

22. Specifically, the Report states that: *“Randox struggled to deliver the expected level of testing capacity against its first contract, which did not set out any performance measures. Yet the Department still awarded Randox a contract extension worth £328 million seven months later, again without competition”*.

True Position – contract award and pricing

23. The true position is that the contract extension took place in October 2020. At this point, no other new service provider could have reacted in time to support the resurgent need for COVID-19 services throughout the winter of 2020/2021. As Dame Dr Jenny Harries told the PAC: *‘I just point out that once that testing got going—this is the critical thing; this was quite new—it actually overperformed later on. It was the work that Randox did that really got us through the next wave of that pandemic, through that winter. It was absolutely critical in the capacity that was provided.’*⁹
24. With respect to the pricing of awarded contracts, Randox negotiated a significantly lower price for the contract extension and subsequent contract variations, having covered significant capital costs in the first period. This was acknowledged by the NAO at paragraph 3.3. of its report¹⁰.

True Position – Randox performance

25. With respect to contract performance, Randox was the highest capacity laboratory in the country during the relevant period of time (c. September/October 2020). This was acknowledged and evidenced in the Government’s response to the Humble Address regarding our client¹¹. Randox had scope for considerable expansion (50k/day as at contract extension end September 2020 rising to 120k/day by the end January 2021, 4 months later). By comparison, by mid-March 2020 the complete NHS capacity for PCR COVID-19 testing was stated to be 2,400 tests/day¹²
26. In relation to performance, the NAO’s report reflects that: *“between 2 October 2020 and 7 December 2021, 62% of tests were turned around within 48 hours. In 2021, Randox’s void rate (the percentage of samples tested that returned an inconclusive result) was 2.1%,*

⁹ Q129 <https://committees.parliament.uk/oralevidence/10470/default/>

¹⁰ <https://www.nao.org.uk/wp-content/uploads/2022/03/Investigation-into-the-governments-contracts-with-randox-laboratories-ltd.pdf>

¹¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1052476/government-response-to-humble-address-motion-on-randox-contracts.pdf

¹² As briefed to PM and SoS DHSC, Meeting on Mass Testing, No 10 Downing Street, 17 Mar 2020

compared with 2.5% in 2020. The average void rate across all laboratories with government contracts for testing services was 2.5% in 2021 and 2.9% in 2020¹³ In addition, 96.4% of samples were processed by Randox within 72 hours of arrival, with the remainder processed and reported shortly thereafter.

27. In fact, the DHSC's independent consultants (Newton) placed Randox at the top end of performance, compared with all other Pillar 2 laboratories. Shona Dunn, Second Permanent Under Secretary to the DHSC stated that: *"The Newton report that came out in June, which had looked at the performance of a number of different providers, had placed Randox at the top end of the performance in terms of its testing provision on a number of different metrics¹⁴".*

28. The findings of the independent Newton Consultants report (the "Newton Report"), which was commissioned by the DHSC in May/June 2020 and was critical to its decision-making in relation to Randox's contract extension, does not appear to have been acknowledged by the PAC. For the sake of accuracy and to avoid the public being further misled, it should have been noted that the Newton Report recorded that:

- Culture on site is open, all staff are passionate about delivering the tests and improving processes.
- Work to optimise the manual handling processes already achieves cycle times as fast as the speeds targeted in other labs.
- Investment in developing technologies and validating new technologies has increased sustainability as returns will not hit Randox and the supply chain is diversified.
- Performance reporting is in place to monitor individual lab performance and to understand issues.

Misrepresentation 4: That Randox was unprepared and unduly reliant on loan equipment from the Government

29. The Report states at paragraph 17 that: *"Randox asked for government help within weeks of being awarded its first contract to enable it to deliver its contracted level of tests. Randox needed access to specialist testing equipment held in universities and other laboratory facilities, which it and other suppliers received after ministers requested equipment loans on their behalf. The Department said it was not surprised at the amount of help Randox needed from government. The Department noted that contracts were explicitly written to allow for suppliers to ask for assistance on various fronts, which it did not consider unusual at the time. However, the National Audit Office's review of available contract documentation found that, prior to the award of its first contract, Randox had not specified it would need government support to secure testing equipment required to fulfil the contract. The Department was also unable to demonstrate how such help was factored into its negotiations with Randox on price."*

30. The inference is that Randox was unprepared and unduly dependent on loaned equipment and may have misrepresented its capacity in contractual negotiations. That inference is false.

¹³ Paragraphs 20, 3.6, 3.8 and Figure 3: [Investigation into the government's contracts with Randox Laboratories Ltd \(nao.org.uk\)](https://nao.org.uk)

¹⁴ Q71 <https://committees.parliament.uk/oralevidence/10470/default/>

True Position

31. Some Government support was anticipated at the outset of the contract. In the first DHSC/Randox contract of 30th March 2020, Appendix 1, the following is specifically stated; *'Supply Issues: Raw Materials: Contractor anticipates that it will be able to cover supplies of raw materials, including reagents, until the end of week three from the contract commencement date. Authority support may be required in procurement chains thereafter (including access to third party systems outside contractor control as indicated in presentation sent to OLS)'*. This clause was specifically included as both parties recognized that the impact of unprecedented global demand for PCR equipment and consumables could not have been accurately anticipated from the outset of the contract.
32. Para 2.14 of the NAO Report also states the Randox position that at the time they received 4 RNA extraction systems (the most critical equipment for the PCR process) on loan they had 26 additional RNA extraction systems on order. However, because of the critical nature of RNA extraction equipment within the national plan, the release of new systems from the suppliers to laboratories was controlled by DHSC. Therefore, the shortages experienced by Randox were, at least in part, the result of those very same DHSC control measures.
33. In fact, our client's reliance on loan equipment turned out to be minimal. As the NAO acknowledged at para 2.14 of its report: *"Randox told us that less than 0.5% of samples it processed were on loaned equipment. It also told us that most of the loaned equipment was returned by the end of July 2020 and all loaned equipment was returned by mid-November 2020, apart from two items still awaiting collection as at March 2022"*¹⁵.

Conclusion

34. It is important that witnesses, parliamentarians and the general public have confidence in the rigour and reliability of select committee investigations and reports. The PAC's publication in this instance was inaccurate, misleading and misrepresentative. It is not in the public interest for the public to be misled. The PAC's investigation that underpinned its publication was unfair and in breach of the fundamental principles of natural justice.
35. As presented to the House and published to the public at large, the Documents are inaccurate and misleading and have unnecessarily caused significant harm to our client's reputation.
36. In the circumstances, we respectfully request that the PAC either formally withdraw or amend the Report to append this letter.
37. We await hearing from you on behalf of our client as soon as possible. However, in light of recent events, our client is of course prepared to wait for your response as appropriate but must reserve the right to raise this matter with the Speaker of the House in due course.

Yours faithfully,

SCHILLINGS

¹⁵ <https://www.nao.org.uk/wp-content/uploads/2022/03/Investigation-into-the-governments-contracts-with-randox-laboratories-ltd.pdf>

APPENDIX 1

Randox Laboratories Limited

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Profit and loss account for the financial year ended 30 June 2021

	Notes	Year ended 30 June 2021 £'000	18 month period ended 30 June 2020 (restated *) £'000
Turnover	5	547,701	181,032
Cost of sales		(294,766)	(132,656)
Cost of sales analysed as:			
Exceptional items	6	(31,721)	(30,920)
Non-exceptional cost of sales		(263,045)	(101,736)
Gross profit		252,935	48,376
Administrative expenses		(41,507)	(56,035)
Administrative expenses analysed as:			
Exceptional items	6	(6,522)	(14,426)
Non-exceptional administrative expenses		(34,985)	(41,609)
Other operating income	7	8,100	12,628
Operating profit	7	219,528	4,969
Interest payable and similar expenses	10	(210)	(554)
Profit before tax		219,318	4,415
Tax on profit	11	(41,937)	(3,190)
Profit for the financial year/period		177,381	1,225

* For more details on the restatements refer to note 27. These restatements had no impact on previously reported profit excluding exceptional items.

The notes on page 18 to 38 are an integral part of these financial statements.

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Public Accounts Committee
House of Commons
London
SW1A 0AA

FAO: Sarah Heath – heaths@parliament.uk

Our Ref: MB/HH/EC/R0282/003

Your Ref:

26 July 2022

NOT FOR PUBLICATION OR DISSEMINATION

Dear Ms Heath

Our client: Randox Laboratories Limited

1. We write further to your letter at 14:39 today from which we understand that you will be issuing an amended Press Notice. This has not been provided with your letter and it is unclear whether you have amended both Documents (as defined in our previous letter) or simply the Press Release. Evidently, both Documents require significant amendment.
2. While you appear to be taking steps now to try and mitigate your liability for the likely reputational and financial impact to our client, the damage has already been done. Our client has had to respond to numerous media enquiries, all of which were prompted by your dissemination of the Documents. The tone and content of these Documents have already informed and influenced the media's stance and their reporting of this matter. There is also the risk that some media outlets may not take your amendments on board in their final copy. It is, at the very least, incumbent on you to ensure that every media outlet and third party to whom you disseminated the Documents are made fully aware of your amendments and not simply sent an updated Press Notice.
3. We further note your comments that our client was aware of the inquiry taking place. With respect, our client's knowledge of the inquiry does not equate to a right of reply, or an invitation to participate in the inquiry or, most importantly, the opportunity to correct or verify the factual accuracy of the assertions that you intend to publish. Crucially, it does not extinguish your responsibility to make reasonable enquiries of our client before publishing serious allegations about them. As already explained, your ability to avail yourself of any public interest or privilege defences is severely limited by the fact that those Documents were published without any attempt to contact our client for verification either over the course of your investigations or while preparing the Documents. That remains the case now, particularly as our client is still not being given an opportunity to comment on the amended Press Notice ahead of its dissemination. To the extent that Parliamentary Privilege is a factor, it has no relevance to the libels in your Press Release / Notice or press conferences or interviews delivered.

4. We would further remind you that the onus is on the PAC to provide our client with a fair and reasonable opportunity to comment. It is not our client's obligation to proactively seek out such opportunity. Our client is entitled to expect that it would be given an opportunity to comment in circumstances where you intend to publish allegations about it.
5. Given your liability is not sufficiently mitigated by virtue of amending the 'Press Notice', we invite you again to confirm by **6pm today** that you will:
 - 5.1. Immediately disseminate an email (sight of which is to be provided to us in advance) withdrawing all the Documents from publication. Should you have already disseminated the amended Press Notice, that should be withdrawn also;
 - 5.2. Provide a copy of the amended Press Notice to us and accompanying email seeking confirmation from the recipients that the content of the previous Press Release should be disregarded and removed from any draft copy;
 - 5.3. Provide our client with no less than 48 hours to review any pre-recorded interviews, and remove any false and/or defamatory allegations contained therein before print or broadcast;
 - 5.4. Provide our client with no less than seven days to review and provide further comments to the matters contained within the Documents and amended Press Notice; and
 - 5.5. Provide final versions of the updated press release and report to our client no less than 48 hours before further dissemination.
6. Our client's right to take further legal action is expressly reserved should you not agree to these entirely reasonable requests.

Yours faithfully



SCHILLINGS

PRIVATE AND CONFIDENTIAL

Public Accounts Committee
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FAO: Legal Department: pubaccom@parliament.uk
Jessica Bridges Palmer: bridgespalmerj@parliament.uk

Our Ref: MB/HH/EC/R0282/003
Your Ref:

25 July 2022

MOST URGENT NOT FOR PUBLICATION OR DISSEMINATION

Dear Sir or Madam

Our client: Randox Laboratories Limited

1. We act for Randox Laboratories Limited.
2. We refer to the Committee of Public Accounts' (the "**PAC**") 'final report' entitled "*Government's contracts with Randox Laboratories Ltd – Seventeenth Report of Session 2022-2023*" (the "**Report**") and accompanying press release ("**Press Release**", together, the "**Documents**"), both of which were circulated to various unknown recipients, including our client, at 11am this morning.
3. Although the covering email warns that the Documents are embargoed until 00:01 Wednesday, 27 July 2022, the embargo atop the Press Release states that the embargo is in place until 00.01 Tuesday, 26 July 2022. We since understand that the PAC followed up with an email to clarify the embargo is in place until 00.01 on Wednesday.
4. Given the risk of imminent publication, we are writing now on a non-exhaustive basis to put you on notice of our client's complaint, so that steps may be taken to mitigate the potential harm caused by your actions and your liability in this regard. We reserve the right to follow up on a more substantive basis in due course.

Inaccurate and misleading allegations

5. The PAC will be well aware that this is the first our client has seen of either the Report or Press Release. At no point was our client contacted in relation to the PAC's inquiries, nor was information or clarification sought in respect of either of the Documents, both of which contain inaccurate and misleading allegations concerning our client. Those allegations suggest that:
 - 5.1. Our client profiteered opportunistically from Government contracts granted during a state of emergency;

- 5.2. It is reasonable to suspect that those contracts were improperly obtained, via a VIP/fast-track channel, as a result of our client's political connections rather than its capabilities; and that
- 5.3. Our client obtained a lucrative extension of its initial contract despite significant underperformance, well below that promised.
6. These allegations could not be more serious and are undoubtedly defamatory. We remind you that your liability is not restricted to your own publication to media outlets, but also their republication of the allegations to their readers. Such publication will undoubtedly cause our client serious and irreparable harm to its reputation as well as serious financial loss, for which the PAC is liable. This includes a down-turn in its consumer-facing business, loss in relation to existing contracts as well as the loss of potential new contracts. Indeed, our client's customers and partners will not want to support or work with a company that it (wrongly) thinks exploited its position at the height of the pandemic to maximise its profits.
7. Not only are such assertions defamatory, but they are also manifestly false and misleading. They appear to be based on nothing other than conjecture and assumptions arising from a lack of record-keeping by the DHSC. This is plainly insufficient to substantiate a defence of truth.
8. Furthermore, your failure to contact our client or provide them with any opportunity to comment beforehand, severely limits your ability to rely on a public interest defence. Such defence imports a duty to demonstrate that the matters published are in the public interest, and that you reasonably believed that such publication was in the public interest. Given the gravity of the foregoing matters, it would have been all the more incumbent on you to contact our client during the course of your inquiries to seek their side. No reasonable belief that publication is in the public interest can possibly subsist where there has been a failure to conduct reasonable checks and enquiries.
9. Instead of providing our client with any reasonable opportunity to comment, our client has instead been ambushed with a copy of the Report and Press Release at the same time as the media. Such conduct is contrary to the public interest as well as reckless and demonstrative of a blatant disregard for the truth in furtherance of a misleading and pre-determined narrative of wrongdoing. Such conduct falls woefully short of that expected of a Governmental body and is indefensible.

The facts

10. Had our client been contacted ahead of publication, it could have apprised you of the fact that:
 - 10.1. Our client has not profited "hundredfold" – let alone "profiteered" - from Government contracts awarded to it. It is apparent that such allegation is based on a misreading of our client's 2021 accounts (a surprising error for a Public Accounts Committee). Those accounts do not show a profit of £1.225m. Furthermore, the suggestion that such profit emanates from Government contracts alone is also inaccurate.
 - 10.2. The criticism levelled in respect of the extension of the DHSC contract takes no account of the fact that:

- 10.2.1. Randox were the highest capacity laboratory in the country at that time (evidenced within Humble Address paperwork), with scope for considerable expansion (50k/day at contract extension end Sep – 120k/day by end Jan 21 – 4 months later). In mid-March 2020 the complete NHS capacity for PCR COVID-19 testing was 2,400 tests/day.
- 10.2.2. The DHSC's independent consultants (Newton) had placed Randox at the top end of performance, compared with all other Pillar 2 laboratories. Quoting Shona Dunn, 2nd PUS DHSC, - "*The Newton report that came out in June, which had looked at the performance of a number of different providers, had placed Randox at the top end of the performance in terms of its testing provision on a number of different metrics*".
- 10.2.3. Randox negotiated a much lower price for the extension, having covered significant capital costs in the first period.
- 10.2.4. Furthermore, the PAC was told by Dr Jenny Harries that after being granted the extension in October 2020, our client in fact overperformed.
- 10.3. Dame Meg Hillier MP's statement is also misleading. We refer, in particular, to the statement that "*much of the business was won without any competing tenders from companies who may have had better capacity to deliver, perhaps without the upfront capital*". This assertion fails to take into account the fact that at the start of the pandemic, the DHSC opened a 'call to arms' to all laboratory providers. Every single laboratory in the country had the opportunity to contribute. Had there been any company with a better capacity to deliver, they would have – and could have – applied. No such companies were identified.
- 10.4. There is no evidence to suggest that Randox was routed through a VIP/fast track channel, and the allegations is accordingly denied.
- 10.5. The £777 million figure quoted is inaccurate and reflects the maximum possible contract value. The value was in fact significantly below that at £469 million.
11. The above is not exhaustive, but indicative of the false and misleading content contained within the Documents.
12. We would further add that it is apparent from the sensationalist headline and content contained within the Press Release (in particular) that it has been drafted and designed to attract press attention, notwithstanding the detriment to our client. This includes gratuitous and unwarranted reference to "*profiteering*", "*acting fast and loose*" and our client's profits increasing a "*hundredfold*". The Court of Appeal has acknowledged that the publication of outrageous and baseless claims that have the propensity to "go viral" are likely to give rise to a claim for aggravated damages, and our client's rights in that regard are accordingly reserved.

Conclusion

13. In light of the above, and so that you may mitigate your liability, we request that you:
 - 13.1. Immediately disseminate an email withdrawing the Press Release and Report from publication;

- 13.2. Provide our client with no less than seven days to review and provide further comments to the matters contained within these Documents; and
- 13.3. Provide a final version of the Report and Press Release to our client no less than 48 hours before further dissemination.
- 14. Given the urgency, we require your response by return by **Noon tomorrow**.
- 15. We reserve our client's rights.

Yours faithfully

SCHILLINGS