



House of Commons
Transport Committee

Cancellation of the InterCity West Coast franchise competition

Eighth Report of Session 2012–13

*Report, together with formal minutes, oral and
written evidence*

*Ordered by the House of Commons
to be printed 23 January 2013*

HC 537

Published on 31 January 2013
by authority of the House of Commons
London: The Stationery Office Limited
£12.00

The Transport Committee

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Summary

On 3 October 2012 the Secretary of State for Transport announced that the competition to award the InterCity West Coast franchise had been cancelled because of the discovery of “significant technical flaws” in the way in which the procurement was conducted. The Department for Transport commissioned Sam Laidlaw and Ed Smith, both of whom sit on the Department’s board as non-executive directors, to oversee a review of what had gone wrong. Their final report was published on 6 December and gave a damning indictment of how the competition was handled.

In this report we identify the underlying causes of the failure to communicate accurate and honest information to Ministers and senior management, inappropriate official interventions and errors in the calculation of Subordinated Loan Facilities, which led to the cancellation of the competition and the actions the Department needs to take to demonstrate that these issues have been adequately addressed.

This episode has revealed problems of governance, assurance, and policy and resources. Embarking on an ambitious, perhaps unachievable, reform of franchising, in haste, on the UK’s most complex piece of railway was irresponsible and involved such an element of risk that greater senior executive oversight and relevant technical expertise was required.

The Department has already published a response to the Laidlaw report which Mr Laidlaw described as “very encouraging” and initiated a review of franchise policy, which we are now examining in a separate inquiry. However, a number of matters have not been adequately resolved.

- We recommend that the Department explain why ministers and senior officials were misled about how subordinated loan facilities were calculated, if necessary after disciplinary proceedings against staff have concluded.
- There remain concerns that officials manipulated the outcome of the competition to ensure First Group got the contract. We recommend that the DfT undertake a full email capture to get to the bottom of this.
- The Secretary of State acknowledged that money which could have been spent on transport projects would “not be available” as a result of this issue. However, he did not envisage that any projects that have been announced or planned would be stopped as the savings necessary to make up these costs would be found. We recommend that the DfT provide us with a comprehensive breakdown of costs.
- We strongly suspect that there are lessons for ministers in terms of more realistically matching policy ambition to departmental capacity and resources, not least in their role as chairs or members of departmental boards. We recommend that the Secretary of State inform us of the lessons which he considers current and future ministers, rather than officials, should draw from the cancellation of the competition.

1 Introduction

1. On 3 October 2012 the Secretary of State for Transport announced that the competition to award a 13-15 year franchise to run train services on the West Coast Main Line (WCML) had been cancelled.¹ This development was as unexpected as it was far-reaching in its consequences. Only three weeks earlier the Secretary of State had told us that, despite a legal challenge, he was “content with the way in which the Department exercised its review of that contract” and that he intended to award the InterCity West Coast (ICWC) franchise to First Group, as originally announced in August.²

2. The competition was cancelled because of the discovery of “significant technical flaws” in the way in which the procurement was conducted.³ As a result:

- an inquiry was announced into what went wrong with the procurement process. This was overseen by two of DfT’s non-executive directors – Sam Laidlaw, Chief Executive of Centrica, and Ed Smith, formerly Strategy Chairman of PricewaterhouseCoopers. Their interim report was published on 27 October and their final report was published, with redactions, on 6 December.⁴
- a second inquiry was announced into the wider rail franchising programme, to be conducted by Richard Brown CBE, Chairman of Eurostar International. Mr Brown’s report was published, with redactions, on 10 January.⁵ We are conducting a separate inquiry into rail franchising in the light of his proposals.
- three members of DfT staff were suspended pending an HR investigation conducted for the Permanent Secretary by Bill Stow, a former senior civil servant at the Department for the Environment, Food and Rural Affairs. Those members of staff were reinstated but we were told by the Permanent Secretary on 7 January that disciplinary proceedings against a number of members of staff were underway.⁶
- after some uncertainty about how to proceed, Virgin Trains, the existing operator of services on the WCML was awarded a franchise to carry on providing services until November 2014, by when it is envisaged that a new long-term franchise will have been let.⁷
- current competitions for the Great Western, Essex Thameside and Thameslink franchises were paused.

1 <https://www.gov.uk/government/news/west-coast-main-line-franchise-competition-cancelled>.

2 Ev 1-2, Q4.

3 <https://www.gov.uk/government/news/west-coast-main-line-franchise-competition-cancelled>.

4 *Report of the Laidlaw inquiry*, Session 2012-13, HC 809, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/29866/report-of-the-laidlaw-inquiry.pdf (hereafter *Laidlaw report*).

5 *The Brown review of the rail franchising programme*, DfT, Jan 13, Cm 8526.

6 Ev 27-28, Qq 993-95.

7 <https://www.gov.uk/government/news/virgin-trains-to-run-improved-west-coast-services>. The franchise can be terminated up to six months early if a new long-term franchise can be let more quickly.

3. These events raised serious questions about governance and management in the Department for Transport, the roles of ministers and civil servants at all levels, the Department's capability to let and manage major contracts, and the future of the Government's franchising programme. There are also significant implications for the public purse, with the Government pledging to reimburse the costs of the four bidders for the franchise, to the tune of around £40 million. The Laidlaw report offers a damning indictment of how the competition was handled, detailing confusion about roles and responsibilities, mistakes in the evaluation process, and the provision of misleading information to senior civil servants and ministers.

4. We heard oral evidence from First Group and Virgin Trains before the competition was cancelled on 10 September. We also raised the issue with the Secretary of State for Transport and the Permanent Secretary on 12 September in a meeting which covered the work of the DfT more generally.⁸ Following the cancellation of the competition we heard oral evidence from the Secretary of State and Permanent Secretary on 31 October and 7 January and from Mr Laidlaw and Mr Smith on 18 December. We are grateful to all those who gave oral evidence.⁹

5. When Virgin Trains issued judicial review proceedings against the DfT in relation to the ICWC franchise the department commissioned PricewaterhouseCoopers (PwC) to advise on aspects of the financial evaluation process. We asked the Permanent Secretary to make the PwC report available to us when he gave oral evidence in October and it was sent to us on a confidential basis, with numerous redactions, on 21 December. We were grateful to receive the report, although the redactions make it hard to follow. Although we cannot comment on the report, because it was provided in confidence, it contributed to our questioning of the Secretary of State and Permanent Secretary on 7 January.¹⁰

6. The events which led to the cancellation of the ICWC franchise competition have been comprehensively described and analysed by the report of the Laidlaw inquiry. There has also been a report on the same issue by the National Audit Office.¹¹ We have not sought to duplicate their detailed work. Instead, we have set out to address two questions:

- what were the underlying causes of the failure to communicate accurate and honest information to Ministers and senior management, inappropriate official interventions and errors in the calculation of Subordinated Loan Facilities, which led to the cancellation of the franchise competition; and
- what actions does the Department for Transport need to take to demonstrate that these issues have been adequately addressed.

8 The transcript of that evidence session is published with this report.

9 The transcripts of the evidence sessions on 10 September and 31 October are published with an earlier report: Transport Committee, Seventh Report, Session 2012-13, *Rail 2020*, HC 329-II

10 See in particular Ev 29-30, Qq1006-10.

11 *Lessons from cancelling the InterCity West Coast franchise competition*, NAO, Session 2012-13, HC 796 (hereafter *NAO report*).

2 What went wrong, and why?

What went wrong?

7. The Laidlaw and NAO reports give compelling accounts of what went wrong with the ICWC franchise competition:

- The invitation to tender was issued before the Department had decided how to set the Subordinated Loan Facilities (SLFs) which bidders could be asked to provide. The SLF was a new feature of franchises, intended to reduce the risk of the franchisee defaulting. The level of SLF would reflect the riskiness of the bid.¹²
- Lacking time and resources to develop a bespoke way of calculating SLFs, the Department decided instead to use an internal model which was intended to assess the impact of different economic scenarios on franchise payments. Bidders were provided with a ‘ready reckoner’ rather than the model because of the risk of legal challenge.¹³
- When it came to deciding on the level of SLFs to require from bidders, officials used discretion to adjust the figures, increasing the SLF required from Virgin Trains and reducing what was required from First Group.¹⁴
- The modelling itself was flawed. SLF figures should have been expressed in nominal (cash) terms but were expressed in real terms. SLFs were therefore understated, by nearly 50%.¹⁵
- The discretionary adjustment of the figures, to the benefit of First Group, clearly opened the DfT to legal challenge from Virgin Trains. Officials and advisers knew that this risk existed but did not provide sufficient warning of it to senior civil servants and ministers. Indeed, misleading information, that the SLF figures had been derived from the model, was fed up the chain.¹⁶

8. In our view, these errors were due to failures of governance, assurance, and policy and resourcing. These failures are all the more remarkable given the value of the prospective franchise. First Group’s bid had a net present value of some £5.5 billion. We infer from a letter which the Permanent Secretary sent to us on 30 November that this was probably the biggest single contract DfT had ever attempted to award.¹⁷

12 *Laidlaw*, paragraphs 4.7 and 4.8.

13 *Laidlaw*, paragraphs 4.23, 4.25 and 4.28.

14 *Laidlaw*, paragraphs 4.48-4.65.

15 *Laidlaw*, paragraph 5.12.1 and also see *NAO report*, paragraph, 4.17.

16 *Laidlaw*, paragraphs 4.66-4.96.

17 Ev 30, Q1013, and Transport Committee, Seventh Report, Session 2012-13, *Rail 2020*, HC 329-II, Ev 195.

Governance

9. There were a number of problems with the internal structures in the DfT which contributed to the failure to identify and escalate problems with the franchise competition. In particular, there were no senior staff directly involved with the procurement project, no one person clearly in charge, and a lack of senior oversight of the project team.¹⁸ The project team reported to the Contract Awards Committee, the body which decided to adopt a discretionary approach to deciding SLFs, and upwards to the DfT Board's Investment and Commercial Sub-Committee. Laidlaw is particularly critical of deficiencies in these bodies, including unclear terms of reference, poor and non-existent minuting and sloppy administrative practices.¹⁹

10. In addition, we were struck by the scant attention paid by the DfT's board and executive committee to rail franchising, despite the political and commercial significance of franchise procurements. Since 2010 the board has been chaired by the Secretary of State and includes the Minister of State, senior officials and non-executives (including Mr Laidlaw and Mr Smith). It meets monthly. Its responsibilities include scrutinising major projects or programmes and "ensuring the design, capability and capacity of the organisation matches current and future commitments and plans".²⁰ We note Mr Laidlaw's view, expressed during oral evidence to the Committee, that "It is quite unusual in any board [...] to get involved in the organisational structure below [the executive committee]".²¹ According to the Laidlaw report, the board referred to rail franchising just twice from January 2011 to August 2012, and to the ICWC franchise only once.²² The cancellation of the ICWC franchise competition is an embarrassing early failure for the enhanced governance and leadership which the DfT board is expected to provide.²³ However Mr Laidlaw gave us his assurance that Ministers were "diligent" and "extremely careful and cautious" in asking "penetrating" questions around whether the bids were deliverable.²⁴

11. The executive committee, composed of senior officials, including the Permanent Secretary, normally meets weekly. In 26 meetings from 10 January 2012 to 14 August 2012 it made no explicit reference to the ICWC franchise. The Laidlaw inquiry team was told that the committee members had "received very little information from the ICWC Project Team, which was in contrast to other large procurement projects".²⁵ This raises the question of why senior managers did not ask more questions.

12. The Laidlaw report also questioned the DfT's arrangements for anonymising bids, which it described as "unique".²⁶ When letters from Virgin Trains complaining about the

18 *NAO report*, paragraph 2.13.

19 *Laidlaw*, paragraphs 7.20 to 7.25.

20 DfT, *Annual report and accounts 2011-12*, Session 2012-13, HC 51, p86.

21 Ev 18, Q928

22 *Laidlaw*, paragraph 7.24.7.

23 For further background on this see Public Administration Committee, Session 2010-12, Thirteenth Report, HC 714, paragraphs 74-77.

24 Ev 16, Q916

25 *Laidlaw*, paragraph 7.24.6.

26 *Laidlaw*, paragraphs 7.36-7.39.

franchise competition were received in late July, before the decision on the award of the contract had been made, the Secretary of State, Permanent Secretary and other senior officials who saw them were advised to stand aside from the decision-making process.²⁷ This meant that key personnel were missing from a crucial meeting of the Board's Investment and Commercial Sub-Committee at which flaws with the SLF calculations could have been probed.²⁸ Ironically, the anonymisation of bidders not only failed to stop DfT officials treating one bidder more favourably than another, it contributed to the failure of senior managers to find out what was going on. The Permanent Secretary pledged to change this policy, describing this episode as “a lesson already well and truly learned”.²⁹

Assurance

13. Related to governance are the mechanisms by which ministers and the Permanent Secretary can gain assurance that projects are being run properly and that problems are being identified and dealt with. Assurance mechanisms are vital in any large organisation, where it is not possible for the most senior leaders to have knowledge of everything going on at lower levels.

14. Philip Rutnam, the DfT's Permanent Secretary, said that none of the assurance mechanisms on which he and ministers relied, including line management, internal audit, and external advice from bodies such as the Major Projects Authority, had worked satisfactorily.³⁰ Issues flagged up in some reviews, such as the Gateway review of the entire rail refranchising programme in March 2012 and the DfT's own self-assessed capability review, also carried out in March 2012, do not appear to have been fully addressed.³¹ A three-day review of the ICWC franchise project by the Major Projects Authority in July 2012 did not detect any problems and concluded that the department was well placed to award the contract.³² However, consideration of the underlying financial models was outside of the review's scope.

15. The Laidlaw report criticised the DfT for not following up the conclusions of reviews of the ICWC franchise competition, such as those mentioned above.³³ It also warned of over-reliance on positive conclusions of reviews with relatively limited scope.³⁴ This point was also made by the NAO: “management took too much comfort from assurance processes that have a limited scope and ability to identify issues”.³⁵ It went on to argue that “assurance processes are not a substitute for proper supervision and management controls”.³⁶ This is a vital point which is easily overlooked. Failures of governance do not

27 Ev 15 Q905.

28 *Laidlaw*, paragraph 7.24.5

29 Ev 32 Q1027.

30 Ev 33 Q1032.

31 *Laidlaw*, paragraph 7.34 and *Capability Action Plan*, DfT, 2012, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/3274/dft-capability-action-plan.pdf.

32 *Laidlaw*, paragraph 7.34 and *NAO Report*, paragraph 4.30.

33 *Laidlaw*, paragraph 7.35.3.

34 *Laidlaw*, paragraph 7.35.2.

35 *NAO report*, summary, paragraph 16.

36 *NAO report*, recommendation I.

account for the failure of line managers to find out what their staff were doing and to act. Mr Rutnam described this as one of the most difficult questions he had had to consider:³⁷

There were people who knew that things were awry, but none of them did enough to escalate it within the organisation. Time and again I find myself saying that, if only they had, how things could have been different.

Mr Rutnam argued that this problem was specific to the part of DfT dealing with rail franchising, not systemic.³⁸

Policy and resourcing

16. Despite the size and importance of the ICWC franchise, the Secretary of State has consistently maintained that the failures were the fault of officials and implied that no blame should attach to ministers.

17. It is also important to consider what policy and resourcing factors may have contributed to the cancellation of the franchise competition. The ICWC franchise was the first to be let by the current Government and reflected new policies including longer franchises, the introduction of SLFs and the use of an adjustment process to cater for the effects of changes in the economy. Bidders were required to forecast revenues way into the future, taking account of factors such as rail demand and economic matters which were fully or partly outside of their control. Ed Smith described the “very detailed nature of these processes” as likely to increase the risk of something going wrong.³⁹ Mr Laidlaw said that “even if [the process] had been followed to the letter, there would have been some significant problems with it”.⁴⁰

18. The Laidlaw report also criticised the Department for inadequate planning and preparation and for prioritising letting the franchise by December 2012 ahead of resolving the many complex issues raised by the new approach.⁴¹ It notes that “at no stage ... was any consideration given to developing a contingency plan” in case the competition could not be concluded in time for a new contract to start in December.⁴²

19. This lack of planning and preparation was compounded by the complexity of the franchise on which the Government’s new policy was being tested. Network Rail has recently described the WCML as “the busiest mixed traffic railway in Europe” with “12 different operators ... fast and slow passenger trains mix with each other and heavy freight trains. Different trains stop at different stations, with different frequency, and other lines join it at regular intervals”.⁴³ **Embarking on an ambitious, perhaps unachievable, reform of franchising, in haste, on the UK’s most complex piece of railway was irresponsible**

37 Ev 30 Q1011.

38 Ibid.

39 Ev 18 Q926.

40 Ev 18 Q927.

41 *Laidlaw*, paragraphs 7.7-7.14.

42 Ibid, paragraph 7.13.

43 *A better railway for a better Britain*, Network Rail, Jan 2013, p14.

and involved such an element of risk that greater senior executive oversight and relevant technical expertise was required.

20. Although the Department is required to reduce its administrative budget by 33% by 2014/15 and has made staff reductions up-front,⁴⁴ this has not prevented the Department from delivering other complex projects successfully. It is important to stress that the failures within rail franchising are not necessarily indicative of wider problems in the Department. Responsibility for rail was split between policy and procurement teams and a number of senior rail staff retired or departed.⁴⁵ The Laidlaw report concluded that this led to a “loss of both ‘corporate memory’ and individual commercial experience”.⁴⁶ Mr Laidlaw described this loss of capability as one of the root causes of the problems with the franchise competition.⁴⁷ In addition, and in a departure from previous practice, the Department decided not to engage financial consultants to assist with the procurement as they decided that they wanted to build their own internal capability and that they wanted to do this within their own resource. Mr Laidlaw described this as a “misjudgement”.⁴⁸ He argued that financial consultants “would in all likelihood” have prevented the problems which led to the cancellation of the competition, particularly in view of the disproportion between the resources expended by the Department on running the franchise competition and the considerably greater amounts spent by bidders.⁴⁹ Although the decision not to use consultants came at a time when the Government was sharply reducing consultancy costs, Mr Laidlaw said he did not “think there is any evidence to suggest that [the decision] was a result of resource constraints”.⁵⁰

21. These decisions, about how to cut the Department’s administration budget, how to maintain capability in rail franchising, and whether or not to employ consultants, were or should have been taken by ministers, on advice from the Permanent Secretary. The failures chronicled by Mr Laidlaw showed that the Board did not ensure, as it was required to do, that the “design, capability and capacity” of DfT matched its workload. Some responsibility for that failure must rest with successive Secretaries of State, as chairs of the Board.

44 *NAO report*, paragraph 2.8.

45 *Laidlaw*, paragraph 7.17.1.

46 *Ibid.*

47 Ev 17 Q924.

48 Ev 17 Q923.

49 Ev 17 Q922 and Ev 15 Q910.

50 Ev 17 Q923.

3 What should the DfT do now?

22. Mr Rutnam has issued a response to the Laidlaw report which commits all parts of the Department to applying “the Laidlaw prescription”.⁵¹ Mr Laidlaw described this response as “very encouraging ... a response of somebody who is very clearly very committed to solving the problem and is taking immediate action”.⁵² However, he cautioned that it would “inevitably take longer” to build organisational capability than to make changes to roles and responsibilities.⁵³

23. Many of the issues we have highlighted as crucial to understanding the causes of the cancellation of the competition were addressed in the departmental response to Laidlaw. For example, rail policy and procurement have been reunited under a single Director General; governance arrangements are to be revamped; and a skills review for each franchise competition team is being carried out. Procurement processes in other parts of the DfT have been reviewed and Mr Rutnam has concluded that “the issues identified in Mr Laidlaw’s report are specific to the West Coast competition and thereby the Department’s franchising programme, rather than being a cause for wider concern”.

24. The other aspect of the DfT’s response to the cancellation of the ICWC franchise competition was the commissioning of the Brown review of franchising.⁵⁴ The Government’s response to the Brown report is due in the Spring.⁵⁵

25. However, there are a number of issues which have not been adequately resolved. Firstly, ministers and senior officials were told that the SLFs had been calculated in accordance with a transparent process which had been notified to bidders and, later, that there was nothing in the challenge from Virgin Trains which should lead to the contract award being delayed.⁵⁶ Mr Laidlaw was very careful in the language he used to describe how this had happened. His report refers to “inaccurate statements” being made to the then Minister of State and her not being given “an appropriately accurate and full briefing”.⁵⁷ In oral evidence he referred to “the lower levels of the organisation ... not escalating risks and the exercise of discretion to the senior officials until very late on in the process”.⁵⁸

26. **A more direct description of what happened is that ministers and senior officials were lied to about how the outcome of the franchise competition had been reached.** The Secretary of State said he did not think ministers had been deliberately misled, adding “I hope that was not the case”. He suggested that the inaccurate information given to

51 *Response to the report of the Laidlaw Inquiry*, DfT, 6 Dec 2012.

52 Ev 20 Q947.

53 *Ibid.*

54 See paragraph 2.

55 HC Deb, 10 Jan 12, cc 23-24 WS.

56 *Laidlaw*, paragraphs 4.97-4.118.

57 *Laidlaw* paragraph 4.118.1.

58 Ev 16 Q914.

ministers was a result of shoddy workmanship on the part of more junior officials.⁵⁹ Whilst that may explain the technical errors with the model which was supposed to be used to calculate SLFs it is hard to see how it could account for the repeated provision of misinformation about the process. **A major unanswered question is why ministers and senior officials were misled about how the SLFs had been calculated, the issue which led directly to the cancellation of the franchise competition. We recommend that the Department explain why this happened, if necessary after decisions have been reached on whether or not to take disciplinary action against particular members of staff.**

27. Related to this issue is the question of whether or not the staff who ran the franchise competition were biased in favour of First Group, or against Virgin Trains. Mr Laidlaw gave a “qualified” view that he “could see no evidence of systemic bias or anti-Virgin culture” and that this was a “reasonably robust conclusion” although his inquiry team had not been permitted to review all emails sent by DfT civil servants during the franchise competition.⁶⁰ The Secretary of State did not wish to second guess the motivations of the officials involved but said he was sure “most of the people who acted thought they were acting in good faith and doing what was right for the industry”.⁶¹

28. In our view, we cannot categorically rule out the possibility that officials manipulated the outcome of the competition not only to keep First Group in the running for as long as possible, as Mr Laidlaw suggested,⁶² but to ensure that First got the contract. It is not clear whether this was because First’s bid offered higher premium payments or for other reasons. Although Mr Laidlaw has stated a qualified conclusion that there was no systemic anti-Virgin bias, this finding would be more compelling if his inquiry had been able to review all emails sent within DfT during the competition. **We recommend that the DfT find a way of undertaking a full email capture, reporting to someone suitably independent, to help get to the bottom of why DfT staff discriminated against Virgin and in favour of First Group during the ICWC franchise competition.**

29. The Secretary of State told us that his latest estimate of the cost of cancelling the franchise competition was of the order of £45 million, comprising preparations for the DfT-owned Directly Operated Railways to take over WCML services while Virgin Trains’ legal challenge was resolved and compensation to the four bidders for the franchise.⁶³ However, the final bill for this episode is likely to be significantly higher. The NAO had identified seven areas in which costs are likely to arise:⁶⁴

- Compensation to ICWC bidders (£40m)
- Preparations to deploy Directly Operated Railways (unclear)

59 Ev 25 Q976.

60 Ev 11 Q871.

61 Ev 24 Q973.

62 Ev 22 Q965.

63 Ev 28 Q1000.

64 NAO report, paragraph 5.7.

- External advisers on the Laidlaw and Brown reviews (£4.3m)
- Professional fees resulting from the judicial review (£2.7m)
- Staff costs (including external advisers) for the cancelled competition (£1.9m)
- Opportunity costs arising from lack of investment in, or reduced income from, the ICWC franchise until it can be re-let (and similarly in relation to any other franchises for which existing contracts have to be extended until competitions can be organised) (unquantified).
- Any costs associated with cancelling or pausing other current franchise competitions (unquantified).

30. By this reckoning the cost of the cancellation is already in excess of £50 million and is likely to be greater still. The Secretary of State conceded that this money “will not be available to spend on projects that we might have been able to spend it on” although he argued that “the main areas of our expenditure programme are still going ahead”.⁶⁵ **One of the most significant and disappointing aspects of this episode is that money which could have been spent on transport projects to yield tangible benefits to people across the country has instead been spent on consultants, lawyers and review teams; on work which has achieved nothing; and on compensating train operators for the DfT’s incompetence. Once decisions have been taken on how to proceed with the rest of the rail franchising process the DfT should provide us with a comprehensive breakdown of the costs it has incurred as a result of the cancellation of the ICWC franchise compensation, including the opportunity costs identified by the NAO.**

31. The Department’s response to the Laidlaw report states that the Secretary of State has accepted that report’s recommendations; but the response has been provided by the Permanent Secretary not the Minister. Appearing before us, Mr McLoughlin emphasised that the lessons learnt were primarily for civil servants: “the truth of the matter is that this will form part of civil service training for many years to come”.⁶⁶ However, the Secretary of State could not be drawn on whether there were any lessons for ministers to learn. In his view, ministers had asked questions appropriately and had no way of knowing that the answers they received were incorrect.⁶⁷ He also pointed to a statement in the Laidlaw report that “had there been the appropriate escalation, sufficient resources [to run the ICWC competition more effectively] could or would have been found” arguing that had this been done “they would have been found”.⁶⁸

32. The Secretary of State is justified in arguing that ministers rely on full and frank advice from civil servants in order to make good decisions and for clarity of accountability. This is a crucial issue for the Permanent Secretary to address. However, **in this report we have identified a number of policy and resourcing decisions which turned out to be**

65 Ev 29 Q1004.

66 Ev 24 Q971.

67 Ibid and Q972.

68 Ev 24 Q970.

misjudgements. It is not possible for us to assess whether officials appropriately drew attention to the risks associated with these decisions because the relevant papers are not in the public domain. However, we strongly suspect that there are lessons for ministers in terms of more realistically matching policy ambition to departmental capacity and resources, not least in their role as chairs or members of boards. We recommend that the Secretary of State inform us of the lessons he considers current and future ministers, rather than officials, should draw from the cancellation of the ICWC franchise competition.

33. Finally, there will clearly be considerable work for the Department in implementing the Laidlaw recommendations and responding to the Brown report, stretching over a period of months if not longer. **We recommend that, in its reply to this report, the Department inform us of the action it has taken in relation to each of the recommendations made by Laidlaw. Furthermore, we wish to receive an updated analysis in January 2014, which should also cover the action taken in relation to each of the recommendations of the Brown report which the Department decides to accept.**

Conclusions and recommendations

Policy and resourcing

1. Embarking on an ambitious, perhaps unachievable, reform of franchising, in haste, on the UK's most complex piece of railway was irresponsible and involved such an element of risk that greater senior executive oversight and relevant technical expertise was required. (Paragraph 19)

What should the DfT do now?

2. A more direct description of what happened is that ministers and senior officials were lied to about how the outcome of the franchise competition had been reached. A major unanswered question is why ministers and senior officials were misled about how the SLFs had been calculated, the issue which led directly to the cancellation of the franchise competition. We recommend that the Department explain why this happened, if necessary after decisions have been reached on whether or not to take disciplinary action against particular members of staff. (Paragraph 26)
3. In our view, we cannot categorically rule out the possibility that officials manipulated the outcome of the competition not only to keep First Group in the running for as long as possible, as Mr Laidlaw suggested, but to ensure that First got the contract. We recommend that the DfT find a way of undertaking a full email capture, reporting to someone suitably independent, to help get to the bottom of why DfT staff discriminated against Virgin and in favour of First Group during the ICWC franchise competition. (Paragraph 28)
4. One of the most significant and disappointing aspects of this episode is that money which could have been spent on transport projects to yield tangible benefits to people across the country has instead been spent on consultants, lawyers and review teams; on work which has achieved nothing; and on compensating train operators for the DfT's incompetence. Once decisions have been taken on how to proceed with the rest of the rail franchising process the DfT should provide us with a comprehensive breakdown of the costs it has incurred as a result of the cancellation of the ICWC franchise compensation, including the opportunity costs identified by the NAO. (Paragraph 30)
5. In this report we have identified a number of policy and resourcing decisions which turned out to be misjudgements. It is not possible for us to assess whether officials appropriately drew attention to the risks associated with these decisions because the relevant papers are not in the public domain. However, we strongly suspect that there are lessons for ministers in terms of more realistically matching policy ambition to departmental capacity and resources, not least in their role as chairs or members of boards. We recommend that the Secretary of State inform us of the lessons he considers current and future ministers, rather than officials, should draw from the cancellation of the ICWC franchise competition. (Paragraph 32)

6. We recommend that, in its reply to this report, the Department inform us of the action it has taken in relation to each of the recommendations made by Laidlaw. Furthermore, we wish to receive an updated analysis in January 2014, which should also cover the action taken in relation to each of the recommendations of the Brown report which the Department decides to accept. (Paragraph 33)

Formal Minutes

Wednesday 23 January 2013

Members present:

Mrs Louise Ellman, in the Chair

Steve Baker
Sarah Champion
Karen Lumley
Karl McCartney

Lucy Powell
Adrian Sanders
Iain Stewart
Graham Stringer

Draft Report (*Cancellation of the InterCity West Coast franchise competition*), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 15 read and agreed to.

Paragraph 16 read, as follows:

Despite the size and importance of the ICWC franchise, the Secretary of State has consistently maintained that the failures were the fault of officials and implied that no blame should attach to ministers. This conclusion is questionable given that ministers determined policy on franchising and successive Secretaries of State chaired the DfT board throughout this procurement. The failures which led to the cancellation of the ICWC franchise competition were not simply matters of low level governance and administration. Policy and resourcing matters, ultimately the responsibility of ministers, were also part of the problem.

Amendment proposed, in line 2, to leave out from “ministers.” to the end of the paragraph, and insert “It is also important to consider what policy and resourcing factors may have contributed to the cancellation of the franchise competition.”—(*Iain Stewart.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 5

Steve Baker
Karen Lumley
Karl McCartney
Adrian Sanders
Iain Stewart

Noes, 3

Sarah Champion
Lucy Powell
Graham Stringer

Amendment accordingly agreed to.

Paragraph, as amended, agreed to.

Paragraphs 17 to 18 read and agreed to.

Paragraph 19 read, as follows:

This lack of planning and preparation was compounded by the complexity of the franchise on which the Government's new policy was being tested. Network Rail has recently described the WCML as "the busiest mixed traffic railway in Europe" with "12 different operators ... fast and slow passenger trains mix with each other and heavy freight trains. Different trains stop at different stations, with different frequency, and other lines join it at regular intervals". With hindsight, embarking on an ambitious, perhaps unachievable, reform of franchising, in haste, on the UK's most complex piece of railway may have been a doomed enterprise.

Amendment proposed, in line 5, to leave out from "intervals." to "a doomed" in line 6, and insert "Embarking on an ambitious, perhaps unachievable, reform of franchising, at haste, on the UK's most complex piece of railway was irresponsible and"—(*Graham Stringer.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3	Noes, 3
Sarah Champion Lucy Powell Graham Stringer	Steve Baker Karen Lumley Iain Stewart

Whereupon the Chair declared herself with the Ayes.

Amendment accordingly agreed to.

Another Amendment proposed, in line 6, to leave out "a doomed enterprise.", and add "involved such an element of risk that greater senior executive oversight and relevant technical expertise was required."—(*Iain Stewart.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 4	Noes, 3
Steve Baker Karen Lumley Karl McCartney Iain Stewart	Sarah Champion Lucy Powell Graham Stringer

Amendment accordingly agreed to.

Paragraph, as amended, agreed to.

Paragraph 20 read and agreed to.

Paragraph 21 read.

Amendment proposed, in line 1, to leave out from the start to the end of the paragraph, and insert "The failures chronicled by Mr Laidlaw showed that the Board did not ensure, as it was required to do, that the "design, capability and capacity" of DfT matched its workload."—(*Iain Stewart.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 4

Steve Baker
Karen Lumley
Karl McCartney
Iain Stewart

Noes, 4

Sarah Champion
Lucy Powell
Adrian Sanders
Graham Stringer

Whereupon the Chair declared herself with the Noes.

Amendment accordingly negatived.

Another Amendment proposed, at the end of the paragraph, to add, “More than 45 million pounds of public money has been wasted, the department and the United Kingdom have suffered huge reputational damage and the railway industry is left in a state of uncertainty and therefore Ministers in post at the time of this fiasco should consider their position.”—(*Graham Stringer.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3

Sarah Champion
Lucy Powell
Graham Stringer

Noes, 5

Steve Baker
Karen Lumley
Karl McCartney
Adrian Sanders
Iain Stewart

Amendment accordingly negatived.

Paragraph agreed to.

Paragraphs 22 to 31 read and agreed to.

Paragraph 32 read.

Amendment proposed, in line 7, to leave out from “domain.” to “We recommend” in line 9, and insert “Ministers at the time must take responsibility for their mistakes and misjudgements.”—(*Graham Stringer.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3

Sarah Champion
Lucy Powell
Graham Stringer

Noes, 5

Steve Baker
Karen Lumley
Karl McCartney
Adrian Sanders
Iain Stewart

Amendment accordingly negatived.

Paragraph agreed to.

Paragraph 33 read and agreed to.

Summary agreed to.

Motion made, and Question put, That the Report be the Eighth Report of the Committee to the House.

The Committee divided.

Ayes, 5

Steve Baker
Sarah Champion
Lucy Powell
Adrian Sanders
Graham Stringer

Noes, 3

Karen Lumley
Karl McCartney
Iain Stewart

Question accordingly agreed to.

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.

[Adjourned till Monday 28 January at 4.30 pm

Witnesses

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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.

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Eighth Report	Cancellation of the InterCity West Coast franchise competition	HC 537
Seventh Report	Rail 2020	HC 329
Sixth Report	The Coastguard, Emergency Towing Vessels and the Maritime Incident Response Group: follow up	HC 647
Fifth Report	Future programme: autumn and winter 2012–13	HC 591
Fourth Report	Plug-in vehicles, plugged in policy?	HC 239
Third Report	Competition in the local bus market	HC 10 (<i>HC 761</i>) (Incorporating HC 1861–i–iii)
Fifth Special Report	Flight Time Limitations: Government Response To The Committee's First Report Of Session 2012–13	HC 558
Fourth Special Report	Air Travel Organisers' Licensing (Atol) Reform: Government Response To The Committee's Seventeenth Report Of Session 2010–12	HC 557
Second Report	Road safety	HC 506 (<i>HC 648</i>) Incorporating HC 1738
First Report	Flight time limitations	HC 164 Incorporating HC 1838
Third Special Report	Sulphur emissions by ships: Government Response to the Committee's Sixteenth Report of Session 2010–12	HC 87
Second Special Report	Counting the cost: financial scrutiny of the Department for Transport 2011–12: Government Response to the Committee's Fifteenth Report of Session 2010–12	HC 15
First Special Report	Draft Civil Aviation Bill: Pre-Legislative Scrutiny: Government Response to the Committee's Thirteenth Report of Session 2010–12	HC 11

Session 2010–12

Seventeenth Report	Air Travel Organisers' Licensing (ATOL) reform	HC 1798
Sixteenth Report	Sulphur emissions by ships	HC 1561
Fifteenth Report	Counting the cost: financial scrutiny of the Department for Transport 2011–12	HC 1560
Fourteenth Report	Cable theft on the Railway	HC 1609 (<i>HC 1933</i>)
Thirteenth Report	Draft Civil Aviation Bill: Pre-Legislative Scrutiny	HC 1694
Twelfth Report	Cost of motor insurance: follow up	HC 1451 (<i>HC 1934</i>)
Eleventh Report	Thameslink rolling stock procurement	HC 1453 (<i>HC 1935</i>)
Tenth Report	High Speed Rail	HC 1185–I (<i>HC 1754</i>)
Ninth Report	Out of the jam: reducing congestion on our roads	HC 872 (<i>HC 1661</i>)
Eighth Report	Bus Services after the Spending Review	HC 750 (<i>HC 1550</i>)
Seventh Report	Taxis and private hire vehicles: the road to reform	HC 720 (<i>HC 1507</i>)
Sixth Report	The Coastguard, Emergency Towing Vessels and the Maritime Incident Response Group	HC 948, incorporating HC 752–i (<i>HC 1482</i>)
Fifth Report	Keeping the UK moving: The impact on transport of the winter weather in December 2010	HC 794 (<i>HC 1467</i>)
Fourth Report	The cost of motor insurance	HC 591 (<i>HC 1466</i>)
Third Report	Transport and the economy	HC 473 (<i>HC 962</i>)
Second Report	Financial Scrutiny of the Department for Transport	HC 683
First Report	Drink and drug driving law	HC 460 (<i>Cm 8050</i>)
Tenth Special Report	The proposal for a National Policy Statement on Ports: Government Response to the Committee Fifth Report of Session 2009–10	HC 1598
Third Special Report	The performance of the Department for Transport: Government response to the Committee's Fourth Report of Session 2009–10	HC 549
Second Special Report	Update on the London Underground and the public-private (PPP) partnership agreements: Government response to the Committee's Seventh Report of Session 2009–10	HC 467
First Special Report	The major road network: Government response to the Committee's Eighth Report of Session 2009–10	HC 421

Oral evidence

Taken before the Transport Committee on Wednesday 12 September 2012

Members present:

Mrs Louise Ellman (Chair)

Julie Hilling
Kwasi Kwarteng

Mr John Leech
Iain Stewart

Examination of Witnesses

Witnesses: **Rt Hon Patrick McLoughlin MP**, Secretary of State for Transport, and **Philip Rutnam**, Permanent Secretary, Department for Transport, gave evidence.

Q1 Chair: Good afternoon, Secretary of State, and welcome to the Transport Select Committee. I congratulate you on your appointment. We are pleased that you are able to come here so soon after you have been given this very important position.

Are there any comments that you would like to make before we ask you questions?

Mr McLoughlin: I would be grateful if I could just make a few opening comments; I won't be very long. Can I first say, Madam Chairman, what a great honour and pleasure it is for me to be sitting here before you today as Secretary of State for Transport? I am joined by Philip Rutnam, who you will know is the Permanent Secretary at the Department.

I would like to set out at the start that, although there have been some ministerial changes at the Department for Transport, there is no change in what the Government seek to do in achieving our transport infrastructure. Our focus on growth, efficiency, affordability, passenger experience and safety remains as strong as ever.

Secondly, I feel particularly fortunate in being able to bring a degree of experience, although it has lapsed for some 20 years, but it is surprising that some of the issues are the same as they were when I left the Department. I hope that this perspective has taught me how important it is to think long term while not ignoring the challenges that we face today.

I look back with pride at the work that we did when I was last in the Department, on the channel tunnel and the channel tunnel rail link. They were very controversial at the time; there is no question about it, but I don't think that anybody today could imagine our transport network without them. However, I also look back on schemes such as Crossrail, a project that has spent far too long in the pipeline, and it makes me determined to press on as urgently as possible with projects that I know will deliver massive benefits for our country.

Finally, I would like to say that I am grateful for this early opportunity to appear before the Select Committee—at least I think I am; perhaps I might hold that back for a little while. I had not expected it to be quite as soon as it has turned out to be. I am looking forward to working with you all in the months and years ahead, and I will be following your upcoming aviation inquiry and other work with great interest. Indeed, I note that you are making a

statement—tomorrow, I think—on the aviation inquiry.

Both individually and collectively, the Committee has a tremendous knowledge and understanding of transport policies, and I very much hope that we can work together in some areas, although in other areas we may have disagreements, to achieve what I know we all want, which is an efficient, reliable and safe railway system in our country. Thank you very much for giving me that opportunity.

Q2 Chair: Thank you very much, Secretary of State. You have indeed been a Transport Minister before, between 1989 and 1992, and I understand that you have been in the Whips Office for 17 years.

Mr McLoughlin: Yes.

Q3 Chair: How will both sets of experience be applied to the problems in front of you?

Mr McLoughlin: The Committee will have to wait to see how that is going to hang itself out. However, I remember when I was first appointed to the Department by Baroness Thatcher back in 1989 being told that she thought it very important that we should have a spread of Ministers across the country in the Department because it is a Department that has importance to all areas of the country. That is very much in my mind. Obviously, London takes up a huge amount of resources; that is natural, because it is a capital city and there is a huge amount of public transport in London, but I don't underplay the importance of the other major cities in our country as well.

Q4 Chair: One of the major issues in front of you, and a controversial one, is the award of the franchise for the West Coast Main Line. Are you asking for a pause in this while you look at this yourself, irrespective of the outcome of the application for judicial review?

Mr McLoughlin: No. As I said, although the Ministers have changed, the policy has not. There was an exhaustive procedure that was gone through. The two companies went through huge amounts of effort to try to win that bid, and it was judged fairly by the Department. It is our intention to proceed with the bid that FirstGroup made, and I am content with the way

in which the Department exercised its review of that contract.

Q5 Chair: You don't feel that you should be looking at it personally in view of the controversies.

Mr McLoughlin: It is slightly difficult at the moment for me to talk about it in too much detail, because there is a legal case between Virgin and the Department. That does put me in some difficulties, but I am satisfied that due diligence was done by the Department. Therefore, the intention is to go ahead with the contract when we can.

Q6 Chair: There are some concerns about how the Department measures risk in relation to the franchises. When we held a session earlier this week and spoke to FirstGroup, it appeared that they had been called in to the Department to discuss the assessment of risk and that the financial provision that they were asked to supply in relation to safeguarding the interests of the taxpayers and the passengers had been adjusted as a result of that conversation. We were told that this was clarification.

I wonder whether you, Secretary of State, or perhaps Mr Rutnam, could explain how the Department measures risk, and what kind of negotiations there could be with a potential franchisee about what that risk is and how the taxpayers' interests should be safeguarded.

Philip Rutnam: May I comment on that briefly? As the Secretary of State said, this is a matter that is subject to a legal challenge at the moment, so perhaps you will forgive me if I don't go into too much detail of what may be the subject of some court proceedings. The first point to make is that, in relation to the award of the West Coast franchise, and indeed the whole conduct of our franchising programme, we have been through quite an exhaustive consultation process in which all interested parties, including potential bidders, were able to take part.

The process that we are adopting in this round of refranchising has developed from the process that was used by previous Administrations in franchising, in that we are trying to take a more sophisticated and more evidence-based approach to the assessment of risk. That involves more detailed financial models being supplied by bidders and a more detailed scrutiny of those financial models by the Department. Critically, it involves an assessment, which is never going to be entirely free from some element of judgment, but, in so far as we can, we have sought to make an assessment of what level of financial risk a particular bid involves, and then adjusting the amount of capital that the bidder has to put at risk as part of its bid to us to reduce the risk to the taxpayer.

This is all explained in the documentation, but, broadly, for a bid that involves a higher element of risk, perhaps because it includes more aggressive assumptions about revenue generation or cost reduction, the bidder will be asked by the Department to put a larger amount of capital at risk if the bid is to proceed.

That is what happened in the case of the West Coast. The process as described in the documentation was followed. We made an assessment of the level of risk

involved in all the bids, and we made an appropriate request from the particular bidders to put additional capital at risk, through what is known as a subordinated loan facility, which is essentially just a technical term for additional capital at risk, to ensure that, on a risk-adjusted basis, we can assess which of the bids is the strongest.

Q7 Chair: How concerned were you that the additional premium offered by FirstGroup would not materialise until eight years into the franchise—a long time away?

Philip Rutnam: Again, I do not want to get into too much of the detail about the bid, because some of this is commercially confidential; it is also, as I say, subject to legal proceedings. We looked at the profiles for all the bids and made an assessment of the level of risk involved for the taxpayer that was attached to those profiles. We also made a judgment overall as to which of the bids offered the best value for money for taxpayers, and the judgment on that was very clear—very clear by a significant margin.

Q8 Iain Stewart: Leaving to one side the detail of the judicial challenge, are you concerned that it might become so protracted that the possibility of handing over to the new franchise in December might be in peril?

Mr McLoughlin: Obviously, I would not want it to be protracted. I shall keep a very close eye on it, but there will be contingency plans that we can make. I am determined that the trains will not stop running: they will continue to run, and powers are vested in the Secretary of State under the Railways Act to ensure that that happens.

There is one point I would like to make. I think that Sir Richard Branson has made a fantastic contribution both to the railways and to aviation in this country. I am very sorry that we seem to be in disagreement with him, because anybody who has seen him operate and has seen what he has done for the transport infrastructure in this country would respect him and take their hat off to him.

Q9 Iain Stewart: Have you had any indication of how long the judicial review process will take?

Mr McLoughlin: If you talk to different lawyers, you get different lengths. The point that I would make, Iain, is that we are determined to press ahead with the award that we have made, but we have to act within the law. There are powers available to me as Secretary of State, if I need to exercise them, to ensure that the West Coast Main Line is maintained and run after 9 December.

Q10 Chair: Is it correct that you have changed the basis on which you assess risk, or the financial requirements that you have been asking for, in relation to the Great Western franchise?

Philip Rutnam: Not specifically that I am aware of. The way in which we assess risk in franchises has developed significantly for this round of franchising—this process for franchising awards—which includes the West Coast, Great Western, c2c in Essex and a number of other franchises.

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We are always looking to make sure that our methodology is absolutely the best that we can make it, but the most significant change of which I am aware is between the process that was adopted, say, in the first half of the last decade, where there was essentially no process for adjusting the amount of capital that bidders had to put at risk to the Government in order to reflect different levels of risk, and the process that we have adopted now, in which that amount of capital does vary, depending on the best assessment of risk that we can make.

Q11 Chair: Are you saying categorically that you have not made any changes in relation to the assessment of risk, or the financial provision required of the bidder, in relation to the Great Western franchise compared with the West Coast Main Line?

Philip Rutnam: I would have to do a detailed comparison of the invitation to tender for the Great Western franchise compared with that for the West Coast to be able to tell you categorically what differences there are. I would observe that the invitation to tender for Great Western was issued some time ago, long before the decision, let alone the legal challenge, in relation to the West Coast. These are processes that are essentially very similar, as far as I am aware.

Q12 Chair: If you are able to look at that, and if you are able to tell us, we would like to know whether there was any difference in the approach in relation to risk and the financial provision that you required from the potential franchisee.

Philip Rutnam: We can obviously look at that and let the Committee know.

Chair: Thank you.

Q13 Mr Leech: First, Secretary of State, may I welcome you to your position? I also welcome your comments about a northern MP being Secretary of State. It is welcome news that we have a northern voice for transport.

Mr McLoughlin: Those in the north are usually more inclined not to regard Derbyshire as north, but I take that as a compliment.

Q14 Mr Leech: You are certainly more northern than recent Secretaries of State. If I recall correctly, our previous Secretary of State was in post two days before she turned up in front of the Select Committee.

Mr McLoughlin: Yes, indeed.

Q15 Mr Leech: So you have had a relatively long period of acclimatisation.

Mr McLoughlin: It doesn't quite seem that way.

Q16 Mr Leech: I have three very quick questions. When we had Virgin and First in front of us earlier in the week, I asked whether or not the Department had seen First's bid as being five times more risky because it was expected to have put £200 million aside as opposed to £40 million. Would it be a fair assessment to suggest that the bid was considered to be five times more risky?

Mr McLoughlin: I shall refer to Philip on this, because I have come to this late; the decision had already been taken by the time I got to the Department.

Philip Rutnam: I don't think that the measurement of risk works in that way, with respect. You can say that the Government reached the view that the level of the subordinated loan facility that should be sought from First was of the order of £200 million and that the level of the subordinated loan facility to be sought from Virgin was of the order of £40 million. Those, I think, are the figures that you have been given, but that does not mean that the bids overall were five times more risky.

There are other elements in the whole bidding process that deal with risk. For example, bidders are required to put up bonds for season tickets; they are required to provide assurances to Government in a number of different ways. It would not be a fair comparison to say that one was five times more risky than the other. They are all quite complex, interconnected financial calculations.

Q17 Mr Leech: If Virgin's legal challenge is unsuccessful, there is some concern that, when future franchises come up for renewal, there will be fairly speculative bids by some operators that perhaps might lead to further legal challenges by existing operators of future franchises.

Has there been any discussion within Government about the potential for trying to get the franchisee in position earlier? If there is a long, protracted period for legal challenge, making a decision in August and the company taking over in December is not a very long period of time.

Mr McLoughlin: That is one of the questions that I have asked. We have set out a very clear timetable, and one thing that the industry would not welcome is if we were to start changing that timetable. A lot of very substantial work goes on, but, yes, I will look at when these particular dates fall because that is an issue on which I would want to satisfy myself a little more.

Q18 Mr Leech: My final question is in relation to franchising in general. One of my concerns is that I am not convinced that we can have a fair franchising and tendering process but at the same time make sure that the fact an operator has done a good job is taken into consideration. Yes, if someone has done a bad job, they can be excluded from the process.

I think, generally, Virgin has done a very good job on the West Coast Main Line, but that very good job cannot be taken into consideration. Have you thought about whether there is any way to change the franchising system so that good performance can be taken more into consideration than it currently is?

Mr McLoughlin: I can answer that in two ways, John. I don't demur from the service that Virgin has provided and the satisfaction that it has provided, but the Government have put a huge amount of investment into that line; £9 billion on the West Coast Main Line is a huge amount of public investment. We have to judge that. The franchise runs from December 2012 to March 2026. That is a huge time. There was

a lot of pressure previously to extend these franchise periods, deliberately so that companies could make proper investment and get returns, and we have to judge all that too.

This is not a decision for the short term; it is a decision for the long term. You know better than most—you use the line, as do a number of members of the Committee—that it is a very important line in the national rail infrastructure. As I say, a huge and significant amount of investment in it has been made by the Government.

Q19 Kwasi Kwarteng: I wanted to pick on a point about the risk, but we have strayed away from that. This is probably addressed to the Permanent Secretary. It is true that £200 million is bigger than £40 million, which suggests that the implied risk in the FirstGroup bid was greater than in the Virgin bid. Am I right in suggesting that?

Philip Rutnam: Obviously the reason for asking for larger subordinated loan facilities reduces the risk to the taxpayer.

Q20 Kwasi Kwarteng: Where do you see the risk to the taxpayer lying with the FirstGroup bid?

Philip Rutnam: We made a set of judgments that underlay the decision that was made to award the contract to FirstGroup. If you look at it in the round, we are very clear that the judgment that we made was the one that was in the interests of taxpayers as well as passengers.

Q21 Kwasi Kwarteng: Where are the risks, specifically?

Philip Rutnam: With respect, I don't want to get into too detailed an account of a decision that is right at this very moment the subject of a legal challenge and given that the precise set of steps we went through to reach that judgment may be the subject of court proceedings.

Q22 Chair: I accept the point that you make in relation to the legal challenge, but could you tell us if it is correct, as Sir Richard Branson claimed, that, for First to be able to make their premium payments, in the last years of the franchise every seat on every train, every day of the week, would need to be filled? Does that fit with your assessment?

Philip Rutnam: I would be very surprised if that were true. I cannot tell you categorically because I don't have the facts in front of me on that precise point, but I would be very surprised if it were true.

Q23 Chair: Would you also clarify the nature of the commitments being made by First? They promised to introduce new services in relation to Blackpool, Bolton and Shrewsbury. We questioned them on that in the Committee, and they said that that would be a contractual agreement rather than an aspiration. Last week, however, Simon Burns, the new Transport Minister, answering a parliamentary question, said that First were required only "to actively consider and use all reasonable endeavours" to introduce those services. That is far from the contractual commitment

that First told us they were willing to enter into on this. Would you clarify that for us?

Philip Rutnam: My understanding is that what First have offered is indeed a contractual commitment to operate those services. I am afraid that I cannot give you here and now the precise letter of that contractual commitment, but that they are proposing contractual commitments is my understanding of the position.

Q24 Chair: Why then did the Transport Minister, Simon Burns, say something different? A contractual commitment is very different from being required "to actively consider and use all reasonable endeavours".

Philip Rutnam: It depends, perhaps, on the wording of the contractual commitment. Rather than giving you yet another answer now, it might be easier to respond to that point in writing.

Chair: That would be helpful.

Mr McLoughlin: It may well be subject to the Office of Rail Regulation approving those services, but we don't see that there would be a problem with that happening.

Q25 Chair: That point was indeed made to the Committee, but it is rather different from a Minister talking about using best endeavours. It is not quite the same.

Mr McLoughlin: We will check it out.

Chair: We will await your clarification, if you are able to give it to us.

Q26 Julie Hilling: I join others in welcoming you to your position, Secretary of State.

Mr McLoughlin: Long may it continue.

Q27 Julie Hilling: It is frustrating that transport seems to be reorganised fairly regularly, as it makes it difficult for us as a Committee. We think that we have made progress and then suddenly there is a change in personnel, so I hope that you are here for somewhat longer as a Secretary of State.

I want to talk not specifically about the Virgin bid or the West Coast bid but about the wider implications of franchising. As we know, millions and millions of pounds are wasted by companies that are unsuccessful in the bidding process. It is clearly an expensive process. Virgin have told us that they raised concerns very early on about the bidding process. I wonder what has happened to those concerns, and what is going to happen going forward, with the things that this round of bidding seems to have thrown up.

Mr McLoughlin: I would hope the Department will always learn if things have gone wrong. It is very important that we have the confidence of the industry. It is very unfortunate that, at the end of the day, there is a row and a legal dispute over this particular contract. You say that the companies spend a lot of money. They do spend a lot of money on preparing these bids, but they are also very valuable bids, and they would not spend that money if they did not think that there was a proper return for them thus to do so. There has to be an element of competition involved in that for the sake of the passenger, for whom we are trying to get the best deal as well.

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Q28 Julie Hilling: That may be an argument for renationalisation, Secretary of State.

Mr McLoughlin: I am not sure that it is one that the Labour party is yet willing to make.

Q29 Julie Hilling: I have another question about fares in relation to franchising. One of the concerns that our constituents have raised with us is the enormous cost of travelling on the West Coast. As I said last week, I could have a holiday in Benidorm and £80 of spending money for the cost of a peak return ticket. How much does the fare box come into franchising decisions now and how much in the future? Where do you stand in terms of these ever-increasing fares that keep people off the railways?

Mr McLoughlin: My understanding is that part of the benefits is that First will be reducing the standard anytime fares by an average of 15% over the first two years of the franchise. So fares and fare levels are something that is very important. Train operators themselves want to maximise the number of passengers on the trains, to make sure that they are utilised to their full capacity. Yes, fares are very important, but I come back to the point that there has been significant public investment, indeed, on this particular line.

Q30 Julie Hilling: Indeed, but your last-but-one predecessor said that he believed that the railways were a rich man's toy. What are you going to do to ensure that that situation doesn't continue and that ordinary people have access to our rail services?

Mr McLoughlin: I am not going to try and answer for what previous Secretaries of State have said. What I would say is that the train, at peak times, is a very expensive mode of travelling, but then getting in a car at peak times is also very expensive because you are likely to be held up in road congestion and be burning fuel at the same time.

What I would like to see is fare prices eventually being a bit more accessible and more understandable, which is one of the great problems at the moment. Indeed, we are doing a review on the whole aspect of ticketing and fares so that it becomes a bit more understandable. Certainly on my own line you can spend a huge amount of money to catch a train before 8 o'clock, but if you wait until 20 minutes past 8 it is a lot cheaper. The trains before 8 o'clock aren't so busy as those after 8 o'clock, and we all know the reason why.

We need to work with the rail operating companies to see the way forward on this particular issue. Some of the recommendations of the McNulty report, which will hopefully reduce the cost of running the railways, can then be reflected in fair passenger prices as well.

Q31 Chair: This is my last question I want to ask you on the West Coast Main Line. Would you confirm who will be running that line if the legal issues are not resolved by the due date in December?

Mr McLoughlin: If the legal issues are not completed by that date, there are powers for the Department to act through Directly Operated Railways under section 30 of the Railways Act.

Philip Rutnam: There are contingency arrangements under which the Department can ensure continuity of service through a public body that reports to us, which is known as Directly Operated Railways.

Q32 Chair: Is that what you intend to do?

Mr McLoughlin: If we get to that situation, that is what we will have to do.

Q33 Chair: I turn now to High Speed 2. Are you committed to delivering the legislation for the first part of the HS2 network by 2015?

Mr McLoughlin: I would certainly like to see the legislation delivered by 2015, yes.

Q34 Chair: Are you committed to ensuring that the line goes beyond Birmingham to the north on the agreed timetable at least, if not quicker?

Mr McLoughlin: As I said right at the start of my evidence, I know from my own experience that rail planning and infrastructure planning takes a very long time, but it is our intention to complete the Y link. That does take a bit longer, but we have to get the first section up to Birmingham operating, and it is our intention to do so.

Q35 Chair: Will you be recalculating the business cost ratio of the scheme?

Philip Rutnam: May I comment on that? We keep the business case for this investment under review of course. We published a revised business case on the basis of the most up-to-date information that we had earlier this year. We continue to keep the business case under review, and we take into account the most recently available information—for example, on GDP, passenger numbers and other evidence that we have available. We will be publishing a further revision at some point in the future, but I'm afraid that I cannot tell you exactly when.

Chair: Are there any other questions on High Speed 2?

Q36 Iain Stewart: We have the aviation capacity review coming up. I wonder whether you would be willing to look at some of the details of high speed rail in that context so that, if a decision is made on a particular expansion at an airport or a new airport, the HS2 route detail might be amended to take account of it.

Mr McLoughlin: Well, gosh. I am going to stand by the fact that, at the moment, the route has been published. It is the route that was published by the previous Government, and we intend to stick by that route. If you are talking about Heathrow, there is an intended stop at—I can't remember the exact name—**Philip Rutnam:** Old Oak Common.

Mr McLoughlin: It is at Old Oak Common. However, I am not going to prejudge other questions that may come later about what the Davies Commission may or may not say.

Q37 Julie Hilling: When will you be publishing the route of the Y?

Mr McLoughlin: We have announced that we would like to do it before the end of the year, and it is still

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my intention to try to do so. That, at the moment, is the intention, but I wait to see more papers on it.

Q38 Chair: This Committee took a great interest in the issue of Thameslink rolling stock and the difficulties that arose there. I understand that no contract has been signed with Siemens at the moment for Thameslink rolling stock. Is that correct? If so, could you tell us why it has not been signed and what is going to happen?

Mr McLoughlin: We are working closely with Siemens to conclude the contractual arrangements. We certainly hope to sign the contract by the turn of the year. There were some procedural issues that had to be gone into. I know the close interest that the Committee took in it; I too took a close interest in that contract but from another stance.

Q39 Chair: Can you give us a clue about what these procedural issues were? This contract was supposed to have been signed many months ago and then there were delays, but we have never had a proper explanation for the delays.

Philip Rutnam: The first point to bear in mind is that this is a very large and complex contract. The most important thing from our point of view is to get the right commercial terms in it in order to generate as much value for money for the taxpayer and for passengers as possible. We are focused on getting it absolutely right, with every “i” dotted and every “t” crossed. It is a very complex and large transaction, and that is what we are focused on. While it has taken a few months more than we expected, there is no risk that I am aware of to the entry into service of the Thameslink trains to deliver the full Thameslink service.

Q40 Chair: Shouldn't these commercial considerations giving the best deal have been explored fully before it was announced that the contract would be awarded to Siemens?

Philip Rutnam: The way that the process operates is that, back in the summer of 2011, we identified the preferred bidder for this process. It was always clear, whoever had been the preferred bidder, that there would need to be some months of detailed negotiation and to ensure that the private-sector financing needed to fund the capital cost of the trains was all lined up. We need to be achieving financial close as well as commercial close.

I mention here the Intercity Express Programme, which is an even larger rolling stock transaction. The contract, you will probably recall, was awarded to a consortium led by Hitachi. That is a similar scale of project and a similar sort of process. We announced in July that we had achieved the financial and commercial close on that very large transaction. Following identification of the preferred bidder, it then took quite a few months of detailed negotiation to generate the right conclusion.

Q41 Chair: Is there any date beyond which you are not going to go, when you might decide that you can't conclude this?

Philip Rutnam: We are focused very clearly on concluding this transaction. We are confident that we will be able to conclude it. The Secretary of State has already identified when we hope to do that.

Q42 Chair: Thank you. I now turn to aviation. Secretary of State, there has been an announcement of a new commission to look at airport capacity. What is that going to achieve that has not been achieved before?

Mr McLoughlin: These issues are not short-term ones; they are for the longer term. I hope that, when we are ready to announce the full membership of the Davies Commission, we will be able to show that it is a body of respected people who can come forward with a detailed investigation into future aviation capacity and what the best answers are for the United Kingdom to keep its importance and status in the aviation field. It is no bad thing to have a completely independent commission addressing some of the complications on whether a new estuary airport or expansion at some of the other London airports is the right way forward.

I met Sir Howard earlier this week. Obviously, an announcement was made within a few days of my arrival at the Department. That should indicate that it was not something new that had been thought up completely by the Secretary of State but that it was work that had been going on within the Department for some time as the proper way to move forward.

Q43 Kwasi Kwarteng: The issue of south-east aviation capacity was raised when you were Parliamentary Under-Secretary in 1990, and, as far as I can make out, in 22 years we have done nothing on aviation capacity in the south-east. How surprised are you about that?

Mr McLoughlin: I am not sure. Am I surprised? To say that nothing has been done on capacity is wrong. There have been capacity increases. The ATMs—air traffic movements—at Heathrow are substantially bigger than they were 20 years ago. To say that nothing has happened is a slight exaggeration.

Q44 Kwasi Kwarteng: Forgive me, Secretary of State, but the issue raised in 1990 was that a new runway to cater for demand arising in south-east England would be needed. With regard to that runway, I don't think that we have made as much progress as perhaps was envisaged in 1990, and I want to know what your thoughts are about that coming back to your role in a more senior position.

Mr McLoughlin: My thoughts are that it is a very difficult and complicated subject to address. You have been keen to call for a third runway, but even if we have a third runway it would take some considerable time to plan it and get it through the planning process. It is very controversial, and I think it is right to set up a commission to give us that advice. There have been commissions in the past, but not for some time, going into the kind of detail that the Davies Commission will go into.

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Q45 Chair: Are we doing enough to support regional airports? Could the Government do more either to expand their capacity or use better what we have now?

Mr McLoughlin: I am trying to set the Department a task, and I very much hope that the Committee can help me with this. I do not regard Manchester airport as a regional airport. I do not regard Birmingham airport as a regional airport. These are very big international airports; they are not regional. Manchester airport has more passengers than either Stansted or Luton. The term “regional” almost puts them into a different category. They are not regional airports; they are very important international airports, and I am going to try during my tenure to stop calling them regional airports. Perhaps we can have a concerted effort on that, because they are part of the overall infrastructure; they are vital infrastructure and they provide very important services to our constituents.

Q46 Chair: Does that mean that the debate will move away from concentrating solely on capacity in the south-east?

Mr McLoughlin: The south-east and the connectivity that Heathrow has is very important and I don’t think that it will move away from that, but we should also bear in mind what capacity we have elsewhere in the country. It is up to the operators what services they wish to operate. Manchester has seen huge growth. I remember a long time ago being a member of Staffordshire county council, and we were interviewing a new planning officer. The then chairman of the county council asked the planning officer, who came from the south-east, what he thought of Manchester airport. He said, “Well, it’s not that important. It’s far more important that we concentrate on the south-east and south-east airports.” I remember that, after about five minutes of the interview, the chairman of the county council at the time said, “The interview is now over. I don’t think that you are suitable for this job.” There is a different approach on what we need to do as far as aviation is concerned.

Q47 Mr Leech: You said at the beginning of your comments on aviation that you were looking at all the options in the south-east.

Mr McLoughlin: The Davies Commission will look at all the evidence.

Q48 Mr Leech: I am sorry. The Davies Commission is looking at that, and that includes the option for, potentially, a new hub airport in the Thames estuary. The Committee is consistently told by people in the aviation industry that you can’t create another hub airport, Heathrow is the only hub, and that’s the end of it. If we can consider the Thames estuary as an alternative hub to Heathrow, why aren’t we looking at one of our other international airports as a potential hub airport—perhaps Manchester or Birmingham, whichever one it might be?

Mr McLoughlin: The London airport issue is something that we have put separately to the Davies Commission, and that is the right way to go forward on that particular area. As for the connectivity that

might be available at other airports, it is something that I am willing to talk to those airports about. I have not yet had the chance to visit Manchester; I hope to do so in the not too distant future.

Q49 Mr Leech: The point that I was trying to make was that considering the Thames estuary as an additional or alternative hub suggests that the argument that you can only have a hub at Heathrow is not accepted as being the case. My question is that, if we are saying that there could be another way of dealing with aviation and airport capacity, surely we should be looking at the scope of other international airports and not just the south-east.

Mr McLoughlin: What I am not prepared to do is to prejudge what the Davies Commission will say. We have asked it to make an interim report by 2013. That may give us some signposts as to certain areas that we may want to travel down. You can take it from me that I am very keen to talk to the other airports—Birmingham, Manchester and the like—as to this whole issue of services offered to constituents from the midlands and the northern area. That is something that I will be doing.

Q50 Chair: When in 2013 is the interim report expected?

Philip Rutnam: By the end of the year.

Mr McLoughlin: By the end of 2013, but I can’t give you a date at this stage.

Chair: I just wanted an idea of what the plan is.

Q51 Iain Stewart: Leaving aside the debate about long-term aviation capacity, I would be interested in your thoughts on what else we can do in the short term to improve capacity at airports. I am thinking particularly of what lessons we can learn from the Olympic period. Again, there were prophecies of doom and transport chaos, but Heathrow coped admirably with a very high intensity of demand. What plans does the Department have to capture some of the lessons learned there in the short term?

Mr McLoughlin: As a new Secretary of State, I would like to pay great tribute to all those people in the Department who worked so heavily on ensuring that public transport worked so well during the period of the Olympics. A huge amount of work was done by the Department, and, despite the doom and gloom that we had before the Olympics took place, the Department made a great contribution. I have asked the Permanent Secretary to communicate this to those members of staff; it was absolutely fantastic.

There are lessons to be learned from it, not only in what we did with regard to public transport but also, as you say, at the airports. I am sure that I shall be getting many reports on how we can build on that—build on it working with the UK Border Agency and the Home Office too, which had the lead on border control. It was very successful, and we need to make sure that we try and carry through the points that we can learn from it and the improvements that can be made.

Q52 Chair: The Prime Minister has said that the Government want to spend more on infrastructure or

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want more infrastructure development to take place. When do you expect to be offering financial assistance to transport providers under the new Infrastructure (Financial Assistance) Bill?

Mr McLoughlin: Philip, can you answer?

Philip Rutnam: There is the new UK Guarantees programme that the Treasury have announced, for which they are seeking legislative provisions. We are already exploring possibilities under that. There are discussions in relation to some of the big local authority projects, and the Mersey gateway bridge is one example. We are looking to see whether we can find ways of using this significant programme that the Treasury has announced.

Q53 Chair: When should we expect announcements about building new roads or perhaps bringing rail investments forward? When should we expect to hear about a construction programme?

Mr McLoughlin: The Bill was published last Thursday, so it has to go through its proper process in this House and another place if that is necessary. We will keep you and the House up to date in the usual manner, through written ministerial statements or statements to the House, when we have something to announce on those issues. You can take it very much that the Prime Minister is keen to ensure that we make the most use of this availability. I am very keen that the Department does so as well.

Q54 Chair: Do you want to build more roads?

Mr McLoughlin: There are some areas where more roads are very important because they can relieve congestion and help us move. Do I want to build more roads? In some areas there are road improvements that can be made. Yes, where we can and where it is sensible to do so, but it is not something that can be done overnight.

Q55 Chair: How are you going to decide which projects to take forward?

Mr McLoughlin: I will give that some consideration in due course.

Q56 Kwasi Kwarteng: On the issue of roads, do you have any particular views on road pricing?

Mr McLoughlin: No, not developed enough to share with you this afternoon.

Q57 Chair: I want to deal with road safety next if there is nothing else to raise on infrastructure.

On road safety, the Committee is very concerned that there was an increase in road deaths in 2010, apparently reversing a long-term trend. Is this of concern to you, Secretary of State? Is road safety an area that you will be looking at nationally?

Mr McLoughlin: I am very concerned about road safety but not just road safety. In fairness, the Department has an important role as far as safety is concerned. There is aviation safety, marine safety, coastguard safety—there have been some horrendous incidents we have heard about over the summer as far as our coastguards are concerned—and there is also road safety.

It is fair to say that, although there was an increase in fatalities in 2011, the annual total in 2011 was below that of 2009. The Department has been very good over a number of years in seeing an improvement in road safety. It is not just the Department; it is also working with the local authorities. Sometimes, small changes can make a difference to the safety of roads and road surfaces. It is an area where, of course, we must never, never give up our fight on that particular subject. I know that you have done a report on it; I have not yet had time to read it, but I will look at that report.

Q58 Chair: The Committee has also been concerned for a long time about the high rate of deaths and accidents among young people on the roads. Will you be turning your attention to that area as well?

Mr McLoughlin: Going back to my earlier days in the Department, I remember that we were seeing the number of road deaths coming down and we had an incredibly good record compared with our competitor nations on road safety. One of the areas where we weren't very good was the number of child deaths. That was higher than perhaps some of our European neighbours, and I shall want to look at that. The whole issue of safety and the devastation wreaked on a family as a result of a fatality in a road accident is something that we have all had to deal with as Members of Parliament, and it is very difficult indeed.

Q59 Julie Hilling: Particularly on road safety, we expressed some concern last year about the drink-driving campaigns and the fact that it was put on the internet rather than being a more public-facing television campaign on safety at Christmas. Will you overturn that this time and put some of that information back on the television? I am aware that within this—let me set the framework—that the Government have cut their marketing budget. That means that safety campaigns are actually not publicly available to everybody. That is the context of my question.

Mr McLoughlin: I would like to give you the assurance that I shall look at these particular issues. I also want to look at the best way in which we can communicate it, because the television adverts that we used to run may be right at certain times and in certain areas, but I am not sure that they get to the number of people that we want. There are other media aspects these days that we can use to try and get that particular message across. I am prepared to look at it, and to look at the whole system in the round, to really get that message across.

This morning, Stephen Hammond was on one of the TV programmes—"Daybreak", I think it was—talking about people using their mobile phones and texting while driving, and the incidence of death that that has caused. People don't do it thinking that they are going to cause a death. They do it just because they think it is safe to do so. It is not safe to do so. It is not safe to drink and drive; it is not safe to use your phone and drive; and it is not safe to text and drive. Because people get away with it, we have to think more about it.

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Q60 Julie Hilling: Will you also be looking at being safe to drive in terms of sleep apnoea, eyesight and all those other issues that we have raised as a Committee, and our concerns about whether we are rigorous enough in establishing that people are physically safe to drive?

Mr McLoughlin: Yes, but you also have to rely on common sense. The Secretary of State for Transport cannot be a guardian angel of the 22 million sitting people behind their steering wheels driving their cars, but we have to try and get that message across. There was a case in the papers not so long ago where the judge was quite critical about the availability of the sentences that were available to him. Actually, we have changed the law on that and new sentences will become available next year for the courts to use for dangerous driving and the like. We need to get those kinds of messages across. The trouble with driving sometimes is that drivers become complacent. Sometimes they forget that they are in charge of a vehicle that could cause mass damage and kill people.

Chair: Are there any further questions from members?

Q61 Julie Hilling: Can I tackle a slightly different subject? There are two areas that I would like to ask you about. One is about the question of devolution in rail franchising. There are bids in from the north in terms of them running a new Northern franchise, whatever that is—perhaps a conglomeration of Northern and TPE. The PTEs have bid to run that, and I know that there are some others. I wonder what your view is, or do you not yet have a view on that?

Mr McLoughlin: At this stage of the afternoon I don't think I have a view on it, but give me a bit of notice next time and I will.

As somebody said, I have done it for longer than Justine did when she first appeared before you; I have done it for seven days rather than two. It is a huge Department, and I need to meet a number of organisations, including the northern passenger organisations, and I will be doing that over the next few months.

Q62 Julie Hilling: The other thing is a more general question on rolling stock. The Government have announced a lot of electrification, but the Thameslink cascade of vehicles is not going to satisfy them all. I wonder what the plans are for new electric rolling stock to fulfil all of that electrification, otherwise we will have the nonsense of running diesel under wires. I wonder what the forward planning is for new electric rolling stock.

Chair: Are you able to answer that or is that something you would like to think about, Secretary of State?

Mr McLoughlin: I have had discussions about that, but I am not sure that I have an answer for you at this stage. No doubt we shall be returning to the subject in future hearings of the Select Committee, and I shall come back with a much better response, Julie.

Chair: Thank you for coming so soon after your appointment. We thought that it was important to ask you a number of questions, but I am sure that all of the issues that we have raised will be returned to in the future. Thank you very much for coming here today.

Tuesday 18 December 2012

Members present:

Mrs Louise Ellman (Chair)

Sarah Champion
Jim Dobbin
Karen Lumley
Karl McCartney

Lucy Powell
Iain Stewart
Graham Stringer

Examination of Witnesses

Witnesses: **Sam Laidlaw**, Non-Executive Director, and **Ed Smith**, Non-Executive Director, Department for Transport, gave evidence.

Q857 Chair: Good morning, gentlemen, and welcome to the Transport Select Committee. I would ask you to start by giving your names. This is to help our records.

Sam Laidlaw: My name is Sam Laidlaw. I am chief executive of Centrica.

Ed Smith: My name is Ed Smith. I am a non-exec at the Department for Transport.

Q858 Chair: We have a number of questions to ask you about your very important report. Indeed, your report is a damning indictment of the Department for Transport. It shows that the bidders in relation to the West Coast Main Line were treated inconsistently in a process the Department knew to be flawed and was vulnerable to legal challenge. It shows that senior officials and Ministers were given an assurance that the subordinated loan facility-setting process was sound, despite warnings from lawyers to the contrary, and that this multi-million pound exercise was conducted against a background of confused governance in what your report calls “a culture of limited ownership and ineffective oversight”. Indeed, the situation was only exposed because of Virgin’s legal challenge.

It is a pretty serious situation we have here and your report is a very important one. Before we ask you some questions about the content of the report, I would like to clarify some aspects of your own roles and work within the Department. You were both non-executive directors in the Department for Transport. Could you explain to us what that means and what sort of work you have both been doing within the Department?

Sam Laidlaw: Yes, certainly, Chair. I will take that question. The role of non-executives in Government Departments is relatively new. This is something that was set up in its current format by the coalition Government. These are advisory boards. They are not in the same sense as a corporation or a commercial entity might have non-executive directors who are collectively accountable for the performance of a commercial enterprise. These are advisory boards where the accountability of the Departments remains through the accounting officer to Parliament. We advise on matters of organisational capability. We advise on matters of delivery of policies, basically. The whole aim is to ensure that, as part of the Government efficiency and reform agenda,

Government policy is delivered as effectively as possible.

We meet relatively infrequently. This year we have met so far six times. We obviously therefore don’t get into the level of detail that perhaps a commercial board might do. Clearly, we are there to assist and ensure that, wherever possible, Government policy is delivered effectively for the benefit of taxpayers.

Q859 Chair: Mr Smith, you have paid employment, don’t you, for the work you do?

Ed Smith: Yes, I am remunerated.

Q860 Chair: Could you explain to us what that is?

Ed Smith: The remuneration is at a level of £20,000 per year, which is an amount as a non-executive director. I operate as a non-executive director and, up until the end of June, had also chaired the Audit Committee of the Department.

Sam Laidlaw: I should also emphasise for the benefit of the Committee that for the purposes of this inquiry neither Mr Smith is nor I am receiving any remuneration.

Q861 Chair: Yes; we did know that, but it is good to clarify that. There was a delay between the time your report was submitted to the Department and the time it was published. When did you actually submit your report to the Department, Mr Laidlaw?

Sam Laidlaw: We submitted a report very shortly before the end of November. It was the 26th, I recall.

Q862 Chair: What date in November?

Sam Laidlaw: It was 28 November; I beg your pardon. The Department advised us that they would like to consult with various people whom they felt might be interested parties as a result of that report. That process of consultation took a further week, and, therefore, the final report was issued on 6 December.

Q863 Chair: Did the Department request any redactions or alterations in the report following their review?

Sam Laidlaw: The redactions that are in the report were made by the Department. They are a matter for the Department. We submitted a final report to them and the redactions are those of the Department. As we understand it, they are there to protect the commercial confidentiality of bidders, but also there are one or two redactions to remove the identity of certain

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individuals who may or may not be subject to the HR investigation that was ongoing at the time.

Q864 Chair: At least one of those redactions is pretty serious. It is a redaction of who it was who is said to have advised officials that it was appropriate to exercise discretion in estimating the SLF requirements, when later legal advice said that that was wrong and would lay the Department open to legal challenge. That is a pretty serious redaction. Did it concern you that that name was removed?

Sam Laidlaw: No, because for the purposes of the terms of reference of our inquiry—which, just to remind the Committee, was to understand what went wrong, why it happened and lessons to be learned going forward—given that there was an independent HR inquiry under way, we did not feel that it was necessary or indeed appropriate to get into naming individuals that could prejudice that HR inquiry. We made it quite clear in our report to the Secretary of State. We referenced the job title of that particular individual and, therefore, the Department have full knowledge of it. It is a matter for them whether they choose to publish it more broadly. I think there is a general point here that, given that there is an HR investigation under way, it would be potentially prejudicial to individuals in the Department if names were more broadly published.

Q865 Chair: Did the fact that there was an HR investigation under way impede you in any of the work you were doing or inhibit you in anything you wanted to say?

Sam Laidlaw: No, it didn't. The two investigations were done in parallel, as, indeed, was the investigation done by the National Audit Office. We had three concurrent investigations under way. We were able to take the benefit of gathering evidence simultaneously on a number of occasions. We were using the same evidence base, which I think made it a much more productive and cost-efficient exercise than if we were separately gathering evidence from each of the witnesses. It did not hinder our investigation.

Q866 Chair: Apart from the redactions made, were there any other alterations or removals to the report made at the request of the Department?

Sam Laidlaw: No; not at the request of the Department. At the request of some interested parties, there were clarifications and minor modifications made in the period between 28 November and 6 December.

Q867 Chair: What kind of clarifications?

Sam Laidlaw: They were really where individuals felt that there was some ambiguity around either what had been said or the roles that they had played.

Q868 Chair: Where these individuals made the clarifications, did you automatically accept what the individuals said?

Sam Laidlaw: No, very far from it. We went through a very careful review. We gathered the evidence that we had taken. During this inquiry we took some 70 different witness statements from 55 people. We also

looked at over 3,000 documents and gathered a lot of information. We cross-checked what they were telling us as a result of this final further process of consultation with the evidence that we had previously gathered. In many cases, we dismissed it as being clearly self-interested; in other cases, we accepted it.

Q869 Chair: Did any Ministers or officials attempt to discuss the findings of your report while the report was in process and before it was handed into the Department?

Sam Laidlaw: No, they didn't.

Q870 Chair: Were any inquiries made?

Sam Laidlaw: The only conversation was when, on 28 November, I submitted the report to the current Secretary of State, I made him aware of the contents that were in the report, and it then went through the further consultation process in that final week.

Q871 Chair: There are a number of areas in the report where it seems that you were only able to make what you called a qualified opinion because of the lack of information that you were able to access. In particular, you say that, in relation to the issue of whether there was an anti-Virgin bias in the Department, you saw no evidence of that, but you say you were only able to take a qualified view "in the absence of a full, independent e-mail capture and review". Didn't it trouble you that you were not able to get that full e-mail capture?

Sam Laidlaw: This is natural caution, particularly given the potential for litigation that obviously surrounds this whole issue. On the very strong balance of probability, given the enormous amount of data that we did look at and the fact that, although we did not do a full e-mail capture, we nevertheless had the benefit of reviewing all the e-mails that were provided to the HR inquiry that was under way at the time and could see no evidence of systemic bias or anti-Virgin culture, we feel that that is a reasonably robust conclusion. But it cannot be a completely conclusive conclusion, unless we not only reviewed every e-mail but also interviewed everybody in the Department, which would take a very long time. We probably felt that the interests of the taxpayer here were best served by a short sharp inquiry gathering as much detail as we could rather than seeking to extend this process further. We think that getting rail franchising moving forward and accepting the recommendations of our report is the most important thing.

Q872 Chair: But, in October, you submitted a request to the Department for Transport for e-mail searches. This was more general; it may have been wider than the Virgin issue. You report that that was not done. You say that was "because of Government data security and related issues". Didn't that concern you?

Sam Laidlaw: This was not a limitation imposed on us by the Department for Transport. What happened here was that we put in a request to transfer all the relevant e-mails on to a separate platform so that we could interrogate them. That was not possible due to constraints imposed partly around data protection and

partly around confidentiality of data and Government data security protocols imposed by central Government, not imposed by the DFT. I think the DFT sought to remove that restriction but were unable to do so within the time available.

They then offered an alternative, which was to look at all the e-mails that were being captured for the HR inquiry, which seemed, to us, to give us not perhaps 100% of what we required but certainly over 90% of what we required.

Q873 Chair: So you accept that position; you don't feel there was any attempt to withhold any information from you.

Sam Laidlaw: No. It was clear to me that the Department at a very senior level were doing all they could to facilitate our request.

Q874 Chair: The invitation to tender for the franchise was issued before the Department knew how to calculate the subordinated loan facilities. How serious a problem do you think that was?

Sam Laidlaw: I think that is a very serious problem and in a sense was at the root of the problems that subsequently emerged. Therefore, in our recommendations around proper planning and preparation, ensuring that, in future, the commercial structure is properly tested is key. The fact that this process was launched without the mechanism for determining the SLF being properly and robustly tested led to the whole series of cumulative errors that subsequently occurred and the need to apply a discretion that was outside the published process.

Q875 Chair: You say in paragraph 4.10 that members of the project team were aware "from an early stage"—those are your words—that the Department was unlikely to be able to develop a bespoke model for setting the subordinated loan facilities before the bids were due. When you say "from an early stage", how early was that? When did you actually know that?

Sam Laidlaw: The invitation to tender went out on 20 January. It was in the February to March period—certainly by the time the rail franchising body met on 21 March—that it was clear that the GDP resilience model, which was not designed for this purpose, was going to be adopted for this purpose but was not fit to be shared with bidders. Of course, a ready reckoner was then prepared as an alternative to show to bidders. I believe there was honest intent here to try and find a way through this. It was, through the ready reckoner, to give prospective bidders an indication as to the amount of capital and subordinated loan they would have to put in their bid, but, clearly, the ready reckoner and the GDP resilience model were both flawed, as we now know.

Q876 Chair: That was a very serious issue, wasn't it?

Sam Laidlaw: Indeed.

Q877 Chair: That then led to subsequent decisions.

Sam Laidlaw: Absolutely.

Q878 Iain Stewart: I would like to follow up the Chair's questions about your conclusion that there was no anti-Virgin bias in the Department. I would like to refer specifically to the meeting of the Contract Awards Committee on 27 June. In paragraph 4.55 you say that in the papers for that meeting code names were used for Virgin and First to give anonymity.

Sam Laidlaw: Yes.

Q879 Iain Stewart: But in the discussions at that meeting would officials have known the identity of the bidders?

Sam Laidlaw: At the 27 June meeting it is most unlikely that they would, although it is fair to say that, despite the best intentions of anonymity and anonymisation—which I think we should come back to later, because the Department has recognised that it has its limitations—the evidence we have heard from a number of people is that those who know the bidders very well will generally, despite these best intentions, be able to determine at some stage in the process which bidder is which.

Q880 Iain Stewart: That causes me some concern. I accept your point from the e-mail capture that you had that you saw no evidence of bias, but there is still a question mark over what you did not see. If, at this meeting, individuals were able to bring their own knowledge of who the bidders were, how can we rule out that in this meeting, at which the decision to exercise discretion on the SLF was made, that was not the product of some anti-Virgin bias or indeed anti-First bias? It could have gone either way.

Sam Laidlaw: It is well documented in the report that what clearly emerges from the meeting is that there were 14 people there with a variety of different recollections, unfortunately. The minutes are not very clear on this point. I also think the decisions that were taken at that meeting were taken as a result of different people putting different emphasis on different factors. There isn't one clear sequence of events or causes that caused the adjustments to be made. There were discretionary adjustments that, therefore, did not conform to the published process that can be readily audited. It is not entirely clear what happened at that meeting and why the decisions that were taken were taken. I accept that that is a limitation of the evidence, but we have interviewed everybody who was at that meeting and I don't think the presence or absence of e-mails is going to make a difference to the understanding of what was at that meeting. There was clearly a difference of individual views there.

Q881 Iain Stewart: I appreciate you might not be able to name the individual, but what was the rank of the most senior person at that meeting? First, was it entirely officials? Were any Ministers present?

Sam Laidlaw: Yes; it was entirely officials and it was at director level.

Q882 Chair: There were not any proper minutes taken of that meeting, were there?

Sam Laidlaw: There weren't comprehensive minutes taken of that meeting.

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Q883 Chair: You say in your report that there was a short draft of minutes replaced by an even shorter draft.

Sam Laidlaw: Yes.

Q884 Chair: Who would have been responsible for that?

Sam Laidlaw: The secretary of the CAC, I would presume, would normally take the minutes¹. It is one of our clear recommendations that, first, the governance and terms of reference of this committee—and, indeed, other committees in the Department—need to be tightened up. The Department is actioning that. Going forward, obviously the nature of the minute taking and the comprehensive requirement that is in everybody's best interest that those minutes be more comprehensive in future is something that needs to be adopted.

Q885 Chair: It was a very important meeting, wasn't it, because that was the meeting where somebody, whose name was redacted, advised that it would be appropriate for the Department to use discretion in calculating the size of the SLF requirement?

Sam Laidlaw: Yes. What appears to have happened here is that they were looking at a flow chart that implied there was an element of discretion and, therefore, that gave the committee reassurance that they had an element of discretion that they could apply; but previous guidance that had gone out to bidders made it quite clear that there would not be an element of discretion in this process. That previous guidance was possibly forgotten about by the individual who was providing that advice.

Q886 Chair: We are told that, following that meeting, an external legal adviser warned that the Department could be open to legal challenge if they went down that path.

Sam Laidlaw: Yes, because the external adviser reminded the individual that this previous guidance had gone out to bidders.

Q887 Chair: Was that reminder made within or after the meeting?

Sam Laidlaw: That was after the meeting.

Q888 Chair: Is there any evidence that any such guidance was given within the meeting?

Sam Laidlaw: No.

Q889 Chair: There is no evidence. There is nothing in your report that says that.

Sam Laidlaw: No.

Q890 Karl McCartney: With regard to the Committee of 14, I read in the report that obviously there was some reorganisation in the Department. Do you know how many of those 14 were involved in previous franchising processes?

Sam Laidlaw: I would think less than half. It is of that sort of order. I can come back to you on that point.

Q891 Karl McCartney: Of those 14, how many were internal? Were they all internal or were some consultants?

Sam Laidlaw: I think they were all internal.

Ed Smith: Yes; I think they were. Again, we can come back to you. My recollection is that they were all internal.

Q892 Karl McCartney: Thirdly, had any previously worked for any TOCs, including First or Virgin?

Sam Laidlaw: I am not sure. None had recently, but whether they had in the past is something we can check.

Q893 Karl McCartney: The rail industry is quite incestuous so I was just interested to find that out.

Sam Laidlaw: It does speak to the question of building capability for the long term, which is clearly a very important recommendation of our report. The DfT is going to need to strengthen its capability both from inside and outside the civil service. In gathering that experience from outside the civil service, it is inevitably going to have to go to the rail industry. That is something that we are going to have to protect very carefully.

Q894 Karen Lumley: In your experience, would you have expected a senior official to be working full time on this contract?

Sam Laidlaw: I think we would have done. I think the evidence that was given by the Permanent Secretary to the Public Accounts Committee suggests that it was clearly a shortcoming that a senior civil servant was not actively full-time managing this project.

Q895 Karen Lumley: Who do you think was responsible for that decision?

Sam Laidlaw: It really stems from the reorganisation that was done. It began in late 2010 but was not actually concluded until 2011. Having previously had one organisation that was responsible for the whole of rail franchising from beginning to end, an organisation was designed—I think with good intentions—to separate the policy piece from the implementation piece and, if you like, a client provider organisation. That is not atypical and I have seen work in other organisations. But, in so doing, when this particular rail refranchising project moved from the policy piece prior to the invitation to tender going out to the implementation piece, when the invitation to tender went out on 20 January, there was clearly a hiatus as to who the senior reporting officer was. That was not picked up until April. I think it is in that time period that this project had insufficient senior ownership.

Q896 Graham Stringer: Your report is a long way away from being a whitewash. It is quite devastating really, but it is still a bit unsatisfactory inasmuch as half the report—the human resources and personnel side of it—isn't there. When did you learn that there was going to be a separate departmental investigation into the personnel side of it?

¹ The evidence available to me suggests that the longer draft minutes were replaced on the initiative of an internal DfT lawyer or lawyers with shorter draft minutes that were prepared by one of the attendees of the Contract Award Committee on 27 June 2012.

Sam Laidlaw: The departmental investigation was started at the same time or before my inquiry. The individuals who were suspended, and who have now been returned to work, had been suspended prior to 15 October when my inquiry began. Therefore, that process is under way. As I think the Permanent Secretary has already said, that inquiry has concluded and disciplinary action is being independently taken.

Q897 Graham Stringer: The reason I ask is because I went back and looked at the Secretary of State's statement on 15 October. He mentioned the Brown report, your investigation and that staff had been suspended, but he did not say that there was a separate internal investigation going on.

Sam Laidlaw: When I was asked to conduct this inquiry, at that time I was informed that there was an independent inquiry going on that was performing the HR investigation.

Q898 Graham Stringer: In your interim report and the final report, you make it clear that you had no line management responsibilities; you had an oversight role in relation to the Department for Transport. Do you not think it would have been better to have had somebody completely external? Although you do not have direct responsibility, you are associated and that must lead people to worry about a conflict of interest.

Sam Laidlaw: First, I would say that the report, as you yourself have said, is a critical report. It is not a compromised report. It also reaches very similar conclusions to the report of the National Audit Office, which I think everybody would acknowledge is fully independent. If you take the commercial analogy, it is not atypical for senior independent directors to launch investigations either through an audit committee or separately when things go wrong in large corporate entities. It was that model here that it was seen to be replicating, plus the fact that I and my colleagues had expressed some concerns about the process. We had expressed those concerns as non-executive directors to the Permanent Secretary and, therefore, we were the natural place to go and also to try and sort it out in a way that was probably going to be much more expeditious and cost-effective than launching a full-scale judicial inquiry, which I suspect would have taken considerably longer.

Q899 Graham Stringer: You say that you are satisfied of Mr Smith's independence, but Mr Smith was there at the Investment and Commercial Committee, wasn't he, when decisions were being made? You say that he challenged those decisions at the time. Again, doesn't that lead to a conflict if somebody who was involved in the process is then part of the investigation into it? Was that wise?

Sam Laidlaw: I should first say that I have been greatly assisted by Mr Smith in this inquiry. As to his independence, there is absolutely no doubt in terms of his own personal integrity, but also the evidence is very clear on the point that he provided a lot of challenge at the one meeting that he did attend—you are right—on 2 August 2012, where he was the person who was saying, "Are you sure this SLF has been calculated in the right way?" He received the answer

that it had been applied following the formula. We now know that, unfortunately, that was not the case.

Ed Smith: I am more than happy to expand on that.

Chair: Mr Smith, if you could tell us more about that, it would be very helpful.

Ed Smith: I was called by Clare Moriarty, who chairs the BICC, the day before the 2 August meeting to ask if I could come in because the anonymisation process had led to a number of people not being available at the second BICC meeting. The first BICC meeting on the Tuesday had raised a number of outstanding issues.

I got the papers late that evening on the Wednesday and absolutely committed to coming in. The meeting was about an hour. We focused on three areas. One was looking at the revenue projections. There was quite a lot of discussion around the revenue projections. The project team gave pretty robust answers on the additional investments that First were intending to make, the revenue projections that had been risk-adjusted and the deliverability of the bid.

The particular area of my focus was on the subordinated loan facility. I asked a number of questions on that, first, as to how it was calculated. The response was that it was calculated in accordance with the model. Secondly, I asked a question about why, as the risk profile of a bid changes, the subordinated loan facility does not go up more exponentially; in fact, it goes up in a more linear way. I drew a diagram on my notes to show that, which I submitted into the inquiry. Again, the answer came back that the whole approach to the model was a linear projection of the subordinated loan facility until you get to the default rate of 4.4%.

The final area was with respect to the other components of the bids that led to the subordinated loan facility being the third component of protection. The first protection was the size of the margins inherent in the bids. The second component was a quite significant dividend being thrown off by these bids over the franchise period. The third component was the subordinated loan facility. When you looked at the inherent margins in the bids, the level of dividends being thrown off and the resulting SLF, the answers that were coming back were all that this was done in accordance with defined process and that the models were applied.

I acted, and I stand ready to confirm that, absolutely appropriately in terms of my challenge and questions. Indeed, I raised the matter later on in the month with Sam; that it did look in the light of other evidence that that line of questioning was right, but again the message coming back was that it was absolutely calculated in accordance with defined process, the model and what information had been given to bidders.

Q900 Chair: Who told you that?

Ed Smith: Members of the rail project team who were present at the BICC meeting.

Q901 Chair: Which members?

Ed Smith: I think that is part of the HR investigation and therefore is probably something that it is not appropriate for me to disclose.

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Q902 Chair: What position did these members have?

Ed Smith: They were members of the project team.

Q903 Chair: Were they senior or junior members?

Ed Smith: Middle-ranking managers.

Q904 Chair: So middle-ranking members of the project team told you that things were in order.

Ed Smith: Yes.

Q905 Chair: You also mentioned that the anonymised procedure meant that a number of people were not available. Could you expand on who that might be and what that means?

Ed Smith: From my understanding of the process, because of letters coming in from Virgin during the latter half of July, some of those letters were made available to the top of the office, to both the Permanent Secretary and Director-Generals. As a result of that, it was felt that they should recuse themselves from the Board Investment Committee.

Q906 Chair: Does that mean that the more senior people were not there when you were asking these questions?

Ed Smith: That is correct.

Q907 Chair: Who was it who thought it was appropriate that they should not be there?

Ed Smith: Again, those are the people that are subject to an HR investigation, but they were people in the line of accountability for the franchise.

Q908 Chair: Mr Laidlaw, you spoke earlier about concerns you expressed to do with the process and the franchising. Could you expand a bit on that and tell us when you expressed those concerns?

Sam Laidlaw: As a result of the conversation that Mr Smith has just referred to in the latter part of August, we were due to have a board meeting on 9 September. We were unable to have that because of the Cabinet reshuffle that had occurred a few days before and the new Secretary of State was not able to be there. Nevertheless, I convened a meeting of the non-executive directors. At that meeting we expressed concerns as to the process. I went to see the Permanent Secretary and said that we needed to have a full review as to what was happening here. He had already started working on a full review in anticipation of legal challenge from Virgin. I said that the board was keenly interested in this process and needed to be reassured that, indeed, due process had been followed.

Ed Smith: My conversation with Sam was parallel to the one I had with Clare Moriarty, who had brought to my attention in early September that the SLF had not been calculated in accordance with the model but that discretion had been used, as we now have identified in our report.

Q909 Chair: She brought that to your attention in September.

Ed Smith: Yes, when she became aware of it as a result of the initial investigations that had gone on following the receipt of Europa reports during August.

Some work had already been started to investigate at that point.

Q910 Graham Stringer: I have two questions on this particular point. First, the National Audit Office drew attention to what they thought was a very small sum of money paid for legal and financial advisers. From memory, I think it was £1.9 million. It was a very small amount for a project of this size. Did this concern you at any time? The second point is that you say you brought the matter to the attention of the Permanent Secretary, but what are your comments on the fact that the Permanent Secretary had more or less been taken out of the process and the line of accountability for this project?

Sam Laidlaw: On the resource question, which is a very valid concern, as we now know it, at the time, as non-executive directors, we had no knowledge as to how well or poorly resourced this project was. I wholeheartedly endorse the Permanent Secretary's comments to the Public Accounts Committee that, if bidders are investing some £10 million on average each for a bid, and the Department is resourcing this to a cost of approximately £1.9 million, there is an asymmetry of commercial capability and resource here that probably is not in the best interests of taxpayers; but we were not aware of that as non-executive directors at the time. It is one of our recommendations that, clearly, rail franchising commercial capability needs to be beefed up.

In answer to the second part of your question as to whether it was appropriate that the Permanent Secretary, because he was aware of the letters that had come in from prospective bidders, should be recused from the process, I think he has said that that policy—which I have to say I had not seen before in other commercial entities that I am familiar with of anonymising to the extent that occurs in the Department for Transport—is being changed immediately because it can be severely counterproductive, as was the case here.

Q911 Lucy Powell: That leads nicely on to my own line of questioning. You make some analogy with the commercial world, but, obviously, the big difference here is that this is public funds.

Sam Laidlaw: Indeed.

Q912 Lucy Powell: The public are rightly very alarmed and angry at the loss of public funds that have been incurred and will be likely to continue to be incurred over the next year or two.

Sam Laidlaw: Understandably, yes.

Q913 Lucy Powell: You have also taken some responsibility yourself as a non-executive director and I do not think you should do that. I would ask you what you think the general role of a Minister is and then perhaps we can explore that in the context of your report.

Sam Laidlaw: The general role of Ministers here is to satisfy themselves that due process is being followed and this franchising procurement, or any other procurement, is being done in the best interests of the taxpayers, but also the process follows the published

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outline and complies with public procurement requirements both here and the European public procurement requirements, and the process has good integrity and good transparency.

Q914 Lucy Powell: Therefore, in this case they did not do that.

Sam Laidlaw: In this case, clearly what happened did not conform with those principles, but I don't think it was for any lack of questioning by Ministers. The evidence we have taken from two Secretaries of State and the Minister who was involved throughout this process is quite clear. They asked pretty penetrating questions, and in the answers they received from senior officials they had no reason to suppose that the process was flawed. The reason I think they received those answers from the senior officials was that the senior officials themselves had no reason to suppose that the process was flawed. It was the lower levels of the organisation that were not escalating the risks and the exercise of discretion to the senior officials until very late on in the process, after 15 August when our—

Q915 Lucy Powell: Are you satisfied that those questions were being put sufficiently robustly? If you as a CEO were in a position where you were receiving lots of letters on a continuous basis from somebody of the stature of Sir Richard Branson with very technical questions—because Virgin clearly knew that there was something wrong with the SLF process—would you have been satisfied with some of the answers that those Ministers received at the time? Would you go into Parliament and on the broadcast media and defend those decisions being in receipt of such letters?

Sam Laidlaw: Again, I think the process of anonymising did not help us here, in that, because the Secretary of State was in receipt of these letters after the Branson letter came in on 23 July, she was advised by legal counsel and her officials that she could no longer be part of this process. The remit was passed to the Minister of State, who was not in receipt of those letters. This concept of anonymising not only precluded senior officials but also Ministers from having access to what, in my view, they ought to have access to.

Q916 Lucy Powell: I am just putting myself in that position. I would find it astonishing if I was in that position and then, a month later, I was on the airwaves—Parliament was not sitting at the time—fronting out a decision if I had been told a month earlier that I could not be part of that decision. My reading of your report in relation to ministerial responsibility, and I will come on to some of the context in a minute, which is very relevant, is that either Ministers were not doing their job at all or Ministers were doing their job badly. It seems on further questioning to you that Ministers actually weren't doing their job at all and, therefore, they should take some responsibility.

Sam Laidlaw: No; I think that would be an incorrect characterisation of what we have seen. What we have seen is that during this time period Ministers were very diligent. Whether or not you received a letter

from one of the prospective bidders, you only had to open the newspapers to recognise that this was a very sensitive issue. Therefore, Ministers were extremely careful and cautious and asked a lot of penetrating questions around whether the bids were deliverable. They did not get into the specifics of how the subordinated loan facility was calculated, but they got into a lot of questions around the general commercial terms. Because the people they were asking the questions of were themselves misinformed, no matter what they had done, they would not have got to the bottom of the problem here because they were in a sense asking the wrong people. The people at the senior level of the organisation were not fully briefed on how the process had been followed or not followed.

Q917 Chair: Would you say that this was just a total mess-up or was it malpractice? Ministers were asking the questions but they were not being given the answers. Are you saying no one knew the answers?

Sam Laidlaw: As we have said in the report, this was a sequence of errors, which started with poor planning and preparation, as we discussed earlier, in terms of the fact that the invitation to tender went out without the SLF process being properly and robustly tested. Recognising that it was flawed, a discretion was then applied that should not have been applied in the process. That application of discretion was not shared with senior officials, who, in turn, because they did not know about it did not share it with Ministers.

Of course, what we also subsequently discovered was that, even if they had followed the interpretation of the model, which was interpreted in real terms and should have been adjusted into nominal terms, that was also incorrect. There was a multiple sequence of individual errors here.

Q918 Chair: Why wasn't the warning about possible illegality or the fact that the bid may be open to challenge escalated to a higher level? How did that happen?

Sam Laidlaw: Chair, you are on a very interesting question here that has exercised the inquiry a lot. What was it that actually stopped people escalating concerns, in the initial stage when it was clear that the GDP resilience model was not really fit for purpose and could not be shared with bidders, or in the subsequent stage when the discretion was exercised and again there was not the escalation?

Q919 Chair: And the warning that it may be illegal.

Sam Laidlaw: The concern and the context here was that that this was being resourced by some relatively junior people and the organisation that we described earlier did not have the ownership and leadership that it should have done; therefore, there was not an obvious route to escalate concerns. That is one point. There was also a feeling that this whole process had to be done because the existing franchise expired on 9 December of this year. This whole process had to be done against the clock. Clearly, that sense of urgency possibly made people more reluctant to escalate issues and concerns than they otherwise would have been. That is obviously very regrettable.

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Q920 Chair: Do you think that Eversheds themselves should have done more? After all, it is a very serious comment to make, isn't it?

Sam Laidlaw: We thought hard about this. It is clear in my report that Eversheds did, indeed, have a conversation on 2 July with Government lawyers. There was a further conversation. How hard they pushed it is a matter of conflicting evidence. Certainly, as I have said in my report, given the longstanding relationship that Eversheds had and have with the Department, there was clearly the opportunity for them to raise it at a more senior level, which was an opportunity they did not choose to take. I don't think that is in any sense a dereliction of duty, but that was an escalation opportunity that was available to them.

Q921 Lucy Powell: I have one point of clarification that relates to that. Mr Smith, you said earlier that you were told in September that there was a problem with the subordinated loan decision. At that point, the former Secretary of State was still on the airwaves defending this decision. The new Secretary of State was then appointed in early October. He came on the airwaves to defend this decision, but obviously it was already being escalated. There had been a problem with the underpinning of the decision in the first place. How did you feel when you saw them on the television defending a decision that you probably at that stage had some serious concerns about?

Ed Smith: I can't honestly say that I saw them on the television.

Lucy Powell: It is the general idea.

Ed Smith: The investigation had already started. PricewaterhouseCoopers had come in to start looking at some of the modelling work just as the handover between the Secretaries of State was going on in the first week of September². I think that was when the reshuffle took place from memory. What Clare Moriarty said to me was, "It looks as if what you were told at the BICC with respect to the SLF being calculated purely by reference to the model was not fully correct." That was about the limit of the conversation. It sort of reinforced the point that Sam and I had a discussion about. When you look back at that and the sizing of that SLF in the context of this bid, it did look as if my point about exponential risk and the sizing was justified, but it is easy with that degree of hindsight.

Q922 Jim Dobbin: On that issue, there was a decision not to use consultants or financial advisers. Do you think that, had that happened, this mess would not have occurred?

Sam Laidlaw: It would have considerably reduced the risk of this occurring. You can't say with absolute

certainty that financial advisers would have prevented it, but in all likelihood they would have done. There was a small piece of work commissioned by Grant Thornton, which, unfortunately, was not as widely circulated in the Department as it should have been. It did not reach the Department until 16 March, by which time the invitation to tender had already gone out. Anybody who read that report would have concluded that this whole question of SLF determination needed a lot more consideration.

Q923 Jim Dobbin: Why do you think the decision was taken not to use consultants?

Sam Laidlaw: We have looked into this. The Permanent Secretary and Clare Moriarty gave some evidence on this to the Public Accounts Committee last week. There was clearly a view at the time that the Department wanted to build their own internal capability and that they wanted to be able to do this with their own resource. Clearly, that was a misjudgement in that the resource they had in this area was inadequate and did not provide sufficient oversight.

It is in contrast, it has to be said, to a number of other franchise operations and all franchise operations going forward. Those currently being conducted do have independent financial advice. It is one of our recommendations that, indeed, they should have and must have going forward. That was a considerable error. I don't think there is any evidence to suggest that it was a result of resource constraints, because the resources were available for Eversheds and Atkins. There is no suggestion of people saying, "We are just doing this to save money."

Q924 Jim Dobbin: On that point, coincidentally, the Department decided to start a massive staff reduction programme. Do you think that that staff reduction programme, which was implemented quite fast in one year rather than over four years, would have benefited the process itself?

Sam Laidlaw: Again, it is a very good point that we have thought about. The staff reduction largely occurred at the end of 2010 and the beginning of 2011. It was not so much the number of staff here as the fact that, when the organisational change was made, the previous rail franchising entity that had been led by Mike Mitchell was disbanded and a lot of those individuals retired at that point. There was a loss of capability of some quite senior people, which I refer to in my report. That was at the root of some of this. The shortcoming here was the retirement of that capability and the failure to replace it with senior rail franchising people, recognising that they would probably have had to come from the industry and, therefore, we would also have had to manage the conflict described earlier.

Q925 Karl McCartney: I have two points for clarification. First, in my experience some facets of the rail industry are quite complex. How long do you think somebody who is wholly independent of the rail industry would take to get up to speed to do an inquiry such as yours, recognising that rail franchising is probably one of the most complex areas within the

² It has been brought to my attention this week (following the Xmas break) that I may have inadvertently provided an incorrect impression of the date at which PWC were brought in to review the modelling for the ICWC franchise in response to Q921. In fact the work that had been done in early September was internal work on the process with respect to the SLF determination rather than the PWC modelling work which was done later in that month and reported on 2 October with respect to flaws in the GDP model. I do not think this makes a difference to the substantive point made in my response but of course would wish the inaccuracy to be noted.

rail industry? How many months do you think it would take somebody to get up to speed? I was just countering what Mr Stringer was saying by saying it should be someone fully independent. I think it would take them six months to a year to get up to speed.

Sam Laidlaw: It is complicated. To be honest, part of the challenge here—and this is a matter for Richard Brown—is because rail franchising has got more complicated. The combination of the desire to introduce the GDP resilience model to ensure that taxpayers retain the exogenous risks and franchisees keep the endogenous risks of rail performance and so forth is a difficult thing to model. With longer franchises, it gets more difficult because there is more risk. Therefore, it took me, and I am sure it has taken Ed, a little while to understand the complexity of what bidders were being asked to do. I think the bidding flow charts speak for themselves in terms of the complexity here. It takes a while to understand it.

Q926 Karl McCartney: I want to clarify one other phrase. Three of the most culpable civil servants were suspended, but you made reference to the fact that, however many it was, they are all now back working in the Department. Is that right? Did I hear you correctly?

Sam Laidlaw: This is a matter for the HR inquiry rather than the Laidlaw inquiry. My understanding is that they were suspended purely during the period that the HR inquiry was gathering evidence, which is now complete. Therefore, as a matter of norm, they would be reinstated. That makes no judgment one way or the other on their culpability and where that inquiry will go.

Ed Smith: That is absolutely right. I would like to go back just briefly on the point about the complexity because it is something that I have said a few times. People instinctively think that the very nature of the complexity of the process helps to reduce risk. In my judgment, the very detailed nature of those processes has the potential to increase risk because of this requirement to strictly adhere to every single component in the process and almost withdraw from any concept of commercial judgment. That is, again, potentially something for Richard Brown in his report.

Q927 Chair: Does this mean that, in your view, the nature of this particular franchise meant that nobody would have been able to deal with it effectively? Is that what you are saying?

Sam Laidlaw: From what we now know, the process itself had some pretty serious flaws in it. Therefore, even if it had been followed to the letter, there would have been some significant problems with it.

Q928 Sarah Champion: You have painted a lovely image for me of more junior staff members rushing around trying to get this bid together and telling people above that are asking the right questions, “No, everything’s fine; everything’s fine.” Mr Dobbin mentioned that too many staff were lost very quickly and there was a reorganisation that went on. You have said this is a major contributory factor as to why this occurred. Were the board or Ministers aware of this?

Did you think it was too fast, and were you aware of what the implications would be?

Sam Laidlaw: The answer is that, with the benefit of hindsight, I wish we had been. It would not be normal for the board to get involved. You often have oversight and understanding as to the highest level, who is on the executive committee and the first line of reports. It is quite unusual in any board where you are a non-executive director to get involved in the organisational structures below that. That was essentially the issue here.

Q929 Sarah Champion: As you say, hindsight is a wonderful thing. With hindsight, what checks should have been put in place to stop this situation occurring, specifically looking at the staff reductions?

Sam Laidlaw: Greater than the staff reductions was the problem we identified in the report of lack of any one senior reporting officer really gripping this project from, effectively, January to April. That obscurity as to who the SRO really was during that period was the biggest problem. That made it difficult for individuals on the team to escalate. That, compounded with some of the experience that had left the Department, contributed to it. You can escalate concerns through committees, but that is a second line of defence. The first line of defence is to escalate to your boss. The absence of a clear boss for this was at the root of the problem.

Q930 Sarah Champion: How did that happen? Whose fault was that? It seems absolutely fundamental to have a project manager in place or whatever you want to call him.

Sam Laidlaw: How did it happen? What appears to have happened is that, when the invitation to tender went out, the previous SRO thought that it was being handed on, but the full terms of reference of the new SRO picking it up were never fully signed off. Therefore, the person who was thought to be picking up the ball, if you like, from the person who previously had it did not pick it up.

There was then a Gateway Review commissioned by the Cabinet Office in April that identified this as an issue. It was then rectified in April, but, unfortunately, by then—

Q931 Sarah Champion: As you said, the damage had been done at that point.

Sam Laidlaw: Yes.

Ed Smith: I would add that, at the time of the theoretical transition from one senior responsible owner to the other, of course the ITT had gone out, but there were components of the ITT or the policy that were still being worked through, as we say in our report. There was a lack of clarity about the precise cut-off between one responsibility for policy and the issue of the ITT, and then the evaluation and the procurement of the bids. That lacuna during that period was unhelpful.

Q932 Sarah Champion: Could this situation happen again?

Sam Laidlaw: I was pleased to see that the Department have wholeheartedly not only endorsed

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the recommendations but are following up on them and making the necessary organisational changes. They have made it very clear that there will be a senior civil servant responsible for each rail franchise going forward. With that assurance—and we do need to build capability in the Department too, which is another critical recommendation—then I think it won't happen again.

Q933 Chair: Was any consideration given to delaying the start of the franchise?

Sam Laidlaw: The interesting point is this, and you raise a very good point, Chair. One of the recommendations of a previous piece of quality assurance was that there needed to be some contingency in the timetable, but, once the invitation to tender went out and there was only eight months left to award the contract, there was no contingency in the timetable. Indeed, the idea of suspending, stopping or delaying the timetable was never countenanced, as far as we can see, by any of the officials. Of course, ironically, that is exactly what has ultimately happened, but 9 December 2012 was the date when the existing franchise ended and it was thought to be an immovable date.

Q934 Chair: Was there ever any discussion about consulting Ministers about the possibility of delaying the start date?

Sam Laidlaw: We have not seen any evidence of anybody pursuing that line of argument. It was very far from people's minds.

Q935 Chair: When FirstGroup gave evidence to this Committee, they told us that during the negotiating process, before what was thought was the final award had been made, they were called into the Department and some kind of negotiation took place, which FirstGroup told us reduced the amount of subordinated loan facility they would be asked to set aside. They described that as a small reduction but we never got any conclusive figure. Can you shed any light on that?

Sam Laidlaw: Our terms of reference only go up to 15 August. If the period you are referring to was after that, we did not investigate beyond 15 August.

Q936 Chair: Did you come across that during the period you were investigating?

Sam Laidlaw: At the CAC meeting on 27 June—the Contract Awards Committee—the subordinated loan facility that First were being asked to submit did slightly reduce, yes.

Q937 Chair: By how much?

Sam Laidlaw: I think that is one of the pieces that have been commercially redacted. If it hasn't, I will get back to you with the precise figure, but I believe it is commercially sensitive.

Q938 Chair: We have that figure. FirstGroup told us that it was by £15 million. Would that fit with your figures?

Sam Laidlaw: It is a little bit more complicated than that. There was an adjustment made by Atkins to the

revenue that First had projected, and then it would depend on whether you applied the ready reckoner, which was giving one set of numbers, or whether you applied the GDP resilience model, which was giving another set of numbers.

Q939 Chair: You say in your report that the request for the subordinated loan facility from Virgin was increased from nil to £40 million, and for First was reduced to £140 million, but it does not say reduced from how much. Is that something you can't tell us? Can you tell us that figure?

Sam Laidlaw: I have the unredacted version, but I think it is really a matter for the Department because they have made the redactions.

Q940 Chair: So you presented that figure and the Department redacted it.

Sam Laidlaw: Yes.

Q941 Iain Stewart: I would like to follow on Ms Champion's point about this not happening again. Can you give us any certainty that the problems you identified were contained within the rail franchising part of the Department and there were not similar concerns about organisational structure or lack of capability in other areas where the Department have taken commercial decisions of this nature?

Sam Laidlaw: No; this is clearly a crucial point. What is clear is that the West Coast franchising was novel. It was unique in its complexity. The organisational structure chosen to manage it we now know was not fit for purpose. I think it would be a mistake to conclude by any means that this was a widespread problem in the Department. We have seen the Department deliver a number of other complex projects very successfully, not least the Olympics or, indeed, Crossrail.

It is obviously beyond the scope of my inquiry to do a review of the entire Department, but what has happened since is that the Permanent Secretary has conducted a review of the procurement activities across the Department, with the assistance of officials from other Government Departments, and assured himself—this is something that we will be reviewing at the board in due course—that this is not a more prevalent problem. I have no basis for supposing that it is. There are particular circumstances around the West Coast franchise that are unique to that process.

Q942 Graham Stringer: I want to take you back to the Gateway Review. I am still not clear in my own mind why, when that review gave a red/amber alert, it did not lead to any action.

Sam Laidlaw: There were three Gateway Reviews. There was one conducted in 2011, one in April and one in July of this year. The one to which you are referring, which identified the need for a clearer SRO, did result in a change at the senior level. The Director General of Projects assumed a responsibility for rail franchising generally, but it did not result in changes in the detailed organisation of the rail procurement team and the leadership of the West Coast rail franchising team.

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The argument that was made to us was that, by this stage, the Gateway Report was at the end of April and bids came in at the beginning of May. A lot of the preparatory work in helping bidders prepare their bids had already been done at that stage. That was the reason that we were provided with, which is arguably less than completely satisfactory as to why no changes were made at that stage.

There was a further Gateway Review in July, which was done by a different Gateway Review team, which gave a green light to the process. That is clearly troubling. We have interrogated that team, and it is clear that the reliance that was placed on that review by the Department, and I suspect also by others in Government, was probably greater than the level of interrogation and quality assurance that that review was able to perform in a relatively limited period of time.

Q943 Graham Stringer: You are right that it was the April Gateway Review that I was concerned about. That cited worries about resourcing governance and development of the GDP mechanism, essentially. That is quite important. I am still not clear from your answers why more account was not taken of a Gateway Review with eight months left before the end of the Virgin franchise. Was it widely reported? Was it reported to the executive group, the Permanent Secretary and to your management?

Sam Laidlaw: It certainly did not come to the board. I am not aware how widely circulated it was within the Department. To be fair to the Department, certain elements of it were acted on, but certain elements of it were regarded as being too late to take action for this franchise but to think about for the future. That was the view that was taken at the time from what we have seen in the evidence.

Q944 Graham Stringer: I have one final point. The anonymised procedure seems to have been a major problem. It cut lines of accountability.

Sam Laidlaw: Indeed, yes.

Q945 Graham Stringer: There is the change in the structure of the Department that was novel and also broke lines of accountability. There were just the straightforward mistakes made in the calculator. If you had to apportion culpability to those three elements, or any other element that I have missed out, how would you do that? Would it be a third, a third, a third? Is the anonymised process the real villain? What is the biggest problem?

Sam Laidlaw: I think the biggest problem was with a very complicated process where, as Mr Smith has said, there was an attempt to continue to add process to mitigate risk, but it ended up compounding risk. A very complex process was designed that was not properly road-tested before it was launched. Therefore, once defects emerged in the process because it had not been properly quality assured, there was no ability within the published process to apply commercial discretion to remedy those defects. Therefore, discretion was applied, but it was outside the process. Much later on, the ability of top management to come in, halt the process and call time

out was limited because they were anonymised, but that was much later on.

Q946 Chair: Shouldn't the board have some kind of input into this or some view of what was going on?

Sam Laidlaw: Absolutely. In future, going forward, the board will want to be assured that, first, the recommendations of my inquiry are going to be followed. They are around planning and preparation and ensuring that we have very clear commercial structures that bidders can understand and, in that context, a review as to whether the SLF is the best mechanism. Obviously, that is something Richard Brown will talk about. They are also around making sure that we have good organisational structures and much better clarity of the governance structures of what individual committees within the Departments do. This is something that the board identified in the capability review last year. In the annual report, it is something that I reference as an area that we need to work on and will be working on going forward, but also strengthening the capability and strengthening the quality assurance. The board will want to be reassured that all those areas are making very strong progress before we re-launch franchising.

Q947 Chair: Are you satisfied with the response that you have had from the Permanent Secretary?

Sam Laidlaw: I think the Permanent Secretary's response was very encouraging. This was a response of somebody who is clearly very committed to solving the problem and is taking immediate action, rather than sitting back and having a period of study and review. He has embraced the recommendations. He is driving the necessary organisational changes in the Department. The piece that will inevitably take longer is building organisational capability. It is going to have to be supplemented from some external resource, but it is very important that the Department starts to look forward and endorse the recommendations, deliver against them and get back to rail franchising.

Q948 Chair: There have been four Permanent Secretaries and three Secretaries of State since 2010. Is that part of the problem?

Sam Laidlaw: That has made the correction of deficiencies in organisational structure more difficult. Clearly, when we had a period at the end of 2011 where the Permanent Secretary had to leave to go and look after the Revenue, and then we had an acting Permanent Secretary, that made solving some of these quite difficult organisational challenges hard to do, because, as an acting Permanent Secretary there for a short period of time, it is very difficult to change the organisational structure. That hiatus probably did not help.

Q949 Chair: You refer to a culture of fear. What does that mean?

Sam Laidlaw: I don't think I referred to a culture of fear.

Q950 Chair: It is an interpretation. You talk about "cultural aspects". You say there is "consistent evidence from interviews to suggest that DFT officials

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felt inhibited from escalating significant risk areas”, and “when attempts were made to escalate such issues, in some instances senior officials were perceived to be unreceptive”. I have put my interpretation on that. Can you tell us what you mean by that?

Sam Laidlaw: I think it is some distance from a culture of fear, I am pleased to say. There was sometimes an inhibition, perhaps, from raising issues. The question that we have clearly been asking is what was behind that. It is a long way from a lot of the encouragement that is generally there within the civil service to escalate issues. It is a long way from what we see in other parts of the Department for Transport. It is largely as a result of the time pressure that everybody felt they were under here, but, also, as we discussed earlier in this session, the lack of anybody to escalate to. Sometimes, because there wasn't anybody, you had to go to a very senior level in the organisation, and that, in itself, can be quite inhibiting too. You would see that in any organisation. People are comfortable talking to their immediate boss, but it is a big step to go right to the top. If there is nobody in the middle, that makes it more difficult.

Q951 Chair: You have just talked about the time pressure they felt they were under. Does that mean they felt unable to say, “We need more time to do this. Let's have a debate”?

Sam Laidlaw: If you cast your mind back to the origin of this process, originally, there had been an intent to let the West Coast franchise and start this process in the middle of 2011. That was then delayed until January 2012, so there was a seven or eight-month delay in the process, which was intended to ensure that the process was robust and fit for purpose before it was launched. That obviously was not the case. In doing that, effectively, all contingency of time was used up. If you look at the evidence here, to let a very complex process such as this in eight months was far faster than had been done for many simpler franchises previously. It was an ambitious timetable to start with, but there was a strong feeling that, having deferred it once, no one had an appetite for deferring it again. Indeed, the legal advice that was being given was that it would be very difficult, if not impossible, to defer it again. Of course, we know that is not the case.

Q952 Chair: Who gave that advice?

Sam Laidlaw: I think it was the general view of the lawyers at the time.

Q953 Chair: Somebody gave the advice. You don't have a general view without somebody saying something. Who gave that advice?

Sam Laidlaw: I can come back to you on that. I think we will get into specific individuals, which, of course, is something—

Q954 Chair: Was there legal advice given that it might be illegal to delay further?

Sam Laidlaw: No, because we clearly now know that the franchise has been extended.

Q955 Chair: I am asking you what advice was given, not whether that advice was correct.

Sam Laidlaw: What I said was that I thought it would be very difficult to do. It has only been extended now with the concurrence and approval of the European Commission. It is not an easy thing to do.

Q956 Chair: Is it your understanding that there was a view in the people taking these decisions that it might be illegal to extend the period further?

Sam Laidlaw: The use of the word “illegal” is—

Chair: Questionable.

Sam Laidlaw: Yes. The general view was that it would be very difficult to do and, therefore, in that sense unwelcome.

Q957 Lucy Powell: Leading on from that is the context in which these decisions were taken. Obviously, there have been individual errors along the way and systematic failure. I want to explore what you describe as the context that might have given rise to some of those failures. From your report, you seem to accept that the change in franchise policy and the desirability of a speedy implementation of that was also one of the factors, going from seven years to the longer time frame.

Sam Laidlaw: The longer time frame undoubtedly added complexity to the process. There was the combination of applying a normaliser for GDP growth through the resilience model, together with the longer time frame, and the fact that the West Coast franchise itself as one of the largest franchises out there—if not the largest franchise—is by its nature more complicated than many.

Q958 Lucy Powell: That this was the first franchise to be used on the new policy was an added factor as well. The fact that it was the most complicated franchise, as you say, being done under the new policy was also a factor.

Sam Laidlaw: That was a compounding factor; indeed, yes.

Q959 Lucy Powell: Taking those policy decisions together with the resourcing decision—the lack of staff and the change in structure—and also the Government policy of not using external advisers, which undoubtedly had an impact on officials, who do you see as being responsible for that collective context?

Sam Laidlaw: Like all contexts, I don't think there is any one individual that is responsible. It is by its nature the accumulation of a series of events. We have already covered the decision not to use external financial advisers. That was clearly taken by the Department believing they were capable of managing it themselves.

The length of franchise was something that was both a coalition commitment and something recommended by the McNulty Report. The view that this should be the first franchise to use this process was also influenced by the fact that, if it was going to be a 15-year franchise, then, recognising that it needed to tie in with the plans for High Speed 2, if you left this franchise too late, they would not be able to dovetail

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with the requirements of High Speed 2 in 2026 or 2027. The GDP resilience model approach was an attempt to remedy some of the defects of previous franchising, where we had obviously tried the cap and collar methodology but that had been unsuccessful. Some bidders had been in severe financial distress and the taxpayer had ended up picking up most of the bill, or other bidders had done very well and had very little incentive for further investment.

Q960 Lucy Powell: So you don't see issues of policy changes and resourcing as ministerial responsibilities.

Sam Laidlaw: The policy of going to the GDP approach is a ministerial responsibility, and the length of a franchise is a ministerial responsibility—absolutely.

Q961 Lucy Powell: What about resourcing?

Sam Laidlaw: And the sequencing, and then making sure that the resources are fit for purpose. The interesting thing is this. Obviously, in retrospect, somebody should have identified it, but at board level we did not see that the letting of the West Coast franchise was high risk on the risk register. It was not on the risk register in the sense that the Olympics were or in the sense that the High Speed 2 hybrid Bill might be. That was clearly an oversight. With the benefit of hindsight, somebody should have identified that.

Q962 Graham Stringer: Something has been nagging away at me ever since I started reading these reports. I don't completely understand how the calculations and projections are done in the GDP calculator, but one of the things that I understood had happened over the last four or five years was that the link between GDP and growth in passenger numbers had been broken for the first time in history. How then could you use that as a basis for the calculations, when you have passenger numbers going up as GDP is going down? I am asking whether it was a doable intellectual task.

Sam Laidlaw: It is a doable intellectual task if you accept the proposition that there is a correlation between the two. You are correct in the presumption that, clearly, the elasticity has changed between GDP and passenger numbers. That is one of the areas of inconsistency in this process. You are also correct in saying that the correlation probably is not as great as it might once have been because there has been some modal switching, which is partly as a result of fuel duties.

However, if you want to try and protect franchisees from the exogenous variables, GDP is one of those, and of course one of the primary reasons, I am told, although it was well before my time at the Department for Transport, that the East Coast franchise got into difficulty was due to GDP-related issues and passenger numbers. The attempt was to try and protect franchisees from that going forward. Equally, if there is an economic recovery, it is to ensure that the taxpayer benefits.

Q963 Karl McCartney: I am quite interested in the management of the rail industry and the management of change. You talk about franchising not being on the

risk register per se. Would you say that is something endemic throughout the Department because the previous Government took the decision to disband the SRA—the Strategic Rail Authority—that did rail franchising? Are there any senior civil servants that you are aware of in the Department for Transport who worked at the SRA or in fact have any experience at a suitable level of franchising? That may be one of the reasons we have got to where we are.

Sam Laidlaw: The answer is that I think there still are, but there are probably not enough with senior rail franchising experience.

Q964 Chair: Atkins were brought in to assess the risk elements of the bids, looking at projections of additional numbers and whether the capabilities were there. Did you do any work in that area?

Sam Laidlaw: Yes, we did. We took quite a lot of evidence and interrogated Atkins quite carefully to ensure that there was a good basis for the risk adjustments that they had made and that there was no bias there. We were persuaded that the adjustments that they had made were appropriate. We were, as we expressed in the report, perhaps a little concerned that some of those adjustments only came to light at a relatively late stage in this process, but I think they were reasonable adjustments.

Q965 Chair: It seems that some of the changes on the SLF assessments were to do with keeping FirstGroup in the competition. There is comment on that here. Does that suggest that, even if you do not have evidence of an anti-Virgin frame of mind, there was a pro-FirstGroup approach?

Sam Laidlaw: No. It would be wrong to characterise it as a pro-FirstGroup approach. I don't think we have seen any evidence of that. You have to remember that, at face value, the bid that First put on the table was actually worth hundreds of millions of pounds more to taxpayers. Therefore, the whole context of this was that that was not something that, in the interests of taxpayers, those who were managing this process were going to discount lightly. That is the first point to make.

The second point I would make is that, in my experience of other commercial bidding processes, and I have seen a great number of them, it is natural to try and keep two bids on the table as long as possible to maximise the prospect of ultimately getting the best bid. That does not infer any bias one way or another. You just always want to have two bids as long as you possibly can.

Q966 Graham Stringer: You have answered our questions fully this morning and you do have another day job. Can you take us through the actual process that you have been through in interviews? Have you done the interviews personally or have you delegated that to other people?

Sam Laidlaw: I have done some of those personally. The more senior people and the Government Ministers I have done personally. For some of them, I have relied on Ed Smith, and some of them have been done by Ed Smith and our independent legal advisers, Linklaters and Ernst & Young. They have all been

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fully transcribed and I have read all the evidence of the 55 witnesses who gave evidence³.

Q967 Chair: Thank you very much for the report and also for coming and answering so many questions.

Sam Laidlaw: I hope that the recommendations will be taken forward and we can get back to rail franchising.

Chair: Thank you.

³ A small number of interviews were not fully transcribed, but notes prepared of those interviews.

Monday 7 January 2013

Members present:

Mrs Louise Ellman (Chair)

Steve Baker
Sarah Champion
Jim Dobbin
Kwasi Kwarteng
Karen Lumley

Karl McCartney
Lucy Powell
Iain Stewart
Graham Stringer

Examination of Witnesses

Witnesses: **Rt Hon Patrick McLoughlin MP**, Secretary of State, and **Philip Rutnam**, Permanent Secretary, Department for Transport, gave evidence.

Q968 Chair: Good afternoon, gentlemen. Welcome to the Transport Select Committee. Would you give your names and positions, please?

Mr McLoughlin: I am Patrick McLoughlin, Secretary of State for Transport.

Philip Rutnam: I am Philip Rutnam, Permanent Secretary for the Department for Transport.

Q969 Chair: Secretary of State, you, of course, were not in post when this debacle occurred. Are you glad that you weren't in the hot seat?

Mr McLoughlin: I was in another hot seat at the time. In politics, you take the challenges that face you in whatever job you are doing. The truth is that I am not going to try to escape from the fact that what happened as far as the West Coast Main Line is concerned was a very damaging and serious incident for the Government and the Government have got to learn from it. I was a member of the Government and I share the responsibility as a member of the Government.

Q970 Chair: Looking more specifically at the role of Ministers in the Department for Transport at the time, the Laidlaw report is very scathing about the role of officials and criticises processes and governance. It talks about an organisational structure that failed to set out roles and responsibilities, associated accountabilities, a culture of limited and ineffective oversight and the need for leadership. Given those very severe criticisms, backed up very strongly by evidence as detailed in the report, would you say that Ministers don't have any of the responsibility for what happened?

Mr McLoughlin: No, but we can all quote bits of the Laidlaw report. You can quote them to me and I can quote them back to you. I can quote paragraph 7.18, where he said that, had there been the appropriate escalation, sufficient resources could or would have been found. There was not the evidence to say that they would not have been found; they would have been found. What we have to do is learn the lessons from what was a very serious mistake. It is not the first mistake Governments have made, but it is a serious mistake. We have to learn lessons from it and make sure that we put into position now the right kind of apparatus so that an incident like that cannot happen in the future.

Q971 Chair: What would you say are the main lessons for senior Ministers and, in particular, the Secretary of State?

Mr McLoughlin: It is difficult to say because there were the questions asked. The Prime Minister asked a question, which was referred to in Laidlaw, as to whether everything that was done was correct. The reference was that the checks had been made.

The truth of the matter is that this will form part of civil service training for many years to come, taking account of the mistakes that were made and the way in which escalations should be referred up and taken up the chain. It is not the only problem, but one of the problems we see from this is that that was not done as effectively as perhaps it should have been.

Q972 Chair: The report is very clear that the Rail Minister, in particular, was given inaccurate information and that questions asked were not answered fully. There are issues to do with governance, structures and the way the resources were allocated. Would you say that the Secretary of State would have some kind of responsibility for that?

Mr McLoughlin: I would say that the Secretary of State has responsibility for that if he or she is warned of the issue. As Laidlaw says in the paragraph from which I have just quoted, it does seem that these were not escalated up the system sufficiently. However, I come back to the point that people know and will see that, in future, this inquiry of Laidlaw, and subsequently Brown to perhaps a lesser degree—Laidlaw is much more about what went on with the Department and Brown is much more about the future of franchising—will become more apparent and, hopefully, these kinds of mistakes won't happen in the future.

Q973 Chair: Why do you think officials bent the rules to keep FirstGroup in the competition?

Mr McLoughlin: I don't want to second-guess or try and judge that. You are asking me to interpret. I can only interpret what I have done since I have been at the Department and what I have learned from the inquiries that have taken place. I don't think I can second-guess what officials did. I am sure that most of the people who acted thought they were acting in good faith and doing what was right for the industry overall, but they weren't, and we have seen the serious mistakes that have come as a result of it.

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Q974 Chair: Mr Laidlaw says that he tried to get a full e-mail capture to come to a view on whether there had been an anti-Virgin or a pro-FirstGroup bias. He says, “In the absence of a full, independent e-mail capture and review ... I can only express a qualified view on the issue.” Then he says he has seen no evidence of any such bias, but it is a qualified view. Can you tell us why the Department was unable to provide the full information requested?

Mr McLoughlin: Philip may want to go into greater detail on this, but there was a problem with taking data off site and giving it over to another body to go through certain data. When Mr Laidlaw appeared before the Committee, he said that he was satisfied that he had seen as much evidence as he needed to be able to make his report and was not critical of the things that were held back. There was a desire as far as the Department was concerned, and I think as far as Parliament was concerned too, to get answers as quickly as possible to some of the mistakes that were made. Obviously, as Secretary of State, I wanted to make sure that we could continue to run the railways, to learn from the mistakes that had been made and to put in place the right kind of structure so that we can return to future long-term franchising as soon as possible.

Q975 Chair: Do you think that Ministers were deliberately misled by civil servants?

Mr McLoughlin: No, I don't think they were deliberately misled. I hope that was not the case. I don't think that was the case. One only has to go through the Laidlaw report to see that some of it was not the proper workmanship that one would expect from the civil service. That needs to be taken on board and lessons learned.

Q976 Chair: After seeing what happened and looking at the detail, do you feel you have confidence in your civil servants now?

Mr McLoughlin: Yes. As I said to you on the last occasion, the truth of the matter was that mistakes were made in one section, but I want to re-emphasise that, overall, the Department for Transport has first-class civil servants, who are doing a very tough job. It is tough at the moment working in a Department that has a lot of pressure on it. It is a Department that has a lot of things to deliver across the road and rail network, in aviation, shipping and bus services. There is a lot going on in the Department, and a lot of very good civil servants who have worked a very long time in the Department.

Q977 Karen Lumley: We heard from Mr Laidlaw that there were not enough top civil servants taking responsibility and getting involved at that level. Are you confident that won't happen again?

Mr McLoughlin: As you will have seen, the Permanent Secretary made an announcement before Christmas about the new Director General for the rail industry. Clare Moriarty has taken over that particular post. Obviously, I hope that will not happen in the future. Yes, I am confident. There is also another Director General joining us to deal with HS2—David Prout, who has come from DCLG. We will have to

appoint another Director General over the course of the next few months, but it is also important to make sure that we make the right appointments and do not rush to make appointments.

Q978 Lucy Powell: The Laidlaw report also says that a couple of other contextual issues were part of the problem here. One was that the franchising policy changed to longer-term franchising and was being trialled on this, the biggest and most complex of all of the franchises. The other was about the resourcing of the Department and there being a lack of sufficient resource to use external advisers and so on. Do you see those two areas as being a ministerial responsibility?

Mr McLoughlin: That part of the Laidlaw report said that, had the problems come up to the top, then there may well have been ways in which that could have been addressed and we could have got external advice. I certainly don't rule out in future having to use external advice where it is appropriate. These are big franchises.

I should have perhaps said a few moments ago, which I meant to say in some opening remarks, that I have the Brown report, and I hope to publish that later this week. I know that this inquiry today is not to talk about that particular section. You will want to talk about that in due course, but that does, obviously, deal with the wider issue of the length of franchising.

Long-term franchising is not something that is completely new. The Chiltern Line is a long-term franchise. It is renewed on a five-yearly basis but given for a 20-year period. I don't necessarily see that, but I don't want to say too much at this stage about what is in the Brown report, which I am still considering, as a result of its only recently being delivered to me.

Q979 Lucy Powell: You see no ministerial responsibility for those contextual problems that gave rise to some of the issues?

Mr McLoughlin: There is obviously ministerial responsibility, in that it was a policy that was set out, but I don't think that necessarily answers some of the more specific criticisms that Laidlaw has put in about different figures being given to different bidders and bidders being treated in a different way. Those sorts of things should not have happened.

Q980 Lucy Powell: Do you agree with the statement David Cameron gave in 2009, that Ministers must take responsibility for serious or systematic performance failures in their Department, and Ministers must not be allowed to shuffle off responsibility for flawed policy and poor design within their Department? Is that a statement you now agree with?

Mr McLoughlin: Every Secretary of State always agrees with the statements made by the Prime Minister, and I am not going to be in the position of starting a new role in Government. The Prime Minister is absolutely right in that statement, but it does rely on the Secretary of State being given the full information. As was clear in certain parts of what happened in this, the Secretary of State and the Minister of State were not given that assurance.

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Indeed, the Prime Minister asked for assurance. The Parliamentary Under-Secretary of State, the Member for Lewes, also asked for specific assurance. That is referred to in the Laidlaw report.

Chair: Mr Stringer?

Q981 Lucy Powell: You don't think that is a shuffling off; sorry.

Mr McLoughlin: Sorry?

Lucy Powell: I will defer to the Chair.

Q982 Graham Stringer: Following up the point made by Lucy there, the context was not just the policy. You referred to paragraph 7.18 in the report. If you look at the conclusions in that section, which is paragraph 7.19, in the heavy black type, it talks about the dispersal of the rail team and the change in the structures of the Department being part of the cause for things going wrong, does it not? The Ministers were responsible for taking decisions on the structure and resourcing of the Department, were they not?

Mr McLoughlin: I think you will find that that was already well under way and had been planned for before the Government came into office. The truth of the matter is that over a period of two years there were four different Permanent Secretaries. That has not been the greatest backdrop in an overall management context and I am pretty sure that that is something that the head of the civil service will also want to draw lessons from.

Q983 Graham Stringer: Let us look specifically at the wording of paragraph 7.19: "Organisational restructuring at the" Department for Transport "resulted in a lack of clarity in roles and responsibilities". That is not because there were four Permanent Secretaries. That is a decision taken by Ministers finally, is it not? They have to sign off on the structure of the Department.

Mr McLoughlin: Yes, but, as I pointed out and Laidlaw points out, the problems were not referred up to the Secretaries of State through the proper channels. It is very difficult for a Secretary of State. I have asked to see both—

Q984 Graham Stringer: Can I just stay on that point, Secretary of State? I accept completely that, when Laidlaw was here, he said that the Ministers had asked the right questions, and they had been very tough in asking the officers, but they had not been given the right information. I accept that completely. Laidlaw was not a whitewash. He was very clear about what the Ministers had done when presented with that information. I am asking quite a different point. The responsibility of the Ministers was to set up the structure of the Department. Laidlaw says that the organisational restructuring resulted in a lack of clarity of the roles and responsibilities associated with accountability. I am not going to read the whole of it; it is longer than that, but that is the start of it. Should Ministers not take responsibility for that? They decided on that structure, which was dysfunctional.

Mr McLoughlin: You are asking me to account for what my predecessors did in the questions that they asked. I was obviously not in that meeting. The point

I would make at that stage is that, if they were not told that there were particular problems, and if they were not advised that they were having difficulty with certain elements of the formula—

Q985 Graham Stringer: And we agree on that.

Mr McLoughlin: What I am saying is that, if the Secretary of State is not told and if he is reassured that the process has been robust, I think the Secretary of State is not at fault for accepting the advice that has been given to him.

Q986 Graham Stringer: We agree completely on that, but there is a proud and decent history in your party where Ministers who have not taken decisions resigned. Carrington was such a case in the Falklands, and Peter Brooke in Northern Ireland. There has been a history of ministerial resignations, not because of bad decisions but because things went wrong in their Department. That is really the point I am making, with a plus that they actually sorted out the structure. As an ex-Chief Whip, I would be interested in what your definition of ministerial responsibility is. We accept that the information that Ministers were given was inaccurate and not full. However, when tens of millions of pounds of public money are lost and the Ministers have set up a structure that was dysfunctional, where does the ministerial responsibility begin and end there?

Chair: Can we have short answers?

Mr McLoughlin: It was a fairly long question but I will try and give a short answer. If there had been ministerial culpability in the wrong decision or an attempt to ignore advice, then I think there is ministerial culpability, but I don't think anybody is saying that the Ministers ignored advice or failed to ask the questions. There are serious lessons to be learned from this of course. This is a serious incident. In no way would I try to deflect from the very bad position in which this leaves the Government or, indeed, the fact that the rail industry rightly wants some guidance to make sure that incidents like this do not happen in the future.

Q987 Chair: Is it an issue to do with governance? That was the nub of the question. Is there a responsibility there?

Mr McLoughlin: We have the detailed report of what Laidlaw has said. Shortly, in the next few days, I hope to be able to publish the Brown report. We will then see a clearer picture as to where we go in the future, but lessons have been learned from the past, yes.

Q988 Iain Stewart: I would like to follow on from that. You have mentioned that the Department will be making significant organisational changes as a result of Laidlaw. There are possible policy changes in franchising from Brown, and, as you have mentioned, there are big strategic transport questions. In terms of governance, what assurances have you sought and received from the head of the civil service and the Prime Minister that there will a period of stability in terms of the leadership of the Department to allow you to tackle these big issues?

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Mr McLoughlin: In fairness, Mr Stewart, I have not directly challenged the Prime Minister on these particular points, but they are lessons well learned. As I say, the truth of the matter is that we have had the reign of four Permanent Secretaries. In some respects I acknowledge the reasons for that, but I hope that Philip is there for a very long time learning the lessons from this. I have picked up the tail part of this and learned what mistakes have been made. We are determined to make sure that we put into operation very strict criteria within the Department.

Having said that, I would not necessarily want the Department to become over-cautious in what it needs to achieve because we need to achieve a lot in the Department. In the introduction to the report that you published just last week, which we will respond to in due course in a more proper and reasoned way, you say: "In many ways the railway has been a success in recent years." That is certainly true from the way in which the passenger numbers have dramatically increased.

Q989 Iain Stewart: I would ask Mr Rutnam to comment on this in terms of the senior civil servants in the DFT. Have you had any discussions with your superiors in the civil service about the Department being exempt in any way from the usual rotation of senior staff?

Philip Rutnam: I have not specifically had a discussion about exemptions from the usual rotation, because the underlying question is more what skills and capability we need in order to do the job that we have to do and, within that, what longevity we need both from people we already have—how long do we need some of those to stay in post—and people I may want to bring on board.

The wider point is exactly the one the Secretary of State has made. There are a number of lessons to be learned from this episode. One of those is the importance of stability at senior level in an organisation like this Department. Linked to that is having very clear accountability within that structure and who is responsible for what. Both of those points are fully taken on board in the DFT. Those are certainly points I have talked about with the head of the civil service and the Cabinet Secretary and to which I have had a very positive reception.

Q990 Karl McCartney: I want to go back to a point my colleague Mr Stringer made about previous Ministers of a Conservative Government doing the honourable thing in contrast to 13 years of the previous Labour Government. However, is it normal for a senior civil servant to then come out and publicly say that the Secretary of State did ask all those questions? I believe a senior civil servant did come out and say that the Conservative Secretary of State at the time had asked all the right questions. I know it is before your time.

Mr McLoughlin: I am slightly reluctant to go down a path without knowing the actual incident and a bit more about that, Mr McCartney. Lessons have been learned from this particular event. That is what I want to talk about. I think I can remember why Peter Brooke resigned. I am not sure that it was anything

the Department did wrong. It was a TV appearance which—

Chair: I think we will keep to transport.

Q991 Karl McCartney: You mention that Ms Moriarty has been appointed with regard to that, and it is something I asked both Mr Laidlaw and Mr Smith when they were in front of us. Are you confident that the senior management have experience in franchising per se? If not, do you have the level of confidence in them that they are competent in those roles as senior managers?

Mr McLoughlin: I am constantly repeating myself. The truth of the matter is that we have all learned from this particular episode. This episode should not have happened. A lot of the criteria that should have been followed were not followed. There are still the HR consequences flowing through the Department. We have brought in a person to head rail services and to be in charge of the whole section, not splitting it in any way. I think Clare Moriarty will do a superb job as far as that is concerned. I have every confidence in her ability to do that, as does the Permanent Secretary. I know from discussions I have had with Philip that he is as annoyed and upset as I am as to what went on in the Department and the way we failed in this.

Philip Rutnam: I would like to add something to the Secretary of State's answer. It is important to be clear that the appointment of a single Director General responsible for all our roles in relation to rail is only the very first step. We have a number of other actions that we will be taking—some, I hope, will be in the very early part of 2013 and others will take place during the course of the year—to strengthen our capability in relation to rail and, in particular, in relation to rail franchising and the letting of these large contracts. We have talked about that. Laidlaw talked about it in his report. We also talked about it in the Government's response to the Laidlaw report, which was published at the same time as Laidlaw was itself published.

Q992 Karl McCartney: Will you be looking externally for consultants to come in with expertise or are you looking to have that completely in-house?

Philip Rutnam: In truth, there will be a mix. It will partly depend on where we can best access the expertise that we need on terms that ultimately represent good value for money, or at least very defensible terms. That is a work in progress. In truth, I would expect there will probably be a mix of growing in-house capability. We have some very smart people in the Department who have all the aptitude needed to work on projects like this and would like the opportunity. We will probably be importing some additional expertise from the market. We will be looking at some combination of those.

Q993 Karl McCartney: Hopefully, we are looking forward positively to the future. Going back slightly, I believe three people were disciplined and suspended. Are they all back in their full-time roles?

Philip Rutnam: I will comment on that as it is a staffing matter. At the time that the competition was cancelled on 3 October, I took the decision as

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Permanent Secretary to suspend three members of staff. Under the terms of civil service employment and civil service processes in our own staff handbook, suspension is not in itself a disciplinary penalty. It does not imply any judgment or conclusion in relation to an individual's conduct; it is just a precautionary measure. Those suspensions were for the duration of the detailed investigation, which I also launched at the same time into the conduct of individuals. That was an HR investigation in order to provide me with a basis for making decisions as to disciplinary action. When that investigation concluded, which from memory was at the very beginning of December, I lifted the suspensions because the reason for the suspensions was no longer there. It was just during the course of the investigations, so those individuals returned to work. However, shortly thereafter, I initiated disciplinary action against a number of individuals in the Department. I am afraid I cannot give any more details as to who those individuals are. You will understand that this is a confidential staff matter and those processes are still ongoing.

Q994 Chair: Can you tell us any more about the main conclusions of the HR study?

Philip Rutnam: I am sorry, Chair, but nothing more really other than that there were grounds for initiating a disciplinary process in relation to a number of individuals in the Department. The report itself and those processes are confidential. They are still in process and not concluded. You will have been able to discern from Laidlaw, which is not a report that names names but none the less is a very detailed and frank account of what went on within the Department, that there were a number of quite serious errors made and aspects of conduct that really do not accord with the standards of professionalism that we would expect. I do not think you will be surprised to hear that, having done a detailed HR investigation, or having had one undertaken for me, I have initiated disciplinary action.

Q995 Chair: How many staff have been subject to disciplinary action?

Philip Rutnam: I am afraid I am not willing to answer that question simply because I fear that, if I start giving numbers of individuals, there will be a process, probably played out in the media if previous experience is anything to go by, of seeking to identify which individuals they are. I do not think that would be fair either to individuals who might be named correctly or individuals who would be named incorrectly. I am not willing to identify the number of individuals, but I can assure the Committee that this is a process that has been taken with the utmost seriousness. A very detailed investigation has been undertaken in parallel with Laidlaw by Bill Stow, who is a very experienced former senior civil servant, into the conduct of individuals. It is on the basis of his detailed report, which is comparable to Laidlaw in terms of granularity, that I have made decisions.

Q996 Chair: Can you confirm that Peter Strachan has left the Department?

Philip Rutnam: As was mentioned earlier by the Secretary of State, shortly before Christmas, I announced a restructuring of the Department with the appointment of another individual, Clare Moriarty, as the Director General to take responsibility for all of our rail functions. Following that restructuring, Peter Strachan has decided to move on from the Department, so he has left the Department, yes.

Q997 Chair: Has Peter Strachan been held responsible for anything that went wrong?

Philip Rutnam: Peter Strachan was one of a whole number of individuals who had some responsibility for work on the West Coast, but I am not willing to get into a detailed account, blow by blow, of which individual by name was responsible for what. What I will say is that, following the restructuring which I announced shortly before Christmas, Peter has decided to move on from the Department.

Q998 Chair: Was that decision linked to the findings of the HR inquiry?

Philip Rutnam: It was a decision that Peter reached of his own accord. He reached the decision to move on from the Department in light of my decision in relation to restructuring, including that Clare Moriarty should take on the role of being Director General responsible for rail.

Q999 Chair: Could you confirm what happened to the three suspended officials? Are they all back now?

Philip Rutnam: As I said, I have lifted the suspensions on the three suspended individuals, which were put in place for the duration of the investigation into the HR aspect of this. Having lifted the suspensions, those three individuals have returned to work.

Q1000 Jim Dobbin: The public, of course, will be interested as taxpayers in the cost of this whole debacle. I would ask the Secretary of State what his current estimate is of cancelling this competition.

Mr McLoughlin: Mr Dobbin, I gave figures as to what we thought the recompense of the bid costs to the companies would be in the region of £40 million. There have also been costs as a result of First starting to commission, and figures have been given. There were also the arrangements set up in case they were needed by DOR—Directly Operated Railways. They had to do an amount of work. The latest figures we have are in the region of £45 million. Those figures were given by the Permanent Secretary to the Public Accounts Committee just before Christmas. The House and the Committee will want to come back to those figures in due course, but, before we pay out any money, we are doing the proper checks to ensure that all the costs are validated and that they are genuine costs. It has been a very expensive exercise.

Q1001 Jim Dobbin: What about the costs of postponing other competitions such as the Great Western, Essex Thameside and Thameslink franchises? Do you expect to have to refund those bidders?

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Mr McLoughlin: As I say, I am about to publish the Brown report. I will want to say as much as I can about the future of those particular paused bids when I publish the Brown Report, but no contract has been made where I envisage any cost of payments on those particular franchises.

Q1002 Karen Lumley: Are you confident, with your new restructuring and new Director General, that you have the staff needed to give these contracts and, more importantly, the West Coast Main Line?

Mr McLoughlin: Of course I am confident. That is what has to be done. It is not a matter of whether I am confident; that is what has to be done. Taking that on board, we have what Richard Brown's report will say in the not too distant future. As the Permanent Secretary has just rightly said, this is not an overnight exercise where you move 20 or 30 people all of a sudden into specific positions. Clare Moriarty has been in the Department for some time. She is a very experienced senior civil servant and will be in overall charge, but obviously we will be looking across the civil service.

One of the points made a little while ago was about transfer throughout Departments. We have been very fortunate in getting a new Director General to start in the Department. That is David Prout, who has come from DCLG. There can be certain qualities in other Departments of getting senior civil servants into the Department for Transport as well. We will draw on a proper recruitment exercise, which the Permanent Secretary is currently doing, looking across the whole sphere of the expertise that we need.

Q1003 Iain Stewart: Following on from that, and I appreciate that the detailed answer to this will happen after the Brown report is published, there are a large number of franchises due to be re-let over the next 12 to 18 months. There is obviously a capacity need in the Department to process all those. Have you had discussions with the train operating companies and potential new bidders about their capacity to submit multiple bids potentially for very different railway lines?

Mr McLoughlin: Mr Stewart, if you don't mind, I won't answer that too much, because if I answer that in too much of a detailed way it may pre-empt the Brown report, which I would rather not do at this stage. You can rest assured that the points you are making are occupying my attention at this particular moment in time. I hope very soon not just to be able to tell the Committee but also the train operating companies about the route that the Brown report will map out for us.

Q1004 Chair: Could you tell us a little more about where the costs of this fiasco are going to be met from? We are told it would come from headroom in the Department's budget relating to support to passenger rail services. What does that mean and what else isn't going to happen?

Mr McLoughlin: In running a large department like the Department for Transport, you do find areas where there will be underspends. That will be part of what we will look to use in certain areas. At the end of the

day, it is going to mean that in the region of £44 million or £45 million will not be available to spend on projects that we might have been able to spend it on. That is unfortunate, but the main areas of our expenditure programme are still going ahead and there are areas in which we save money across the field.

Q1005 Chair: So it is quite possible that some projects will be stopped.

Mr McLoughlin: I do not envisage any projects that have been announced or planned being stopped, but I do imagine that we will find the savings necessary to make up these costs.

Q1006 Chair: I want to go back to the issue of the subordinated loan facility because that was a critical issue in what happened. Is it correct to say that, if the Department had judged the West Coast bids strictly in accordance with the guidance given to bidders, even though that guidance was flawed, the SLF required of First would have been unrealistically big? Mr Rutnam, can you perhaps answer that one, if the guidance had been followed?

Philip Rutnam: The SLF would certainly have been larger. It is quite a complicated question, in fact, to answer because it all depends on a number of assumptions. It depends on which of a series of errors you unpeel. If you recall, one of the errors that, sadly, we made was taking the output from the GDP resilience model that had been built as though it were nominal—a cash figure—when in fact it was a real figure in 2010 prices. That, on its own, made a difference of the order of 50% or more. It was a bit under halving the number. Correcting for that error on its own would have significantly increased the SLF. There was then the fact that the SLF for FirstGroup was, as the Laidlaw report describes, adjusted by the Contract Award Committee when they exercised their discretion in the meeting in late June. That was another significant adjustment. Whether or not it was unrealistically big is, in a sense, a matter that one would ultimately have to have asked First. However, what we concluded was that, because all the bidders had been given information about the level of SLF that was likely to be required back in February 2012 that was itself flawed, therefore, the basis on which the competition had been conducted was unsound. I do not think I can definitely say that, if corrected, the figure would have been unrealistically big. It would have certainly been much bigger.

Q1007 Chair: If First had not been willing to provide the SLF requested, they would have been knocked out, wouldn't they?

Philip Rutnam: Under the rules of the competition, yes, that is how it would have worked.

Q1008 Chair: And Virgin would have won.

Philip Rutnam: If Virgin had been willing to provide whatever level of SLF was being sought of them.

Q1009 Chair: If Virgin had agreed to provide the SLF sought but First had not been, then First would have been knocked out.

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Philip Rutnam: If First had declined to provide the SLF requested, then you would go to the next highest ranking bidder, which in this case was Virgin. However, this is all, of course, entirely hypothetical. As the Secretary of State concluded, on the basis of the evidence that he had seen by 3 October, this was not a safe competition and it was not a fair basis on which to proceed to the award of the franchise.

Q1010 Chair: Laidlaw talks about the decision that was taken to reduce the amount that First were asked for and increase the amount that Virgin were asked for. He refers to an awareness of the possibility that a higher level of SLF than that already communicated to First could knock First out of the West Coast Main Line competition and have a knock-on effect on other franchises. Presumably, that was a significant consideration.

Philip Rutnam: He does refer to it. He has, with his advisers, done a very detailed review of all the considerations that he has been able to discern that seemed to have been in the minds of people making the decision about the level of SLF. That was indeed one consideration, but it only seems to have been one consideration. A number of considerations are listed in his report. I am looking at paragraph 4.61.

Q1011 Chair: Another key issue in the Laidlaw report was the possibility that what was being decided would be subject to a successful legal challenge. That was raised by Eversheds' adviser, but it was not only not acted on but that concern was not escalated to a more senior level within the Department. Why do you think that was, Mr Rutnam?

Philip Rutnam: In some ways I find this among the most difficult questions. There were people who knew that things were awry, but none of them did enough to escalate it within the organisation. Time and again I find myself saying that, if only they had, how things could have been different. Why did they not do it? The truthful answer is that I don't know. I can speculate. Laidlaw offers some answers, but they are at the more speculative end of his findings. He talks about whether there was a concern on the part of some of the staff who did not escalate things that, if they had done, they would not have had a receptive hearing. In other words, their concerns might have been dismissed by more senior staff.

He also talks about a culture, in effect, within the team of people working on trying to get this award done of completion. There was a culture of completion almost at any cost. They knew there were risks but they felt they had to get the job done, so never mind the risks. They just had to get on with getting the job done. I don't think he concludes definitively as to which of those it was.

What I would say on the basis of my observation of the organisation in the months I have been there is that clearly either of those is a very concerning issue. Little concerns me more, if you like, than people failing to be direct or to have the confidence to raise with others more senior than them in the Department the concerns they have. Both of those would be deeply concerning explanations. My observation of the organisation is that this has clearly been a problem

here but it is not a problem I have seen elsewhere. It is not a problem that I believe is systematic to the organisation. There are many other cases that I have experienced where people have been very ready to bring their concerns to the top of the Department, whether to me, other senior officials or to Ministers.

Q1012 Chair: Secretary of State, in your position what lessons would you draw from this particular incident? Would you want civil servants to give you information that you might not want to hear? It might be something that perhaps disturbs a timetable to which you have been committed.

Mr McLoughlin: There is the position within the civil service where they can escalate up. If there is that sort of concern, then, yes, of course, they should come to Ministers. I always respect the advice I am given, though I may not always act upon that particular bit of advice. You need a proper and frank discussion within a group of people. You may take a different course of action having listened to all the arguments. Ministers have to make sure that they are acting within the law and that they are open to all the policy advice available to them. That is what the Department is there to do.

Q1013 Steve Baker: Mr Rutnam, could you confirm that this was the DFT's biggest ever single contract?

Philip Rutnam: It was a very large contract. It all depends how you measure these things. The Committee asked me about this in the last hearing on 31 October and I wrote to you with some figures. Some of those contracts in nominal value are larger than this; others are very similar to it in value. It is certainly a very large one.

Q1014 Steve Baker: The Committee's staff have advised us that it is the largest contract that the Department has let. Can you confirm that there was a hopelessly confused governance structure, with no one person clearly in charge of the process?

Philip Rutnam: No, I do not think that is quite right. During the period in which I have been in this Department, since April, there was one person in charge of the process. There was a senior responsible owner for both the franchising programme as a whole and for the award of particular franchises, including this one. There are two aspects to the confusion that is discussed in Laidlaw. One is that, under the organisational structure that was put in place towards the back end of 2010 and early 2011, it had been decided that there should essentially be two successive SROs, in the jargon, for projects like this. One senior responsible owner was responsible for the design of the franchise and the parameters to be put into it—what it is that the Government should be buying. Then there was another, who should be responsible for the delivery of that and the execution of that through the award process. Laidlaw, I think rightly, criticises that as creating a potential gap between the two. That is one problem.

The second problem he identified was that in the early months of 2012—specifically January to March 2012—it was not clear whether the baton had been passed from one SRO to another SRO. There was an

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SRO responsible for the project during 2011, and certainly from April onwards in 2012, but there was a successive SRO structure that was over-complex, and there was a period of two months in which it was not clear who was the SRO.

Q1015 Steve Baker: Is it possible for us to agree very simply that there were profound governance problems involved in this whole process?

Philip Rutnam: Given the outcome, I am not going to defend the governance of this process.

Q1016 Steve Baker: I am also conscious of your remarks earlier, where you said if only somebody had escalated the issue. What I am hearing are profound managerial difficulties. To go to the heart of the matter, it is a long time since I have been involved with civil service promotion procedures—about 13 years—but my understanding is that the civil service's processes are there to ensure that the best possible people end up in the particular roles. Would you say that is right?

Philip Rutnam: That is obviously the objective, yes.

Q1017 Steve Baker: How many people would you say were involved in this process who are paid six-figure salaries—zero?

Philip Rutnam: My answer to that particular question is going to be off the top of my head. Involved in franchising and the franchise award in some way, it will be a small number, of single figures.

Q1018 Steve Baker: A small number, of single figures.

Philip Rutnam: Two, three or four. I don't know exactly, I am afraid; some, yes.

Q1019 Steve Baker: From a member of the public's point of view, they would expect a very high degree of managerial competence from somebody paid a six-figure salary, would they not?

Philip Rutnam: Indeed.

Q1020 Steve Baker: I am reflecting that we have ended up with a situation where at least one of the Department's largest ever contracts was subject to profound managerial errors, in an environment where people were paid very large sums of money to provide managerial competency. I understand that, elsewhere, you have said you would like to see more judgment used in future processes. Given that we have the best people in place and yet all of these things happened, why should any of us have confidence that, in future, the civil service will put into these roles people capable of exercising a greater degree of judgment and therefore a greater degree of flexibility in these matters, and yet not make similar mistakes?

Philip Rutnam: It is a reasonable question to ask. What I would say in response to it is, first, I fully recognise the profound mistakes made in this case and the fact that they are completely unacceptable. That is a recognition not just by me but one that is shared at all levels in the Department for which I am responsible. Secondly, we are acting vigorously to address the failings that have been identified in this—

whether failings of governance, which in my terminology means the oversight of management and does not mean management itself, failings in terms of the clarity of managerial responsibility and accountability, or failings in our approach to planning and preparation.

My second point is that we are acting vigorously to respond to those findings. My third point would be that, while I completely understand the enormous anger that this episode has caused, I would point out that this is actually a Department that on many other occasions has shown its ability to successfully deliver projects of quite similar complexity and scale. To take just two quite recent examples, those are projects that involve large amounts of public money, such as the sale of the High Speed 1 line for £2 billion consideration or the procurement of multi-billion pound new generations of trains such as the Intercity Express programme.

There are other examples, too, of live procurements in process of a multi-billion pound scale that we are proceeding with in a very smooth and successful manner. I accept the criticisms in this case. I do not think that they are criticisms that should be applied to the Department as a whole.

Q1021 Chair: What about the Thameslink rolling stock issue? Do you think that has been dealt with very expeditiously?

Philip Rutnam: Thameslink rolling stock is a very large and complex deal. It is a private finance deal of roughly £1.5 billion in value. It has certainly taken significantly longer than we had expected and wanted to bring to close. I have been quite closely involved in this personally in the last few months. We have now made very significant progress. We brought the project to a commercial close before Christmas, reaching commercial agreement with Siemens and the other equity partners on the terms of the transaction reflected in issuing the information memorandum for raising the bank financing. We hope and expect to bring it to a financial close early in the new year. It is a large and complex transaction. It is one of huge importance but one we are confident we will bring to a satisfactory conclusion.

Q1022 Chair: We keep hearing it is about to be brought to a conclusion but it hasn't been, has it, not completely?

Mr McLoughlin: You have just heard the latest up-to-date figures. It is true that contracts of this size do take some time. The initial invitation to tender, if my memory serves me right, was sent out by Ruth Kelly when she was Secretary of State for Transport¹. It was called Thameslink 2000 for a very good reason—that it was supposed to be completed then. Sometimes these projects do take a bit longer than we would like.

Q1023 Chair: I think this one is rather more than a bit longer.

Mr McLoughlin: That is true.

¹ The Thameslink ITT was, in fact, issued on 27 November 2008, when Rt Hon Geoff Hoon was Secretary of State.

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Q1024 Lucy Powell: Mr Rutnam, you were talking earlier about the culture within the Department and one of two options. There was either a climate of fear about escalating or a culture where people felt they could not go higher up with their concerns. Who do you think is responsible for creating a culture and a climate within an organisation, and what are you doing to address that to make sure it does not happen again?

Philip Rutnam: My answer to that is that the responsibility ultimately rests with the leaders of the organisation. Ministers have an important role, but, to be frank, I would say that, in relation to something like that, even stronger and more important than the role of Ministers is the role of senior officials, starting with me.

If you will indulge me, I sent a personal message to staff at the time that we published the Laidlaw report. The single point that I stressed as most important was that we must have a culture of open and honest exchange by staff at all levels with senior managers and Ministers. This is fundamental to the way our Department should do business.

Lucy Powell: I accept that it was a different Minister at the time.

Q1025 Graham Stringer: Is one of the lessons learned that the anonymisation process of information about bidders should be abolished?

Mr McLoughlin: There is a lot of criticism of the anonymisation process. One can see why it is there. If we abolished it, a lot of other questions would come into being, so I think we need to think a bit more carefully about that and take advice. The anonymisation process is there to try and reassure people that everyone is being treated equally. As you read from the Laidlaw report, because people became aware of who the bidders were, they had to drop out of the process. That possibly led to certain people not being at individual committees in which they had previously taken part. That is something we have to think about quite carefully. We will want to come back to give you a more detailed answer on that.

Q1026 Graham Stringer: Laidlaw says he can't find any other Department in the whole of Government using this anonymous process. Shouldn't you take action more quickly than this?

Mr McLoughlin: I can't think of many other Departments—and one always has to be careful about saying this—that do procurement to the kind of level that the Department for Transport does, having to take account of European procurement rules. The Ministry of Defence does do large procurement, but that is not completely covered by the same procurement rules. Obviously, we need to give some attention to that.

Q1027 Graham Stringer: Does this imply that another lesson learned is that the Permanent Secretary should not have allowed himself or would not in the future allow himself to be excluded from the process in the way that you were excluded from the process?

Mr McLoughlin: Philip can speak for himself on that particular point, but he made his position fairly clear the last time we came to the Transport Select

Committee that that was not something that he would perhaps want to see in the future.

Philip Rutnam: I think that is a lesson already well and truly learned.

Q1028 Graham Stringer: I realise we discussed it the last time. I am still on lessons learned. You are dealing with the East Coast franchise, the West Coast franchise and Thameslink. Is there sufficient capacity both within the private sector as well as the Department to deal with all of these processes in a relatively limited period of time?

Mr McLoughlin: That is one of the things that will be dealt with by the Brown report, if I may say so, Mr Stringer, and we will publish that in due course and make announcements as soon as we possibly can.

Q1029 Graham Stringer: There is a detail that concerns me on personnel issues. When you made the statement to the House explaining that you had set up Brown and Laidlaw, you did not mention to the House that you had set up a personnel inquiry. Was there a particular reason for that?

Mr McLoughlin: I thought I had referenced it. You are quite right, looking back on it, that I did not reference it. We were fairly open that an HR inquiry had been set up. When I gave my statement to the House, it was mainly about what we were doing about the collapse of the franchise as it was and what action I was taking in setting up Laidlaw and Richard Brown. The HR was more a role for the Permanent Secretary. I make the point that I employ two members of staff in the Department for Transport and they are both my special advisers. I employ nobody else in the Department. That is the responsibility of the permanent civil service.

Q1030 Kwasi Kwarteng: Clearly, this has been a huge embarrassment. We have had ample sessions and asked lots of questions. The one thing I am unclear about is what immediate measures you can take within the next three months to prevent something like this happening again. That is what the public actually want to know. They know that there has been a mistake and that taxpayers' money has been spent or, rather, misspent. They want to know what specific steps you are going to take in the immediate future to minimise the risk of this happening again.

Mr McLoughlin: We have outlined a number of things that we have done in the immediate future. There is a new Director General responsible for the rail industry with an overall concept of what goes on. We are still waiting for publication of the Brown report. I have received the Brown report. We will then also explain how we are going to handle franchising from here on as far as the future is concerned. I certainly know from some of my Cabinet colleagues that the lessons of the West Coast Main Line have been learned quite substantially throughout the whole of the civil service.

Q1031 Kwasi Kwarteng: Could you spell out what you think is the main lesson?

Mr McLoughlin: I think the main lesson is that there should be an overall person in charge of franchising

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or the procurement. There is the necessity for civil servants to be questioning and to refer things up the system, if necessary, to Permanent Secretary or Secretary of State level. The one thing that Philip referred to a little earlier on was why people were not coming forward when certain things were happening. It is unacceptable, basically, that different levels of information were given to different bidders. That was just completely unacceptable.

Philip Rutnam: I don't know whether the Committee has seen the Government's response to Laidlaw, which we published on the same day as the Laidlaw report itself. It sets out a whole series of actions that we are taking quickly and urgently, both specifically in relation to rail franchising but also in relation to other elements of our responsibilities for rail. It is very much a three months' time scale. It is not a protracted time scale. We have also been taking steps—indeed, we started taking these steps right back in October when all of this came out—to make sure that the sort of failings that we have found on West Coast are not failings that we find in other projects, some of which we have already talked about.

Q1032 Kwasi Kwarteng: I would ask the question that I addressed to the Secretary of State directly to you. Clearly, you were a new person on the scene, as it were, as this decision was being made and you were kept out of it. What specifically have you learned from this fiasco?

Philip Rutnam: In truth, in part it is about never taking anything for granted. That may sound a little bit superficial, but let me try to explain. In terms of the outlook within the Department over the next few years, I see three lines of defence. How do we try to make sure that things don't go wrong and, so far as possible, they go as right as we can make them? There are three lines of defence. There is management accountability. That is about people who I am ultimately responsible for, reporting to the Secretary of State, and making sure that they know they are responsible for getting stuff done. There is governance within the Department, which is about the scrutiny and oversight of what those managers, and the people working to them, are doing. That is why we have internal committees of the wise and the experts who are there to provide constructive challenge to the different parts of the Department and to managers. There is then internal and external assurance. Those are the sorts of things you can get from internal audit, expert external advisers or the likes of the Major Projects Authority. Those are three sorts of support or lines of defence to make sure that things are done right.

In this case none of those worked satisfactorily. That is a huge lesson. It means that you absolutely have to be on your toes, because, ultimately, while people are acting with the best of intentions, they can still get something catastrophically wrong.

Kwasi Kwarteng: Thank you very much; that was a good answer.

Q1033 Chair: Have you had an assurance from the other bidders that you won't be challenged on giving

Virgin an additional 23-month franchise?

Mr McLoughlin: I have made the announcement. The people I have spoken to in the industry have basically welcomed the fact that we did not go for the short-term eight-month contract and then an extended two-year contract. That has been welcomed. I know of no challenge so far.

Q1034 Chair: You are not concerned that there will be any legal challenge to that contract. That is quite different from people agreeing to support it.

Mr McLoughlin: I am very reluctant to give an answer because you may ask me in three or four meetings' time why I said something as catastrophic to the Select Committee. I know of no challenge at the moment, Madam Chairman.

Q1035 Chair: Does the contract provide for any further extension beyond November 2014?

Mr McLoughlin: No. I would anticipate that, at that stage, we will be ready to move to a longer-term contract in light of what the Brown report may say.

Q1036 Chair: Will you have enough time to award a new contract after 23 months?

Mr McLoughlin: I very much hope so, yes. Within 23 months—

Q1037 Chair: You hope so. You think you will.

Mr McLoughlin: Yes. All right, then, yes, we will be ready to do that.

Q1038 Chair: Can you tell us anything about the length of the franchise that you are likely to offer?

Mr McLoughlin: Not at this stage, no. If you remember, one of the reasons why the West Coast Main Line was not a 15-year contract—I think initially we were talking about a 12-year contract—was because of the consequence of HS2 and the way in which that would change the whole future of what happens on the West Coast Main Line.

Q1039 Chair: What is happening about InterCity East Coast, currently run by Directly Operated Railways? Is that going to go out to tender?

Mr McLoughlin: It will be my intention in due course that that should go out to tender. Indeed, when the previous operator of that franchise decided it could not continue, that was the announcement made by the then Government. As I have said on the Floor of the House, that will be something I would intend to follow through.

Q1040 Chair: When is "in due course"?

Mr McLoughlin: We are publishing the Brown report shortly, and I hope to be in a much better position to be able to answer some of those questions.

Chair: On a future occasion we might pursue you on what "shortly" might mean. I thank both of you very much for coming.

Written evidence

Written evidence from Sam Laidlaw (ROR 48)

ADDITIONAL INFORMATION FROM SAM LAIDLAW, NON-EXECUTIVE DIRECTOR, DEPARTMENT FOR TRANSPORT

During my oral evidence to the Committee earlier this week, I said that I would revert on a small number of questions put to me by members of the Committee. Accordingly, I set out below my responses to those questions. I regret that, as you will see, I am unable to provide much further information:

1. *How many of the 14 attendees at the meeting of the Contract Award Committee on 27 June 2012 had been involved in previous franchise processes?*

The evidence gathered by the Inquiry team (see paragraph 2.15 of my Report) does not enable me to answer this question as we looked at general experience levels and seniority but not the specific previous experience of every individual in the process. I would suggest that, if the Committee wishes to obtain the requested information, it should seek the information directly from the Department.

2. *Of those 14 attendees, how many were internal DfT officials and how many were consultants?*

I believe that two of the attendees were contractors, while the remaining 12 were employed DfT officials (including internal DfT lawyers). If a definitive response is required by the Committee on this question, I suggest that confirmation is sought directly from the Department.

3. *Of those 14 attendees, how many had previously worked for TOCs (including First or Virgin)?*

I would make the same observations as my response to question 1 above.

4. *What was the size of the reduction in the additional SLF required in respect of First's bid between:*

- (i) *the amount orally notified to First by the NT on or about 20 June 2012; and*
- (ii) *the final SLF amount of £140 million (in addition to First's bid SLF and equity of £60 million) imposed by the Department following the meeting of the Contract Award Committee on 27 June 2012?*

The unredacted version of my Report that I issued to the Secretary of State sets out the amount of the SLF requirement orally notified to First by the Department on or about 20 June 2012. The reference to this amount has however been redacted by the Department in the published version due to commercial sensitivity. In those circumstances, I regret to say that it would not be appropriate for me to provide the requested information.

21 December 2012

ISBN 978-0-215-05319-0

