

Transport Committee

Oral evidence: HS2 - CH2M contract, HC 1140

Wednesday 19 April 2017

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Members present: Mrs Louise Ellman (Chair); Mark Menzies; Huw Merriman; Iain Stewart; Graham Stringer; Martin Vickers.

Questions 1 - 91

Witnesses

I: Rt hon Chris Grayling MP, Secretary of State for Transport; and Sir David Higgins, Non-Executive Chair of High Speed Two (HS2) Ltd.

Examination of witnesses

Witnesses: Rt hon. Chris Grayling MP and Sir David Higgins.

Q1 Chair: Good afternoon and welcome to the Transport Select Committee. This afternoon we are going to look at recent procurement and other issues relating to HS2. Given the scale of HS2 and the sums of money at stake, it is essential that the public have full confidence in the processes involved. Today's session will focus on the withdrawal of CH2M from a major HS2 contract and other recent developments concerning HS2.

Please could you give your names and positions for our records?

Chris Grayling: I am Chris Grayling, Secretary of State for Transport.

Sir David Higgins: David Higgins, chairman of HS2.

Q2 Chair: What were the events that led to the withdrawal of CH2M from the phase 2b development partner contract?

Chris Grayling: I will give you a quick run-through in overall terms. It is worth saying that these are matters predominantly looked at by the board of HS2 and the responsibility of the board. David will walk through what happened from a company perspective.

Let me start by giving you the perspective from my share of what we have gone through in terms of the process for CH2M. It is worth saying that from a departmental point of view we have been working quite hard to make sure that things are right. When Simon Kirby left we appointed an interim chief executive, who happened to be from CH2M and had previous employment history on the project, knew the project well and was a logical fit.

When we recruited Simon's permanent successor—the leading candidate was also from CH2M—we were particularly careful to ensure that we managed a proper process and picked the best person for the job. This is a small world, where people with major project management skills work for a small number of organisations. We worked very hard, and I ensured that my permanent secretary worked very hard, to ensure that the recruitment process was done very carefully and that we took the right person for the job, given the links with the company and the fact that we already had an interim from the company. We oversaw the process as carefully as we could.

When this particular contract was let and CH2M ended up at the top of the list, alarm bells would be the wrong phrase, but, as you would expect, there was a desire to make quadruply certain that we were not getting ourselves into difficult territory. That certainly rang in my head and I asked my permanent secretary to do serious due diligence to make sure that neither of the two individuals, interim or incoming chief executive, had a position that would in any way have compromised the recruitment process. That work was done independently. I was given



absolute comfort by my permanent secretary off the back of that work. David will talk about what HS2 did to the same effect. We signed off the award of the contract.

We then went into the proper process, which is a standstill period. During that standstill period, we were alerted to the fact that there was a conflict of interest in the bid team from CH2M. We made appropriate inquiries about that. To be frank, they took a decision to step back from the contract before we could take a decision that it compromised their position and that they could not go any further with it. That is what happened.

Q3 Chair: You clearly saw that potentially there was difficult territory, but you did get into difficult territory and it has raised major questions about what has happened. Sir David, as the person immediately responsible, what did you do to address the issue of potential conflicts of interest?

Sir David Higgins: I ask the indulgence of the Committee to go through the sequence of the timeline for a tender as important as this. We keep focusing on the one tender, which is the delivery partner role; the actual tender was a £500 million tender and it was phase 2b—Birmingham to Leeds and York and Crewe to Manchester. It is the design work to prepare the hybrid Bill for Parliament in two and a half years' time. That is what was out for tender.

That started with a pre-qualification questionnaire to the market. That happened in February 2016. Before that is signed off by the board, we have independent legal on the tender conditions and the scope. We also have an independent review by an independent assurance panel. That was chaired by David Orr, a past president of the Institution of Civil Engineers. It is an eminent panel of experts, all independent. They sign off on all the pre-qualification tender documentation prior to its going out.

That tender went out. We get the feedback from the market. We prepare a tender on the basis of how the market reacts to our information, and that is the invitation to tender. That went out in September and again there was an entirely independent review of the tender documentation. That starts with Eversheds, our independent legal advisers, advising the board as to the satisfactory nature of the tender documents and the preparation of those tender documents, as well as, once again, the independent assurance panel chaired by David that reviews the work.

The tender is closed and the review comes in with an evaluation of the process. The evaluation process is not usually subject to independent assurance, because it is a more technical process, but at that stage the board insisted again on having an independent review of the process of evaluation to ensure that it complied with the criteria of assessment the company had set out. Again, that was passed and signed off.

I know you will have perhaps seen commentary in the press that the assessment may have been up for questioning. The assessment is quite



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detailed; it is quite clear. I have the assessment here. It is quite clear as to how the tender is going to be assessed. This is signed off by the bidders at the stage of bidding. If a bidder—one of the three bidders in this particular contract—were dissatisfied, the time to complain about this assessment table was at the time when they were submitting their bids. They had the option to do that.

Once they have submitted their bids, all tenderers have to sign a declaration. There is a conflict of interest term; I will quickly read clause 6.15. "Tenderers are reminded that from the date of expression of interest"—that is from when they start to tender—"to the date of contract"—the date of award—"it is their responsibility to ensure that any person or companies engaged directly or indirectly in connection with the preparation of the response does not have, or could not reasonably be seen to have, any conflict of interest in connection with HS2 projects. Steps should be taken to identify all such persons or companies who have knowledge of an HS2 project acquired through previous or current roles. Checks should be made to ascertain whether such persons possess confidential information"—this is the critical part—"relevant to the response. Tenderers are required to immediately notify HS2 of any such occasion and measures should be taken to determine whether it is unfair."

If any tenderer, or any individual within our company or a tenderer, advises of any such potential, perceived or actual, it goes to an independent panel within HS2 to determine whether there is actually a conflict of interest. In this particular case, it comes down to one of five contracts. It is important to say that, of the £500 million-worth of contracts for phase 2, £350 million of those contracts have already been awarded. Companies such as Arup, WSP or AECOM are already working on engineering work on the design of phase 2.

It came down to one whistleblower who notified Mace that there was one individual person who did work as a consultant at HS2, which was correct, between 2011 and 2016, and that that person worked on the bid. We were aware that this individual was put forward by CH2 to work once the project had been awarded. That was perfectly acceptable. Many of the people who work on this project have worked for HS2 or other contractors. The clause is clear, however, as to the time between the preparation of the tender and the time of contract. If someone who has worked for us before has confidential information about the tender, it should be raised with us. That was not raised with us.

When it was raised with Mace, which we welcomed, we then went back to CH and said, "We have had this issue raised. Can you identify it?" Their response was that the person clearly had no confidential information and had a minimal role in the preparation of the tender. However, he was going to be used if they were successful on the tender. That was not sufficient or satisfactory for us. By that stage, we had a QC on our side and independent legal advice advising the board. There was a QC on the



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side of CH. We are in the process of exchanging up to 50 different questions, to get into great detail about both the individual involved and the company to get to the bottom of the issue of judgment as to whether or not the person possessed material that could have been considered confidential, and whether the four days that the person potentially sat in on meetings were material enough to influence the bid. That is what it came down to. Before the board was given a chance to make a final determination, CH2 withdrew its bid.

It is important to remember that there are three parties in this bid. People have focused on CH2 and Mace. In fact, Bechtel was No. 2 and put in a compliant bid. It had no such issue of conflict of interest. As the clause says, "Failure to meet this obligation may result in disqualification of the tender." Clearly set out in the tender document by HS2 is the ability for us to disqualify an individual tenderer and then to go to the next award. It is fair to say that has happened before on Government contracts. This is not the first time that this sort of situation has occurred. We have now written to both Mace and Bechtel and said that it is our intention to award to Bechtel. There is a 10-day cooling-off period in the tender and it is now up to anyone who wants to do so to complain about that. That is the extensive work we carried out to make sure that the issue of conflict of interest was very fairly dealt with and the processes worked in this particular case.

Q4 **Chair:** There are a number of very important issues that you have raised. This rather sounds to me like a justification of what happened after other people pointed out what went wrong. Members will want to ask you about a number of points you have raised, which will include the nature of the independent assessment that you refer to. This was an independent assessment conducted by people you appoint; so there is a question mark over how independent they are. There are a number of issues.

There are one or two other points I want to pursue with you at this stage before other members join in and raise their points. From what you have just told us, it sounds like the onus for identifying conflicts of interest rests entirely with the bidder. Is that the case? The Secretary of State has already spoken about looking at potentially difficult territory. I think that was the phrase that was used. Sir David, from the way you have explained it, the onus is on the bidder to identify conflicts of interest and not you, the HS2 procurer of this major, major contract with very large amounts of public money and public confidence. Is that right? Who is responsible for identifying conflicts of interest, apart from whistleblowers or the media? Who within the company?

Chris Grayling: I would argue that the process has worked as you would expect it to.

Q5 **Chair:** I am stopping you there. I am asking you a very specific question.

Chris Grayling: And I was going to answer that.

Q6 **Chair:** Who is responsible for identifying conflicts of interest?



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Chris Grayling: I was going to answer that. Ultimately, first and foremost, it is for the bidder to conform to the rules. No Government contracting body can crawl through every aspect of every bit of working of an organisation tendering for a contract. That is utterly unrealistic. There is a duty on the part of the tenderer to conform to the rules, and there is a consequence if they do not conform to the rules. The company involved has just lost a very substantial piece of business as a result of a breach of the rules.

In this particular circumstance, that came to our attention because somebody inside the organisation told one of the other bidders. That information could have come through a number of different channels, but it is really important to say that the process has worked in exactly the way you would wish it to work. There is an exhaustive procedure. An issue has arisen. That issue has been investigated. The bidder has withdrawn before the board of HS2 and my Department could take steps to rule on the future of that contract. Had they not done so, it is more than likely that we would have chosen to ask them to withdraw anyway. I do not really see how else you would wish the procedure to work.

Q7 **Chair:** I am asking you a question. Are you saying that it is wholly up to the bidder to identify conflicts of interest and that neither the Department nor HS2 has any responsibility for identifying a conflict of interest? Is that what you are saying?

Chris Grayling: What I am saying is that it is not realistic for any Government contracting body to monitor every piece of working hour done by an individual—

Q8 **Chair:** But this is a major thing. I think it is Mr Reynolds we are talking about. Is it not correct that his involvement in the phase 2b development partner programme contract was very substantial?

Sir David Higgins: In preparation of the stage 2—

Q9 **Chair:** It is concerning that there was somebody from the winning company who in fact designed the contract and therefore had influence—

Sir David Higgins: That is entirely incorrect.

Q10 **Chair:** Tell me what the position is.

Sir David Higgins: I can assure you. The individual you are talking about is Chris Reynolds and the allegation that he wrote the procurement document is incorrect. I am aware of the protocols in terms of statements made in this Committee. I can guarantee to you that he did not prepare the procurement document. However, he did work for HS2 on and off for some four or five years on phase 1.

I think you have the letter from Mace. I do not have a copy of it. I think I have seen it on the *Construction News* website, if I am honest about it. There was a statement made that he wrote a lessons learned document that was crucial for this document. I have not seen that document. It



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certainly never came to the board. In the last few hours since I have been able to sight the Mace letter via a third party, I have done a bit of investigation. Yes, it was a report of lessons learned from the phase 1 work. It mainly related to how we, HS2, would resource ourselves in the future, in particular in dealing with the community. It recommended that we appoint a community director, and we have done that. A lady called Julie King has been appointed. Most of it was for HS2 to work out how we needed to upgrade our resources on community relations. It was not as a result of the PQQ; it wasn't any of the tenderers' feedback about how we should write the procurement document, which is what has been implied in the various media speculations.

Q11 **Chair:** Did Mr Reynolds design the tender document or have any influence on the scoring of the tenders?

Sir David Higgins: No, he had no influence on the scoring in the tender document and, no, he did not design the tender document.

Q12 **Chair:** Did he have any influence on the scoring?

Sir David Higgins: No, because he was not involved at all on the scoring.

Q13 **Chair:** He had no involvement at all.

Sir David Higgins: What I will say is that we were aware that Chris Reynolds was going to be a critical part of the team doing the work on phase 2b. If we had been aware that he had been in meetings for four days in the lead-up to the preparation—he did not lead the bid team and he never met HS2 in the bidding process—we would have said to them, "Don't do it. We are unhappy with it, because the perception is that he worked on and off for HS2 for four years, and you should not have him anywhere near your tender team. They need to be entirely independent."

This is not the first time someone has left our organisation and gone to work for a major engineering company that is tendering for work. We are very clear in what we have said to other organisations in exactly the same situation: "Keep that individual well away from our organisation in the tendering process."

We should have been consulted in this process. We agreed to disagree in the end. CH said he had no confidential information. All the information was public. Even if it was public, he knew where to find it, so he was quicker than others at finding it. Secondly, he was attending meetings for four days. He should not have been there. That was our position. If we had been asked, as is required in this document, we would have gone to our panel and said, "Keep him well away from the tendering document." CH2 would say there was no confidential information and therefore this does not apply. These tender conditions are the same for every other major engineering tender, such as Crossrail or the Olympics.

Q14 **Chair:** If Mace had not raised objections, would nothing have happened?



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Sir David Higgins: If Mace had not raised those objections, the whistleblower, who actually came from a different organisation, may well have raised it with us. That is fine. If they had raised it with us after we had awarded the contract, we would have done exactly the same as we did during the tender process. We would have written to CH with legal advice and asked them to answer the questions. If they had answered the questions in an unsatisfactory nature, we would have terminated the contract.

- Q15 **Mark Menzies:** The key thing for me is that I am struggling to understand, Sir David, why a company like CH2M, a commercial organisation, would voluntarily withdraw from a £170 million project without good reason. That is the bit that flummoxed me.

Sir David Higgins: We will never know. I will not know. It happened before we expected it, I have to be honest. They make a commercial decision. They have other work with us. They are one of three in a consortium that is advising us on phase 1. They have contracts on Crossrail. They have work on Thames Tideway. Maybe they didn't look forward to a legal battle with us for a while on this particular contract. Who knows?

- Q16 **Mark Menzies:** They have other contracts with you. They have a reputation to protect. Perhaps it could be suggested that they withdrew from a £170 million project without good reason because they feared a judicial review. Mace set a deadline for 3 April, and the last thing they wanted was scrutiny in a court, with documents being published and allegations of the level of involvement between CH2M and HS2 that could then stand up in court.

Sir David Higgins: It would never have got to a judicial review, because in the state it was before they withdrew, with the information that our board had at the time, unless CH came back with further information, we were ready to disqualify. Our QC said, "You have to give them one last chance to respond to these questions of yours and it is unfair to disqualify them as they are today." If they had been unable to answer our questions satisfactorily, we would have disqualified. We would not have waited for someone else to come in and challenge it with a judicial review.

- Q17 **Mark Menzies:** Returning to the Chair's point about Christopher Reynolds and the work that he was doing, let me check my understanding. Christopher Reynolds was the chief of staff at HS2. Is that right?

Sir David Higgins: He worked for Alison Munro for two years, 2011 to 2013, as chief of staff, which is an assistant role to a CEO. They look after their business diaries and those sorts of things. It is not chief operating officer.

- Q18 **Mark Menzies:** But he would have access to a lot of information.



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Sir David Higgins: Of course; absolutely right.

Q19 **Mark Menzies:** He was chief of staff at HS2. He had access to a lot of information, some of which was highly commercially confidential.

Sir David Higgins: Presumably, yes.

Q20 **Mark Menzies:** He had then been working at CH for some time.

Sir David Higgins: No. He was working at CH, seconded to HS2, but not for CH.

Q21 **Mark Menzies:** But he was still involved with CH, whether as a secondee or not.

Sir David Higgins: True.

Q22 **Mark Menzies:** It does not matter what the label is; it is work that is done. He was also working on the HS2 bid, wasn't he?

Sir David Higgins: On the HS2 bid?

Mark Menzies: Yes.

Sir David Higgins: No, he was not working on the HS2 bid. He had left the organisation. He was not working on the HS2 bid. He worked on looking at lessons learned from phase 1. He was involved in phase 1. That was his prime role. He wrote some report saying, "This is what we recommend you do from phase 1." It is not a report that the board ever saw. Most of those recommendations relate to community relationships and how we manage the public.

Q23 **Mark Menzies:** So Chris Reynolds, who was the chief of staff at HS2, had access to commercial information. Let us ask it another way. What was his involvement?

Sir David Higgins: In 2013, three years before the bid was happening.

Q24 **Mark Menzies:** Yes, but this is a project that has a lot of longevity, as you know. What was his involvement in the bid? Can we say that he was not involved in the bid at all? Would it be accurate to say that Chris Reynolds was not involved in the bid at any stage?

Sir David Higgins: Let me see. I think I have somewhere here a description of what Chris actually did in the organisation. As I say, his primary role was working on phase 1. Somewhere here I have a description of when he left the organisation.

Q25 **Mark Menzies:** Sir David, that is not what I asked you. I asked you what his involvement in the bid was. Was he involved in the bid at any stage?

Sir David Higgins: He was never preparing the procurement documentation. I know that because I asked that exact question. You have a procurement plan—

Q26 **Mark Menzies:** Sir David, that is not what I am asking you. I am asking



you, was he involved in the bid at any stage?

Sir David Higgins: Was he involved in the bid? In HS2's bid, he was not involved in the evaluation at all or in setting the procurement documentation. Was he involved in phase 1 and did we take lessons from phase 1 that could be construed to help phase 2? The answer is yes.

Q27 **Mark Menzies:** So he was involved in the bid.

Sir David Higgins: No, he was not involved in the bid. He was involved in phase 1, and lessons from phase 1 would have helped, or could have helped, anyone preparing phase 2.

Q28 **Mark Menzies:** Again, just to clarify it for the record, when did Chris Reynolds leave HS2 and when did he start working at CH?

Sir David Higgins: He left HS2 in June 2016. He left earlier in the year and then he came back again to do some further work. He left in June 2016. He started at CH in September.

Q29 **Mark Menzies:** This contract is clearly a huge matter of public interest. The Committee should surely see documents that have been prepared by Mr Reynolds. Could you ensure that those are forthcoming?

Sir David Higgins: We do not have any dispute that Chris Reynolds should not have been involved in the tender process. Our tender conditions are very clear. They state very clearly that it is anyone who could "reasonably be seen to have had or could be perceived to have had"—any potential, seen or construed, to have had any influence or confidential information.

He will maintain that he had no confidential information. We maintain that it could be construed that he had unique information because of his history. As is required under clause 6.12 of the contract conditions, which the tenderer has to sign and say they have abided by, we should have been informed. We were certainly informed that he was going to work on the project if they were successful. He should not have been involved in their tender preparation of CH's bid because he was too close to us. We have no dispute on that whatsoever. That was the reason why we went very close to disqualifying CH.

Q30 **Mark Menzies:** Will you release all documents that Mr Reynolds has prepared, and which HS2 has in its possession, to the Committee?

Sir David Higgins: To this Committee?

Mark Menzies: Yes.

Sir David Higgins: I will ask for legal advice. Some of that will be CH's and some will be his documentation.

Q31 **Mark Menzies:** What would your concerns be about releasing those documents?



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Sir David Higgins: Because it is his information. It is his emails and his private information. He is a person who has his own legal rights, and so does CH.

Q32 **Mark Menzies:** I am not interested in his personal stuff. I am interested in his involvement with the bid.

Sir David Higgins: Yes.

Q33 **Mark Menzies:** That is what is concerning me. As a final point, what are the contracts that are still in existence between CH and HS2? Tell me a bit about those contracts.

Sir David Higgins: The contract that they work on is phase 1. They work with two other organisations. They advise us as a delivery partner for the main work civils contracts, which then carry out the physical work. There are two other organisations—major international companies—and they provide the programming expertise, as they do on Crossrail and as they did on the Olympics with Mace.

Q34 **Mark Menzies:** What is the ballpark cash figure?

Sir David Higgins: That total figure is around £300 million, divided between three companies. To date, of the £2 billion we have spent on the contract, around £120 million has been expended with CH. It is important to understand that, yes, £120 million seems like a lot of money—

Q35 **Mark Menzies:** It is a lot of money.

Sir David Higgins: It is a lot of money, but what is a lot of money is that at the moment under the main work civils contracts and the rolling stock contract, which is out for tender tomorrow, and the main stations contract, there are £12 billion-worth of contracts out for tender. Let me just explain that. There are £12 billion-worth of contracts under evaluation at the moment or under tender. CH, because of the conflict of interest requirements that we imposed on them, are not allowed to have any work on any—

Q36 **Chair:** Nevertheless, Sir David, we are focusing on a particular problem area. It is true to say, isn't it, that Mr Reynolds had information, because of his previous involvement, which was of benefit to the winning bidder?

Sir David Higgins: We do not know that.

Q37 **Chair:** That would be a true statement, wouldn't it?

Sir David Higgins: We do not know that.

Q38 **Chair:** Well, you do know that. You did just say to us that his involvement in phase 1 on the lessons learned would be of benefit in looking at phase 2.

Sir David Higgins: No; what I did say is that there was a lessons learned paper, which refers mainly to how HS2 handles community relationships, and which we have acted on ourselves as an organisation.



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Whether that would ever benefit a tenderer is questionable. The point that we make is that under our terms and conditions we should have been informed as to his involvement in the tenderer or their potential to involve him, in which case we would have advised them strongly not to involve him during the tender stage.

Q39 Mark Menzies: I want to pin you down on this point. Ballpark, to the nearest £10 million of the £120 million that is not a lot of money, what is the sum of money in existence in contracts between HS2 and CH? Ballpark.

Sir David Higgins: As I said, there is a contract of £300 million. That contract is run by three different organisations. CH is one of the consortium members. How those consortium members actually divide up the work between them—

Q40 Mark Menzies: Is that not something you should know?

Sir David Higgins: No, because I do not know what the internal arrangements between the three companies are.

Q41 Mark Menzies: Don't you think you should?

Sir David Higgins: No, of course not, because it is a consortium. I will give you a simple example. Mace, Laing O'Rourke and CH formed a consortium to deliver the Olympics. I do not know how they divided the money up between them. We just paid one company, CLM, as the Government. You do not say to them, "How much did you split the profit up between your shareholders?"

Q42 Mark Menzies: This is absolutely extraordinary.

Sir David Higgins: No, it isn't. Of course it isn't.

Q43 Mark Menzies: It is extraordinary and let me tell you why it is extraordinary.

Sir David Higgins: Why?

Q44 Mark Menzies: Because we have £300 million that we are talking about here. We have a company that has withdrawn from a process under severe questions as to why they withdrew from that process. We have the chairman of an organisation sat before us who does not know how that £300 million is divvied up and what share is going to a company that has withdrawn from it. You should know that.

Sir David Higgins: No. I know that the three companies involved are CH, Atkins and SENER. Those are the three companies. They have formed their own consortium for how they service us, and we then contract with them for a figure that ranges between £250 million and £350 million—

Q45 Mark Menzies: And you never thought to ask.

Sir David Higgins: Over a 10-year period.



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Mark Menzies: Extraordinary.

Q46 **Chair:** We are clear that this is about a big contract that is very important to whichever company—

Sir David Higgins: We are getting very confused about one thing. There is another party in the room that no one has ever talked about.

Chair: No, we are not getting confused. We are concerned about something with a big question mark around it, and that is what we are going to keep pursuing.

Q47 **Huw Merriman:** Sir David, your company's approach on the due diligence is effectively to put the obligation under clause 6.12 back to the bidders. If they effectively breach that, they could end up losing the bid, which in this case has been successful as far as that is concerned. Is it your understanding that that is the usual process for procurement?

Sir David Higgins: Correct. It is. That is the standard practice. You will see that in Crossrail and in all major Government contracts. It is interesting. We intend to tighten it up following this exercise. This seems fairly onerous. It is pretty clear, I would have thought. There is also a document you need to sign as a tenderer to say that you have complied with that clause. It is quite clear. In future, we will say, "You need to disclose to us who you intend to use on your tendering." It will give us more chance to be able to scrutinise this ourselves. It is something we will tighten in our tendering process, but that tendering process is standard practice. It is used on every major engineering and civil contract in the country to date.

I have to say, with the publicity that surrounds this, that there will not be a contractor or an engineering firm in the UK that will not be very focused on the issue of declaring conflicts of interest. It has been clearly seen that in the end our board was prepared to be very tough on it. We could simply have waved it through and said, "CH said minimal involvement and no confidential information." We got a QC involved and a heavy legal team. We went through extensive questioning of CH. We were not concerned that they worked on another contract. We took a very tough position as a board in terms of due diligence. It was quite clear to CH2 that if, in the end, they were unable to answer our questions satisfactorily we would have no compunction whatsoever about cancelling their tender. We were covered in the contract conditions to allow for that.

I go back to the point I was trying to make earlier. We are forgetting that one party complied very fairly with this entire tender. They are called Bechtel. They put in a compliant bid. That will be 15% cheaper than Mace and technically better as per all the independent assessments. Now they have been awarded it, and people are forgetting that it would be utterly unfair to stop the process or re-tender it when Bechtel have completely complied with the rules, including the rules on conflict of interest.

Q48 **Huw Merriman:** You will not believe this, but I was going to make a



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suggestion that you could perhaps take the names and do the due diligence, but you have already, so you are one step ahead on that one.

Sir David Higgins: It is a very sensible suggestion.

- Q49 **Huw Merriman:** Is that standard? Is that, if you like, the platinum-plus approach for procurement?

Sir David Higgins: It will be new. I am sure everyone else will reflect on it now. It seems belts and braces, but what is clear is that it is about interpretation. Here is a tenderer. Who knows what the discussion was between Chris Reynolds and CH? I am not aware of it—what was represented, whether he had confidential information or not and how much input he had at all into the bid. He and his lawyers will maintain that it was minimal, but the issue from our point of view is that we have a different level of judgment and a different standard. We intend to apply that fairly ruthlessly. In future, we intend to do our own more intrusive investigations to work it out.

The most important thing for us is an open and transparent tendering system to make sure that the industry is confident enough with our bidding that we get competitive prices. The last thing in the world we as HS2 want, or the Government want, is for the industry to think that our process is not scrupulously fair.

- Q50 **Huw Merriman:** The downside of HS2 doing more diligence, of course, is that perversely it could allow a company who have breached to say, "Actually it was your fault, so we are still in the game." I can see that you are damned if you do and damned if you don't, to a certain extent. Have your external legal advisers given you the advice that you still have the deterrent effect from 6.12, notwithstanding that you do additional as well?

Sir David Higgins: There is still an obligation on the tenderer, perceived or otherwise, to declare any potential conflict of interest. We will not remove that clause.

- Q51 **Iain Stewart:** I have a question for clarification. I apologise if I misheard what you said, Sir David. I understood that you said Bechtel's bid was the best technically, and was 15% cheaper of the three.

Sir David Higgins: Of the remaining two compliant bids.

- Q52 **Iain Stewart:** I was going to ask what gave CH the advantage over Bechtel.

Sir David Higgins: They were rated higher technically. In some ways, that is not surprising, if we are honest about it, because they had carried out phase 1 work. This is what they had done on phase 1, and very successfully, because all the work that has been through Parliament in the last three years was programme-managed and supervised by CH in a very competent way. Naturally, they had a very competent team. Incumbent advantage is something we always have to consider. Yes, they



were technically rated the highest, but they have left the table. They are no longer there. They have withdrawn their bid and we are not considering CH any more.

There are two compliant tenderers left in the evaluation process. The technical evaluation of Bechtel is marginally, not massively, higher than Mace, but they are 15% more cost-effective and therefore cheaper from the public's point of view. Therefore I think the award is clear and our board have signed off on that award. It has gone through the Department. It is subject to a 10-day standstill period, ballpark standard practice. If Mace wish to challenge it, it is entirely their right to challenge it. I will be meeting Mace in a week's time, when they will have had plenty of time to understand the evaluation process and how we reached that conclusion.

Chris Grayling: It is worth saying that, in terms of this process, this is how public procurements are supposed to work. You go through the tender process. You evaluate the tenders. You announce a preferred contractor. You then have a standstill period to allow others to challenge that decision. You then move on to the final stage of confirming the contract.

In this particular case, we went through all of that. During the standstill period an issue arose. In this particular case, it arose as the result of a whistleblower. The appropriate steps were taken to monitor and to investigate. Before either my Department or HS2 could take a definitive decision—I am pretty clear what that definitive decision was going to be—the company chose to withdraw.

My argument would be that that is how the process is supposed to work. In this particular case, it was a whistleblower who drew our attention to a failing on the part of the contractor in the bid process. It could have been something completely different. You would want a process whereby, if an issue arises during that standstill period—that is what the standstill period is for—we will take appropriate action. That is what happened.

Q53 **Chair:** Were you concerned that Bechtel might take legal action against you if you did not give them the contract once the preferred bidder had withdrawn?

Sir David Higgins: It would have been contrary to our contract tender award. It says that, if we disqualify a party because of this, we have the right to disqualify them. It does not say that we have the right to abolish the bidding process. You are right that Bechtel may have challenged it, or we could get into the bizarre situation that we re-tender it, CH tender again with the same team that had all the experience of phase 1 and they win again. What happens then? How many times would we have to re-tender it to get a result with which somebody is satisfied?

Q54 **Chair:** Do you think it was really likely that that would happen?



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Sir David Higgins: It may well have. They had the right to do it, didn't they?

Q55 **Chair:** But they withdrew under pressure, didn't they?

Sir David Higgins: They withdrew for their own reasons. We will never know. I am not aware of it. I have not met CH to understand why they have done that. I will be interested to understand what reason they give for withdrawing. They made their own commercial decision. It is up to them to withdraw.

Q56 **Chair:** Have you not previously said to us that there was a conflict of interest that had not been declared?

Sir David Higgins: I said that, unless CH came back with additional information, a board would have made the decision to disqualify. However, our QC's advice to our board—remember that we have independent directors on our board—was very clear: "You have to give CH the chance to respond to the questions you have asked them in a satisfactory way, otherwise you are denying them the chance to respond to your challenges. If you disqualify them before that, you face a risk of challenge."

Q57 **Chair:** Doesn't that really contradict the statement you made to us that you do not know why they withdrew? Surely you do know why. They withdrew because it got too hot for them, did it not?

Sir David Higgins: No, I do not know why they finally withdrew. One of the members asked if it was commercial, or whatever, but I will never know why they withdrew. They made a judgment. They are a private company. They made a judgment that they did not want to go on in this long legal challenge between the two organisations. They may have decided that they could not respond to the questions adequately. Who knows? I will not know why they decided. All I am saying is that at the stage when they withdrew we were certainly under the impression that unless something came back satisfactorily we would disqualify them, but we did not.

Q58 **Chair:** You spoke to us about having independent oversight of what happened. You appointed the Institution of Civil Engineers.

Sir David Higgins: An individual who is past president, David Orr.

Chair: An individual.

Sir David Higgins: David Orr had the same role on Crossrail. He is a past president of the Institution of Civil Engineers. He still chairs our independent assurance panel. On his panel, he has a series of experts from both a legal and procurement background who review all our work and all our tenders. They review the tender documents before they go out as well.

Q59 **Chair:** It was the individual rather than the institution who was



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appointed.

Sir David Higgins: Correct. That is absolutely right. It was his previous role. He is an eminent engineer. That is the only reason for mentioning it.

Q60 **Chair:** What exactly did he look at? Did he look at the evaluation of the bid specifically?

Sir David Higgins: He looked at the process we set out to evaluate the tenders and whether we complied with our own processes. We had publicly set out in the tender documents how we would evaluate them. This assessment schedule, which I showed you before, is quite detailed. Did we carry out the evaluation in accordance with that assessment panel? The answer was, yes, they were satisfied it was.

Q61 **Chair:** He looked at the evaluation itself, did he?

Sir David Higgins: He looked at the processes.

Q62 **Chair:** Did he look at the actual evaluation—not the process, but the content of the evaluation?

Sir David Higgins: He did not go back and re-evaluate all the tenders. No, he did not go back, because evaluation is a process of interviews with individual staff. There are workshops where they interview staff—there is interview of the CV. He did not go back and redo the tender evaluation himself. He said, “What processes did you put in place? How did you carry out the evaluation?” He looked at the process of evaluation. He did not review or re-evaluate the tenders himself, no.

Q63 **Chair:** Was there any outside assessment of the evaluation?

Sir David Higgins: Was there outside assessment? No. There is outside assessment of the process of evaluation. There is an external review at the tender stage.

Chair: Order. You are not quite saved by the bell. We will return from the vote in about 10 minutes.

Sitting suspended for a Division of the House.

On resuming—

Q64 **Chair:** Sir David, you were giving us some information about evaluation and other matters.

Sir David Higgins: Earlier, a question was asked about the ratio in the contract between CH and the other two companies, Atkins and SENER. It was Andrew Jones who confirmed in Parliament on 13 April that the ratio was 10% SENER, 40% Atkins and 50% CH. Hopefully, that answers the question on the ratio between the three parties.

The other thing I was trying to find earlier was the history of Chris Reynolds. From December 2011 to April 2013, he was chief of staff working for the then chief executive. He then worked at HS2 on



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secondment from CH2 from June to December 2013. He worked on the phase 1 hybrid Bill. From April 2014 to March 2016, he worked, again on secondment from CH2, on the additional provisions in the hybrid Bill. You can effectively say that on and off until March 2016 he worked on the hybrid Bill and the various amendments that came with the hybrid Bill. There was a short-term contract from April to June 2016 whereby he spent several months undertaking work on organisational design for the phase 2b team, ballpark what I think is referred to in the letter from Mace, which particularly related to the community engagement element. That was a short-term contract. That is the history of Chris Reynolds as I have it.

Q65 **Chair:** Thank you. I want to ask you about your conflicts panel.

Sir David Higgins: On the back of that, none of it negates the issue that Chris Reynolds should not have been involved on the bid, as we have consistently said, and as I have said in the evidence, hopefully, here today.

Q66 **Chair:** He should not have been involved in the bid.

Sir David Higgins: By CH for delivery partner 2b.

Q67 **Chair:** And you still say that that was entirely CH's responsibility.

Sir David Higgins: Correct, under the terms of the contract. That is correct.

Q68 **Chair:** None of it was yours to identify.

Sir David Higgins: It will be in future, because we will take a more intrusive role, but under the clauses of the contract, which are standard Government procurement contracts, it was their responsibility to do that and disclose it.

Q69 **Chair:** But you are now going to change that, in the light of this incident.

Sir David Higgins: We are going to tighten it. We are going to leave that clause exactly as it is, because that is how every other major civil and transport contract operates, but we will be more intrusive just to catch this issue and to tighten the rules in this particular case in the future.

Q70 **Chair:** There are some very close connections, aren't there, between the two companies—between CH and yourselves—including the appointment of a chief executive.

Sir David Higgins: Correct.

Q71 **Chair:** In relation to the chief executive appointment, you said at one point that you were looking worldwide and you were going to get the best worldwide. Yet it turned out to be the man already in the building. Is that a little odd?



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Chris Grayling: He was not already in the building, because the acting chief executive was not the person appointed as the full-time chief executive. The person who was appointed as chief executive was running CH2M's European operation. We had a list of candidates from a number of different organisations around the world. He came with the strongest CV and did the most effective job in presenting his case to become chief executive.

Q72 **Chair:** At what point did you decide that he was the best candidate? Whose decision was it? Was it HS2? Was it the Secretary of State? Was it the two of you together? How did it work?

Sir David Higgins: It was the Secretary of State's decision ultimately.

Chris Grayling: Basically, it was an interview process. I saw the CVs of the applicants. There were clearly a small number of stronger candidates than the rest, of which the successful applicant was one. They were all interviewed. The interview panel made a recommendation to Sir David and to myself. Before that was accepted, because of the fact that CH2M were as strongly linked to HS2 as they are and because we had one of his colleagues as interim chief executive, I instructed my permanent secretary to carry out a further level of due diligence on the process, to make sure that he was absolutely happy that the process was robust and isolated from any commercial interests between CH2M and HS2. When I received that assurance, I approved the appointment. I do not make any apology for doing so. We want the best people, and if the best person happens to be running the European operation of one of the biggest HS2 contractors, if he is the best person for the job, he is the best person for the job.

Q73 **Chair:** At what point was all that happening in relation to letting the contract?

Chris Grayling: Before.

Sir David Higgins: The tender for phase 2b was submitted in mid-September 2016. The first discussion that I or anyone from the Department had with Mark as a potential candidate to be longlisted was in mid-December, two months later. His contract was negotiated and signed on 9 February, so you can see there is a clear distance between the submitting of the bid some two months before we had our first discussion with Mark about potentially whether he wanted to apply and whether we thought he should be in the longlisting process. Prior to his coming to HS2, we had clarification that he had no shares, no options and no payments outstanding from CH. Certainly at the time when Roy Hill was on an interim, they had no involvement at all with any CH contracts or the determination of the 2b contract.

Q74 **Iain Stewart:** On the recruitment process for the new chief executive, did the company use a professional executive search firm?

Sir David Higgins: Heidrick & Struggles.



Q75 Iain Stewart: I used to be an executive search consultant. Did they go through the usual process of presenting you with, first, a longlist and then a shortlist of candidates?

Sir David Higgins: Correct. It lasted for four months. They went round the world. We had some 30 people interviewed. I did many of the phone conversations and videos myself, along with the global officers of Heidricks, from Singapore to Sydney to America. We looked at a lot of people from mining companies.

It is not surprising that the final shortlist was made up of people who came from global programme management companies. Remembering Mark's history, he started as an apprentice on the railways at London Underground. He has worked his way through the railways. He then went to Metronet. Then he went into the private sector and worked on the Olympics. He worked on all the major highway and structural work for the Olympics. He went into Crossrail and worked on that project. He then took over the European operation and merged it with William Halcrow—3,000 staff and £500 million annual turnover. It was a complex issue of rationalising a matrix organisation and merging two organisations.

He is an obvious candidate. There were one or two other obvious candidates who came from the usual suspects you would recognise in the industry. The brief was clear. We wanted someone who knew the English and UK market. We wanted someone who had worked here and had done major projects with a programme management background, ideally a railway background, and had a proven track record in solid management.

It is a relatively small pool. Hopefully, HS2 over 15 or 20 years, plus all the other major Government infrastructure investment, will widen the pool. We fish in a small pond and that is one of the challenges we face in this entire discussion today. There is a very small group of very talented people that everyone is hiring. They move between contractor and engineering company, and between client and contractors the whole way through. Our challenge is to have an open and transparent process that the industry has confidence that we will fairly execute and carry out, so that they feel they have a fair chance to bid. We are in a limited pool. Hopefully, the pool will get bigger as time goes on.

Q76 Graham Stringer: I have a few questions about the small pool. To make the process work in a transparent way, fishing in a small pool where all the fish know each other, you have to have a strong belief in Chinese walls. Do you have that belief and, if so, why?

Sir David Higgins: Yes.

Q77 Graham Stringer: What is the evidence that the Chinese walls work?

Sir David Higgins: I know from going through £8 billion-worth of procurement on the Olympics that we had a totally ruthless process. I did not know; the board does not get to see the evaluation process. They are anonymised in terms of the selection process. We have the evaluation



team entirely quarantined from the rest of the organisation. They are up in Birmingham in an entirely isolated area. We are familiar with the process and, having been legally challenged before, it has stood the test of scrutiny, and they make sure that we have a clear process.

We have the protection of an independent sub-committee of the HS2 board chaired by an independent director, with independent directors on it. They do the full review of the evaluation process. Your earlier question, Chair, was about checks and balances to make sure that evaluation was done correctly. It is that independent committee that puts an enormous amount of time and effort into it.

I particularly did not sit on the committee this time round, on this evaluation, because I thought, "I am sitting here evaluating people who are coming from these sorts of organisation to be CEO, potentially." I did not want to sit, and neither did the other non-executive director, Mel Ewell, who was also on the seven-person evaluation team to choose the chief exec. Neither Mel nor I sat on the committee that signed off the final recommendation on the 2b delivery partner role.

Q78 Graham Stringer: Secretary of State, what interests me most as a Manchester MP is not the rather complicated commercial details, but whether what has happened will delay stage 2b. Will it?

Chris Grayling: I do not think it will. This is a matter of weeks rather than months. Stage 2b is a long project. I do not think this needs to impact on the timeframe. We have moved quickly. If we had discovered this in six months' time, it might have been a different question, but this emerged during the standstill period so it will be a relatively short delay. I do not think it will affect the timetable at all.

Q79 Graham Stringer: You are going to award the tender to the second tenderer. Do you think that is legally challengeable by Mace?

Sir David Higgins: It is difficult to understand how you would legally challenge someone who is cheaper and is technically better, but there is nothing to stop them. I hope to meet the Mace CEO before the end of the standstill period to explain the process we have gone through. I have written to Mark to say how much we appreciate the fact that they brought forward this issue. Imagine, as the Secretary of State just said, we had discovered this in three months' or six months' time. I have given complete assurances from the HS2 board that no tenderer involved in whistleblowing will ever be disadvantaged in this organisation in terms of evaluation. I hope we can avoid legal challenge. That is not to say they do not have the right to do it. Of course they have the right to legally challenge the award.

Q80 Graham Stringer: I am not a lawyer but I can imagine, where one tenderer, CH2M, has dropped out and there have been certain accusations of conflict of interest, that Mace may say the bidding process is flawed and that therefore it should be rerun. That brings me back to



the question I put to the Secretary of State. If either there is a legal challenge or the tendering is rerun under threat of legal challenge, which might be the sensible option in the way you explained at the beginning, would that not delay phase 2b?

Chris Grayling: My view would be that we would be equally legally vulnerable, probably more legally vulnerable, if we did not follow our process and simply restarted this, when there is a clear second place to whom we can make the award.

My hope and belief is that the professional organisations involved would not seek to use the courts gratuitously. There is a huge amount of business to be won with HS2. There is a huge amount of investment taking place in the infrastructure of this country. There is a real commercial opportunity for any serious project management organisation that is involved in infrastructure. Sometimes they will win; sometimes they will not win. Each will learn lessons when they are not successful and apply those lessons to future tenders.

As a nation, we need to get on with the job. My message to any contractor working with Government is, if you have a legitimate grievance, come to us and we will address it, as we have in this case, but please do not use the court system without good grounds, because ultimately that does no favours to any of us.

Q81 Graham Stringer: Let me take you back to a question I have asked in previous sessions. Is hope in this process sufficient to reassure my constituents that phase 2b will not fall behind Crossrail 2 in terms of the schedule? I understand that the critical part of that scheduling is the timetable in this place to get the next hybrid Bill. If there is a delay to 2b, will it not put it behind Crossrail 2?

Chris Grayling: There isn't a pecking order list one way or the other. We have a number of major projects in the pipeline for the future that will require hybrid Bills. I do not think anything that is happening on this project at the moment will change the timeline for it. I do not think it is a question of losing your place in the queue. Our intention will be to proceed with the hybrid Bill for 2b as soon as we possibly can.

Q82 Graham Stringer: As I understand it—I am not sure I completely understand the hybrid Bill process because it is so complex—we have rules that only one hybrid Bill goes through at a time.

Chris Grayling: The House authorities are currently doing a review of the hybrid Bill procedure to try to simplify it. It is something I support and something I was involved in when I was Leader of the House. It is certainly the case that the hybrid Bill process is too convoluted and extended.

Q83 Graham Stringer: We can agree on that, Secretary of State.



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Chris Grayling: I hope and expect, as a result of the work that is being done on this, that by the time we come to future hybrid Bills, and particularly 2b, we will have a simplified process. I do not think it is a question of having a queue. At the moment, we do not sit here with an expectation that HS2, 2b is going to start, and then several years down the track Crossrail 2 is going to start. We are working hard to develop those projects and I hope we will have a streamlined and simplified parliamentary process that enables us to get the infrastructure projects we need into the system.

Q84 **Graham Stringer:** If the tender process has to be rerun and your optimism is not justified, how much will it cost?

Sir David Higgins: It is not the cost. It would probably take nine to 12 months to redo the tendering.

Q85 **Graham Stringer:** So that is the real cost—the time.

Sir David Higgins: That is the real cost. At that stage, we would probably go back to the Department and say, "It is probably better that we try to hire these people ourselves directly rather than lose nine to 12 months' worth of time." It would be an unsatisfactory way of doing it, and let's hope we don't go there. It will have the potential to cause consequences, but I hope that reason prevails and we do not have a chance of delaying the line to Manchester.

Q86 **Graham Stringer:** I take the point that time is the real cost, but do you have a rough ballpark figure for the financial cost of the re-tendering?

Sir David Higgins: I do not know, no.

Q87 **Chair:** Why is the commercial management service contract being rerun?

Sir David Higgins: There is a simple answer to that. We changed the scope. It is as simple as that. We looked at the main work civils contract, and this is a contract for third-party private sector companies to help us in contract administration of the major work civils contract. The civils contract is around £8 billion-plus. They are major tenders for the contracting industry to deliver. This contract is about £9 million in total. It is a relatively small contract. It is a framework contract. We looked at how it would tie in with the work that the delivery partner was doing, and the contractors, as we became more aware of how the contracts were evolving. We decided that we needed to change the scope of that contract.

We are going to draw down a Highways England framework contract now to carry out that work in the short term, so it should not delay anything at all. We will probably re-tender it in a couple of years' time. As we worked out how the contracts would work and how we would administer them more effectively, we needed to change the scope. The rules are pretty strict: if you change the scope, you have to re-tender. It was our better understanding of the role of that relatively minor contract.



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Q88 **Chair:** You have had a lot of change of very senior staff recently. You yourself have now become chairman of Gatwick Airport. Does this mean there is any less commitment to HS2?

Sir David Higgins: Me personally?

Chair: Yes.

Sir David Higgins: No. I am on seven days a week. The Gatwick role is chairing the board. It is a relatively time-scarce role. It does not involve me in a massive amount of work, to be honest. I have spare time. I am contracted here for three days a week. I will certainly do that, and I am around all the time so I can assure you of my commitment to the project.

In terms of change, yes, I was saddened in some ways that Simon Kirby left and went to Rolls-Royce, but I have to say that having our chief executive headhunted to be COO of the country's premier engineering company is not a bad tick in the box for HS2 for starters. I was delighted for Simon. We have run a pretty smooth transition. I am enormously grateful to Roy Hill for stepping in, because of his previous experience, coming out of Highways England on secondment, to carry out the work. We have not really missed that time.

Of the senior team, four have left in the last year. One is Simon, who left because he was headhunted. One was a lady who was on a contract. She came in to do some contract change work on people. We are recruiting a permanent person there. The other two people have left the organisation. It was our plan for them to leave, because we are finishing a stage of the three years' hybrid Bill work. It has now moved into delivery. There is a very clear transition and change organisationally. That was something we had planned for; so I do not see that we have any great churn at the top of the organisation.

The other question that has been put sometimes is that there is a revolving door between ourselves and CH2. I just want to put that to bed. We have 1,100 permanent staff out of 1,500 in total, and 25% of the permanent staff are ex-CH2 people; 2.5% of our organisation is ex-CH. I am not aware of anyone leaving our organisation and going to CH. I might be wrong but that would be a minimal amount. If it is a revolving door, it is pretty squeaky and we are not getting much benefit from it. Our organisation is hiring people. It is inevitably higher in companies like CH, but there is not some fluid door where people are constantly moving in and out between the two organisations.

Q89 **Chair:** But the highest proportion of secondees comes from CH, doesn't it?

Sir David Higgins: Correct. That is right.

Q90 **Chair:** At 38%, it is a very high figure.

Sir David Higgins: Remember they are a delivery partner so, yes, they make up a fair chunk of our secondees. We want to reduce the secondees



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all the time. Two years ago, we had just under 800 staff, which was 50% secondees. We are now down to less than 30% secondees in our organisation. It is logical that they are a big share of the secondees because they are doing all the work on the delivery partner work.

Q91 **Chair:** Secretary of State, should the public feel confident that HS2 is in good hands?

Chris Grayling: Yes, absolutely. We have a good new chief executive. We have a very experienced and distinguished chairman. We have a good team. The construction work is about to start. The first phase hybrid Bill is in place. In this particular case, we were notified of a procedural flaw in the contracting process, something that was not acceptable. During the standstill period, the supplier took the decision to withdraw rather than have us take a decision on whether or not that should happen. The standstill period is for precisely that purpose.

I would argue that the process has done what it is supposed to do. We can never legislate to stop people getting things wrong or doing things inappropriately. We can take action when they do. In this case, we did not have to because they had already done it themselves. We have added an extra layer to the process as a result, which goes beyond what is the norm in public contracting. I do not really see what else we could have done.

Chair: Thank you very much.