

HOUSE OF COMMONS
ORAL EVIDENCE
TAKEN BEFORE THE
TRANSPORT COMMITTEE

RAIL 2020: WEST COAST MAIN LINE FRANCHISE

TUESDAY 18 DECEMBER 2012

SAM LAIDLAW and ED SMITH

Evidence heard in Public

Questions 857 - 967

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Oral Evidence

Taken before the Transport Committee

on 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 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 refranchising body met on 20 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.

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 minutes. 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?

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 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.

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 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.

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 September. 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 20 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 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 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.

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

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.