House of Commons

Committee of Public Accounts

M25 Private Finance Contract

Nineteenth Report of Session 2010–11

Report, together with formal minutes, oral and written evidence

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The Committee of Public Accounts

The Committee of Public Accounts is appointed by the House of Commons to examine "the accounts showing the appropriation of the sums granted by Parliament to meet the public expenditure, and of such other accounts laid before Parliament as the committee may think fit" (Standing Order No 148).

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Powers of the Committee of Public Accounts are set out in House of Commons Standing Orders, principally in SO No 148. These are available on the Internet via www.parliament.uk.

Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at http://www.parliament.uk/pac. A list of Reports of the Committee in the present Session is at the back of this volume.

Committee staff

The current staff of the Committee is Philip Aylett (Clerk), Lori Verwaerde (Senior Committee Assistant), Ian Blair and Michelle Garratty (Committee Assistants) and Alex Paterson (Media Officer).

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Summary

In May 2009, the Highways Agency (the Agency) signed a 30-year private finance contract for widening two sections of the M25 motorway, and maintaining the entire 125 mile length of the road, including the Dartford Crossing, and 125 miles of connecting roads and motorways. The contract has a present value cost of £3.4 billion. The Agency mishandled this project to address congestion on the M25 at a potential extra cost to the taxpayer of around £1 billion.

The invitation to tender for the contract excluded hard shoulder running as a solution for traffic congestion. We are concerned that a private finance solution aimed at transferring risk to the private sector should have restricted innovation in this way.

The Agency's poor cost estimation meant that it lacked up to date data for the cost of construction and significantly over-estimated the market rate for operation and maintenance over a 30 year period. This undermined the Agency's ability to understand and challenge the bids received, and to compare a private finance solution with conventional procurement. The substantially lower costs quoted by the PFI bidders for operations and maintenance raise significant concerns about the maintenance regime the Agency employs in its other contracts and the value for money being achieved.

The decision in March 2008 to continue with the widening project rather than adopting an alternative cheaper solution was in part made because of the delays in trialling and evaluating alternatives. Hard shoulder running was first trialled in Europe in 1996. It took five years before the Agency announced its intention to trial this technique in 2001 and a further eight years before the Agency started to use hard shoulder running in 2009.

The Agency justified the widening deal through a flawed and biased cost estimation. The Agency now accepts that additional maintenance costs of £193 million used in the analysis should have been discounted to reflect the fact that these costs would be incurred over the 30 year life of the project. Had this been done, hard shoulder running would have emerged as the cheaper option, casting serious doubt on the Agency's decision to proceed with the widening contract.

It took nine years from 2000, when consultants were commissioned to produce a long-term sustainable strategy for the M25, to 2009 for the contract to be signed. Between 2004 and 2010 the Agency spent £80 million on consultants on this project. More should have been done to limit the costly delays to the project and the amount spent on advisers who will have benefited from the drawn out procurement. The Agency lacks the expertise to assess whether its advisers are providing value for money. Large amounts were spent on advice yet the outcome of the procurement has been very poor value for the taxpayer.

On the basis of a Report by the Comptroller and Auditor General[1] we took evidence from the Department for Transport and the Highways Agency on the M25 private finance contract, examining the procurement process and the use of advisers

1 C&AG's Report, *Procurement of the M25 private finance contract*, HC566, Session 2010-2011

Conclusions and Recommendations

1. **We do not agree with the Highways Agency's view that the private finance contract to widen, operate and maintain the M25 represents value for money.** The Agency mishandled the procurement at a potential extra cost to the taxpayer of around £1 billion. It took nine years from the government starting to consider congestion on the M25 to the Agency letting the contract. By asking bidders to focus only on road widening, the Agency limited the alternative solutions bidders could offer, ruling out hard shoulder running. The Agency lacked robust information, particularly on maintenance and operation costs, which undermined its ability to assess and challenge the bids received. The delays in progressing the project also exposed it to the credit crisis resulting in higher financing costs of £660 million. The recommendations that follow are intended to help the Agency do better in future.

2. **The Agency spent £80 million on consultants over six years on this project.** We consider this expenditure to be excessive. More should have been done to limit the costly delays to the project and the amount spent on advisers who will have benefited from the drawn out procurement. The Agency should make more effective use of mechanisms to control the cost of its advisers, for example, through scoping their work into tightly defined packages, using target pricing, and managing contract performance closely.

3. **The Agency lacks the capacity to assess whether its advisers are providing value for money.** Large amounts were spent on advice yet the outcome of the procurement has been very poor value for the taxpayer. We are not convinced that the Agency is in a position to identify poor quality advice or challenge the cost of the advice it receives. The Agency needs to develop its own commercial skills so that, in major procurements, it can challenge its advisers effectively, evaluate the quality of the advice received, and engage only those advisers who provide good value for money.

4. **The Agency's poor cost estimation meant that it lacked up to date information on the cost of construction and significantly over-estimated the market rate for operation and maintenance over a 30 year period.** This undermined its ability to understand and challenge the bids received, and compare a private finance solution with conventional procurement. The Agency should identify the lessons from this contract and use them to seek reductions in operation and maintenance costs in its other contracts, particularly the 85% cent of the strategic motorway network that is not under a PFI contract.

5. **The advertisement inviting interest in tendering for the contract was too narrowly drawn as it excluded hard shoulder running as a solution for traffic congestion.** We are concerned that a private finance solution aimed at transferring risk to the private sector should have restricted innovation in this way. Public authorities must encourage innovative solutions and avoid the possibility of building in potential obsolescence through the specification. The Agency, the Department for Transport and the Treasury should check that all advertisements inviting interest in tendering are drawn widely so that viable solutions are not ruled out.

6. **The Agency persisted with its preferred solution of widening the M25 because of the time taken to trial hard shoulder running.** Hard shoulder running was first trialled in Europe in 1996 and is now commonly used in Germany and the Netherlands to deal with traffic congestion. It took five years before the Agency announced its intention to trial this technique in 2001. It took a further eight years before the Agency started to use hard shoulder running in 2009. This Committee concluded in 2005 that the Agency was inhibited by a risk averse culture resulting in it having fallen behind other leading countries in adopting alternative traffic management measures. We recommended among other things that the Agency should design pilots with clear objectives, budgets and timescales and evaluate the outcome quickly to enable faster roll out where appropriate. We are concerned that these recommendations have not been implemented and expect the Agency to do so now.

7. **The Agency appears to have been committed to a single procurement route and justified the widening deal through a flawed and biased cost estimation.** The Agency now accepts that additional maintenance costs of £193 million used in the analysis should have been discounted to reflect the fact that these costs would be incurred over the 30 year life of the project. Had this been done, hard shoulder running would, we believe, have emerged as the cheaper option, casting serious doubt on the Agency's decision to proceed with the widening contract. We are concerned that the Agency's staff engaged in the project had become committed to a widening project using private finance. In seeking to justify this, they lacked objectivity in their cost comparison. The Agency should establish rigorous, effective and objective mechanisms to challenge the evidence for key decisions, involving people with relevant expertise who are not part of the project team.

8. **We were unable to take evidence from the Senior Responsible Owner (SRO) because he had left the Agency and at the time of our hearing was employed by one of the project's major contractors and investors.** The SRO in this project left to work for a company that had previously provided advice on the project. That company is now owned by one of the project's major contractors and investors. We note that a condition of his new employment is that he works on rail rather than road projects, but it is not clear what procedures are in place to make sure that this commitment is honoured. We note that Cabinet Office clearance was obtained for this move but there remain potential conflicts of interest. The Treasury, in its role of promoting best practice in privately financed projects, should examine existing guidance to clarify the rules to be applied when officials who have worked on private finance projects leave the public sector.

1 The procurement process

1. The Government commissioned consultants to produce a long-term sustainable strategy for tackling congestion on the M25 in 2000. In May 2009, nine years after the start of the project, the Highways Agency (the Agency) signed a 30-year private finance contract with Connect Plus for widening two sections of the M25 motorway, and maintaining the entire 125 mile length of the motorway, including the Dartford Crossing, and 125 miles of connecting roads and motorways. The contract has a present value cost of £3.4 billion.[2]

2. The Government announced its intention to proceed with widening in July 2003 and the Highway Agency's initial 2004 timetable anticipated construction starting in May 2007. This was subsequently revised following consultation with industry and a decision to widen the motorway using private finance, to May 2008. The delay exposed the project to the 2008 credit crisis resulting in further delay and higher financing costs of £660 million.[3]

3. We asked the Agency what they could have done differently to avoid these delays and the consequent cost increases. The Agency found it difficult to identify delays that could have been avoided, but noted that as a result of the credit crisis the time taken to raise finance had been much longer than expected.[4] The Agency accepted that, with hindsight, some things could have been done to progress the project more quickly – the various stages of the project could have been run faster and some decisions could have been taken earlier.[5] The Agency also considered that it could have reduced the time taken if it had avoided the lengthy consultation it carried out with the construction and financial markets before the procurement, asked bidders to arrange finance during the bid process rather than afterwards, and restricted the size of tender documents which each ran to some 30,000 pages.[6]

4. Private finance projects usually define the outputs required allowing flexibility over the solution. But in this case the Agency's 2005 procurement advertisement had specified only road widening.[7] This ruled out hard shoulder running, an option one of the bidders wanted to submit. The Agency accepted that its procurement advertisement should have been worded more loosely and told us that this was a lesson that it had taken away from this project.[8]

5. The Agency assessed the bids received against a model to benchmark costs, but it was difficult for the Agency to assess the value for money of the bids received because the cost range produced by the model was between 27% and 43% more than the lowest bid.[9] The Agency's estimates for the costs of widening were based on data from contracts from 1992-

2 C&AG's Report, para 3

3 C&AG's Report, paras 11, 12 and 1.3

4 Q2

5 Qq11,12

6 Q49

7 C&AG's Report, para 15

8 Qq162, 166

9 C&AG's Report, para 2.6

94, three of which were M25 widening schemes, updated using published indices for construction cost prices. The cost figures the Agency used for the operations and maintenance elements were based on existing contracts for maintenance and renewal, adjusted by an estimate of how much more efficient a PFI contractor might be on maintenance.[10]

6. While the Agency's estimates for widening costs were about the same as those in the bids, its estimates for maintenance were much higher. The Agency attributed its over-estimation of these costs to the fact that they were based on conventional maintenance contracts with five to seven-year terms, whereas the bids were based on the estimated costs for maintaining or renewing the assets and structures under a private finance contract over 30 years. The Agency explained that it had assessed the estimated maintenance costs by extending its existing maintenance regime from a five to a 30-year period, whereas the tenderers had proposed different ways in investing in maintenance over the 30 years. The Agency accepted that it needed to take the maintenance techniques used in this contract with a view to applying them to the 85% of the motorway strategic road network managed under conventional maintenance contracts.[11]

10 Q75

11 Qq 76, 82, 83, 92, 101, 103

2 Consideration of hard shoulder running as an alternative to road widening

7. In 2003, the Agency and the Department for Transport (the Department) decided to widen the M25 rather than adopting a flexible procurement strategy which could accommodate other solutions to address congestion. At that time, the Agency had insufficient evidence of the effectiveness of alternatives to widening, such as hard shoulder running, which provides additional capacity by allowing drivers to use the hard shoulder at times of peak congestion. This technique was first trialled in Europe in 1996, but the Agency did not announce a trial until 2001. The contract for the trial, on a section of the M42, was let in 2003.[12]

8. When this Committee examined the Agency's approach to tackling congestion on England's motorways in 2005, it concluded that the Agency had been inhibited by a risk averse culture resulting in it having fallen behind other leading countries in adopting traffic management measures. We recommended that the Agency should design pilots with clear objectives, budgets and timescales; choose suitable sites unaffected by other factors; and establish adequate data collection procedures prior to and during the trial; monitor progress regularly; and evaluate the outcome quickly to enable faster roll out if appropriate.[13]

9. But the Agency was not satisfied with the general benefits and savings potential of hard shoulder running until July 2008, some seven years after its original announcement to trial this approach. In 2009, shortly before letting the M25 widening contract, a programme of hard shoulder running became part of the Department's policy for managing motorways and major trunk roads. The Agency now plans to use the approach to relieve congestion and improve journey time reliability on two other sections of the M25. [14]

10. In March 2008, the then Secretary of State for Transport requested reassurance from the Agency that motorway widening remained the best solution. The Agency's response supported the case for widening. It used cost estimates that showed that savings from hard shoulder running would be more than offset by additional costs, such that hard shoulder running appeared to be £53 million more expensive than road widening.[15] However, in response to our questions the Agency accepted that the additional maintenance costs of £193 million for hard shoulder running used in this analysis should have been discounted to reflect the fact that these costs would be incurred over the 30-year life of the project.[16] This decision to stick with widening was therefore substantially influenced by a technical error in the calculation. Had this error not been made, these costs would have been

12 C&AG's Report, para 8

13 Committee of Public Accounts Twenty-fifth report of Session 2004-05, *Tackling congestion by making better use of England's motorways and trunk roads*, HC 134, conclusions 1 and 2

14 C&AG's Report, para 17

15 C&AG's Report, para 3.4 and Figure 10

16 Qq 114, 115, 121

reduced by at least half, changing the bottom line which would have shown hard shoulder running to have been the cheaper option.[17]

11. The Agency did not, therefore, have a thorough estimate of the cost comparison between widening and hard shoulder running as a means of dealing with congestion on the M25. The National Audit Office estimated the savings that a conventionally procured hard shoulder running solution could have provided compared to the privately financed widening of the M25 as potentially ranging from £400 million to £1.1 billion.[18]

17 Qq 116-120

18 C&AG's Report, para 19

3 Use of Advisers

12. The Agency should have done more to limit the amount spent on advisers who will have benefited from the drawn out procurement. It relied heavily on advisers throughout the project, spending £80 million between April 2004 and March 2010.[19] The Agency told us that the monthly invoices from consultants had been checked against the relevant framework agreements, which had been negotiated in a competitive environment. But the Agency was not able to say to what extent the bills submitted by consultants had been challenged in this process.[20]

13. The National Audit Office noted in its report that the Agency's reliance on advisers had built up over time and in part reflected insufficient commercial and technical skills within the Agency. It therefore risked advisers controlling projects and having little incentive to transfer knowledge back to the Agency.[21] The Agency told us that each of the streams of work on the project had been led by its staff, thereby avoiding the issue of consultants managing consultants. The Agency could not tell us what proportion of its staff budget had been spent on consultants. However, it subsequently supplied data which showed that the estimated annual cost of consultants advising the Agency had fallen from £30 million a year to £12 million a year during 2010 and that the Agency's own staff costs were some £140 million a year.[22]

14. We were unable to take evidence from the Agency's Senior Responsible Owner (SRO) for the project from 2005 to June 2009 as he had left the Agency to work for Parsons Brinckerhoff, a company that was then employed as an adviser on the project. This company's contract was terminated, to avoid potential conflicts of interest, in October 2009, when it was taken over by Balfour Beatty, one of the contractors to the project. The Agency told us that as a senior civil servant the SRO had been through the Cabinet Office clearance process prior to leaving, and that one of the resulting conditions of his departure was that he would work on rail projects. The Agency told us that the former SRO was working exclusively on rail projects, but it was not clear what arrangements were in place to ensure that that was the case.[23]

19 C&AG's Report, para 2.23

20 Qq192-198

21 C&AG's Report, para 20

22 Ev 22

23 Qq24, 25, 40-44

Formal Minutes

Tuesday 1 February 2011

Members present:

Rt Hon Margaret Hodge, in the Chair

Mr Richard Bacon	Rt Hon Anne McGuire
Mr Stephen Barclay	Austin Mitchell
Dr Stella Creasy	Nick Smith
Matthew Hancock	Ian Swales
Chris Heaton-Harris	James Wharton

Draft Report (*M25 Private Finance Contract)* proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 14 read and agreed to.

Conclusions and recommendations 1 to 8 read and agreed to.

Resolved, That the Report be the Nineteenth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report.

[Adjourned till Wednesday 2 February at 2.30 pm

Witnesses

List of printed written evidence

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2010–11

First Report	Support to incapacity benefits claimants through Pathways to Work	HC 404
Second Report	Delivering Mulit-Role Tanker Aircraft Capability	HC 425
Third Report	Tackling inequalities in life expectancy in areas with the worst health and deprivation	HC 470
Fourth Report	Progress with VFM savings and lessons for cost reduction programmes	HC 440
Fifth Report	Increasing Passenger Rail Capacity	HC 471
Sixth Report	Cafcass's response to increased demand for its services	HC 439
Seventh Report	Funding the development of renewable energy technologies	HC 538
Eighth Report	Customer First Programme: Delivery of Student Finance	HC 424
Ninth Report	Financing PFI projects in the credit crisis and the Treasury's response	HC 553
Tenth Report	Managing the defence budget and estate	HC 503
Eleventh Report	Community Care Grant	HC 573
Twelfth Report	Central government's use of consultants and interims	HC 610
Thirteenth Report	Department for International Development's bilateral support to primary education	HC 594
Fourteenth Report	PFI in Housing and Hospitals	HC 631
Fifteenth Report	Educating the next generation of scientists	HC 632
Sixteenth Report	Ministry of Justice Financial Management	HC 574
Seventeenth Report	The Academies Programme	HC 552
Eighteenth Report	HM Revenue and Customs' 2009-10 Accounts	HC 502
Nineteenth Report	M25 Private Finance Contract	HC 651

Oral evidence

Taken before the Public Accounts Committee

on Wednesday 1 December 2010

Members present:

Rt Hon Margaret Hodge (Chair)

Mr Bacon	Chris Heaton-Harris
Stephen Barclay	Joseph Johnson
Stella Creasy	Rt Hon Mrs Anne McGuire
Jackie Doyle-Price	Nick Smith
Justine Greening	Ian Swales
Matthew Hancock	James Wharton

Amyas Morse, Comptroller and Auditor General, **Robert Prideaux**, Director of Parliamentary Relations, **David Finlay**, Director, and **Marius Gallaher**, Alternate Treasury Officer of Accounts, were in attendance.

REPORT BY THE COMPTROLLER AND AUDITOR GENERAL

Procurement of the M25 private finance contract (HC 566)

Examination of Witnesses

Witnesses: **Martin Capstick**, Director, Strategic Roads and National Networks, Department for Transport, **Graham Dalton**, Chief Executive, Highways Agency, and **Ginny Clarke**, Chief Highway Engineer and Network Services Director gave evidence.

Q1 Chair: Can I welcome you all to our Committee hearing this afternoon and say immediately that we're probably going to have to adjourn soon? We've all been told there is an imminent vote, so apologies for that because that distracts us and we lose the flow of things.

I've got to start by saying to you, we've now been meeting as a Committee for about six months and I think when I read this Report, and I know it's a view shared by Committee members, it's probably the most shocking Report I've read in terms of failure to provide value for money for the taxpayer; we have a whole range of concerns. I'm afraid it's not going to be a pleasant Committee meeting for you. I apologise for that because we do try and be constructive but I think the cost and delay and failure to provide value for money is pretty shocking. As I read the Report, the Department commissioned consultants back in 2000 to deal with the issue of the M25, and the contract was only let in 2009—nine years later. Which of the many delays, which are set out in the NAO Report, do you think were avoidable?

Graham Dalton: The Department started consultants on doing the ORBIT Study back in about 2000. That was quite a free-ranging study that looked at many aspects, not just about getting on and widening the motorway. That was just one of them.

Q2 Chair: Can I just ask you to please the answer the questions? There were a whole load of delays. The consultants was one—they took two years to report—but there were a whole load of delays. What I actually asked you was which of the delays were avoidable?

Graham Dalton: I'm not sure that I can put my finger on any of these specific delays and say they were avoidable. The final one was with the credit crisis and the longer term to raise finance, which was much longer than we expected.

Q3 Chair: That was probably the least avoidable.

Graham Dalton: That was a factor of the market.

Q4 Chair: You think the rest were all completely acceptable: nine years' delay from the start of looking at the M25 to letting a contract? You think, apart from the credit crunch, which I would have said is probably the one thing that was unavoidable—well, it was avoidable, because you could have signed the contract before the credit crunch—everything else was unavoidable?

Graham Dalton: Madam Chairman, with respect, it was not nine years' delay; it was nine years to get from the initial need to do something about congestion on the M25 to having a contract let.

Q5 Chair: Well what's so difficult about widening a road?

Graham Dalton: Once you've decided that's what you want to do and that that's value for money, you can get on and do it. There was time spent on getting the procurement together, and that was going through from about 2004, when the widening entered the programme for improvements—sorry, 2003.

Q6 Chair: To 2005. It took you two years to just put the ad in.

Graham Dalton: And determine the procurement route and how it would be bought.

Q7 Chair: Two years.

Graham Dalton: And one should remember there was a Comprehensive Spending Review in the middle of that time as well. October 2004 was when the funding—

Q8 Chair: Two years—two years to decide. You'd done a load of PFIs anyway. You are probably a Department more than any other, and an agency, used to doing PFIs. So two years, just to put the ad in the paper. And I can't see what's complicated about widening a road.
Graham Dalton: With respect, it's two years in which putting the ad in the paper was the easy bit. It's determining how it was to be procured and what the job was to be and the sequence that it would go.

Q9 Matthew Hancock: You said, determining how it was going to be procured. In paragraph 1.15 of the Report it says, "The Agency's preference was for a single private finance contract. It did not assess a single conventional contract." Were any other procurement options tested?
Graham Dalton: Yes; we looked at multiple conventional contracts.

Q10 Matthew Hancock: Which in particular?
Graham Dalton: It's about the scale of what one's putting out. The design construction market is established such that around £250 million is a size of contract to go for. A single conventional contract was not assessed because that was determined very early on to be something that was far too big for the market.

Q11 Matthew Hancock: So coming back to the original question, do you think that there's anything that the agency could have done to have made this happen more quickly?
Graham Dalton: I'm sure in hindsight there would have been some things that could have been done. There could have been some earlier decision taking.

Q12 Matthew Hancock: So which of the delays could have been shorter? You've just said it didn't need to take nine years, so which of the delays could have been shorter?
Graham Dalton: I think the various stages could possibly have been run a little bit faster.

Q13 Matthew Hancock: Which stages?
Graham Dalton: I'm afraid I'm not in a position to say. Any—

Q14 Matthew Hancock: Sorry, no—hold on. You've just told me that various stages could have been done quicker. The Chair's first question was "What could have been done more quickly?" You've told me various could have been done and I asked you which ones and you've told me that you can't tell me. That doesn't make sense. How could you have done this quicker?
Graham Dalton: I apologise if I seem to be—

Q15 Matthew Hancock: Not answering the question.
Graham Dalton: There is a lot to be done in each stage. If these phases go through—

Q16 Chair: Do you want to go to appendix one?
Graham Dalton: I'd be happy to.

Q17 Chair: I think that's the right one. Appendix one, page 32. In 2000, you commissioned the report.
Graham Dalton: That's right.
Chair: Now, what could you have done more quickly so that we didn't end up with a contract that hit the credit crunch and we didn't spend nine years from deciding something had to be done to actually just letting a contract, not even completing the work?
Graham Dalton: I think there was probably time at around decision making after the report was published and time selecting when to go in, between 2002 and probably 2004, when it went into targeted programme for improvements. So there's a question around there. Certainly between 2004 and 2005, there was a lot of initial design, a lot of assessments so as to work what was the optimum procurement. There was a lot of time then spent between 2005 and 2006, between OJEU and tenders actually going out, on preparing those tender documents. I think that was time well spent. There is always a question of whether it could be done more quickly, but also whether that would have been at the expense of the quality of the documents that went to tender.

Q18 Mr Bacon: Well, they were expensive enough. Most of the documentation was done by consultants, wasn't it?
Graham Dalton: Much of the design and the preparation of documents was done by consultants. That's right.

Q19 Mr Bacon: So it was, and you spent an enormous amount of money doing that. There is a section specifically on the use of advisers. You spent a total of £80 million—this is figure 9—and there was £14 million on lawyers. The technical working, excluding the design works, was £21 million and £41 million in total excluding the design works, then another £24 million just on technical advisers and design works. So I'm not quite clear why, if you were spending all this money on getting all this external help, it should have taken so long. Why, when you were buying in this help, couldn't it have been done more quickly?
Graham Dalton: I think there's a question of the sequence to be worked through. It's not just a question of putting more and more people on and running an infinite number of people all at the same time to come up with an answer; but it was about preparation of tender documents and contract documents, and those were being done in parallel with preparing the technical scopes and specifications.

Q20 Mr Bacon: On which you spent a total of £80 million. The point about this is, going back to the Chairman's first question: this is a bit of road widening. There's a map here showing where it is—it's not even the whole M25; you're talking about two chunks. Even from the decision to do it, when the Government publicly said we are going to do this, which was two or three years after the original study, it still took you the length of the Second World War after that to let the contract. Why?

Graham Dalton: The construction work, the improvement works—absolutely right. That is some road widening; it's two sections. Actually, the contract and design were done for the four sections that are there, including the later upgraded sections as well. This is also about the contracts for the maintenance for a period of 30 years and getting the performance specifications right for maintenance, and it included setting up for transfer of the Dartford Crossing also to go into the contract.

Chair: You're telling us what happened, you're not telling us why. We've got to go and vote. I'm going to come back and ask you the same question.

Q21 Ian Swales: Maybe you can work through it, because my first question would be, what was in the ORBIT Report? I wasn't around at the time. How detailed was that? It took two years and two months to do. What did it tell you? How much work was already there at that point?

Chair: So perhaps whilst we vote—and we will try and reconvene as quickly as we can—you can think about what you could have done more quickly.

Sitting suspended for a Division in the House.

On resuming—

Chair: Apologies for that; we would be better delaying because I think otherwise, it will be too disruptive and I think the issues are really important in this. Are you okay with that, everybody? We'll have to reconvene and you might, by the time we reconvene, be able to answer some of our questions. So apologies to the witnesses and apologies to the public, but I just think if there's four Divisions on the trot, it's madness.

Mr Bacon: Okay.

Chair: Sorry.

Thursday 16 December 2010

Members present:

Margaret Hodge (Chair)

Mr Richard Bacon
Stephen Barclay
Jackie Doyle-Price
Joseph Johnson
Mrs Anne McGuire
Ian Swales

Amyas Morse, Comptroller and Auditor General, **Robert Prideaux,** Director of Parliamentary Relations, **David Finlay**, Director, National Audit Office and **Ed Humpherson,** Assistant Auditor General, National Audit Office, gave evidence. **Marius Gallaher**, Alternate Treasury Officer of Accounts, was in attendance.

REPORT BY THE COMPTROLLER AND AUDITOR GENERAL

Procurement of the M25 private finance contract (HC 566)

Examination of Witnesses

Witnesses: **Martin Capstick**, Director, Strategic Roads and National Networks, Department for Transport, **Graham Dalton**, Chief Executive, Highways Agency, and **Ginny Clarke**, Chief Highway Engineer and Network Services Director gave evidence.

Q22 Chair: Good morning, everybody. Thank you very much for returning, Graham Dalton, Martin Capstick and Ginny Clarke, and our apologies that we had to abandon the last hearing on this issue.
I just want to ask a question. One of the continuing themes in this Committee is the failure to get the senior responsible officer to come and explain his or her actions. In this instance, it is Ian Scholey. Can you just explain to me why he can't come?
Graham Dalton: Chair, Ian Scholey was employed at the Highways Agency until the time we closed this deal. He is not actually in the employment of the agency now.

Q23 Chair: He was still the responsible officer. We called people—
Graham Dalton: And when you called the last meeting, he was actually overseas on business.

Q24 Chair: And why has he been unable to come today?
Graham Dalton: I am not sure if we followed up today.

Q25 Chair: And is it true that he now works for one of the advisers?
Graham Dalton: He works for Parsons Brinckerhoff, which was an independent company working for us as an adviser at the time. He is now working on rail activities and rail schemes, not on highways.

Q26 Chair: So he has left this awful project and gone to work for one of the advisers advising the Department for Transport?
Graham Dalton: He left the Highways Agency when the project was completed, for career reasons. He is a professional—

Q27 Chair: For what reasons?
Graham Dalton: Career reasons. And he works for Parsons Brinckerhoff on rail schemes—
Chair: I don't know if I would have given him a job after this one, but never mind. *[Laughter.]* Go on.
Graham Dalton: He had the opportunity to work on large projects and at the Highways Agency had the opportunity to do this transaction. He came from railways into highways and he has gone back to work on rail schemes.

Q28 Joseph Johnson: Was he a manager there?
Graham Dalton: No.

Q29 Stephen Barclay: Do most people leave jobs for career reasons?
Graham Dalton: He's a major projects professional and wanted to go back into rail on major project schemes.

Q30 Stephen Barclay: Can I just clarify something that relates to the Chair's question? Regarding the firm that he has gone to, during his time as senior responsible officer how much was paid in professional fees or other fees to that firm?
Graham Dalton: The implication is a conflict of interest. We have the numbers in the additional information that we provided you with.
Stephen Barclay: I wasn't implying anything.
Ginny Clarke: Parsons Brinckerhoff was an adviser up to a certain period, which was to 2008.

Q31 Mr Bacon: I'm sorry. Can you be clear? When you say, "which was to 2008", do you mean "until 2008"?
Ginny Clarke: Sorry. Yes. My apologies. Until 2008. Parsons Brinckerhoff was employed as an adviser. It was then taken over by one of the contractors that worked for the private finance initiative consortium, the joint venture, and we requested—it was at our instigation—that it was removed from our contract. It was a partner in a JV that was employed by us. It was removed from that, because we said that there was a potential conflict of interest. So, from that point onwards it was not involved with the M25 PFI.

Q32 Chair: From the point that he entered their employment?
Ginny Clarke: No, no, no. He joined the company a year and a half later, I think.

Q33 Stephen Barclay: Sorry. Can I just clarify something? Can you tell us what date he was appointed SRO on the project and what date he finished as SRO and joined the company, between those two dates? It was a number really that I was looking for, whether it is zero or more—what was paid by the DFT to that firm?
Ginny Clarke: I was just going to say that that is listed in the additional information that was provided after the last hearing.
Stephen Barclay: That is what I am trying to get to.

Q34 Mr Bacon: What is the answer to the question? When was he appointed SRO?
Graham Dalton: I believe that it was at the time that the procurement started.

Q35 Mr Bacon: What date? Give us a date.
Graham Dalton: It would have been 2005, when the procurement started.

Q36 Mr Bacon: He was appointed SRO in 2005. Which month? Do you know which month?
Graham Dalton: No, I don't.

Q37 Mr Bacon: It's extraordinary, because we understand SROs to be the person who is in ultimate charge of the project. That's why the word "responsible" is in the title—"senior responsible officer". Yet we have the problem again and again. Departments cannot tell us—the MOD has the same problem—exactly who was the senior responsible officer, and when. Is there anyone in the Room, behind you, who knows when that individual was appointed senior responsible officer in 2005—which month?
Ginny Clarke: We can find it out, clearly.
Chair: Do you know—

Q38 Mr Bacon: When did he stop being senior responsible officer?
Ginny Clarke: I think it was March 2009—sorry, June 2009—when he left the employment.

Q39 Mr Bacon: So from some point in 2005 until June 2009, he was the senior responsible officer of the project.
Ginny Clarke: Yes.

Q40 Mr Bacon: And during the period 2005–06 Parsons Brinckerhoff was paid £1,900,000; in 2006–07 it was paid £2,700,000; in 2007–08 it was paid just £27,000; and after that it was not paid anything. Is that right?
Ginny Clarke: In 2008–09 it was taken over by Balfour Beatty, and was part of the joint venture that was effectively contracting for the service. That's when we said, "Actually, you can't be part of the JV that is supporting us because of the potential conflict of interest."

Q41 Mr Bacon: But hitherto they were advising you, the DFT.
Ginny Clarke: They were advising us on design aspects. It was October 2009—I have just been passed a note. That's when Balfour Beatty took over Parsons Brinckerhoff, and at that point we said that Parsons Brinckherhoff couldn't work for us any more in the joint venture that was supporting us rather than supporting the contractor. That's when we asked for them to be removed from the joint venture.
David Finlay: I just want to clarify this evidence. Ian Scholey, who was the senior responsible officer, is working for a firm that was one of the advisers at a particular point in time, but is now owned by one of the contractors to the project, so he is within a group of companies that is actually Balfour Beatty—
Chair: Which is still working on the project.
David Finlay: It is a major shareholder.

Q42 Chair: It owns 40% of the project. So the senior responsible officer goes off and works for a consultant, which is then taken over by a company which is getting 40% of the deal.
Graham Dalton: The SRO was a senior civil servant and went through Cabinet Office clearance prior to leaving, and as part of the deal the arrangement was that he would be working on rail for a consulting engineering firm. After he left, that consulting engineering firm was bought by Balfour Beatty.

Q43 Joseph Johnson: Has anyone checked whether he is working on rail projects?
Graham Dalton: We know that he is working on rail projects.

Q44 Joseph Johnson: Exclusively?
Graham Dalton: Yes.

Q45 Chair: Why. Because he is advising you on those, is he?
Graham Dalton: It's not highways. He went to work on rail.

Q46 Chair: Is he advising you on those?
Graham Dalton: No.

Q47 Chair: He is not advising the Department.
Graham Dalton: I can't answer for the Department, but I think it unlikely.

Q48 Chair: Is he advising the Department on rail projects?
Martin Capstick: I can check, but I am not aware of that.

Q49 Chair: Can we have an urgent note on that? I think we should write to the Cabinet Secretary, because it is not right.
We have had a week of this, I'm afraid, so you're coming at the end of a week of really depressingly awful reports on projects. I asked you last time what you would do differently. You've had a fortnight to think about it, and perhaps you would now give us an answer.

Graham Dalton: I think what you were talking about was what we would do differently on the programme, and there are three areas that we would look at doing differently. One is that at the early stage of the procurement, when the project started in 2004, we did a lengthy consultation with both the construction markets and financial markets, before going on to confirm the nature of the procurement and how it would be packaged and go out. There is a question about whether we could just have taken a view and put together a procurement without doing the market consultation.

The second thing we could have looked at was that, rather than asking the bidders to come back with bids and then have a finance competition, which would have meant going to the market for the finance only once, we could have asked bidders to arrange finance during the bid process. That would have meant a shorter period post-competition for financing.

A third area we could have looked at and we picked out in our lessons learned was to look again at whether to restrict the size of the tenders that come back. There were something like 30,000 pages in each tender document, and if there are three tenders, that is a lot of material to be gone through. That is one of the areas that took us longer than expected.

Each of those first two actions were, in the view at the time, to take risk out of the procurement and make it run more smoothly.

Q50 Chair: Let me put to you a number of things. I am sure that my colleagues will add to them. Why did this take so long in the first place? You decided in 2000 to do a consultant's report. Who was the consultant, just out of interest?

Graham Dalton: Kellogg, Brown and Root.

Q51 Chair: Who?

Graham Dalton: KBR—Kellogg, Brown and Root—was the original consultant.

Q52 Chair: Why did it take them so long? Three years?

Graham Dalton: It was one of the multimodal studies that the then Government undertook in 2000–2002. There were 22 multimodal studies as part of the then Government taking a fresh look at transport and moving away from just road-building. That study was done from 2000 to 2002.

Q53 Chair: Why two years?

Graham Dalton: Because it was a comprehensive study.

Q54 Chair: They were looking at a whole range of schemes, not just one.

Graham Dalton: They were looking at a whole range of solutions, not just road. They were looking far beyond road.

Q55 Chair: So they weren't just looking at the M25.

Graham Dalton: No, they were looking at roads, local planning, the need to travel, whether other public transport solutions could come in—it was much more than that.

Q56 Chair: So it was not just the M25.

Graham Dalton: Let Mr Capstick from the Department cover a little more of what was done in that report.

Martin Capstick: If I may help, paragraph 1.4 of the report gives a bit of a summary. It says that the report was looking at strategies including better traffic management—not just road-building—and a new approach to managing incidents and roadworks. It was particularly looking at alternatives to car travel, the opportunities for public transport, ways to reduce traffic levels, and working with employers on whether they could get their staff working flexibly.

Q57 Chair: But it is a study of the M25.

Martin Capstick: It is about orbital travel around London, of which the M25 is clearly the focal point. It was expected that the result would lead to—

Q58 Chair: Okay, this is a study of the M25 and, one assumes, the roads that lead into it, but I still think that two years is an outrageously long time to do a report.

Graham Dalton: It was one of 22 reports done at the time. It was a fairly major study.

Q59 Chair: It doesn't matter. These guys did a report. It took them two years. We will come back to your use of consultants, but presumably the longer they spent, the more they got.

Graham Dalton: They were set a brief on what they had to study.

Q60 Chair: And you paid them on time spent.

Martin Capstick: Actually, it was the Government office for the south-east that paid them, not the Highways Agency.

Q61 Chair: We the taxpayers paid them for time spent.

Q62 Ian Swales: Was a price agreed up front for the work? Would it typically be agreed up front? Did we agree to pay them £2.8 million for that piece of work? I think that is what the number is. Would we have said, "Right, we want you to do this work, and it will be £2.8 million," or would that figure have accrued over time? I am looking at the detailed table of adviser costs that was sent to us.

Graham Dalton: Kellogg, Brown and Root: the study was done between 2000 and 2002, it was not paid by the Highways Agency, we were not part of it—

Q63 Chair: It was paid by the Government.

Graham Dalton: But it is not in that table of charges.

Q64 Ian Swales: Oh, this is different work, then.

Q65 Jackie Doyle-Price: What did they do for the money that is in this table?

Ginny Clarke: This was the subsequent modelling that was done for the detailed design of the widening schemes. It was a separate contract. It was a contract with us, and, if you look at the time frame, it was done later. What they did was support the design that we did, which went into the contract and tender documents. They did the detailed traffic modelling associated with the widening schemes.

Q66 Joseph Johnson: I do not think the Chair has had an answer to the thrust of her question, which was whether you had any control over the speed with which they undertook the work, in the form of the contract that they were given.
Martin Capstick: This is what I think would have happened—I don't have the detail. Typically, for a contract like this, the Government would set out a brief and identify the key tasks that needed to be done. We would invite bids for it, and people would bid against that and indicate their costs. Clearly, over a project of this length, there would be milestones and payments related to milestones. The task involved a degree of analysis, consultation, and working with other transport operators and local authorities, so the timing of the project would have been agreed as it went along, particularly to allow time for work to be done and then discussions to be held.

Q67 Joseph Johnson: And did it conform to the time milestones that you are talking about?
Martin Capstick: I believe so, but I am afraid that I don't have the records of every project, to reassure you.

Q68 Joseph Johnson: You surely know that this is a hearing on the M25 report. Do we not know whether they kept to their timetable?
Graham Dalton: This was a study that was done before the project that we're talking about actually commenced. It was one of 22 multi-modal studies that were going on right around the country at about that time, and that was a typical duration, because they had taken their time—

Q69 Joseph Johnson: So it's a reasonable length of time for a report like this, in your view?
Graham Dalton: For that sort of thing—yes.

Q70 Chair: Two years?
Martin Capstick: If it helps, many of the multi-modal studies were reporting around the same time, which led to a range of Highways Agency schemes being added to the road programme round about 2004.

Q71 Chair: I think we would be interested if you could provide the National Audit Office with a note about the amount of money being spent on consultants on your reports and about the basis on which those consultants were employed. We will come back to consultants because there are a lot of issues around consultancy. But it sounds like a heck of a lot of money was spent.

Q72 Stephen Barclay: Could we include in that note legal fees for all projects, temporary services and any other consultant costs that fall outside management costs? I am just minded of the hearing we had with Ofcom, where it suddenly appeared that there was potentially a general contingency. There was £30 million, which Richard was looking at in terms of costs just last year, so it would be quite interesting to get the breakdown.
Amyas Morse: So we understand each other, and for clarity, I am happy that we do that, but we are asking about projects that we'll need the Department to supply information on, not the Highways Agency, primarily. These were projects let by the Department. I am not saying that's wrong; I'm just making sure we understand each other.

Q73 Chair: It doesn't matter if they'd managed to get another agency to pay for the consultants. We need to know, because it is still taxpayers' money.
Amyas Morse: Okay. Absolutely. We understand that.

Q74 Chair: In terms of lessons learned, one of the things I find most shocking is that you based the value for money of going down the PFI route on what is, at best, flawed data; at worst, this is almost an issue of maladministration, in terms of using out-of-date calculations and not challenging the maintenance cost. Perhaps you can turn to pages 16 and 17 and figure 3. How do you justify that?
Graham Dalton: Are you talking about paragraph 1.19?
Chair: Yes.
Graham Dalton: First, you have to use the data that are available. If contracts hadn't been used or let, there was no data coming from them.
Chair: I'm really sorry, but I can't hear what you're saying because of the acoustics in the room.
Graham Dalton: First, you have to deal with the data available from real contracts. We had data available from previous widening schemes. Paragraph 1.19 talks about data from 1992–94. The schemes that were done after that were design, build, finance, operate schemes—PFI contracts. They were not directly comparable, because we didn't have the disaggregation of costs from those early PFI contracts.

Q75 Chair: You were using data that were 13 years out of date?
Graham Dalton: From contracts from 1992–94, three of which were M25 widening schemes, so they were highly comparable. There are published indices that can be used right through construction, which actually track how construction cost prices have tracked over time. Those are the estimates we used to build the widening estimates. Indeed, once the bids were in, our estimate of the cost of the widening was pretty close to where the bid cost came in for widening.
As to the estimates and figures we then used for operations and maintenance, when we first started, we had the reference. Unlike with a new-build PFI, if you're going to build a facility and then operate it, and it hasn't been there, you haven't got a direct comparison. We had already been maintaining and renewing parts of the M25 for a number of years, so we had a term maintenance contract in place—we called it our area 5 contract—and we knew what it actually cost. That was our reference point for bids. Then we had to make an estimate of how much better than that, or how much more efficient, a PFI contractor would be on maintenance.

Q76 Chair: It is quite astounding to read in this report that your costs were between 27%, 40% or 80% higher than all the bids. They were completely out of kilter. Either you were spending far too much on your previous contracts, or your estimates were wrong. For your estimates to be so wrong, relative to the bids, something must have been deeply wrong. Can't you accept that?
Graham Dalton: Our estimates and the bids as they came in were about the same: about £1 billion, for the widening of those first two sections. We did a public sector comparator—it wasn't an estimate beforehand—first to judge whether to follow the PFI route, and that is when we made the estimate of what efficiencies would come through that procurement route. We followed that through and then did what was effectively a shadow bid, using tender assessment, and it estimated higher than the bids that actually came in.

Q77 Joseph Johnson: On the maintenance costs?
Graham Dalton: On the operation and maintenance costs.

Q78 Chair: That was 65% of the PFI contract. I understand the basis on which you did it, but it was so out. What went wrong? It was not just a bit out; it was enormously out.
Graham Dalton: We have not bid one like this. This was down to how competitive the bidders would be.
Chair: Someone showed a complete lack of understanding of both the market and the real costs of doing this maintenance, which is two thirds of the cost of the PFI.

Q79 Joseph Johnson: Presumably, it was the people who were advising the Highways Agency.

Q80 Stephen Barclay: Paragraph 14 of the NAO's report states, "We are concerned about the credibility of the comparison because the Agency had not taken up the earlier opportunity to investigate the difference between the bids and its benchmark cost model. Consequently, the updated comparator, in our opinion, was not a sufficiently robust guide to likely costs under a conventional procurement." That is the NAO's finding.
Graham Dalton: That is the NAO's opinion.
Chair: But the reports are agreed by you.
Amyas Morse: Perhaps it would be fair if I pointed out that the subject of the Highways Agency's understanding of the costs of maintenance isn't a new one. We have had a hearing on this even in the time I have been in this job. The NAO report on the subject states, "The Agency is only now beginning to exploit the good visibility of costs within these contracts, so that it can challenge contractors' costings and establish benchmarks for continuous improvement."
Quite honestly, although that report found that you were starting to do that, we didn't find that you had mastery over the costs environment on maintenance. I think that that is a fair summary on where we got to in the hearing. This is not something that we thought up when we were writing this report, as we had a long discussion and a hearing on highways maintenance and produced a report on it, and I recollect that I was sitting in the same seat.

Q81 Joseph Johnson: Was it Parsons Brinckerhoff that encouraged the Highways Agency to have this inflated view of what it would cost?
Graham Dalton: The shadow bid model, which is the one you are referring to—the numbers are in figure 6—was actually put together by PricewaterhouseCoopers as part of the cost model.

Q82 Mr Bacon: Isn't it amazing that you spend all this money on consultants—£80 million all together—and still get it so badly wrong? What does that say about your ability to buy advice?
Graham Dalton: Can I just point out that we did have the maintenance report before? In the two and a half years that I have been in the agency, we have done quite a lot of work to improve the commercial management and estimating capability. Before, maintenance was actually on the major projects as well. The difference with this one is that we go out routinely. In 2008, we let three maintenance contracts, which are typically for five to seven-year terms. We have much better data about what those costs will be when we go and do the job.

Q83 Chair: Do they all come in below your estimated costs?
Graham Dalton: The winning bids on two of the three, if I recall, were below by a small margin, and our estimate was typically around the second bid level—so a spread of bids around our estimate. The difference between this and the maintenance contracts that we've bid more routinely is that this is asking contractors to take a view over 30 years of what it's going to cost them to either maintain or renew the asset and the structures. Routinely, we just take a four or five-year look ahead, or get rates for the type of work, however much of that work comes up.

Q84 Ian Swales: So was that a bad decision, to decide to do that, then? To go over 30 years?
Graham Dalton: This is the nub of what this contract is really about. The widening is an important part of improving the service to road users, but we are effectively pre-buying maintenance and transferring the renewals of asset risk on to the contracting consortium. The competition that we got, where we got two very tight bids, two very close bids, was an ambitious view on what they could do to operate and, really, their view on when they were going to have to renew assets, or the amount of work they'd have to do over that time. That's where the real competition comes in.

Q85 Mrs McGuire: How did you judge whether or not they were taking a pessimistic view of what needed to be carried out over a 30-year contract, which would inflate the cost of the maintenance, or an optimistic view? How did you benchmark their analysis?
Graham Dalton: Ginny Clarke was the chief highways engineer. I'll ask her to give the detail.

Ginny Clarke: We gave them an indication of what maintenance we would expect in the normal five-year cycle, and part of the tender they returned to us was their indication of how they would renew the asset over that 30-year period. So against the overall cost of operation maintenance they then told us an indicative basis on which they would renew the asset and maintain it. So we were able to make a judgment—whether they were actually underestimating, for instance, the sustainability of the road pavement, and when they would renew that. So that was part of the assessment of the tender and of the robustness of those bids.

Q86 Mrs McGuire: And they would build in a 30-year projection on construction inflation costs and so on into that?

Ginny Clarke: No. Effectively the cost model gave them high-level figures. What we asked them to do was understand the techniques they were going to use, rather than the cost of those—because the cost is the total cost; what we wanted to understand was what sort of work would they be doing. Would it be similar to the sort of things we might project over that period of time?

Q87 Mrs McGuire: Why did you go for the 30 years, which

obviously you had little experience of, as against your normal projection of five or even 10 years? Thirty years, in terms of coming up with a figure for a highway, just strikes me as a little lengthy. I can understand it in terms of a building or something, but I don't quite understand why you would want to do it 30 years.

Ginny Clarke: Actually we had done our previous design, build finance and operate schemes on 30 years.

Q88 Mrs McGuire: So you weren't new at this game.

Ginny Clarke: No. They are now 10 or 12 years old, now, the first ones, so we have some understanding about how, over the period of time, the DBFO actually enacts those plans. Rather than the theory of it, what do they actually do in practice? That's the basis on which we did, again, a 30 year. It's also in relation to the financial model—

Q89 Chair: But you got it horribly wrong. So what have you learned? You got it wrong. You know you were out by between, whatever it is—I've lost the figures now—27% to 43%. Or 48%? I cannot read my own writing. You got it horribly, horribly wrong.

I'll tell you what it just makes me think. If any contractor came in, they came in lower. We haven't a clue whether at their lower price actually we're getting value for money.

Graham Dalton: Well you could look at it the other way and say that's actually the power of the competition and three strong bids coming in—

Q90 Chair: No, because we can have no confidence in your advice or your advisers' advice as to what is a real value-for-money figure for maintaining this bit of the M25 for 30 years. We just haven't got a clue—and no confidence, given your track record in failing to understand the real cost of it.

Graham Dalton: Well, the estimates came in very competitively. I think it's a good thing that they came in competitively. The thing we had to do is to really make sure that the assumptions that have been made in those bids and those tenders were actually bids that the contractor was going to be able to live with.

Q91 Chair: That's not your job; that's their job. That's the whole point.

Graham Dalton: Well, it is until it goes wrong. We need to ensure that we will not have a contractor that cannot live with—

Chair: I don't think you understand our point.

David Finlay: I think that the evidence, as set out, is that the PFI costs for operation and maintenance over 30 years came in much lower than the agency's estimates, which were based on short-term conventional contracts. That raises two issues. First, why wasn't there a better estimate of what the PFI cost would be in advance of the bids coming in? Secondly, there are question marks over why you couldn't get better deals on conventional procurement for operation and maintenance over a long period.

Q92 Chair: Do you want to respond to that?

Graham Dalton: Sorry, I missed the last point.

David Finlay: The second point is that it raises question marks about whether you couldn't get better deals on operation and maintenance under conventional procurement over a long period.

Amyas Morse: You mean if you were offering the conventional maintenance over 30 years. Presumably, people would give you a pretty sharp pencil for estimating that for that length of time.

Graham Dalton: That's a fair question. If we have enough knowledge of the asset, the question is the viability of the contract. Some 15% of the motorway strategic road network is now under PFI, so we have a number of those contracts running. This is by far the most competitive that we have had.

Q93 Joseph Johnson: Can I dig into the comparison between the estimates of the present value of the cost of the contract versus the present value of the expected benefits of the contract? When you started the bidding process, what were the two figures?

Graham Dalton: Are we talking about the widening?

Q94 Joseph Johnson: Everything, the whole thing—construction and maintenance, cost versus benefit, at the start and then at the outcome.

Graham Dalton: Figure 5 gives us the table at the outset, which is the anticipated benefit-cost ratio initially.

Ginny Clarke: Figure 6 is the tender stage, and it looks at the costs and present value costs. Those were at the tender stage. Against it, we have the unadjusted standard tender.

Q95 Joseph Johnson: The reason why I am struggling is that in paragraph 12 of the report, we appear to be saying that the present value of the cost

increased from £2.7 billion in May 2008 to £3.4 billion in May 2009, when the contract was awarded, versus what appears to be the expected benefit of £2.3 billion, which is mentioned in paragraph 7. Can you help me to understand that? On the face of it, it would appear that from the outset that the expected benefits were lower than the expected costs—if those two figures are comparable. If they are not comparable, can you tell me why they are not?
Graham Dalton: The net present cost of the contract is for the widening and for the maintenance and renewal of the asset over 30 years. When we work out the benefit-cost ratio, paragraph 3 might be useful. It states that the capital cost for the widening is £900 million and that it delivers £2.3 billion present value of benefits. That is the extra benefits bought by the widening.

Q96 Joseph Johnson: Why can't I have a figure that is directly comparable to the £2.7 billion and the £3.4 billion? Where is that directly comparable figure?
Graham Dalton: I don't think there was a benefit-cost ratio calculated at either stage.

Q97 Joseph Johnson: Why?
Graham Dalton: There was for the widening, because that is the benefits that you buy. For the maintenance and renewal, that is keeping a network in a steady state, so I don't believe that you do a benefits calculation for how much you are spending. You can compare the price and get the lowest net present cost.

Q98 Joseph Johnson: Would you never undertake a benefit analysis of a maintenance contract?
Graham Dalton: Because you are not buying new benefits.

Q99 Joseph Johnson: So you would never attempt to establish that. How would you measure value for money?
Graham Dalton: We look for the lowest net present cost. If it's for normal maintenance, then yes, the lowest cost-compliant bid. For this one, it's the lowest net present cost for undertaking maintenance and renewals.

Q100 Chair: That is a deeply disturbing statement to have made. We know that your ability to assess the costs of maintenance is, at best, flawed, because you have got them so wrong. We have no clue whether the figure you have ended up with actually reflects best value. All it reflects is lowest price, not best value. You do no work—and neither do your consultants, from my understanding of your answer to Mr Johnson—to assess whether those figures represent best value rather than lowest price.
Graham Dalton: We know what we are getting; there is a specification for maintenance and condition of the asset.

Q101 Chair: You don't know whether you are getting best value.
Graham Dalton: We know what we are getting, so there is no doubt about what we are getting. We know the cost of maintaining and renewing, as has been, through conventional procurement, and we are doing that across the network. The bids came in much lower—I agree they came in a lot lower than our estimate. It is always difficult to second-guess what bidders in a tender situation will do to price. That fact that we have two very close bids is quite informative.
Amyas Morse: I want to ask you to help to clarify this, as it is an important point. If you calculated the costs in exactly the same way that the bidders did, and they simply decided to drive down their margins or do something else that you had not assumed, just to get the business, within certain limits that would be acceptable and a positive effect of competition. What you need to know is whether that is all that they are doing. For such a large difference, it is surprising if that would be all that was at play. Normally, in a situation such as this and you do a shadow bid—which I agree was the right professional thing to do, to calculate that—you would expect that to be pretty skinny. You would use it to push the bidder, wouldn't you, to say, "Don't bother producing something. I'm expecting you to take all this into account."
The difficulty is that, because there is such a big gap between the two, it is hard to believe that comes simply from competition. Looking at the way that they have costed it, you are left asking whether you have got best value, because it has been in such a different way and there has been such a big disparity. It must be hard for you to determine that. Is that fair comment? I am not trying to say this in a combative way, but from a commercial point of view.
Ginny Clarke: Can I go back to the point that we are talking about? That is assessing the case for a maintenance operation over 30 years, rather than five to seven years? We were comparing it with effectively extending our presumption about what you would maintain between the five and the 30-year period. That is over a time scale that in our traditional maintenance claims we don't do. We do it over a five-to-seven-year period.
You are right to say that the tenderers were looking at different ways in which they would invest money over 30 years and the rate at which they would renew, as distinct from our making that decision about renewing over a five-year period. That is where the differences lie. If you looked at the tenderers, that is where some of the differences were. Would they go and do maintenance on their bridges on a seven-year cycle or a 14-year cycle?
Effectively, they took the risks about those different decisions. The price of their offer is directly related in the maintenance field to their assessing the risk against things such as the life of the road, pavement, the structures, and how the much the cycle of investment will change from the ones that we do. Our estimates are based on our best presumption about how we would do it. Theirs—taking both the financial risk and the quality risk—are about how they would measure it. The benefit side of that isn't assessed in the way in which widening benefits are. It's about renewal—at what stage you would renew an asset, looking at its life. You chase the curve to some extent, and how much you let an asset deteriorate before you start to put money in.

Q102 Chair: They were so consistent in their bids, and you were so wrong. Did PWC advise you on this?
Ginny Clarke: On the financial model, yes.

Q103 Chair: What's your view on the advice you had internally and the advice you got from your consultants? They were so consistent; you were so wrong. It wasn't just one tender that came in that took a different view; they all did. What do you learn from that?
Graham Dalton: The blindingly obvious question for us is about how we take the techniques that Connect Plus now uses to live within that budget. We take those into our conventionally managed maintenance for the other 85% of the network. Apart from the practicalities of what they are doing on the ground, they show us a lot about how the business works and how they are running it, so that we can make sure they're performing. We'll copy with pride. I am quite happy to take ideas, if they've got some good ideas about—

Q104 Chair: Are you still using PWC to advise you on this?
Graham Dalton: PWC's contract—is it nearly finished?
Ginny Clarke: Its contract is on a framework for general legal advice to DBFO, so we use it for advice on other things. We are just about to retender that contract.

Q105 Chair: Do you have confidence in it?
Ginny Clarke: Yes; in terms of the financial modelling, very much so.
Chair: It was the financial modelling that was so bloody wrong!
Amyas Morse: The question is, does PWC prepare the model on your instructions? In other words, do you give it the data and it cranks out the model?
Ginny Clarke: Yes.
Amyas Morse: So it's actually your responsibility for what is in the model.
Ginny Clarke: It was our view about that cycle of maintenance, renewal and replacement. That was our view. What PWC did was to help us to understand how, in a 30-year investment profile, you would put the money against it.

Q106 Chair: And is that "our" Ian Scholey?
Ginny Clarke: Ian was the SRO, but it was my side of the organisation that advised on the techniques for maintenance and the specifications for that. That is around the technical specifications that my part of the organisation dealt with.

Q107 Stephen Barclay: It is a small point, but you have said that PWC also provides legal advice. Is that the case?
Ginny Clarke: No, it's Denton Wilde Sapte.

Q108 Chair: Because you tried to put this in the market at the time of the credit crunch, you ended up with an extra £660 million cost and an extra £68 million of risk being borne by the Agency. Have we got a value-for-money contract?
Graham Dalton: I believe so. While going through the funding competition in that final year from preferred bidder to the contract being awarded, we could clearly see the increase in the cost of finance. That is why, right through that phase, we prepared and refreshed the cost estimate that we had by conventional means, which is where the graph in figure 8—

Q109 Chair: So £3.4 billion is a value-for-money contract, although it's £660 million more than you thought? What is the basis for that? I don't get it.
Graham Dalton: We prepared a range of estimates. On the widening costs, our estimates had been close to the bidders, so we took those as fixed. We looked at a range for the operation and maintenance costs, again based on what the Agency was buying and procuring.
Chair: I don't think you're answering the question.

Q110 Joseph Johnson: You were previously saying that you had done no estimate of the potential present value of the maintenance. You just said that you looked at the lowest bid, so I don't see how you can compute it as being part of a calculation for value for money.
Graham Dalton: I said that we didn't do a benefits calculation. Appraisal doesn't have a benefits calculation.

Q111 Joseph Johnson: But that was because you didn't value the maintenance.
Graham Dalton: Right the way through, we estimated what the net present cost of maintenance would be, which is what we have just been discussing. We took a range, if the Agency were to do it itself, based on optimistic, most likely and pessimistic, built up from our experience in the market. That gave us a range from £3.4 billion to £4.2 billion, which the NAO has analysed. Our view at the time of the contract award was that while the cost of financing had increased, it had taken that level to the very best that we could achieve by going through a conventional approach. The 30-year contract gave us the opportunity to lock off at that price, rather than retaining the risk, so we deduced that it was a value-for-money decision.

Q112 Joseph Johnson: Just in case I'm being rather dim, does that mean to say the Department estimated that it would cost it, to do the maintenance and operations, more than £1.4 billion—the difference between £3.7 billion and the £2.3 billion estimated present value of the benefits of the construction?
Graham Dalton: Yes. As agents we estimated that it would cost us more, and we estimated the net present cost at a mid-point of £3.8 billion for operations, maintenance, renewals and widening. The £3.4 billion was compared to—

Q113 Mr Bacon: While you are talking about net present value of the cost of maintenance, can you turn to page 30, figure 10? The chart describes the Highways Agency's attempt to answer a question from the Secretary of State as to whether it was still worth while to proceed with the widening, or whether

it would be better to do hard shoulder running. What it basically says is that, on the top half, there were a series of potential savings from not going ahead with the widening, but then there were further assumptions in the bottom half of further possible costs, which could offset those savings. At the top you've got a saving of £330 million, but then you've got all these additional costs that have been put in, so that the net saving is only £87 million. The biggest, by far, of those additional costs is the maintenance cost over 30 years. That £193 million is spread over 30 years isn't it?
Graham Dalton: Yes.

Q114 Mr Bacon: So why is that not a net present value figure? It should be, shouldn't it?
Graham Dalton: I thought it was, actually.
Ginny Clarke: The figures that you have quoted are costs.

Q115 Mr Bacon: It's the cost over 30 years, so if you're trying to work out the value of the savings, versus the value of the additional costs, the number that should go in there should be a net present value figure, shouldn't it?
Graham Dalton: I haven't got the reference here. I would expect it to be a net present value figure.

Q116 Mr Bacon: But it's not. We've been told by the National Audit Office that it is not a net present value figure.
Ed Humpherson: It is at paragraph 3.4, the first bullet, which reads: "The Agency offset maintenance costs over 30 years against upfront savings, without carrying out a discounted cash flow. This overstated the offsetting costs."

Q117 Mr Bacon: Thank you.
You've just been talking, in your answers, earlier, to Mr Johnson, about the way you've calculated these things, and the importance of assessing the net present value of the maintenance costs over a period of time; but you didn't do it here.
Graham Dalton: Figure 10 is about looking at an alternative solution to widening.

Q118 Mr Bacon: Yes, but you're trying to look at the cost and the value now spread out over 30 years into the future—aren't you? So you should have put in a net present value cost, and the effect of not doing that, as Mr Humpherson has just said, quoting paragraph 3.4, is to overstate the offsetting costs.
Amyas Morse: We would roughly say, Mr Bacon, very crudely, if you had discounted that number it would certainly be reduced by half, depending on what you choose to assume. Taking any reasonable rate of discounting, you know—
Ginny Clarke: Probably more.
Amyas Morse: Probably more—thank you.

Q119 Mr Bacon: In other words, that figure at the bottom, where it gives the net additional cost of using active traffic management—that's the hard shoulder running—and shows that it was £53 million more expensive to do widening than to do hard shoulder running, is just pie in the sky, isn't it? It's wrong. This chart basically says you've got £87 million of net savings, but you've also got further costs down at the bottom of £140 million. The difference between the two—£140 million minus £87 million—is £53 million. In other words, what it is saying is that it is £53 million more expensive to do the hard shoulder running than it is to do the widening. That is correct, isn't it? That's what it is saying.
Graham Dalton: That is what it is saying.

Q120 Mr Bacon: Good. Okay, we are on the same ground.
Now, intuitively it is bonkers to think that it would be more expensive to do hard shoulder running than to do widening, when there is an absolutely huge slug of capital cost in doing the widening that is higher than the capital cost of doing hard shoulder running, and in either case you will have to do maintenance. So, intuitively it is bonkers. This is just manipulating the numbers to give you the answer that you wanted anyway, isn't it?
Graham Dalton: This was an assessment, at that stage, of stopping the competition and procuring hard shoulder running, which would have given us fewer benefits and a different outcome.

Q121 Chair: Have you got confidence in this assessment?
Graham Dalton: I agree that the figure of £193 million should be a net present.

Q122 Mr Bacon: The whole point is that, if it were, it would be—it is difficult to say exactly—significantly lower. Gosh, it might even be £53 million lower and you would have, at best, nought at the bottom, or you would have it going the other way. In other words, this chart was designed to give you the answer you wanted, wasn't it?
Graham Dalton: This chart—it's quite right—has an error.

Q123 Mr Bacon: Did you just say, "quite right"?
Graham Dalton: It was not designed just to give the answer that we wanted. There is an error in the chart about the figures at the time, which the NAO has pointed out, and that is right.
Mr Bacon: But the error is so significant that it completely alters things. You've got £330 million in capital costs and you say, "We'll bung in all the maintenance costs spread over 30 years, we'll stick in £193 million there—that is a nice big chunk off £330 million", and lo, you suddenly find it is more expensive to do the smaller project than to do the bigger project. It doesn't make any sense.

Q124 Joseph Johnson: It is the other way round. You would have produced the negative number, which would have meant that the forecast saving would have been greater. Either way, it's a bogus table, because they're not using net present added figures, but it doesn't mean that it was boosting its own case, I don't think, because the number was in the wrong direction—it has a negative sign on it.

Ginny Clarke: That is what I was going to point out. Some of these are negative signs, so they work in the opposite direction.
The figure at the end is not a summation of widening against hard shoulder. It is about the costs at the time in 2008—

Q125 Mr Bacon: It is the net additional costs of doing hard shoulder running.
Ginny Clarke: No. It is not just the net additional costs. It is the whole cost—
Mr Bacon: That is what it says.
Ginny Clarke: It's the whole cost to the Government of stopping the procurement at that stage, because it took into account the advice that said, "If you change to hard shoulder running, you'll have to stop the procurement and start again." So it included those costs as well. That was the only point that I was going to make. It is, in that sense, trying to look at the whole picture of costs, not just the narrow aspect of the comparison of hard shoulder running versus widening, where quite clearly we had said, "You can deliver hard shoulder running or widening on the same stretch of road for up to 40% cheaper".

Q126 Chair: So have you got confidence in this table?
Ginny Clarke: Yes, I have.

Q127 Chair: I will tell you the other figure that absolutely astounded me was the presumption that if you stopped this suddenly everybody else would charge you more—the £90 million and the £50 million. You believed that at that time, in the middle of the credit crunch, when absolutely everybody was absolutely desperate for construction work, they would shove up their charges. It just seems unrealistic to me.
Ginny Clarke: But that was the view taken about how the market would respond.

Q128 Chair: Your view.
Ginny Clarke: The Department's view, with our financial advisers.

Q129 Chair: Who?
Ginny Clarke: The Department's corporate finance team took that view, because it had a view across lots of projects.

Q130 Chair: Which advisers on this one?
Graham Dalton: That was the corporate finance specialist employed as a member of staff within the Department for Transport.

Q131 Chair: Which adviser?
Ginny Clarke: No, no, no—they're members of the Department for Transport.

Q132 Chair: Well, I can't think that anybody else in the middle of a credit crunch would have thought that construction costs would go up if you dumped one of the projects. The whole construction industry was absolutely desperate for work.
Ginny Clarke: Just in time terms, this was March 2008. So it wasn't at the height of the credit crunch. Just as a point of information, this table was submitted through the project to the Department and Ministers in March 2008. I was just making the point that that is when those figures were produced. The figures were then adjusted as we got further in and subsequently led to another set of figures, which the NAO looked at, at the time when we were going to award and when we were clearly in the height of the financial crisis.

Q133 Mrs McGuire: What evidence did they have to make that calculation? Was it just a hunch, was it just plucked out of the air that one of the largest procurers of this kind of work would suddenly find themselves at the end of a financial cosh if they changed tack?
Ginny Clarke: I didn't do the actual bit of work, but I understand, because I was there at the time and I was involved with this, that they looked at other PFI contracts across Government—you're right that this wasn't just within the Department, but across Government—and at the view of the risks of pursuing all those other PFIs. That was what that was trying to do in terms of the impact for us.

Q134 Chair: I accept that that was March 2008. By September 2008, if I've got my chronology correct, the table would have changed. Why did you not then review whether you should do a PFI?
Ginny Clarke: We did review when we got to the next stage, which was a little later than that. That was when we had gone through the assessment and we were getting to the stage of contract awards.

Q135 Chair: Why did you do it?
Ginny Clarke: Effectively, that's when we reassessed all these numbers. In fact, higher costs were put in at that stage—

Q136 Chair: Was it still value for money then? If we looked at figure 10, with all the provisos that we have around it, redone in, I don't know—
Ginny Clarke: 2009, it was. The contract—

Q137 Chair: When?
Ginny Clarke: The decision about whether to award the contract, which was May—
Chair: A year later.
Ginny Clarke: That was when it was reassessed.

Q138 Chair: Was it still value for money?
Ginny Clarke: It was still value for money.
Graham Dalton: These figures are comparing two different things. Figure 10 is talking about what if we went for—this was as yet unproven—hard shoulder running instead of widening.
Chair: It wasn't unproven, but we'll come back to that.

Q139 Mr Bacon: You've got a huge number in there that distorts the amount of saving that you make. You've got a figure that's far higher than it should be and that intrudes on your £330 million saving and makes it much smaller than it would otherwise be. In

fact, the number that's doing the intruding on the £330 million should be much smaller—that was my point. I take Ginny Clarke's point about what the number at the bottom for the net additional cost covers, but, regardless, it would have been much, much, much smaller and might not even have been a net additional cost at all; it might have been a net, net, net additional saving—that was my point.
Graham Dalton: I accept your point. If you just take the top half of the table, the £87 million may have come down to a lower figure.

Q140 Mr Bacon: No, no. It would have been a much higher figure. You wouldn't have been lopping £193 million off your £330 million. At the bottom, you'd have had a net, net, net additional saving.
Graham Dalton: The minus £53 million may have got closer to zero.

Q141 Mr Bacon: It would have got above zero, almost certainly.
Graham Dalton: I don't know which side of zero it would have got. The other important thing we were doing was assessing the different benefits.

Q142 Joseph Johnson: Can we just clarify that point? Ms Clarke has said that the figure would fall by more than half on a net present value basis. If someone's got to calculate it, we can do it easily. Let's say for the sake of argument, that the £193 million becomes £80 million or £90 million—let's take half.
Mr Bacon: I will just give you an example. The cash cost of all PFI contracts in the United Kingdom is £210 billion, and the net present value of that is in the region of £117 billion—the Treasury give us evidence on this recently. When the cash cost was £191 billion, the net present value was around £91 billion, so there is a big chunk you have to lop off. You're probably right that it is at least half, if not more than half.
Joseph Johnson: If, as you say, it was half, that minus £53 million becomes plus £40 million.
Mr Bacon: That's quite reasonable, isn't it? If you knock £100 million or so off the £193 million, you're going well the other way; you're suddenly into a net saving, aren't you?
Graham Dalton: That is to buy a different solution.
Mr Bacon: But you might have considered buying a different solution if the numbers had been accurate.
Chair: You're advice to the then Secretary of State, one would hope, would have been different.
Amyas Morse: I know you weren't there at the time, but it is worth just commenting on this for the Committee. As I look at all these numbers, the hard number in this list is £330 million. Then there are increasingly a lot of non-hard numbers—estimation, broad-judgment numbers. If you look at the note on the right of the minus £90 million, it says, "The Agency assumed"—assumed—"that cancellation of the M25 widening contract would lead to market uncertainty and an assumed increase in financing". These are best estimates. You can't really describe these as more than finger-in-the-air numbers. Is that fair? I am not saying that they are not relevant at all—do speak up if anyone has anything to say by the way—but what they are essentially saying is, "We think there is an effect here and we need to find some way of expressing what that effect might be. Here is a broad way of estimating it." You could explain the calculation, but you couldn't regard it as provable, could you? Is that a fair comment?
Ginny Clarke: Some of the numbers are very hard. On the £330 million, we have evidence and we have talked about that. You are absolutely right: some of the others are about people's judgment and people making the point, as the Chair said, about the view of what the market would do in response to a cancellation of one of the biggest PFIs. I accept that that is a judgment. You are right: it is a mixture of the two.

Q143 Stephen Barclay: The £140 million of additional cost to other projects is questionable as well.
Ginny Clarke: Yes. That is where, potentially, there is more a judgment than—

Q144 Chair: So, did you follow the PFI route because you were told to by the Treasury?
Ginny Clarke: No. Are you talking about the original decision?

Q145 Chair: This one. Our view, as you can quite clearly see, is that this was a lousy contract. It became even more lousy when the credit crunch hit. So why on earth did you enter into it? Why on earth did you give advice to the then Secretary of State that this was a sensible thing to do? I am almost giving you a let-out clause here: did you go down this route because the Treasury instructed you to?
Mr Bacon: You are nodding.
Ginny Clarke: No. I said no.
Mr Bacon: I just wanted to be clear.

Q146 Jackie Doyle-Price: What assessment did you make? When the Treasury came to talk to us about PFI deals, one of the things that it told us was that the Department had made money available in the event that a PFI deal was not forthcoming. Obviously, given the market situation at the time, that was a very real concern. So what judgments did you make to decide that PFI was the appropriate funding vehicle on this occasion?
Graham Dalton: The Department made money available to co-fund if the funding competition was not fully subscribed. That was effectively to say to the market, "We are serious about going ahead with this," and to effectively break a stand-off to see whether anyone was going to go into it. That was what that money was for. That money was not offered up to say, "Let's do it in a conventional way instead." The assessment about the value for money was made right back in 2005 when the procurement route was selected, and the test was, as figure 8 shows, immediately before contract signature.

Q147 Jackie Doyle-Price: In terms of the additional cost that the delay caused to the PFI contract, which was £660 million, what are the long-term consequences of that for the Department's ability to deliver other projects?

Graham Dalton: Figure 8 tells us—the additional cost is the blue on the graph—that, on the cost of paying for the widening and operating and maintaining, we believe, at the very best, we could have got the same through conventional procurement.

Q148 Chair: But your basis for calculation was so way out that I do not have any confidence in your calculation. That is the problem. Because you were so way out on the figures, and the way in which you assessed costs was so wrong, particularly for maintenance, what confidence can we have?
Graham Dalton: Our incorrect estimate was on the basis of what a PFI contractor was going to give. We repeatedly come close on estimates for our maintenance contracts as we let them on the five and seven-year terms.

Q149 Mrs McGuire: May I ask, given the exchange we have just had, whether you accept or not the NAO's comments in paragraph 3.10 on page 31 that the figures in figure 10 were not a "sufficiently thorough assessment of the savings"? We need to have a sense of whether or not you accept that assessment of this analysis? There is a great deal of concern around the table that these figures, by any objective standard, don't stack up. It may be a judgment, Ms Clarke, but, robustly, they do not pass muster.
Ginny Clarke: My view is that, at the time we were doing this in 2008, it felt very real and it felt, based on the evidence that we had, that that was effectively—
Mrs McGuire: Can you move us on from 2008 to today? Given the exchanges that we have just had, do you or do you not accept the NAO's comment in paragraph 3.10 on page 31 that this was not a sufficiently robust set of figures on which to make an analysis?
Ginny Clarke: I believed that it was robust at the time, and what we haven't looked at here is the benefits side, at what this was buying. The presentation, in informing others and recommending it, was not just about the cost but about what it was buying. That's the other side of the equation.

Q150 Mrs McGuire: Can I put it another way, then? Although this Committee gets the reputation for being a bit of an attack-dog Committee, it also wants to encourage Departments to learn lessons.
Ginny Clarke: I accept that.

Q151 Mrs McGuire: Right. So, has the Department, or have you as officials, taken a lesson from this, that advancing a cause on this set of figures does not stack up in terms of the scrutiny that the Public Accounts Committee, or indeed any objective analysis, would make of those figures?
Ginny Clarke: The answer to that is, "Yes, we've learnt lessons."

Q152 Mrs McGuire: In other words, would you do it differently?
Ginny Clarke: I think that we have. When we've done a lessons learnt on the whole procurement, there clearly are things that we would do differently. We've learnt every time we've done a PFI—so I do accept that—and I think that we could do it better. In all these areas, we're seeking to be more and more robust because of these challenges to recognise how we provide the evidence.

Q153 Mrs McGuire: So, will you now go back to your corporate finance people and say, "We got a grilling today on these figures that you gave us, and on the advice that you gave us that the market would somehow make life difficult for us, and you need to look at how you make your market assessments"?
Graham Dalton: What we clearly take is that the figure in there, in figure 10, for the maintenance costs over 30 years is not stated on the correct basis. That's what the NAO brought out.

Q154 Joseph Johnson: Who gave you that figure? Who's the consultant who provided that figure and this table?
Graham Dalton: This was generated by our own staff, as far as I recall.
Ginny Clarke: These figures are taken from a table that was generated by the Highways Agency, through our project.

Q155 Joseph Johnson: Right. And did you use the table in this form in your decision to go for the widening as opposed to the hard-shoulder route? Was the table presented like that in your analysis of the final decision?
Ginny Clarke: It wasn't presented quite like that, but the figures are the same. To be clear: the figures are the same because the NAO saw the report that went up. The descriptors on the right-hand side of figure 10 are taken from our words, so I can recognise the words on the right-hand side. So, yes, it is, in fact, taken from our report.

Q156 Joseph Johnson: And you derived the £193 million number. It's your number; it wasn't given to you by consultants. It's your table.
Ginny Clarke: Yes, we derived it. Yes, they're our numbers.

Q157 Mr Bacon: May I just ask about the descriptors while you're on that subject? It says what the things were for the £90 million below the line: "the Intercity Express Project, Thameslink rolling stock"—those both sound like Department for Transport issues—"and the Local Authority private finance initiative programme." Was that the entire local authority PFI programme?
Graham Dalton: That would be a local authority transport programme, which our Department administers.

Q158 Mr Bacon: So, it wasn't everything, it was for transport. What was the value of it?
Graham Dalton: I don't know offhand, but it would be the street-lighting PFIs and similar street maintenance PFIs, such as the one that's just been let in Birmingham.
Ed Humpherson: I want to make a broader observation about these calculations for the Committee. The lower half of this table considers

externalities, that is to say ways in which pursuing a hard-shoulder-running option would affect a series of other projects. That's a very sensible thing to do and, generally speaking, we would support the consideration of externalities. However, we were not aware that any consideration was given to the externalities of signing the deal that was actually signed.

Without doing the analysis, we can't say what those externalities might have shown up, but it is plausible to say that signing a PFI deal with higher interest rates than those that were prevailing in the market at the time could have had a signalling effect, and you might have wanted to include those in some kind of analysis. It's important to realise the kind of analysis that this is, and what it might lead you to in looking at the PFI deal as well.

Q159 Ian Swales: On that point, in terms of this page, we can reference appendix 1. It has three pages of timeline, and we're already on page 3 in March 2008. So my question is: what real flexibilities did you have at this point? What could you have done? What could you not have done? Or were we actually on a steamroller that was simply rolling forward, and this was done in order to justify the route that was already decided?

Graham Dalton: You're exactly right. The decisions were made about where we are and not about where one might have liked to be, which is always the way in contracts.

Q160 Ian Swales: But what about where we were going?

Graham Dalton: The decision on value for money, which is the table in figure 8, was on a like-for-like basis: in buying this thing, if we bought the same thing a different way, could we get it cheaper? Right up to the signing of the contract and financial close, that is when we said that we couldn't buy it cheaper; at the most optimistic we'd buy it at the same price. This table, as you quite rightly pointed out, was saying, "If we were to buy something a bit different, which is hard-shoulder running, what would we have to do?" That was saying that we would have to terminate that procurement. What it doesn't make assessment of here are the reduced benefits that hard-shoulder running would have given and still gives, as we are doing it now. It doesn't give any assessment of the impact of delay to the contract either, and the question whether we would have then impacted on an Olympics window and would not have started the widening until Autumn 2012.

Q161 Ian Swales: Okay. Well, there's another angle. My real question is: if we were flies on the wall in those rooms, would we have been hearing discussions about go or no-go, different forms of financing and different forms of project, or would we actually have been listening to a discussion of, "How we are going to justify the route we have already decided?"

Graham Dalton: As accounting officer, I was very clear, right the way through from when I took over in June 2008—I know my predecessor was, because I discussed it with him—that this was a procurement; a lot of work had gone into specifying and getting it right, and this was a very important procurement that a very important motorway has got to operate right. I was very clear that we needed to maintain a view on what it would cost to do it another way. These were genuine, "Do we go or stop?" decisions.

Q162 Chair: Can I just ask you a question about the actual contract, because it takes you back? The contract—the way in which you framed the invitations to tender—stopped any alternative being considered. Who advised you of that nutty way of having a contract, particularly when one of the people whom you asked to tender wanted to give you a hard-shoulder running alternative? Why on earth did you set yourself that framework? What you should care about is the outcome, namely that you wanted people to move faster and delays to be fewer. That's what you wanted. Telling them how to do it was absurd, particularly when one of your tenderers wanted to do a hard-shoulder running option.

Graham Dalton: I accept and I agree that that original notice in the Official Journal of the European Union should almost certainly have been worded more loosely.

Q163 Chair: Who did that?

Graham Dalton: That would have gone out with the agencies and the Departments.

Chair: Who was responsible for that? One of the consultants, presumably.

Ginny Clarke: The Highways Agency was responsible.

Q164 Chair: Who advised them?

Ginny Clarke: We had one or two advisers but the decision was the Highways Agency's.

Chair: Who? Who advised?

Ginny Clarke: At that stage—you will see on your list—we had Halcrow advising on procurement and we had PricewaterhouseCoopers advising on financial elements, but the decision about what went in the OJEU notice was solely from the Highways Agency.

Q165 Chair: The decision was based on advice you got from internal officials and external. I would have utterly no confidence in advice I got that limited my options so that I then went for a solution that we find it very difficult in the Committee to assess as a value-for-money solution.

Graham Dalton: We need to remember that we had already considered whether hard-shoulder running could be piloted on the M25.

Q166 Chair: Why was it excluded? That's what is so nutty. Why was it excluded?

Graham Dalton: The decision that was made at the time was that having looked at it carefully and decided this was not the place to pilot hard-shoulder running, had the OJEU notice been worded more widely—which I think would be a good thing to do and we put a lot of effort into doing that, and it is a lesson we have taken away—we would have still been at the question of okay, it allows us to do it, but would we still be prepared to go into what would have been a re-bid and a re-tender—

Q167 Chair: And you are still using the advice of those consultants?
Ginny Clarke: No. Can I just be clear, Chair? We might have had advice, but the decision about what went in that OJEU notice was for the Highways Agency and the Highways Agency made that decision in consultation with its parent Department.

Q168 Chair: I understand that. We should probably turn to advisers. You spent £80 million on advisers for this project, which was 7.5% of this absurd cost, against an average spend of 2.6%, usually, on advisers. It seems to me they gave you lousy advice and I accept you, in the end, took responsibility for the decision. What on earth were you doing spending this much money on advisers?
Graham Dalton: Can I just come on to the comparators first? As I think I said when we met a couple of weeks ago when we started getting into this, the 7.5% is a calculation against the two stages of widening, sections one and four. The contract that is being put together enables us to do works to, widen or improve the other two sections as well and enables the operations and renewals over the 30 years. The norm, which is capital investments of, say, £100 million to £200 million on a PFI, of 2.5% is the norm across all the range of PFIs. This is a PFI where, even if you just include the other two widenings—another £1 billion—the 7.5% starts to look like 3.75% just by that calculation, so there is a factor of percentages taken against a low capital figure.
This is an operational motorway. We don't just write something for a new facility, which gives fairly free reign to the PFI company on what they provide and output terms. We do specify, quite heavily, the performance that they have to give. We want them to take full responsibility for this network over 30 years. We have provided them with complete records, documents and drawings going back for the life of the scheme. To enable them to price it, we had already gone through the early stages of design. We have produced a reference design, and it was really important that we did that, because, while this is still widening, it is not the widening that has previously been done on motorways, because this was done within the land corridor. If you drive around the north-west section now, where the motorway goes under the Chiltern railway line, you will see that it is squeezed through under that viaduct. Had we gone for a conventional approach, we would have had to rebuild that viaduct. That would have added hundreds of millions into the scheme. We had to do the design work to test that we weren't going to be immediately hit with, "I'd love to do it, but it's not physically possible," or, "I need to take extra land," and then get into compulsory purchase and the rest of it. A lot of work has gone into its viability and into providing records.

Q169 Chair: Why consultants?
Graham Dalton: Because the Highways Agency, since it was set up, and also, in fact, its predecessor, when it was a departmental body, have contracted out since the early '80s.
Ginny Clarke: Since the early '80s, we have not done our own designs, so a chunk of this was about the design. I would separate them out, so the design is that bit that we always contract out. That is the model.

Q170 Chair: Is that value for money?
Ginny Clarke: Yes. We would otherwise have to employ all those people ourselves.

Q171 Chair: Yes, but if you are paying a consultancy, you are paying a bomb. We presumably noticed this in the paper in that we had on consultants. Was the Highways Agency included in the consultancy?
David Finlay: No. This is external.

Q172 Chair: The Department for Transport is the highest spender on consultants. It spends 70% of its staff budget on consultants. What do you spend? If you look at your staff costs and then look at your consultancy costs, what percentage is on consultants?
Graham Dalton: If I use the staff numbers—how many have we taken out?
Ginny Clarke: We've taken about 140 of what we call consultants sitting in our offices, which is distinct from people who sit outside and are effectively a contracted service.

Q173 Chair: 140?
Ginny Clarke: In the region of 140.
Graham Dalton: Just over 200.
Ginny Clarke: That is from 1 May to the beginning of November.

Q174 Chair: 140 consultants. How many staff?
Graham Dalton: 3,800.

Q175 Chair: What is the relative cost? Your staff bill will be x; what is your consultancy bill?
Graham Dalton: I haven't got a separate print for consultants. You can see in the daily rates that we have here that we use engineering consultants, which typically cost some £500 a day.

Q176 Mr Bacon: We are not interested in that—well, we are—but I understand the Chair to be asking a fairly simple question. How much in total do you spend on staff, how much in total do you spend on consultants and, thus, what is the ratio of one to the other?
Graham Dalton: Can I just explain a little bit more about the model of the Highways Agency? We have 3,800 staff. Some 1,700 of them are uniformed in control rooms or traffic offices, and the balance is professional staff, but most of the work that is done on the network—even where it is badged up as Highways Agency—is contracted out.

Q177 Mr Bacon: I am just asking you a question to which I'd quite like an answer. I'm not saying that it's good or bad. I used to represent the consulting industry. I used to work for the Management Consultancies Association. I quite understand that if

you want to build a motorway, it's probably better to get a consulting civil engineer, under a contract, for the period while you want your motorway, rather than to keep one on the books just in case you want a motorway. That is fairly elementary. What I am asking you is what the costs are?
Chair: Do you know, David?
David Finlay: We've noted in our report, in paragraph 2.26, that there was very limited information on internal costs. That's why we haven't put that in.
Chair: I think what we're after is your annual cost of staffing and your annual cost on consultancy. Those are the basics.

Q178 Mr Bacon: Why don't you send us a detailed note that sets it all out and hopefully justifies it?
Graham Dalton: My overall staff costs—the costs of employing Highways Agency staff—are just over £50 million per annum. I don't have a figure to hand of what we are spending on the consultants in our offices in the current financial year. We have had more last year, because we were delivering the fiscal stimulus.

Q179 Mr Bacon: What is the total that you are spending on consultants, whether they are in your offices or watch what Ginny Clarke called contracted staff out and about?
Graham Dalton: That is a very substantial part of our budget and our overall budget is £2.5 billion per annum.

Q180 Mr Bacon: Okay, but "very substantial" doesn't really help me; £200 million is a lot of money, but so is £2 billion.
Ginny Clarke: The bulk of our costs are spent on the construction, so in terms of the consultant staff, if you include these design people, then they are in the regions of hundreds of millions.
Mr Bacon: I'm sure that they are. It may be that you spend far more on consulting staff, of one kind or another, than you do on your in-house staff. That might be perfectly reasonable and reflect the nature of your business, as opposed to, shall we say, a police force, where you might expect most of the constabulary to be constables who are employed. It is something that may be intrinsic to your business. I am just asking you, and I think so is the Chair, what it is, and you don't seem to be able to tell us.
Ginny Clarke: I cannot give you that number off the top of my head. I know that our staff costs are £50 million.
Mr Bacon: If you could give us a detailed note, that would be helpful.

Q181 Ian Swales: On consultants, I am sure that there is a mine of information here. We could ask lots and lots of detailed questions, and I'm sure I can think of people around the table who enjoy doing that. Just as a kind of sampling, on the supplementary information that you've sent, you say that the Denton Wilde Sapte people, who I understand are lawyers, apparently spent four years advising on pensions and TUPE advice. Who are we talking about? Why would they be giving us all that advice?
Graham Dalton: For example, as part of this contract, there were something like 100 staff previously employed by a concession that ran and operated the Dartford crossing—the bridge and tunnels—who were TUPE'ed into the Highways Agency, and are now part of our traffic officer service. We have integrated that with our overall traffic management. Other staff were TUPE'ed from the previous maintenance contractors into Connect Plus.
Ian Swales: That is 100 people.
Graham Dalton: Many more were TUPE'ed the other way.

Q182 Ian Swales: We started paying for advice about that in 2005, and we were still paying for advice about it in 2008. There is a very complicated project going on in my constituency at the moment, where the TUPE advice would probably be six weeks, or three months at the most. That is for a very complicated deal involving 10 times as many people as that. Why would we have paid for that advice for so long? What was so difficult about it?
Ginny Clarke: In the early years it is about helping us put the proposals together in the tender. In the subsequent years, it was looking at the proposals coming back. The activity flows through the actual transfer of the staff when the actual TUPE action happens, if there is any uncertainty around that. That is why you have them at three distinct stages.

Q183 Chair: Can I get something clear? Are these figures just the money spent on lawyers for the M25?
Ginny Clarke: This is in relation purely to the M25 PFI contract, yes.
Chair: £15 million, totting it up, on Denton Wilde?

Q184 Stephen Barclay: It was £13.8 million over six years. The first year was just £405,000, but even if you average it out, it is £2.3 million a year. As a solicitor who worked in a law firm at one stage, I was just trying to work out how many full-time lawyers you actually had on this piece of work, because £2.3 million a year pays for quite a lot of associates. Do you have an idea?
Graham Dalton: The hourly rates are in there at the moment. I don't have a calculator with me.
Ginny Clarke: We certainly have records.
Graham Dalton: There would be some other costs in there as well.

Q185 Stephen Barclay: It would be interesting to dwell on it. I would just like to leave legal advice to come back to appendix 1, which we discussed earlier. The bit that I was struggling to understand was that in June 2007, legal advisers—I assume that that was Denton Wilde Sapte—stated that allowing the active traffic management variance could be challenged in the courts. That is seven years after the agency considered the M25 for the ATM trial. Obviously, Denton Wilde Sapte—if it gave the advice—was commissioned in 2004. Regardless of that advice, the pilot continued. In July 2008, the 12-month report on the ATM trial was published. In January 2009 ATM was rolled out nationally. I am just trying to understand why it took so long for that bit of advice to be given.

Graham Dalton: Going back to the original OJEU notice, or the publication notice for this contract, the best advice in June 2007—this is on whether we should stop that procurement or whether we could change that procurement—was specifically that if we changed with the preferred bidder, Connect Plus, to use active traffic management, notwithstanding the benefits or whether it was viable or anything else, we could be challenged not just by unsuccessful bidders but by those who either dropped by the wayside in the early phase or who did not even register an interest to bid for the contract originally.

Stephen Barclay: With respect, you are missing my point. My point is that you have had lawyers on it from the start. You then go down the track—

Q186 Mr Bacon: That is the point. In May 2007, one of the M25 bidders asked whether it could submit an active traffic management variant bid. That is not an unreasonable thing to ask given that seven years previously, in August 2000, active traffic management was announced. The agency considered the M25 for the ATM trial, but rejected it in favour of the M42. A year later, in July 2001, the Department announced the M42 ATM trial. So ATM was already a possibility in the mix. Seven years later, somebody asks if they can include active traffic management in their bid, you seek advice on it and are told that if you allow it, you could be legally challenged. Why had you so structured things that you were in a position in which you might get legally challenged on something that you had said seven years earlier that you wanted to take a look at? That is what I don't understand.

Ginny Clarke: But the legal advice wasn't because it was hard shoulder per se; it was about a variant, which effectively is what they were asking us about, and whether that variant—as it happened it was hard shoulder running—would prejudice the position in terms of continuing the procurement. That was what the legal advice was about.

Q187 Mr Bacon: In that case, why not have a procurement process that is flexible enough that it would not have prejudiced it? That is the point.

Ginny Clarke: The advice was that it goes back to that original decision about the OJEU We recognise that and accept that is where the decision tracks back to and the legal advice made that point.

Chair: What I am interested in is who gave you the advice to make such a silly invitation to tender? If your lawyers told you that at the time, you should have sacked them.

Ginny Clarke: Let me be clear, the lawyers did not give us advice at producing the OJEU. That was not about hard shoulder management.

Chair: Who gave you the advice then?

Ginny Clarke: As I said, it was our decision about what went in the OJEU in respect of what we were being asked to do, which was to widen the M25.

Q188 Mr Bacon: You said that it was Halcrow that gave you the advice.

Ginny Clarke: I said that they were our procurement advisers. I said quite clearly that the decision—

Q189 Mr Bacon: The Chairman's question was, "Who gave you the advice?". You answered by saying, "The decision was". The answer to the question, "Who gave you the advice?" is your advisers, Halcrow.

Ginny Clarke: In terms of procurement, yes. In terms of legal advice, it was Denton Wilde Sapte.

Q190 Mr Bacon: And you paid them several million pounds as well—£2.3 million in one year, and £1.5 million in the next, £600,000 and technically, excluding design, £1.6 million. You paid them a lot of money as well and yet you end up in this idiotic position.

Ginny Clarke: This contract was four times the size of any previous PFI that we had done in terms of cost. We need to recognise that.

Q191 Mr Bacon: That is an interesting way of putting it: four times the size of any PFI contract that we—we, the Highways Agency—had done. It wasn't four times the size of any PFI contract that was out there. We have, for years on this Committee, looked at really big PFI contracts. The cash value of MOD building alone is £2.5 billion. There was lots of experience to draw on right across the PFI sector in government to get it right.

Ginny Clarke: And presumably you have the OGC involved.

Graham Dalton: I absolutely accept that the need to word an initial OJEU notice as widely as it can be to avoid this technicality later on. That doesn't change the question. We would still have a decision. Was active traffic management sufficient to develop? Had we entered into a contract then, we would have been buying significantly lower benefits and had less throughput on a busy piece of motorway. Even now, while we are thinking that it's probably going to work for the later upgraded sections, for one of the two being widened down we don't think it would have been suitable.

Chair: David Finlay, then Stephen.

David Finlay: I have two points, if I may. First, just on a point of information, within the sheets that were circulated yesterday, it says, under the legal advisers, that they gave advice on procurement strategy. So, that was certainly within the legal advice. Secondly, the evidence that Mr Dalton gave at the beginning of this section was that part of the reason for the high advisers' cost was that the advice dealt with not only the two sections that are being widened, but the prospect that other sections would be widened. It is worth noting, of course, that those other sections are now liable to be used for hard shoulder running. That may bring you on to the point that you wanted to explore about whether the agency could have come to a decision quicker on hard shoulder running.

Chair: We'll come back to that. Stephen.

Q192 Stephen Barclay: I just wanted to clarify who was actually managing the legal relationship with Denton Wilde Sapte and how often their bills were challenged. In paragraph 20, it says that "The Agency's reliance on advisers…reflects insufficient commercial and technical skills within the Agency", and "The Agency risks advisers controlling projects". That is one of the findings of paragraph 20. What I am interested in is this: if it was a commercial client and they were putting in fees of £13.8 million over six years, someone would be going back to the lawyers and saying, "Let's challenge that, let's question that". How robust was the challenge? How frequently were those bills challenged?

Graham Dalton: Each of the streams of work was led by a member of the Highways Agency staff, so it wasn't consultants managing consultants in that respect, but it was a high proportion in there.

Stephen Barclay: I was not suggesting it was.

Graham Dalton: We have very rigorous and audited systems and internal control, so I would hope that there is no suggestion that any bill was just sent in and not checked and validated for work that had been done.

Q193 Stephen Barclay: People may have checked it and signed the cheque. What I am trying to understand is that there must have been some negotiation done. I cannot believe that Denton Wilde Sapte putting in a bill for £13.8 million was its actual submission. Presumably, it put in fees and someone went back to them saying, "No, we don't accept that bill" and had some sort of discussion.

Ginny Clarke: I was just going to explain the process. They, like our other advisers, had to produce invoices every month, and they produced a detailed breakdown against that invoice. The project teams, those are the people who sat—

Q194 Stephen Barclay: When you say detailed invoice—I say this because I have produced legal bills for firms—are you talking about something that is one sheet or two sheets of paper?

Ginny Clarke: It would probably be more than that, because they would be contracted on the basis of levels of fees, so who was active in that month and against what rate they were being charged against. That is the level of detail that I was explaining.

Q195 Stephen Barclay: That is the bit that is worrying me, because it sounds to me that it is just sending a bill once a month saying, "Associate x has worked 20 hours, partner y has worked 15 hours." I still come back to the question: how often were those bills challenged?

Ginny Clarke: They were reviewed every month. They have to be signed off by somebody in the Highways Agency who says, "I agree this time was spent and these are the appropriate rates". That is what the role of our project staff is about, and it was done on a monthly basis.

Q196 Mrs McGuire: Were any sent back?

Ginny Clarke: I can't answer that question. It isn't—

Q197 Mr Bacon: Do you know what? I have met PFI lawyers at parties and I have said, "What do you do?". "I'm a PFI lawyer", they say. Now, people never used to answer that question with "I'm a PFI lawyer", but they do now. They have talked to me about putting in bills to the public sector and they say, "It's great, you just send in the bill and they pay it. It's incredible. I'd never get the sort of ease of payment with my private sector clients. They go over it with a bloody tooth comb and put me through the mill, but the civil service just pay. It's marvellous!"

Ginny Clarke: Perhaps they haven't billed the Highways Agency then, because I suggest that we do in fact check these things. What I cannot answer is how many times did we throw it back.

Q198 Chair: Are you confident that you got value for money for the £80 million you spent?

Ginny Clarke: I am confident that we got value for money. I did not see everything that was spent against that, but to the best of my knowledge—as I have said, I was here throughout the project—we have had good advice. We have tried to get it at market rate. I take the point on how much that was challenged, but it was against frameworks and we have detailed how those services were procured. They were in a competitive environment. That is the basis against which we checked those monthly invoices.

Q199 Chair: There is one final issue which we need to quickly go through, which is the hard shoulder running principle. It has been used in Europe since 1996, yet you spent 80% of your money simply on constructing roads, probably because you like doing it. You started the trial in 2003 on the M42 and you had evidence, so why on earth did you not save the taxpayer between £400 million and £1.1 billion by changing your mind and going for hard shoulder running?

Graham Dalton: Running on the hard shoulder, as you would expect me to say, is not quite as easy as it looks.

Q200 Chair: But you are doing it now on the rest of the M25.

Graham Dalton: We are coming out of trials on the M42. The NAO talked about an earlier report in 2004, and one of the recommendations was to be more innovative and hard shoulder running is about that. We have tested and trialled it in a controlled manner. We have done it very carefully, so that we can demonstrate as we have gone through the phases how that changes performance and how it changes risk.

Q201 Chair: Mr Dalton, I am going to interrupt you. It has been used in Europe since 1996. That is 15 years of usage. You have trialled it since 2003. You signed this contract in 2009. It beggars belief that you could not take advantage of the experience in Europe and your experience here, however slow you were at getting off the ground, and save the taxpayer up to £1.1 billion.

Graham Dalton: We have worked closely with Europe, especially with the Dutch throughout the time. I think it may help if Ginny explains what was being used in Europe.

Ginny Clarke: In 1996, which was when the Dutch and the Germans tried this first, they tried it on two-lane motorways and on relatively low flows compared with ours. They were flows in the range of 20,000 to 40,000, rather than ours, which is 140,000. We also have three lanes. They did it as a research project, on a short section outside Utrecht. We looked at it, and they were doing it on the basis of trialling it on the ground. They did little preparatory work for it, and they did it on a section of motorway where they had technology and control systems in place. We did not have that. That is how it started.

When we were looking at it in 2000, which is the study noted in the NAO report, and when we identified the need to do a trial section, it was on the basis of that learning experience. It was not the system that is actually being used, and was potentially considered in 2004–05, when this contract was put in place. The evidence that we now have is much more substantial than we ever had at the basis. In the progression from 1996, with those trial sites on short sections in Utrecht and Germany, which had very different characteristics and were on a type of motorway that did not exist in this country, we have caught up with the technology that is available. We have related the results of what the Germans and the Dutch have learned into using it on larger motorways with much higher flows with a variable system of control.

Q202 Chair: You wasted £1 billion.
Ginny Clarke: No, I do not think that we wasted it. At the various stages, we tested it against the knowledge that we had at that time.

Q203 Chair: It seems to me that you refused to use the knowledge from Europe, although the systems that you have in place use the technology they use in Europe, as Richard has told us.
Ginny Clarke: Effectively, ours is more advanced than what is used in Europe. We leaped from their knowledge.

Q204 Chair: At a cost. At an opportunity cost of between £400 million and £1.1 billion on this bit of motorway. If you had done it earlier on the rest of the motorway, the benefits to the economy would have been greater.
Graham Dalton: We wanted something that worked. The German trial in 1996 involved putting a sign up at the side of the motorway saying, "Use the hard shoulder between these hours."

Q205 Chair: Some 15 years on, the Germans have presumably moved their technology on.
Ginny Clarke: Yes they have, but effectively they are picking up on things that we are doing, which they were not doing. The important aspect about how this learning has happened over that time is that as it has changed incrementally as each country has tested different things. I accept that we've all learned from that, but the basis is that we have operated a system under active traffic management that ensures that we can deliver the 80% of the benefits that the national study showed for Ministers in 2008. The value of what we have done is that we have got more benefits out of the systems that we are using. I say again that the PFI was about buying the benefits as well as paying the cost for that.

Q206 Mr Bacon: Ms Clarke, may I ask a quick question? Your CV says that you are responsible for technical services procurement and network performance and planning, that you're board champion for safety, that you've been in the road workers' safety forum and that you were the delegate to the World Road Association for seven years. It says that your job title is chief highway engineer, but it does not say that you're an engineer.
Ginny Clarke: I am a chartered engineer and have been for 30 years.

Q207 Mr Bacon: That is encouraging. Can I encourage you to include that in your CV in future?
Ginny Clarke: Certainly. I probably just didn't want to tell you my age.

Q208 Mr Bacon: We don't like to assume things in this Committee.
Ginny Clarke: Sorry for omitting that. I should have said so.

Q209 Chair: A final question. Reflecting on this contract, are you proud of it? Are you satisfied with it? Do you wish you'd done it differently?
Graham Dalton: The most telling thing is that, unlike some earlier PFIs, we have a lot of visibility in respect of what goes into the contract and we can put a lot of pressure for performance on an important piece of the network. Connect Plus for the contractor means having to work hard and it looks like it is working hard to comply with conditions of the contract. It is not finding it easy to comply with all conditions and give the performance we expect. From that point of view, we think we've contracted something that they are having to sweat to deliver and that is good.

Q210 Chair: Are you proud of it?
Graham Dalton: Yes.

Q211 Chair: Are you satisfied with it or would you have done it differently?
Graham Dalton: On the whole, I would have done it the same again.

Q212 Chair: You're proud of it?
Graham Dalton: Yes.
Chair: Thank you very much indeed.

Written evidence from the Highways Agency

M25 PFI PROCUREMENT

RESPONSE TO QUERIES FROM THE PAC HEARING 16 DECEMBER 2010

During the hearing at the Parliamentary Advisory Committee on the M25 PFI Procurement in December, I agreed to respond to the Committee on three points. I am also including the information that Martin Capstick agreed to provide on the multi modal studies.

(a) *Senior Responsible Officer—Ian Scholey*

Ian Scholey's current role does not involve him in any work for the Highways Agency or Department for Transport either directly or indirectly. He is currently on secondment to Balfour Beatty Capital from Parsons Brinckerhoff. This commenced in January 2010, and has involved preparing bids for PFI projects in Ireland, prequalifying for the DART Underground in Dublin and various rail PPP projects in the USA and Southern Europe. He has confirmed that in his work for Parsons Brinckerhoff after he left the Highways Agency he worked on projects for Network Rail.

In respect to why he left the Agency Ian has confirmed that he was approached by a head hunter for Parsons Brinckerhoff for a the role of Operations Director for Rail who had knowledge of working with Network Rail. His previous employment to the Agency was with Railtrack—the company acquired by Network Rail in 2002. He felt there was little opportunity for him to progress further in the Agency in view of reductions in the roads programme and he wanted to return to the rail industry and the private sector.

He was made a formal offer by Parsons Brinckerhoff in early March 2009, and he left the HA at the end of June 2009 following M25 Financial Close. He has complied with the requirements of the Business Appointment Rules.

(b) *Costs of Consultants in the Highways Agency*

The information that you requested about the costs of consultants (those who are not part of a contracted out service or project) and Highways Agency staff are given below.

	1 May 2010	*1 Dec 2010*
Number of Consultants	333	131
Estimated annual cost of consultants (£m)	30.3	11.9
H A staff (annual cost £m)	143.6	139.8
Of which funded from administration costs	52.2	49.5
No of HA staff (full time equivalent)	3872	3698
Of which funded from administration costs	1278	1163
Ratios:		
Spend on consultants per £100 HA pay (£)	21.08	8.52
Spend on consultants per £100 admin pay (£)	58.03	24.06
No of consultants per 100 HA staff	8.60	3.54
No of consultants per 100 admin staff	26.06	11.27

(c) *Multi Model Study on M25*

In response to the Committee's request for a note on the amount of money spent on consultants involved with the Multi-Modal Studies (of which the M25 Orbit Study was just one), my fellow witness Martin Capstick (Director of Strategic Roads and National Networks at the Department for Transport) has provided the attached information.

I have read the draft transcripts of the hearings on 1 and 16 December and enclose factual corrections to questions 10, 31, 88, 191 and 209.

Written evidence from Department for Transport

MULTI MODAL STUDIES (02)

The Multi-Modal Study (MMS) programme was an outcome of the Government's strategic review of the roads programme, as described in "*A New Deal for Trunk Roads*", published by DETR in July 1998.

The 22 MMS announced in March 1999 were intended to be investigations of the most severe strategic transport problems across all regions of England. For example, areawide congestion which might be best addressed by an area-wide policy could be considered by a Multi-Modal study, as could collections of localised transport problems. In seeking solutions to the problems to be addressed in a Study, the contributions of *all transport modes* were to be considered, including walking, cycling, air transport, shipping and pipelines, as well as roads, railways, buses and other forms of public transport. Solutions could also relate to *non-transport policies*, for example land-use, health and education. It is fair to say therefore that the studies were truly holistic and very innovative in their approach, and represented a very complex undertaking for government.

The Government Offices in the relevant regions were in the lead on the studies, and for each study established a Steering Group drawn from the Regional Planning Bodies, the Regional Development Agencies, the Highways Agency, the Strategic Rail Authority, local environmental interests and other transport and business groups. Given the complexity of the studies and the scope of the programme, the studies got underway and published their reports at different times during the period late 2000 to early 2004, with the average study taking two years to complete.

The output from the Multi-Modal Studies usually included a number of different options aimed at addressing the problems within the study area. As indicated in the hearing on 16 December, the options identified by the Studies were not in the form of fully developed schemes ready for statutory procedures and implementation. Due to the time that has elapsed since the studies were completed and subsequent changes to the machinery of government, we are unable to give the Committeeinformation to the same level of detail as we provided in relation to consultants' costs on delivering the PFI project. However, in the time available for response we have prepared the attached tables which identify the consultants involved with each of the studies and the total costs for each study. Since consultants played a key role in most of the studies, it would be reasonable to assume that the majority of this cost was made up of consultancy costs.

January 2011

Supplementary written evidence from The Highways Agency

CONSULTANTS USED FOR THE MMS

	Lead Consultant	*Specialist consultation Consultant*	*Specialist Environmental Consultant*	*Other Consultants*
Access to Hastings	Steer Davies Gleave			WS Atkins, Llewelyn-Davies
Cambridge to Huntingdon	Mouchel			
South-East Manchester	Steer Davies Gleave			WS Atkins, Llewelyn-Davies, MDS Transmodal
West Midlands Area	Aspen Burrow Crocker	Transport & Travel Research	Ecotec	Transportation Planning, Tony Young Consultancy
West Midlands to North West	Arup & Scott Wilson			
London to South West and South Wales	Halcrow	Sustainable Futures		Chris Blandford, Transport Research Group
North/South Movements in the East Midlands	WS Atkins	None	None	Llewelyn-Davies, SGD, MDS, Transmodal
A453 (M1 to Nottingham)	Pell Frischmann	Capital Value & Risk	Gillespies	NERA, PTV, JFC
Tyneside Area	Arup	Social Research Associates	ERM	Marcial Echenique & partners
South and West Yorkshire	MVA		ERM	David Simmonds, Hyder
London Orbital (ORBIT)	Haliburton Brown Root	Good Relations		Chris Blandford, Centre for Transport Studies, Accent Marcial Echenique
A1 North of Newcastle	Arup & Scott Wilson	Market Research UK		
Hull East-West Corridor	Faber Maunsell	None		Roger Tym & Partners, Marcial Ecienique & Partners
South Coast Corridor	Halcrow	Sustainable Future		Accent, TRG, Chris Blandford
London to South Midlands	Faber Maunsell	Projects in Partnership		David Lock Associates, Sinclair Knight Merz, Alan Stratford Associates, Count on on US
London to Ipswich	Mott MacDonald	Social Research Associates		Marcial Echenique & Partners, Roger Tym, Sinclair Knight Merz, Count on Us, Mouchell
M60 Junctions 12 to 18	Faber maunsell	Social Research Associates		Marcial Echenique & Partners, Roger Tym, Sinclair Knight Merz, Count on Us, Mouchell
Thames Valley	WS Atkins			Roger Tym
West to East Midlands	Jacobs			Ancer Spa, GCI
Norwich to Peterborough	WS Atkins	None	None	Roger Tym; MDS Transmodal
A34 North from Southampton (Scoping Study)	Faber Maunsell			
A52 corridor	WS Atkins			Steer Davies Gleave, Roger Tym & partners, MDS Transmodal

Cost of Multi-Modal Studies *Study*	*Cost (£ million)*
Tranche 1	
Access to Hastings	0.6
Cambridge to Huntingdon	1.1
South East Manchester	1.2
West Midlands Area	1.0
West Midlands to North West(M6)	2.0
London to South West and South Wales	1.8
Tyneside Area	1.4
South and West Yorkshire Motorway Box	2.5
A453	1.3
North South Movements in the East Midlands (M1)	1.8
Transport Solutions Around London (M25)	3.7
Sub total	18.4
Tranche 2	
South Coast Corridor	1.7
Thames Valley	1.2
M60 Junction 12–18	1.4
A1 North of Newcastle	0.7
Hull East/West Corridor	0.9
London to Ipswich A12	1.4
London to South Midlands	3.0
West Midlands to East Midlands	1.8
Sub total	12.1
Tranche 3	
Norwich to Peterborough	0.9
A34 North from Southampton (Scoping Study)	0.01
A52 Corridor	0.8
Sub total	1.71
Total	32.21

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