HOUSE OF COMMONS

# Public Accounts Committee

## Oral evidence: Crossrail: progress review, HC 925

Wednesday 6 March 2019

Ordered by the House of Commons to be published on 6 March 2019.

Watch the meeting

Members present: Meg Hillier (Chair); Douglas Chapman; Sir Geoffrey Clifton-Brown; Chris Davies; Chris Evans; Shabana Mahmood; Nigel Mills; Layla Moran; Anne Marie Morris; Bridget Phillipson; Lee Rowley; Anne-Marie Trevelyan.

Sir Amyas Morse, Comptroller and Auditor General, Adrian Jenner, Director of Parliamentary Relations, National Audit Office, Lee-Anne Murray, Director, NAO, and Richard Brown, Treasury Officer of Accounts, HM Treasury, were in attendance.

Questions 1-201

### Witnesses

I: Bernadette Kelly, Permanent Secretary, Department for Transport, Matthew Lodge, Senior Responsible Owner, Crossrail, Tony Meggs, Chairman, Crossrail Ltd, and Mark Wild, Chief Executive, Crossrail Ltd.

# Reports by the Comptroller and Auditor General

# A memorandum on the Crossrail programme (HC 1924)

## Examination of witnesses

Witnesses: Bernadette Kelly, Matthew Lodge, Tony Meggs and Mark Wild.

*(In the absence of the Chair, Nigel Mills took the Chair)*

**Chair:** Good afternoon and welcome to the Public Accounts Committee on 6 March. First, we have apologies from the Chair and deputy Chair, who are both in the Chamber debating the appointment of the new Comptroller and Auditor General. They will be with us when they have disposed of that business.

We are looking at Crossrail today. During 2018 it emerged that costs were increasing sharply and that the central section would not open in December 2018 as promised. Rather than it being the £15 billion railway of the recent BBC documentary, it is now more like an £18 billion railway, and we do not yet know when services will be available to passengers on the underground and the rail network in the south of England. With all the examples of poorly run projects that we have examined in this Committee, it is disappointing that a project that appeared to be going so well has unravelled so quickly and disastrously. We expect a further value-for-money report from the NAO later in the spring.

This afternoon we want to get answers from the DFT and Crossrail Ltd on when it will know the expected cost of funding and revised schedule for the programme, the causes of the delay, and particularly how the complexity of the programme has impacted on delivery, and the Government's arrangements for the programme and how they will apply learning to other programmes.

The witnesses, from my left to right, are Matthew Lodge, the senior responsible owner for Crossrail Ltd, Bernadette Kelly, permanent secretary at the Department for Transport, Tony Meggs, chairman of Crossrail Ltd, and Mark Wild, chief executive of Crossrail Ltd. Mr Rowley, do you want to commence the questions?

Q1 **Lee Rowley:** Let's start with the obvious one. We are nearly £3 billion over budget. That is a combination of capital and then revenue loss. And we have no end date. Who is responsible for this screw-up?

***Bernadette Kelly:*** Let me describe what I think—

Q2 **Lee Rowley:** No, let's start as we mean to go on. Who is responsible for this screw-up? You don't need to describe anything.

***Bernadette Kelly:*** I will tell you what I think went wrong in order to get us to this position, although I think it is still important to remember that this is an extraordinarily important project, which will deliver some extremely important benefits to the economy, to London and to passengers.

I think the fundamental failure in the project—the thing that has led us to see these cost and schedule overruns—is that, as the project became more compressed in its later stages and as the schedule became more compressed, risks were not adequately identified, assessed, mitigated and reported on by and within Crossrail Ltd. That, I think, is the primary issue that we see when we look at what the issues were that led up to these cost and schedule overruns.

I think there are a number of other factors that are important in how we got here today, which I am very happy to expand on, but in response to your question about what the fundamental problem was, that, I believe, is the fundamental problem.

Q3 **Lee Rowley:** We can come to some of the broader stuff in a moment. Ms Kelly has just outlined the primary problem being a failure within Crossrail. Mr Meggs and Mr Wild, do you concur with that assessment?

***Tony Meggs:*** I think that it was more of a system failure than a case of trying to blame any one particular individual or area. As Bernadette has said, what was going on in this project was a degree of compression. It was not properly understood, so the final works—the very complex work that is going on right now—had too short a period of time. The extreme commitment within the project, and actually outside the project, to meeting a particular date—9 December last year—really created an environment in which there was a great deal of over-optimism, I would say, and possibly poor reporting upwards of the realities on a day-to-day basis. It is very hard just to say it was caused by this or that, because it is a complex situation.

**Lee Rowley:** Well, to some extent—

***Tony Meggs:*** There's one other thing I would like to add. I think that the quality of information that was coming up, surfacing, in the company—I wasn't there at the time, of course.

Q4 **Lee Rowley:** That is completely irrelevant to me. You represent Crossrail.

***Tony Meggs:*** Yes. I am just saying that my evidence is second-hand to a degree. I think the quality of information that was coming out was not as good as it should have been. Secondly, a demobilisation decision was taken, which was driven again by schedule and, I think, cost pressures, clearly prematurely. The controls on the project—the financial controls and the project controls—and other aspects of the project lost grip in the second half of last year.

Q5 **Lee Rowley:** You are describing it in a very passive way. Systematic problems come about only on the basis of failures of leadership, failures of oversight or failures of people. Which was it?

***Tony Meggs:*** I do not accept the premise. There are quite a lot of reasons why projects can go wrong—

Q6 **Lee Rowley:** Yes, and you have had many years of experience, so I am asking you to pinpoint the fundamental problem for me.

***Tony Meggs:*** The fundamental problem was a compression of the schedule, driven by an adherence—a ruthless determination—to hit a particular date that was estimated 10 years ago. That created an environment in which people were very driven towards that date and not properly seeing all the risks that were contained in that compression of schedule.

Q7 **Lee Rowley:** But that must mean that you had no project experts on the project at all. I am an ex-project manager. Compression happens, reduction in timeline happens and contingency gets lost—that happens in the most simple and the most complex of projects. None of that is new, so can we go back to the question of who is responsible for it?

***Tony Meggs:*** We can go back to the question, but I cannot single out any single individual or entity as being wholly responsible for it.

Q8 **Lee Rowley:** So it is a systematic failure. What confidence should I have in Crossrail's ability to deliver anything in future?

***Tony Meggs:*** Well, we are changing a lot of things going forward. We are reinvigorating the board. We have now had five new members over the last six months, so we have a new board. We have a different set of skills on the board. We have a completely new—not completely—management team with a different set of skills. A tremendous amount of experience has been brought into Crossrail, in people who are expert in completing complex railway systems—

Q9 **Lee Rowley:** And that was not there before? Was the previous management insufficient in their capabilities?

***Tony Meggs:*** The previous management, I would say—again, I was not there, so I am speaking second hand—was excellent in the civil engineering phase of building tunnels and building the core of the stations. For the complex system integration work that is now going on, however—let me put it this way—we have a great deal more expertise in that area now than we had six months ago, led by Mark.

Q10 **Lee Rowley:** So it was the board that was at fault for allowing a leadership team that had a skillset in a certain area that did not work later on in the project. Mr Wild, you have been on the board for a long time. Do you agree with that?

***Mark Wild:*** I joined the board in late 2016, so I have a reasonably good view of what you are asking. The first thing I would say about Crossrail is that it is the biggest single railway project that this country has ever done—

**Lee Rowley:** I am aware of that.

***Mark Wild:*** So pinpointing one person is probably not the likely cause.

Q11 **Lee Rowley:** I am sorry, but there has to be a likely cause. That is why people at this table were paid lots of money. I would like a likely cause out of it. It is not acceptable, and we are not going to get very far in the discussion, if we just say it was all systematically difficult. This is what you are paid for.

***Mark Wild:*** I did not say that; I said there was no one person accountable. The cause was, as Tony has described, that the risk profile was not adequately assessed. The amalgamation of risk—system-based risk through a series of delays to do with the stations, the signalling system, the tunnel or one particular station—was not properly assessed. That is a kind of systematic failure. If you look at Crossrail Ltd and what we are doing going forward, we are taking a lot of that into our thinking. I can speak about what we are doing later if you want, to assure you that it will be different. Crossrail Ltd was always the system integrator—

Q12 **Lee Rowley:** Why don't you explain to me the process of risk assessment and where all the failures occurred? Who collated the risk?

***Mark Wild:*** If you go back one step, I was about to explain that Crossrail Ltd was always the system integrator. Under the project development agreement, and in the Act, Crossrail Ltd was accountable for the integration of systems, whether from Network Rail, the Bombardier rolling stock contract, or the individual tier 1 and tier 2 contractors. Risk was managed well, I think, at the tactical level—

Q13 **Lee Rowley:** That is your assessment of it. I want to understand what the process was. Who collated the risks? Where did the original risks get devised?

***Mark Wild:*** If you will let me get to the end—

**Lee Rowley:** I would prefer it if you answered my question rather than having a discursive discussion. Who created the risk?

***Mark Wild:*** It is quite important—when you are describing something very complex that has failed—to understand the basics.

**Lee Rowley:** I am very happy to go into that detail in a moment, but I would like an answer to my question. Who defined the risk?

***Mark Wild:*** The risks were quantified at every single tier 1 contractor. They were aggregated together in a quantitative risk assessment. I think the risk process in Crossrail was actually quite well run and managed, with one exception: the amalgamation of system integration was not properly assessed. With hindsight, it is now clear that the management team did not have a good enough grip or understanding of the work to do—particularly the adjacency of work between stations and trains and the amalgamation of different work streams. We are fixing them now by putting a lot of effort into systematic risk and system engineering risk. I think that is where the gap occurred, because it is clear that by the time we got to the summer of last year, the amalgamation of systematic risks was to an extent that was not quantified. Hence we are seeing quite a large extension of the programme. I do not think the systematic risks were identified at that time.

Q14 **Lee Rowley:** Let me understand that in more detail. Your tier 1 contractors were clearly articulating their risks. Those risks were being aggregated correctly by whoever was responsible for that. Were all of those risks fed into a programme office or to a set of people who were responsible for risk aggregation, and as an output they did not describe the input adequately?

***Mark Wild:*** It is clear now that there was a project controls organisation—quite a large one—and a PMO. There was a very good audited risk process and a process of aggregating risks or harvesting the risks. It is now clear, and we are putting a lot of effort into fixing this going forward. There are lessons for future projects. I believe the missing link has been the aggregation of adjacency of risks between the train, the tunnels and the stations. All these systems are, as you would imagine, interrelated and dependent on each other. It is actually quite difficult to find these risks, but not impossible. The answer to your question is that the risk profile on the aggregation was not correctly identified.

Q15 **Lee Rowley:** But that is project management 101. That is what I was taught when I first became a project manager: what are your dependencies, what are your cost dependencies and how do you integrate this? What does your Gantt chart look like? Are we saying that we did not have a sufficient skills set, or was there wilful non-application of the skill set that was there?

***Mark Wild:*** I would say two things. First, I have been in project management for 35 years and this is by far the biggest thing I have ever seen—it is huge and recognised on a global scale. Secondly, although we are not fixing it in Crossrail, there were not enough people at the latter stages of the projects who understood railway integration risk. There was definitely a gap or deficiency in the skillset—not with the people. I agree with Tony that they were very good, expert people who worked very hard, but the team we have now in Crossrail have a different profile. They are used to the amalgamation of risks.

If you look at it as an historian—back to where we were—you should have had more people from a railway background who are used to sensing what these risks are. It is a lot to do with experience and having done it before. In my first two months doing this job, a lot of my effort has gone into getting the right skills base—people with experience and who have done it before. That is not to say that people in the past did not do a fantastic job, but it is clear that we missed a certain skillset, which we are now replacing.

Q16 **Lee Rowley:** There is a certain incongruity in your statements. How can the people who did it before have done a fantastic job and forced us to write a cheque for the best part of £3 billion? That does not work as a statement, does it?

***Mark Wild:*** There are a lot of lessons here for all of us, including me and everybody on every project going forward. The work that they did on the tunnelling, the major civil construction and community relations is exceptional. A mistake was made in the project. If we had our time again, there should have been a greater injection of railway systems expertise earlier. I am not saying that this would have solved the problem, but it would have identified the risk profile that was being carried. I hope that is clear.

Q17 **Lee Rowley:** So your argument is that there was lots of exceptional work done, but it was done in silos and nobody talked to each other?

***Mark Wild:*** No, I don't think so. I think there was a lot of really brilliant work done in the first five to six years of this project that is notable around the world. In the Crossrail learning legacy there are several hundred papers on some world-class engineering that was done. We should not forget that. What I am really saying is that the aggregation of risk was not properly assessed. Actually the build-up of risk might not have changed the outcome that we face now, but we would have reacted to it a lot earlier. I think that is my point.

Q18 **Chair:** Come on, Mr Wild; the reason why we have a sponsor board is that is your job—to draw together all the risks of all the contractors. It is not just to sit there and take notes from them and go, "It's all fine," is it? What's the point?

***Mark Wild:*** Again, I joined the board in late 2016. I look at my own performance and I think the record would say that I was very challenging, actually. It was me who commissioned the independent reviews in 2018, but it is clear that the board we now have under Tony's leadership is much more expert and experienced in the matters that we are talking about; and also the spirit, and the kind of way forward that Tony and I want to lead this project, is to be open to external challenge a lot more. So I think there are a lot of lessons, actually, for the governance of Crossrail Ltd. My focus, of course, is the future and making sure we open the railway as soon as possible, but rest assured that Tony and I are learning lessons. We are clear now, particularly with the reintroduction of people who have got maybe more experience in these matters, which I think is a crucial element.

Q19 **Lee Rowley:** Well, my focus is on the past, so let us go to the board. If you are busy in the board from 2016, commissioning things, making requests, asking questions, who in the board was not doing it?

***Mark Wild:*** When I look at that period of time during 2017, it was a very busy time and the programme was getting increasingly compressed. If we had our time again—and a lot of this is hindsight: the board we have now—and a lot of these new people came on board in the middle part of 2018, actually—I think we would have had a different outcome in terms of when the compression of risk was identified. I am not saying the outcome would have been different, in the date, but the risk profile would have been identified a lot earlier. So I think it is a lesson about the composition of boards at certain stages in projects.

Q20 **Lee Rowley:** Ms Kelly and Mr Lodge, when did you realise the board was inadequate?

***Bernadette Kelly:*** I don't accept that language, but we certainly did see—

Q21 **Lee Rowley:** What language would you choose?

***Bernadette Kelly:*** What I think the board did not have in sufficient strength and depth were the sorts of people Mr Wild was describing—i.e. people who could genuinely challenge around the way this project was now moving on from being a world-class construction project into being an enormously complex task of systems operation, systems integration and operational delivery. That is a different set of challenges, I think, for a programme of this sort, and I think the board needed more people with the sorts of skills that Mr Wild had, to ask the right questions of the team at that point.

We appointed Andy Pitt to the board in 2018—I forget precisely when; I think the first half of 2018—when we could see that there were real challenges around this. The cost pressures had emerged. We did not know about the schedule pressures at that time but none the less we had growing concerns about the challenges. So we strengthened the Department's non-executive representation at that time. Transport for London, I think, had done so somewhat earlier that year. They had also appointed new members to the board during the course of late 2017 and 2018, and that was precisely in order to make sure that, as I say, the people sitting around the table had the skills and experience needed for this phase of the project.

Q22 **Lee Rowley:** The weakness of the board has just cost us the best part of £3 billion. So who is responsible for that money?

***Bernadette Kelly:*** I think you are continuing to try and single out particular individuals. I do agree with Mr Meggs—

Q23 **Lee Rowley:** Well, it has to be somebody somewhere.

***Bernadette Kelly:*** Well no, because what we have here is an executive team delivering the project, a board challenging and supporting that team's delivery and effectiveness in delivering that project, and of course a joint sponsor arrangement as well. So this is a programme set up with a governance that does not, I am afraid, allow one simply to pinpoint an individual, and indeed it would be erroneous to do so. It is far too big and complex and difficult a task to do that.

Q24 **Lee Rowley:** On that basis, then, I should just accept any amount of money going. When will it be a problem? How many billions of pounds do we lose before we have to accept that this kind of process isn't working?

***Bernadette Kelly:*** What we have done now is establish a new funding envelope—

**Lee Rowley:** No, I don't want to know what you have done—

***Bernadette Kelly:*** No, you were asking me about the money and I will tell you the answer.

**Lee Rowley:** I want to know how I can derive any confidence that any large project—of which you have many—will work, on the basis of just sort of throwing the cards up in the air and saying "Oh, well, it's all very difficult."

***Bernadette Kelly:*** We are most certainly not throwing the cards up in the air. What we are doing is absolutely challenging the way everything has gone on in the last two years in this project. My Department is as keen as anyone to ensure that we are learning the lessons from this. Very big, complex major projects are difficult to deliver. We need to learn from those difficulties when they arise so that we can apply those lessons. I'm afraid I do not recognise your description of our response.

Q25 **Lee Rowley:** Despite the keenness, despite the challenge, we have still lost £3 billion.

***Bernadette Kelly:*** We have agreed an additional funding envelope for the remainder of this project of £2.15 billion, including the GLA contribution. That is now the envelope within which we expect Mr Meggs and Mr Wild to deliver that project. It remains an extraordinarily important project, and one that will deliver very significant value—both to London and to the wider economy. It is an enormously important investment.

*(Meg Hillier took the Chair.)*

Q26 **Lee Rowley:** Yes, I get the advert brochure. Should I therefore derive from your statement that all complex programmes that go through your Department could end up with an additional £2 billion cheque required?

***Bernadette Kelly:*** No, you should not.

Q27 **Lee Rowley:** Well, why not? This one has.

***Bernadette Kelly:*** What you should derive is that, when we experience challenges in the delivery projects, we learn the lessons and we apply those lessons to other projects in our portfolio. That is what we consistently seek to do.

Q28 **Lee Rowley:** So what is the lesson, and who is responsible for teaching it wrongly?

***Bernadette Kelly:*** I'm sorry, but I don't understand what your question is.

Q29 **Lee Rowley:** If you have learned lessons, you have to have assessed the cause, and you have not told me who the cause is. So who is the cause?

***Bernadette Kelly:*** I have told you what the cause is.

Q30 **Lee Rowley:** Who created the what?

***Bernadette Kelly:*** I think what you have actually heard is a consistent assessment from myself, Mr Meggs and Mr Wild that what we had was an issue here around the way in which risks were being identified, assessed and mitigated. That was fundamentally what drove the challenges around cost and schedule—

Q31 **Lee Rowley:** You can't just make that expression. We have just lost £3 billion. I have spent 20 minutes trying to get something out of you. I have failed. You are doing very well at the moment—well done. But ultimately, the reality is that there was a failure here. The failure was either by the management or the board, or it was a systemic failure. Either it points to the previous management, the previous board or to the set-up by the Department in the first place. You choose. I don't mind which one it is, but it has to be one of those three.

***Bernadette Kelly:*** No, I'm not going to. That is artificial. I do not accept the way in which you set up the analysis. To go back to the governance point, which obviously you are asking questions about, it is important to remember that for many years Crossrail and the governance programme and the way in which the company was set up was seen as a textbook example of how to set up large and complex projects. That is the language of this Committee that I have just quoted, and it is the language of successive NAO reports, and certainly the sentiment of many reports through the lifetime of this project.

What we saw in the final stages of this project is a number of things in addition to the systemic risks and the assessment of those that we have described—some of the other issues arising that Mr Meggs was referring to. First, I think there was not a full, proper and fast enough reorientation of this project from construction to systems integration. I have discussed some of that in the context of the board capability. Secondly, I think years of success contributed to a culture of optimism through the system. While everything looked okay, people were happy to believe that it was so. That is true within the company, within the board and to an extent within the sponsors. Demobilisation of capability happened too soon as a reflection of that optimism, when people still believed that the December 2018 opening date would happen.

There is an interesting reflection, as we learn the lessons here. The very autonomy that we put in place to ensure that Crossrail could deliver the construction project made it more difficult for the joint sponsors, Transport for London and the Department, to challenge and understand exactly what was going on in the later stages under the skin of this project. That is an important learning point for us, which we will certainly take into future projects.

There were also some challenges around the quality of assurance work going on at different levels in the system, both within the company and within the project representation. There is a complex set of factors here. I do not actually think it would do us a service as we think about how to deliver future projects to try to over-simplify that.

Q32 **Lee Rowley:** I think it might do us a service to actually get to the bottom of the problem. We have spent 25 minutes not assessing what the problem is.

***Bernadette Kelly:*** Well, I have just given you a very clear analysis of what I think the issues were.

Q33 **Lee Rowley:** But you are unable to pinpoint the cause.

***Bernadette Kelly:*** That is because I do not think there is just a single thing at stake here. I think there are a number of things.

Q34 **Lee Rowley:** I am happy for a list of individuals or entities that were problematic. Fundamentally, we cannot be here, £3 billion later, without a clear understanding of who is responsible for that £3 billion; otherwise, it is you.

***Bernadette Kelly:*** I am talking about the actors in a system, rather than trying to identify individuals. I think there were failures within the company and the leadership of the company to identify systemic risk. Mr Wild has alluded to that. I think the board should have done more to challenge the executive and to ensure that it fully understood whether the information it was receiving accurately reported the progress that was being made in delivering the project. Then, from a joint sponsor point of view, we had an active sponsor arrangement, but we, too, did not get under the skin of the information that was being reported to us through the company and by the board.

Q35 **Chair:** So you are saying it is an ensemble performance, rather than there being a star in charge.

***Bernadette Kelly:*** It is a systems issue, as Mr Meggs has said. That is the point.

Q36 **Sir Geoffrey Clifton-Brown:** Not only are we £3 billion over budget; we have as yet unspecified delays, both of which are costing Londoners and causing them inconvenience. I apologise for not being here earlier; the Chair and I have been on important business on the Floor of the House, so I apologise if I have missed something. In your opinion, did the board or the company deceive the Department or withhold information, or were either or both of them incompetent?

***Bernadette Kelly:*** I have absolutely no reason to suppose that there was any attempt by any party to deceive the Government or Transport for London. I believe that everything that was said and reported was reported in good faith by individuals acting to high professional standards. Unfortunately, the information that was being reported did not give a full picture of some of the risks as they grew and as they became more complex.

Q37 **Sir Geoffrey Clifton-Brown:** So they were incompetent.

***Bernadette Kelly:*** I do not agree that they were incompetent. They were doing something extraordinarily difficult and, as I say, there were some failures in the aggregation of systemic risk. But there were many other areas of work in which there was excellence, and throughout I think the people involved were acting in good faith and professionally.

Q38 **Lee Rowley:** As a project manager, you cannot act highly professionally if you do not aggregate the risks correctly, do not assess those risks and do not look for dependencies. You cannot have it both ways. Either they are highly professional and they did their job, or they aren't and they didn't.

***Tony Meggs:*** If I may give the permanent secretary a break, trying to focus on individuals in a very complex system is just wrong and inappropriate, and will cause us to make false choices and decisions in the future. This is a project of enormous complexity. There was optimism bias. This was a team that had overcome enormous challenges over a 10-year period. This was a challenge too far. That optimism bias, I believe, created an environment in which not every risk was surfaced appropriately. But that is not blaming any particular—

Q39 **Lee Rowley:** That is fine. If there was optimism bias, that is ultimately the responsibility of the leadership team and the failure of the oversight board that was watching over that leadership team. It is very clear. I do not understand why we cannot get to the end of these discussion points. We all accept that there were problems—you are actually articulating some of them—but there is a logical conclusion to be brought out of those.

***Tony Meggs:*** I disagree with the conclusion that you can single out any particular layer, individual or group of individuals and say they are solely responsible. I simply do not accept that proposition.

**Chair:** That is one of the challenges.

Q40 **Nigel Mills:** If you were saying to us, "There was this thing we couldn't predict; it went wrong and there was nothing we could have done about that," I could understand. But it does not sound like rocket science to me that the integration of the systems was going to be quite a difficult bit. That could easily have been predicted. Is it a fair assessment that you ought to have known that this would be much more difficult than you thought?

***Mark Wild:*** The system engineering of Crossrail is notable in the world for being at a benchmark. It has been benchmarked as—

Q41 **Nigel Mills:** That is not the question I am asking. The answer you are giving us is that it all got compressed, you didn't realise how difficult it would be and you underestimated it. My question was, shouldn't you have realised how difficult that was going to be?

***Mark Wild:*** If I could get to the answer, there is no failure of the system engineering structure. There is no systemic failure of how this project was organised or the design. The issue is pretty simple, I think. I used to run

London Underground. You would understand London Underground to be a capable and competent organisation. They could only really build three stations at once, and only commission one or two a year on the underground. There is a reason for that: the immense complexity.

I believe the answer is that the misunderstanding was of the scale of the integration challenge. There is a failure there, but the core system engineering structure and the process are all very sound. The missing link is very important and systemic, and I am sorry it is inconvenient but it is no one person or entity. The failure is a lack of understanding of the sheer scale of this. It is the largest thing that has ever been done.

**Nigel Mills:** And that could not be predicted.

***Mark Wild:*** With the benefit of hindsight, if you go back, clearly you would have done something differently, but we are where we are.

Q42 **Nigel Mills:** That is still not my question. Should it have been predicted?

***Mark Wild:*** You would have to be a historian and you would—

**Nigel Mills:** No, I don't have to be a historian.

Q43 **Chair:** You run railways, Mr Wild. Would you have predicted it?

***Mark Wild:*** You might not like the answer I am going to give you. When you take on something so large, you put in the very best organisational and system engineering structure. The failure is a lack of railway-experienced people in system integration at the time those decisions were made.

Q44 **Nigel Mills:** But it is not unexpected that you would need those people at the right time, is it?

***Mark Wild:*** It is something that a future programme should consider.

Q45 **Nigel Mills:** Again, that is not the question. Is that something that you could have predicted that you would need—experienced railway people who knew how to do this at the time?

***Tony Meggs:*** If I may, the need for that kind of expertise was recognised throughout. It think the PAC in 2014 identified that.

**Chair:** But—there is always a "but" hanging over this.

***Tony Meggs:*** But the introduction of that expertise in sufficient quantity was late.

Q46 **Nigel Mills:** I am pursuing this because it is quite fundamental when doing risk assessments of projects that you have all the material risks there and you know how serious they all are. It is not a great comfort to say, "We were running a great project and everything was going textbook for all these years. The only problem was we hadn't realised it was quite hard to do the final bit." You now say you will be at least a year late. This is not a few weeks because you don't have a few things painted—this is a year's delay and £3 billion. Do we have a date when this is all going to be working, by the way?

**Chair:** We don't have a date yet, do we, Mr Wild?

***Mark Wild:*** I could give an update on where we are and produce a programme for that, it if is an appropriate time to do it now.

**Chair:** It would be good to know. Certainly, it was originally talked about as a year's delay, but when you arrived you acknowledged it was going to be longer.

***Mark Wild:*** In five minutes, I can tell you exactly where we are. We have spent an enormous amount of time over the past two months working on this. Rest assured that while we are doing this we have not taken our foot off the pedal of productivity and delivery. We have our productivity challenges, but we are still working very hard with our supply chain and the project is moving forward. We just completed the fire main in the tunnels. Several projects have reached their critical milestones of demobilisation. All that work is still going on.

On top of that, we have spent a lot of time building a logical sequence of the work. I am very sorry that we have taken time to do that. We do not have an end date, but we have just finished an important piece of work to logically resequence this whole programme.

There are two critical paths: the software path for the train and the complex signalling system, and the stations. As I said before, London Underground could build three of them and commission one a year. We are now building nine of them and commissioning nine in a year. It is taking quite a while to untangle a programme that had become very compressed, and resequence it, both in the software path and in the stations.

At our board meeting last week, we took the board through a logical sequence. It was very important for me and the leadership team to do that to ensure that the programme is built on very solid foundations. It had become so compressed and tied in a knot that we have to spend a lot of time untangling it to make sure we are on solid foundations.

The next thing we are going to do over the next four weeks is to make sure the productivity assumptions underlying that logical sequence are valid and are backed up by our very good tier 1 supply chain colleagues. That will take me three to four weeks, and I aim, by the end of March, to present Tony and the board with a window. It won't be a definitive date, because we still have a great deal of uncertainty, but we will have a window within which this railway will open. I am sure the board will be interested in how we ensure that and take it through the sponsors.

The positive news is that we now have a logical sequence for how this work will be done. The reason why we had to take a breath and make that sequence precise is that the compression was so great that we needed to take a step back. We now need to make sure the productivity assumptions are valid, and that can be done only with the engagement of our supply chain.

Q47 **Nigel Mills:** Does that window include 2019?

***Mark Wild:*** No, I have previously been on the record about that. There is no opportunity to open this railway in 2019, because of the compression of the critical path and the stations.

Q48 **Nigel Mills:** Does the window extend to 2021?

***Mark Wild:*** We would very, very much want to get this done in 2020.

***Tony Meggs:*** That is phase 3—the central operating section.

Q49 **Nigel Mills:** Are you nervous when you make that sort of commitment? You said that London Underground can commission one station a year, and you are doing nine. Presumably, you knew all along how many stations you had to commission. These don't look like convincing excuses.

***Mark Wild:*** I am putting all my effort, and my team's effort, into looking forward. The faster we get an opening sequence, the more we will reduce the capital overspend issues, which are of great concern. Importantly, we will get a programme to bite into. At the moment, this project, like every project, needs dates to go for. Forgive me for putting all my effort into sequencing this job to get certainty about a programme that we can achieve.

Q50 **Chair:** In this Committee, we prefer evidence to off-the-cuff dates. You ran the underground. You have run railways, right? No disrespect to other members of the panel, but you have done that so Mr Lodge shouldn't perhaps make that sweeping judgment. You talked about the difference of one a year for London Underground and others. If you had started this programme, would your alarm bells have been ringing at the number of stations that were being built?

***Mark Wild:*** I have looked at this in some detail. If you go back to the 2010 baseline—this is a key point in answering your question about what has really happened here—the stations should have been completed before the signalling system. Now we are in the exact opposite situation. The stations have slipped beyond the signalling system. That is very, very important, because the stations themselves supply the signalling system, so you really want to get all the stations out the way and then do the railway signalling installation. We are in the reverse situation now. To answer your question, we really don't want to be in this situation.

Q51 **Chair:** It is always easy with the benefit of hindsight, but given your experience of running things, would you have looked at this and said, "It's just too ambitious to try to do that"?

***Mark Wild:*** I think the lesson going forward is that, if the stations had held their original baseline programme from 2010, it would have been achievable. When the railway stations started to slip, we should have paused for breath and resequenced the programme.

Q52 **Nigel Mills:** When did they start to slip?

***Mark Wild:*** They started to slip around 2016 and into 2017. At that point, the ratcheting effect of systematic risk was building up. That is a lesson for the future. Really, you want the stations built before you put the train through the tunnel, for obvious reasons. Now, we are in the opposite situation. It is likely that we will finish the railway systems before the stations, which has meant that we have spent the last two months carefully sequencing this. To anticipate your next question, I am very confident that the logical work that we have done is of great quality. It has been independently assured, and we are in the process of making sure our logic assumptions are right.

Q53 **Nigel Mills:** I am not convinced that we are getting a long way forward here. Ms Kelly, can you assure us that, as a Department, when you look at the risk assessments for major projects, you are now confident that all the major risks are on them?

***Bernadette Kelly:*** This is something we strive to do all the time. We have detailed risk registers for all of our projects.

Q54 **Nigel Mills:** I am sure that you had one for this project, didn't you? You just didn't have this risk on it, or did not have it big enough.

***Bernadette Kelly:*** Projects delivered by a third party have different governance arrangements—we have different arrangements in different places for our portfolio projects—but we expect them to report the risks. We then challenge and assure that assessment, and we also look at cumulative portfolio risk and where that sits with us. I can definitely assure you that the systems are in place to do this.

I understand the line of questioning. The systems were in place for Crossrail too, but did not capture, in the way they should have done at an early enough stage, how those risks were building up. The really important thing for Crossrail and my Department to do—I know that Transport for London is also doing this—is to think about how we ensure that we do not repeat those mistakes.

I think the Committee has seen the KPMG reviews. You will see that we commissioned an enormous number of very detailed assessments, so that we absolutely understood exactly what the issues and challenges were. We will be acting upon all the recommendations in those reviews—I think there are 125 in total—to strengthen things.

There are wider lessons here too. When I spoke to the Committee before, I said that I had commissioned, with the Infrastructure and Projects Authority, a piece of work on the wider lessons learned, not only from Crossrail but from some of the challenges my Department has experienced in major project delivery. That, too, is coming up with a large number of both detailed and broader conclusions on how to strengthen our systems going forward.

In short, yes, we do have our risk assessment thoroughly embedded in all our projects and project governance. If there are things that we can learn here about how to do that better, I am extremely keen that we should learn and implement those lessons.

Q55 **Nigel Mills:** The reason we pursue this is because, although you referred to the suggestion from this Committee, the NAO and others that this was a textbook project at various stages, you did not quite go on to a couple of the other recommendations in those reports, when we said that, yes, the construction phase was all going fine, but that the trick would be moving on to the integration phase and having the right people there to do that. That looks to be exactly what went wrong. The same issues also arose on Thameslink and Great Western as well. It looks like you were warned, and that the same issues had arisen on other, similar projects, yet we have careered into the same problem again.

***Bernadette Kelly:*** I think you are referring to the 2014 NAO Report. A number of actions were taken in response to that. I will ask Mr Lodge to say a little more about those.

***Matthew Lodge:*** We acted upon exactly what the recommendation was. Howard Smith became the CRL ops director. He was attending the sponsor board, updating sponsors on where the project was from an operational perspective. There were regular bringing-into-use discussions and updates from the technical director on how they would move from the current project to where they were going.

CRL was tasked with setting out what we call a transition strategy, going from the construction project through to the operational project. That was signed off by the CRL board and approved by sponsors in 2015. That established the relationships and arrangements for bringing that system into operation.

Looking back, there probably needed to be more, and they needed to be better, but the process that we set out was that, because it was a Crossrail project to deliver, Crossrail needed to put a transition strategy together, which was signed off by the board in 2015. That was the process by which they were going to bring the railway from a construction project into an operational project on a day-to-day basis.

Q56 **Nigel Mills:** Isn't that a bit like having a policy on the shelf gathering dust that you never implement? You put all these things into place that were meant to alert you to these problems turning up, but nobody on the board or yourselves seemed to realise that you were nowhere near delivering this on time.

***Matthew Lodge:*** As we talked about earlier, this is about the accumulation of risks. Again, things were coming together that created the problem that we saw in the midpoint of last year.

Q57 **Lee Rowley:** Systems are designed to avoid the accumulation of risks. Therefore, your system failed, because it did not identify that accumulation in time. Correct?

***Matthew Lodge:*** As we talked about earlier, a number of different risks came together to create the problem that we saw last summer.

Q58 **Chair:** We had a very clear exposition from Mr Wild about the stations, the signalling and how they came out of kilter. Can you give an example of what you did that practically changed things? You talked a lot about process there. What did you do that made a difference? What did you—or the board—uncouple?

***Matthew Lodge:*** Remember, this is a project for Crossrail Ltd to deliver. As sponsors, we are one step back—

**Chair:** But still scrutinising.

***Matthew Lodge:*** Still scrutinising.

Q59 **Chair:** What, practically, changed?

***Matthew Lodge:*** The sponsor board went from every two months to every month—

**Chair:** This is process dates, but what actually happened?

***Matthew Lodge:*** What we then had is a regular report from Crossrail about where they were in this transition arrangement, and what they were doing about taking the railway from where they are to where it needs to be.

Q60 **Chair:** So what did they do to take it from where they are to where it needs to be? That's my point. What practical things, on the ground, actually changed?

***Matthew Lodge:*** What they were doing was bringing the operational teams together, and setting out the processes and what were they doing about bringing them up; with hindsight, I readily accept that that was obviously not good enough. What Crossrail was doing was setting out the plans. Howard Smith—as Mr Wild will know, Howard Smith was from Docklands Light Railway and ran London Overground, so he is a key person who has run a railway—brought all those teams together to have that integrated plan for how we were going to open the railway, moving from the construction project to an operational railway.

Q61 **Chair:** But do you have an example, perhaps of one station, where you saw that there was a difference of approach? Can you humanise things for us?

***Bernadette Kelly:*** These things would be done within the company. I think that's the issue—the sponsors were not actively building the railway.

**Chair:** No, but you might want to know what is being done to build the railway. That's my point. Anyway, I will bring in Sir Geoffrey Clifton-Brown.

Q62 **Sir Geoffrey Clifton-Brown:** The House of Commons Library has a reputation for the integrity of its reports. Its report into Crossrail, dated 23 January 2019, states in a paragraph on page 35: "The first sign that the Elizabeth Line would not be opening on schedule came with the electrical failure at Pudding Mill Lane substation in November 2017.

According to a *Financial Times* article, this failure had 'far-reaching consequences' and 'the explosion set off a chain reaction of glitches—delaying power to the central tunnels and thus all the extensive testing that needed to be done.'" Mr Lodge, did not that set off alarm bells for you?

***Matthew Lodge:*** As sponsors, it did set off alarm bells, and we asked Crossrail Ltd repeatedly, "Can the date of December '18 for opening the central tunnel section still be hit, still work?" They assured us that by revising their plan for testing and commissioning, which moved into a different phase and a different way that they were going to do it, they could still deliver the railway in December '18. We asked that question repeatedly—

Q63 **Sir Geoffrey Clifton-Brown:** May I just stop you? Were these questions in writing, or were they just chummy conversations?

***Matthew Lodge:*** I would have to check. I think we had active discussions at the sponsor board, so they would be minuted. We had discussions about what questions we were asking as sponsors, of ourselves, the Department and TfL—

***Bernadette Kelly:*** Let me just add to that. You are obviously right, it should have—and did—set off very significant alarm bells. What we now know—I think that the report indicates this—is that, effectively, three months of schedule was lost, at that point, with only 13 months to go to the December '18 opening. That was an enormous impact on the schedule at that point. What Mr Lodge is describing is a then rigorous process of challenge.

We have looked back at the minutes of every single sponsor board—Mr Lodge would have been present at all of them; I was not—and at every single sponsor board thereafter questions were being asked of the executive team: "Is this schedule now deliverable?", "Tell us how you are going to deliver this schedule?" In terms of scrutiny and oversight, there was unquestionably a real stepping-up at that point in terms of the questions being asked and the challenges being made of the executive team to provide clarity and assurance that they would still be able to open this railway in December '18. And the executive remained confident consistently through the process of those questions that this could be delivered.

Q64 **Sir Geoffrey Clifton-Brown:** Ms Kelly, the alarm bells have rung, you have got some factual information that things were out of kilter, you were asking the questions, but you didn't get the answers from the board. So I ask you the question again: do you feel deceived by the board?

***Bernadette Kelly:*** I feel disappointed that we did not get better information. I think the word you use is very loaded, as it implies intent. I do not think there was intent to mislead; I think there was optimism that led to inaccurate assumptions being made about what was possible.

**Chair:** We are trawling through the relevant paperwork on this.

Q65 **Sir Geoffrey Clifton-Brown:** Mr Wild, your company twice asked me to visit the Crossrail project, once in 2016—I am on the record in this Committee as saying how impressed I was by the project, what I had seen, and the assurance I was given that it was all going to be on time—and a second and more significant visit, which was in June last year. Exactly the same thing happened: the red carpet was laid out, and all the chief engineers and everybody were there to explain what you'd done. It all looked marvellous.

I was told it was all on time and it was going to open on time. Have I been deceived? Surely, those engineers and those people who showed me around must have been told by your predecessor what impression to give me.

***Mark Wild:*** I agree with the permanent secretary: "deceived" does imply some conspiracy. I think the reality, and the learning for future projects, is that individual people were in their silos, in their contracts, and nobody had the big picture.

The Pudding Mill Lane explosion is quite interesting, actually. It was an interesting and material event, but it was not the main cause of delay at that time. The main cause of delay was actually the lack of installation of the signalling systems, and the fact that the stations were a long way behind, hence why I honestly and objectively believe the aggregation of risk is the key issue. When Pudding Mill Lane happened, the project team—to Tony's point—moved heaven and earth. It was a very serious safety-related incident, and the project team did a marvellous job to get the energisation of the tunnel done.

The reality is now, when you look back on it, that the risk profile at that stage was such that Pudding Mill Lane wouldn't have mattered anyway, because there were many other material things that were going wrong. There could have been 100 other things wrong, and I think the lesson—you weren't deceived, but it is clear that the people you were talking to did not understand the amount of work to do, or the aggregation of risk that they had created. Certainly, sitting on the board, they were not communicating it upwards. I think it is because they did not know, rather than because they were hiding anything.

**Chair:** We do have copies of all the paperwork, which we cannot talk about in every bit of detail. We are trawling through that, and we will be seeing you in a few weeks' time to deal further with this, so by then we will have read every word.

Q66 **Nigel Mills:** Is it fair to say, then, that the board had no idea how big a mess this project was in, and the Department had no idea that the board did not know?

***Mark Wild:*** If I could speak from the board's point of view, from the Pudding Mill Lane explosion onwards everybody, including the Department, TfL and the Board, became very interested. I myself went with the management team to Germany to look at Siemens's product individually. We commissioned independent reviews, so I think from the Pudding Mill Lane explosion onwards, it became increasingly obvious that we had a real problem, and people did react to it.

Again, I think the fundamental failing, which we are fixing going forward and for future projects, is understanding the aggregation of risk. Unfortunately, when you have something that is so big, it is not like you can identify it straight away. It took a while—too long, actually—for the situation to be unveiled.

Q67 **Nigel Mills:** As I say, it is not like you are a few weeks behind; it is taking you several months to work out exactly how far behind and how far over budget this project is. It just seems to beggar belief that nobody had any inkling at board level that this was the case until it all fell apart.

***Tony Meggs:*** My understanding of the situation, from reading and from talking to lots of people, is that there was an increasing concern that grew over time. The team was completely committed to opening on 9 December 2018, and they were willing that to be the case, but everybody, I believe—as Mark has indicated—was aware of growing concerns and uncertainties. The moment at which those coalesced into a recognition that this simply cannot be done is a matter of debate.

I have to say that it has something to do with the enormous pressure to complete on a date that was set in 2010. The Committee will not want to hear this, but in April, which is when we say that we believe the railway will be done, we will not be naming a single date in 2020. We will give a range, which is much more sensible and recognises the risks that exist, and then we will narrow that range with time, through frequent updates and total transparency of information.

**Chair:** Mr Mills—

***Tony Meggs:*** If I may, I have seen in Government, over and over again, that the commitment to a single day—

Q68 **Chair:** My immediate and obvious question to that is where was the courage in the organisation to pass upward the message that this date was causing a problem?

***Tony Meggs:*** The courage required to hold up your hand and say "Stop" in a mega project of this type is immense.

Q69 **Chair:** But they are people who are paid a lot of money and who should have the courage to do that. They are paid to make those judgments.

***Tony Meggs:*** They were people who genuinely wanted to make that occur on December 9 and still believed that they could because they had overcome enormous challenges in the past.

Q70 **Nigel Mills:** The reason why you have boards with non-executives on them and independent assessment of projects is to stop that situation from happening, isn't it? It is particularly to address that risk of everyone getting carried away.

***Tony Meggs:*** I absolutely agree. If I were to criticise one thing or—let me put it more positively—if there is one thing that we are doing differently going forward, it is that there is a good deal more external scrutiny. This is a project that was really quite autonomous, and while the sponsors did what the sponsors did, the level of deep and forensic examination of risk and so on was not occurring from the outside. That was for a number of reasons—none of them good—but partly because actually the project was ostensibly so successful.

**Nigel Mills:** Yes—

Q71 **Lee Rowley:** Can I comment very briefly on that? I just find these answers incredible. Utterly incredible. I have the Jacobs report from April 2018 here. It is clear; it is in there. It says on page 3, "The MOHS remains highly ambitious". On page 4 it says, "Delivery performance has varied across the rail systems and concerns remain with general progress at Central Section"; "testing has proceeded more slowly than expected"; "incomplete infrastructure"; "further schedule pressure"; "uncertainty as to whether or not signalling installations can be completed in time"; "The Infrastructure Managers…remain extremely concerned at the delays"; "More generally, the accumulation of delay across all areas of delivery continues to threaten the start of Trial Running and Trial Operations".

You can go through 50 pages and you can find such quotes on almost every one of them. It is incredible—incredible—for senior people other than Mr Meggs, who was not involved, to sit here and tell me that you were not clear that this was going to fall over. It was perfectly clear that it was going to fall over—it is in black and white, and that was just the redacted version. I bet you that if I saw the unredacted version it would be even clearer.

***Mark Wild:*** No, you wouldn't. Of every independent person that we got to look at this, nobody unearthed the extent of the delay. Nobody. I have only got to the bottom of it because—

Q72 **Chair:** Not the extent, but what you heard from Mr Rowley is the existence of a delay and certain key risks.

***Mark Wild:*** I think if you read that report—

**Lee Rowley:** I have read it.

***Mark Wild:*** It is very common: of all the independent reports that we have had—including those that we have commissioned ourselves—none of them indicated the extent of the delay or that it could be more than a year.

Q73 **Lee Rowley:** But that is not the question that I am asking. I am not asking for a quantification of the delay; I am asking for a recognition that a delay was coming last April.

***Mark Wild:*** Oh, yes.

Q74 **Lee Rowley:** But you can't stand here and say, "It wasn't going to happen until June." People cannot go in front of Sir Geoffrey in June and say, "It's all going to be fine for December" when these documents about your project say quite clearly that that is not going to be achieved. You cannot justify or reconcile those two points.

***Mark Wild:*** I am trying to draw a line between the materiality of what I have found in terms of putting the programme back together. I know that this is a bit difficult—

Q75 **Lee Rowley:** Perhaps you could just answer my question. How do you reconcile statements made to Sir Geoffrey in June that said that this would be achieved by December, when a report going around the project in April said that it was highly unlikely that that would be the case? Those are irreconcilable. Would you not agree?

***Mark Wild:*** It is. I didn't meet you. All I know is what we are doing going forward. Certainly my leadership style and the chair's leadership style is that we are very open to external scrutiny—in fact, we welcome it.

Q76 **Lee Rowley:** Therefore, we can say that Sir Geoffrey Clifton-Brown was deceived.

***Mark Wild:*** I don't like the word "deceived" because it implies—

**Lee Rowley:** You might not have to like it—you just have to accept it.

***Mark Wild:*** I don't like the word "deceived", because knowing those individuals—

Q77 **Chair:** How about "misled"? Is that a better word?

***Mark Wild:*** I think those people did not understand the extent of the problem they had.

**Lee Rowley:** But Jacobs understood. It understood enough to say that there was going to be a delay. We cannot make statements that—

***Tony Meggs:*** I don't think it said that there was going to be a delay.

**Lee Rowley:** What it said was that the project was falling over.

***Tony Meggs:*** No.

Q78 **Lee Rowley:** That was clear. As a project manager, if I had received that as a P-Rep report, I would have said, "This project is incredible trouble." Therefore, I presume that the large number of people you have brought on, with the great skillset that you have explained to me, would have drawn those conclusions as well. We can do the hop, skips and jumps, because that is what the project people are paid to do. It is clear that the project was going down last April.

***Bernadette Kelly:*** I may ask Mr Lodge to say a little more, because he would have been closer to the detail, but my understanding is that this was part of a suite of work done in that March-April period, including work on a revised schedule by Crossrail directly, which P-Rep then assured, all of which pointed to growing, significant difficulties around the schedule, but none of which said at that point that the delivery date of December could not be achieved. Is that correct?

***Matthew Lodge:*** That is right. But it also said there were risks around December.

Q79 **Lee Rowley:** No, no, no. The date was "highly ambitious", as it says on the second page. These are project management euphemisms for "will not be achieved". We don't play around with these things. You know this and I know this. We don't have to go through this. "Uncertainty," "delays across all areas," "vulnerable" and "extremely concerned"—what kind of wording do you want to highlight to you that this is not going to happen?

***Bernadette Kelly:*** At the same time, the board was continuing to report that this project would still open in December 2018.

Q80 **Lee Rowley:** So where was the scrutiny that challenged that, given the Jacobs report and these statements?

***Bernadette Kelly:*** This is precisely why we were asking those questions more and more, through the sponsor board and every other iteration that we had, both with the board and the executive team. You will recall that last time I appeared before you I talked about how we had the then chief executive at my executive board in June, where we asked him about delivery confidence, knowing what we knew about growing risk and uncertainty, and all the things that you describe.

Q81 **Chair:** Had Mr Lodge seen these reports from Jacobs?

***Matthew Lodge:*** I would have seen them, yes. That is why we were asking Crossrail at the sponsor board, "Are you confident about these dates?"

Q82 **Chair:** This is what we got before from Ms Kelly—you asked, "Are you confident and what are you doing?" Did you trawl through some of their examples of what they would do to sort this out, to check that they were really going to stand up?

***Matthew Lodge:*** We challenged them on the plans that they put in front of us as sponsors about what they were doing, and said, "Are you sure that you can do this?"

Q83 **Lee Rowley:** So who did you trust more—Jacobs or the responses you were getting back from the project board? They were both at variance with each other.

***Matthew Lodge:*** A P-Rep working for both sponsors gave us those reports. It was our job as sponsors to challenge Crossrail using that report and then ask Crossrail to consider—

Q84 **Lee Rowley:** I know what your process was. I am asking who you trusted more, because you had different pieces of information coming through. What weighting did you put on each of those pieces of information?

***Matthew Lodge:*** P-Rep was a small team doing deep dives into bits of the project. I then had Crossrail Ltd, which was a company of several thousand people.

Q85 **Lee Rowley:** That is a fascinating description. What weighting did you put on P-Rep versus Crossrail? I am asking for the personal judgment that you made in April, because what you did, in terms of your actions over the subsequent months, was clearly based on that personal judgment.

***Matthew Lodge:*** I was very clear that there were risks around the December '18 date. I was open, in terms of the Department, that there were risks around that date—that it looks like weeks, not months. Crossrail was sticking with the December '18 date and that is what—

Q86 **Chair:** Ms Kelly, at any point did anyone in the Department say, "Look, we recognise that December could be a risky date, so we are lifting the pressure on this date delivery. When would you say that you could deliver this project in a working format?" Did you give them any ease on that?

***Bernadette Kelly:*** It was the responsibility of Crossrail Ltd to tell us if they did not believe that the delivery date could be achieved.

Q87 **Chair:** But Mr Rowley has just read out elements of this report, which clearly demonstrate that there were serious concerns. We know how politics works. If there was a political deadline, set by all parties involved, and once that is set it is seen as a political failure all round, we would probably have been saying to you even then, "Why is it delayed?" and they would be saying the same to the Mayor of London.

Given that everybody knows there was a political drive all round to get it delivered on the date that had been set in 2010, did you at any point give any easement on that date and say, "Look, we're seeing all of these; do you have a date by which you think you can deliver?" Did you put it that way round to them, or did you prefer to keep justifying the date that had already been set, which was politically tied in?

***Bernadette Kelly:*** It is unquestionably the case—it is an important learning point—that these dates become politically very important. It was extremely important to Transport for London, the Mayor and of course to us as well. That is true. But, ultimately, we set up an organisation such as Crossrail Ltd to take a responsible view of what can be delivered. The questions we were asking were, "Do you still believe you can achieve this date?" It was, I believe, the responsibility—

Q88 **Chair:** Had the Queen been invited to open it at that point, in June?

***Bernadette Kelly:*** I do not know the answer to that question, I'm afraid. I have no idea.

Q89 **Chair:** It was quite well trailed that she was going to be opening it herself—that Her Majesty was going to be there and opening the line in her name. That was quite a pressure, I should think.

***Bernadette Kelly:*** I certainly have no responsibility, I'm afraid, for the Queen's engagements or diary, so I cannot tell you the answer to that.

Q90 **Lee Rowley:** But you do have a responsibility for the Jacobs report. We are talking about April now, and you are telling me you had challenged and scrutinised very heavily, but this project had only been re-baselined in February. So you are telling me that, despite a re-baselining in February and despite all the work you did, you were happy to say, "Oh, we don't actually think the Jacobs report is that difficult and we think it's going to be all right, it's still going to achieve December."

***Matthew Lodge:*** We used the Jacobs report to challenge Crossrail Ltd on the likelihood of their plans. We challenged them, and they came back and said, "We can still deliver it in December."

**Lee Rowley:** Fine. So when you see a report that looks like that, with 16 pieces of red on it, two pieces of amber and zero green, it's all going to be all right, is it?

***Matthew Lodge:*** I cannot read which pages you are looking at.

Q91 **Lee Rowley:** Page 13 and page 14 of the report that you told me you read last year when you made these decisions.

***Matthew Lodge:*** There are quite a lot of Crossrail reports; I can't remember all of them for the last—

Q92 **Lee Rowley:** But the report with 16 reds and two ambers would be recalled quite heavily by me, if I was in your position. Perhaps you can answer the question.

**Chair:** You know the point Mr Rowley is making.

***Matthew Lodge:*** Sorry, what was the question?

Q93 **Lee Rowley:** When you see a table with 16 red ratings, two amber ratings and zero green ratings, how likely is it, do you think, that that will be resolved within a few weeks, as you have stated?

***Matthew Lodge:*** It depends on what those risks are and how they all come together.

***Bernadette Kelly:*** We were not judging on the back of that that this would be delivered; we were asking the company to tell us whether and how it could be delivered. The conclusion we draw from a report such as that is not, "This is going to be okay." The conclusion we draw from a report like that is, "Clearly, this is a project in difficulty and we now need Crossrail to tell us whether they are still confident that this deadline or this opening date can be achieved."

Q94 **Chair:** Do you think the regime in your Department gives people the confidence to be able to say no to you?

***Bernadette Kelly:*** That is a really good question. A lot of political pressure grows around some of this, and I definitely think one of the big and important reflections from this is how we recognise that the political pressure right across Government to set dates and then have those dates as immovable outcomes is not necessarily conducive to actually getting these really complex things done in the right way. In the piece of work we have commissioned on the back of this and other project challenges, the whole question about how we need to have the same focus and realism around schedule as we seek to build around cost is really important. In a lot of the interactions that we were having in late 2017-18, we were focused a lot on cost. We were increasingly focused on schedule, but within the system and right across Government and the public sector, if we are going to try to deliver really complex projects such as this, we have to find ways to be more realistic about schedule pressures.

Q95 **Chair:** That is a long answer. I will give an example from another Department, so it is not your Department in the frame, but it is a Department where the story goes round that the permanent secretary—actually in that case it was the Secretary of State—was so demanding of people who came to the meeting that they began to bring with them five junior officials, because every time they were asked a question and could not answer it, they had to bring other people. There was a kind of culture that it is difficult to say no to the senior politician in the room—or it could be the senior civil servant in the room, in this case. Do you think that there is a real cultural issue either in your Department or across Whitehall—I mean, your Department has had a number of transport challenges—whereby people can't say to you, "We're not going to deliver," or, "We need to change the date"?

***Bernadette Kelly:*** I don't believe that such a culture exists. Indeed, I see it as my job to ensure that that doesn't exist, and that people are genuinely encouraged and allowed to raise their concerns, and to do so without fear that that will be seen as unhelpful.

Q96 **Chair:** So bad news is welcome, in a sense?

***Bernadette Kelly:*** Bad news is never welcome, but bad news is necessary, and we need to be open to hearing it and listening to it. I regard it as my job to help in the transmission, where necessary, of those messages to Ministers.

Q97 **Lee Rowley:** I have one final question. With the re-baselining that has gone on, which we do not have a date or a cost for at the moment, how confident are you that it will be correct?

***Mark Wild:*** First of all, as the chair said, we have people on the project now with great experience technically, programmatically and in operations. So the team is very strong, capable and experienced.

We have spent a lot of time working on the logical sequence, so I am very confident of that, but we are going to get independent assurance, just to make sure. We are open to that challenge, but the sequence we have for the software path and for the stations is very solid and makes a lot of sense. The bit I do not have yet is the buy-in of the supply chain and the productivity levels that would support it As a project manager, you understand we have to apply some resources to this, which will push the date out or forward. Until we get to that point, I do not actually know what the range of dates would be, but I am very confident in the logical sequence.

Q98 **Lee Rowley:** What pledge will you give to the Committee now that when you publish a timeline and the cost they will not change?

***Mark Wild:*** As the chair said, we will not be publishing a date; we will be publishing a range, and we will narrow that range as uncertainty reduces. Our aim, and I am sure the chair's expectation of me as a CEO, is that we can be very confident in that range. The range could still be rather wide, but it will narrow with uncertainty. I think the mistake made, as Tony and Bernadette have just said, is trying to land a project on a pin.

Q99 **Lee Rowley:** I am not asking that; that's not my question. My question is: when you finally publish these figures, I want you to give me absolute confidence that they will not be exceeded.

***Mark Wild:*** You have my assurance that, as CEO, I will do my very best and I will always be transparent. The logical sequence and the timeline put in front of you I definitely stand behind.

***Tony Meggs:*** I agree with everything that Mark has said. From a board perspective, we will be looking at this. We have obviously looked at it as it has been progressing, but we will look at the final outcome of this piece of work on 28 March. We are trying to get as much independent review of that as we can. It will still contain risk and uncertainty, because it is a large and very complex project. Frankly, in the context of a project of this scope and scale, the work that Mark and his team of experts have undertaken since January has been done at an extraordinary pace. I compliment them on that, but it took years to plan this project, and we are re-planning it over the course of a long weekend.

Q100 **Nigel Mills:** Six months?

***Tony Meggs:*** I'm sorry. We have had three months; two months so far and we are now in our third month. It will be a good piece of work. We will hear independent reviews. We will share the uncertainties and the risk contained within their outcome, but it is I assure you a very rapid pace at which to re-plan a project of this scope and scale.

**Chair:** Mr Rowley—last point, and then we'll go back to Mr Meggs.

**Lee Rowley:** We have had three goes at trying to re-plan this work: February, when it was re-baselined; August, when the dates were reassessed; and now we're having another one. So it's not like we have not been round the circle twice previously. This one may be the one that works. Ultimately, however, the Public Accounts Committee is responsible for assessing taxpayer value for money, and it is clear that value-for-money limits have been completely blown here. I want you on the record telling me that you are going to be held accountable for this. The Government are writing a £3 billion cheque for this, and it may not be all of your fault that that is the case—that is a debateable point—but ultimately I want somebody to be held accountable for it, in case the next time something goes wrong or the next month the bill goes up. That is not unreasonable of me as a taxpayer to request.

***Tony Meggs:*** And I am not objecting to that in any way whatever.

Q101 **Lee Rowley:** So tell me how I can hold you accountable in a year's time.

***Tony Meggs:*** I don't know. We will tell you when the work is complete in April what our expected opening date and total cost is, and you can hold us to account for that. If we deviate from that, there are other people out there.

Q102 **Lee Rowley:** If you deviate from that, what will you do, Mr Meggs?

***Tony Meggs:*** Obviously, as in any complex project, you will always—

Q103 **Lee Rowley:** No, I am asking what you will personally do if you deviate from that.

***Tony Meggs:*** We will do more of what we are doing right now: making sure we have the right expertise.

Q104 **Lee Rowley:** Will anybody take accountability if it goes wrong next time?

***Tony Meggs:*** I have just said that I am happy to take accountability.

Q105 **Chair:** So you are the man on the spot, rather than the ensemble that Ms Kelly was describing when I arrived. Can we be clear? We understand big projects and that there can be shifts and changes, but will you be totally transparent? If there is slippage, a problem or a financial question—first, you should trim costs to fit in with that if you do this bit of work right—will you as chair of the board tell this Committee immediately?

***Tony Meggs:*** Yes.

**Chair:** So that we can keep our eye on taxpayers' money.

***Tony Meggs:*** Absolutely. We have learnt from the mistakes of the past.

**Chair:** We will look forward to receiving those updates from you. If we are not happy with them, we will call you in. The better it is planned, the less you will have to appear in front of us, Mr Wild and Mr Meggs.

Q106 **Nigel Mills:** I can understand your setting the window for the timing, but, sadly, the use of taxpayers' money does not quite work like, "I will tell you roughly what we need at some point when we get round to it and it might be about right." We awarded you significantly more money towards the end of last year. Are you now saying that that might not be enough?

***Tony Meggs:*** No.

Q107 **Nigel Mills:** You are not saying that it might not be enough.

***Tony Meggs:*** No, that is not what we are saying at all.

Q108 **Nigel Mills:** You just said you would tell us how much it will finally cost.

***Tony Meggs:*** Yes, and we expect to be within the envelope of the funding that has been provided, but we do not have a good revised cost estimate because we do not have a schedule and a plan of work.

Q109 **Nigel Mills:** I like "expect". It is better than "hope", isn't it? Percentage-wise, how confident are you that you can keep it within—?

***Tony Meggs:*** I am sorry—

Q110 **Nigel Mills:** "Expect" must be something like 75% confident.

***Tony Meggs:*** I cannot calibrate the English language that finely, I am afraid.

**Nigel Mills:** It's a pity. I'd like to try this.

***Bernadette Kelly:*** It is important to know that the funding settlement has been constructed to include a £1.3 billion loan and then a £750 million loan directed through Transport for London precisely to create some contingency and headroom. That is why Mr Meggs is being very reasonable in saying that he expects he can come in within that cost envelope.

Q111 **Nigel Mills:** Is it the same language for you, Ms Kelly? Are you confident? Do you expect? Do you hope? Do you dream? Do you pray?

***Bernadette Kelly:*** I very much expect. That is the challenge that we have set and I very much expect and certainly hope that this will come in within that cost envelope that we have now set, which is structured, as I say, to include some contingency so that there can be confidence in this project to deliver.

Q112 **Nigel Mills:** May I switch to the contractual relationship you had with Crossrail Ltd and whether that is an appropriate structure for doing these projects? I think they have to disclose to you formally when things are going wrong. There was a material adverse event that they disclosed to you last August. Do you have any concern that they missed a few timings and they should have made some adverse event notices? Do you think they followed that process as strictly as they ought to have done?

***Bernadette Kelly:*** I might ask Mr Lodge to comment. I understand there was not an adverse event notice in relation to—

***Matthew Lodge:*** There was an adverse event notice last summer as a result of the delays that we found out about in June or July. August was when they gave us the adverse event notice that was based around the delay in the opening of the railway. That is one that they offered to us. There have been various other ones that they have offered to us in the past. One was to do with software on the trains back in I think 2016 or '17. I will have to check my notes. There have not been a huge number of adverse event notices served by Crossrail.

**Nigel Mills:** You have structured a contractual relationship, which seems a bit unusual, given how close everybody is here. It is not one you would be unsurprised to see in the private sector. Presumably the reason for the requirement to give those notices was to get a warning at the first possible moment that things were going wrong, so that you would have the chance to take whatever decision you wanted. Do you believe that Crossrail has complied to the letter with the contractual requirements that were set up to alert you and the other sponsor to when problems were arising, or do you think that it may have been a bit generous in its timing?

***Matthew Lodge:*** To be honest, I would have to go back and look at the evidence of what the event notices were and what we might have seen, based on the evidence that I see. I cannot answer that one straight away.

***Bernadette Kelly:*** I think it is probably fair to say, stepping back from this—without having the detail in front of me—that they were rarely used. I think that that was partly because the bar set for triggering an adverse event notice was high. It is an interesting question whether, if what you want is absolute transparency in real time, you might create a mechanism for escalating issues that did not have such formality around it.

Q113 **Nigel Mills:** I assumed that that was the mechanism. The reason I am asking these questions is that I wonder what the point is of putting that governance structure in place if it does not look as if it is being followed. You do not even know whether it was being followed or not, and there is no sanction if not. The ultimate sanction in this arrangement, if I understand correctly, was that they would send the adverse event notice and you and the other sponsor would basically be entitled to sack them and take the project off their hands.

***Bernadette Kelly:*** I think your general point is really important; I have reflected on it, and I know that Transport for London has reflected on it quite a lot. I would be very interested in the views of Mr Meggs, as someone with great experience in the area, but essentially Crossrail was established as a special purpose vehicle and as a subsidiary of Transport for London. There was a huge amount of autonomy and formality around the relationship—to protect its independence, almost, or to protect it from the sort of interference that can happen when sponsors decide that they have just thought of an interesting new way in which the project can be made better, if I can put it that way.

**Chair:** We understand that, yes.

***Bernadette Kelly:*** With a project of this complexity and scale, and with a fixed budget, it was really important to protect the delivery vehicle from that sort of pressure, which we acknowledge exists in the system. That is why I think it is still fair to say that, for the first seven or eight years of its life, this was a very effective governance vehicle. It allowed Crossrail Ltd to get on with the job and construct the railway in a professional way without a huge amount of political interference. I think what it meant, though, particularly in the final stages, was that the sanctions available when things started to go wrong were a bit nuclear and not terribly useful as a consequence. It probably also means that it protected Crossrail Ltd from necessary and important challenge, for example around reorienting as a systems integration operation and around demobilisation.

It did have strengths. When we think again about lessons, we should not assume that because things ultimately did not work perfectly, everything was wrong, but I think we have to recognise that there were some weaknesses or some elements that did not work so well for the later stages of the project. I do not know whether Mr Meggs would have anything else to say.

***Tony Meggs:*** I support everything that Bernadette has just said. These models were established because they provide a degree of autonomy and allow the project to attract the best and brightest in a way that is very difficult within a civil service context. They protect against the movement of money that occurs in other areas, where projects in different jurisdictions in Government get money taken away from them and so on. They have a lot of benefits, but there is room for improvement. From my experience in Government, I would say that this was an example of extreme autonomy. With the benefit of hindsight, a few more periodic deep reviews, particularly in the later stages of the project would have been very beneficial.

Q114 **Chair:** Who would have been best to do that? Which bit of the system would be the best to do those periodical reviews? The IPA? The Department?

***Tony Meggs:*** The IPA, but— There are no buts; I am a great fan of the IPA for various reasons—

**Chair:** If you weren't, we would be a bit worried.

***Tony Meggs:*** But I do think some of the reviews need to be tailored. I think what Crossrail would have benefited from, in round about 2016-17, would have been a really extensive review. That might have involved co-ordination by the IPA, but also the bringing in of—

**Chair:** At that point, because it was moving from doing the tunnels and the building to the integration.

***Tony Meggs:*** Yes. Everybody recognised those risks—

**Chair:** So it was becoming a different project.

***Tony Meggs:*** And I would take some responsibility for that.

Q115 **Nigel Mills:** Do you think you are going to have to make any more adverse event notifications? Presumably you still don't know a timetable.

***Tony Meggs:*** I sincerely hope not.

Q116 **Nigel Mills:** So you do not think that when you set your window, which presumably will be a lot longer than December 2019, that will trigger a need to make a formal notice under the contract.

***Tony Meggs:*** I would need to check that precisely. We are operating in a completely different mode at the moment.

Q117 **Nigel Mills:** Have we just abandoned the terms of the structure, then? We just thought, "It has all gone horribly wrong. We will just ignore he structure now."

***Tony Meggs:*** I am not saying that. I am saying that we are trying to move, beyond contractual arrangements, to a much closer working with the sponsors, with much more detail. They come and attend a session of our board meetings. I have met with the sponsors 10 times in the last five weeks. We have opened the process up.

Q118 **Nigel Mills:** I say abandoned, you say moved beyond, but they are the same thing. We have just ripped up the governance contract.

***Tony Meggs:*** No, I disagree. We are not abandoning anything.

**Nigel Mills:** Well, moved beyond.

***Tony Meggs:*** If anything, I am saying that an occasional adverse event notice is not sufficient—

Q119 **Nigel Mills:** Okay, but you are sat here in front of us more than a year behind and more than 20% over budget and you cannot tell me whether you have even thought whether there are any more notices you are legally due to provide under that contract.

***Tony Meggs:*** I have not.

Q120 **Nigel Mills:** Is that not a fundamental part of the job—to know what your contractual relationship is with your main sponsors and what you have got to do to comply with it?

***Tony Meggs:*** I am sure it is. I have been here six weeks now, and that is something—

Q121 **Nigel Mills:** Mr Wild, have you assessed this?

***Mark Wild:*** I have. In support of the chair, we have gone the extra mile. The sponsor board is on Friday. We will be having the sponsor board meeting in our facility at Stratford. We will be going through in great detail, together and collaboratively, with the production—

Q122 **Nigel Mills:** But that isn't the question. The question is: are you familiar with the contractual obligations and do you believe there may be a need to make further formal notifications under those contracts?

***Mark Wild:*** We will research this properly, but, as I understand it, there is no requirement now to reset.

Q123 **Nigel Mills:** When you say you will research, you mean you don’t know.

***Mark Wild:*** Put it this way—nobody has put that top of my list. Top of my list is working with the sponsors collaboratively and openly. That is the most important thing.

Q124 **Nigel Mills:** So the structure has failed. I would probably understand it if you said, “Look, it has all gone so wrong and we are now working much closer together, there would be no point making a formal notice because we have already told them months in advance what the situation is.” I could understand that, but that is not the legal position that you are in. It just looks like this carefully designed structure is just not appropriate.

***Mark Wild:*** Can I just dispel a myth? We will check on the adverse event notices—I don't believe any more are due, but it is a technicality, which we will check—

Q125 **Nigel Mills:** It's not a technicality, is it? It triggers legal powers that your sponsors then have, and then have to decide whether to use or not.

***Mark Wild:*** I believe they are not required any more, but it will be checked. Rest assured though, all the other structures are in place and have been enhanced. There have been 101 sponsor board meetings—every four weeks. I spend a lot of time doing that. Every single governance element that we had is in place. We will check about the adverse event notices, but rest assured that we are closer than ever to the sponsors, learning the lessons, as the chair said. It is not like we don't understand something has gone wrong here. We do need to use the structures we have to go forward.

Q126 **Nigel Mills:** How bad would it have to be, Ms Kelly, before you and the other sponsor thought, "We best take this back in-house and just finish it off ourselves"? Presumably it would have to be quite a lot worse.

***Bernadette Kelly:*** What we have done, obviously, over the past few months, is to see a huge change in the leadership of this project. We have had Mark Wild's appointment, and Tony Meggs's appointment. Mark has made a number of very senior appointments to his team. Tony Meggs is refreshing the board. We have an effective and very significant refresh of the leadership of the project. So it has happened.

Q127 **Nigel Mills:** The important thing is the lessons for future major projects. You said that this independence or autonomy was a bit too extreme.

***Bernadette Kelly:*** Yes.

**Nigel Mills:** So when we do High Speed 2, or we look at Highways England and those things, you would not have that structure in place.

***Bernadette Kelly:*** They operate on a very different basis. They do not have the level of autonomy that Crossrail Ltd had. They operate at arm's length, because there are things they need to be able to do outside of the normal civil service way of doing things—they are building railways and roads. They need organisations and to build organisational capability to do those things. They have freedom to operate in ways that are different from my Department or any other part of the civil service. The governance arrangements, the oversight arrangements and the way we work with those organisations is profoundly different, I would say, from the way that the operation was set up in Crossrail Ltd.

That is not to say that there will not be benefit and virtue in ensuring that they have autonomy in certain areas of their delivery to secure the benefits that Crossrail enjoyed in delivering the project. I do not want to make it a blanket argument against, but I would observe that I think the arrangement we have in place for those organisations is quite different in a number of ways.

***Matthew Lodge:*** My personal view is that—we talked about review points earlier—for complex projects with complex systems in them, a number of years prior to going into operation, they need a formal review process. Crossrail, after all, had review points right back in 2008, 2009 and 2010, when it had established lots of its autonomy that allowed it to do the things that the company now does. A bit of a review at, say, three years out from a key operational change would be quite a good discipline to make sure you are ready to move into that new phase of a project.

Q128 **Nigel Mills:** To shift the subject slightly to the level of executive remuneration that was paid to people—

**Chair:** It is usefully laid out on pages 18 and 19.

**Nigel Mills:** You are telling us how great it is that we have replaced all those people, but they were paid quite handsomely. What is your view on that, Ms Kelly? The former chief executive earned £1.7 million over two years.

***Bernadette Kelly:*** Sorry, was the question to me?

**Chair:** Yes. Did you think the chief executive earned his £1.7 million?

***Bernadette Kelly:*** The first thing I want to make clear is that the Department is not directly involved in the way in which those remuneration packages—

Q129 **Chair:** We are not asking whether you were involved in the packages. They were paid highly because they were experts, but do you think they were worth the money that they were paid?

***Bernadette Kelly:*** Again, I will step back and say, first, I do have views. This was an area that the commissioner of transport in London will share as the owning group, effectively, for Transport for London. There should have been more challenge to the Crossrail remuneration committee. On the broader question—I do not want to get drawn on individuals—I would say that, to deliver projects of this scale and complexity, organisations need to be able to recruit and retain—

**Chair:** We know that. We agree with you that people need to be paid correctly for the job.

***Bernadette Kelly:*** I think there was insufficient accountability here. I would also observe that the total levels of remuneration here are somewhat higher than those for the chief executives of my arm's-length bodies.

Q130 **Nigel Mills:** You say you have views. That implies that your view is that they were overpaid. Would that be fair?

***Bernadette Kelly:*** What I have said is that where we are appointing chief executives with, I would say, equivalently challenging roles in our arm's-length bodies, the levels, in particular of variable pay, are not equivalent to the ones you see here.

Q131 **Nigel Mills:** So they were overpaid—that would be a short way of putting that, would it not?

**Chair:** Ms Kelly is a mistress of the art of civil service speak.

***Bernadette Kelly:*** Those are your words. I have no doubt that the packages were in accordance with the framework and so on that had been established at the time. There should have been more oversight of those arrangements. I observe, as I say, that we have senior executives doing equivalently weighty jobs elsewhere for somewhat less.

Q132 **Chair:** One of the concerns that we had when we looked at this was the number of board members who moved on all of a sudden in June and beyond June last year. There are only three board members, including you, Mr Wild, who have actually had any longevity. Do you think there is an issue with continuity on the board?

***Mark Wild:*** I actually have the opposite view. We now have a board that is expert in these areas. Perhaps the change should have been made a bit earlier. Continuity is important, but what is really important is for an executive to have a board that is knowledgeable, can be a sounding board and can challenge you. To do that, they probably need to have specialist skills, so I think the opposite. The Department and TfL acted quite decisively in 2018. Looking back, perhaps it should have happened a bit earlier.

Q133 **Chair:** I go back to Ms Kelly on that, picking up from what Mr Mills was asking. It is interesting to see the names of the people involved. We are not going to pick on individuals, but some people had a number of board appointments. There were professional board members who were not necessarily experts in running a railway. Do you think that led to some of the problems—the fact that they weren't being challenged enough internally by people who weren't expert at running major projects?

***Bernadette Kelly:*** Sorry, you are looking at—

Q134 **Chair:** Up to 31 March. Figure 10. I won't name names, but do you think the governance through the board—the non-executive members of the board, in particular—was strong enough? We have talked about those who were paid as executives, but we haven't talked particularly about the non-executives. Do you think that is an issue across Government, too? Do you think we are perhaps not getting the right appointments in some of these places?

***Bernadette Kelly:*** I am not sure I would conclude that, just because somebody hasn't had major projects experience with this sort of project, they can't bring important skills, perspectives and challenge to a board of this sort. What you would expect to see on a board is a range of different sorts of skills. Sometimes those skills relate to—

Q135 **Chair:** Do you think this board was up to it, in summary?

***Bernadette Kelly:*** Again, it comes back to the job that was done for very many years successfully. I think that what this board lacked in the final stages of the project was the right sort of experience to ask the right sorts of questions—the sort of things that Mr Wild was able to do and Andy Pitt and other new members have done. If we had had more of those skills sooner, some of these issues would have been picked up sooner.

Q136 **Chair:** Mr Wild, you were a board member from September 2016. When you were a board member, were you asking questions about the issues that you are now trying to sort out as chief executive?

***Mark Wild:*** I am actually comfortable with my own performance.

Q137 **Chair:** So what was the problem if you were raising what seemed like reasonable, sensible points? We as a Committee are not experts in running railways. Most of us are not experts in major projects, but we can recognise the integration problem from other work we have done. You were raising these issues. What was the rest of the board saying?

***Mark Wild:*** There were colleagues on the board, such as Phil Gaffney, who is a very notable system integration expert, so it is not like we were bereft of it. At that point, the fundamental problem was that the executive didn't understand or quantify the risk that they were carrying.

Q138 **Chair:** They weren't reporting the right information to the board?

***Mark Wild:*** I don't think there was a conspiracy—

Q139 **Chair:** No, I didn't say there was a conspiracy. I said that they weren't reporting. We have heard in some of the reports that Mr Rowley has read through that that wasn't coming up to you at board level.

***Mark Wild:*** It is clear now that the information coming out of the executive didn't adequately assess the work to be done physically. That is something we are fixing with transparency of work to do on site and the integration of risk. I have learned lessons that I will take forward. Everybody learns in their career, but I think the board itself should have been refreshed a bit earlier, particularly around the Pudding Mill Lane explosion.

Q140 **Chair:** Is it coincidence that board members were leaving in March and June last year?

***Mark Wild:*** I think that when we had the Pudding Mill Lane explosion, which was in November 2017, everybody was on a heightened sense of alert about the risk profile. I can't speak for the Department, but I can speak for my old boss, the commissioner, and the TfL board. They definitely wanted closer scrutiny.

Q141 **Chair:** That was a warning shot to say, "We need different people in there on the board."

***Mark Wild:*** I don't know about the Department, but certainly for TfL—

**Chair:** Ms Kelly is nodding, for the record.

***Bernadette Kelly:*** I totally endorse that. What was happening was, as you say, Transport for London and the commissioner wanted at that point to have different sorts of skills and membership around the table. We took exactly the same view, and both sponsors in this period appointed new non-executives to this board.

Q142 **Chair:** It is worrying to us, as you will have picked up, that it took the fire at Pudding Mill Lane to get people looking at this, first of all, and then realising that there were these other problems, and that you had these highly paid executives who, according to Mr Wild, were not passing things up through the board. The governance structures were not really working, were they, Ms Kelly? We now have different people. What do you think should be done differently, in summary? What would be your key takeaway as to how this should be governed in the future?

***Bernadette Kelly:*** I think the point that both Mr Meggs and Mr Lodge made is really important. With hindsight, what there should have been was a fundamental revisit of the governance structure—probably two or three years ago. We should have built that in from the outset. That would have given us a trigger, in the absence at that point—because it would have been absent at that point—of evidence that this project was failing. It would have given us the opportunity to really challenge the governance structure and provide the right sort of inquiry about whether it was fit for purpose going forward. It would have given us a point at which we could have made more changes in a way that would have been programmed in, rather than being seen as an attack on what was then a very, very successful organisation.

Mr Meggs has given his views, and I certainly think the IPA would help with such a review. I think in this instance, in a project like this, which was jointly sponsored, that should have been a review that was programmed in from the start, jointly commissioned by TfL and the Department, carried out by a heavyweight, independent entity or organisation, and really providing a moment of scrutiny and questioning that got beyond, "This project is doing well. Why wouldn't we keep on with what we've got?", and actually asked the questions about systems integration.

Q143 **Chair:** I don't think anyone would disagree with that analysis, but most people would ask this question. This was taxpayer funded, through the Department and TfL, so there was that money going in, yet even the power of being the funder somehow did not give you the confidence, the ability or the will to not just call in for a chat and get the answers from Crossrail, but say, "Actually, we're so concerned that we want to go in deeper," either in June of last year or, indeed, at an earlier point.

***Bernadette Kelly:*** But I also think this reflects in part the fact that the scale of these problems emerged far faster, frankly, than one would have expected. As late as March/April, we were still looking at budget overruns of at most £200 million to £300 million. Obviously, we were disappointed and concerned about that, but in a project of this scale it was a warning bell, but it wasn't a sign of problems as major as the ones that we subsequently, over the summer, came to realise were crystallising.

Q144 **Chair:** There are still many more questions on this, but I am going to pause here, because we are going to be looking at it again. The National Audit Office is obviously going to be doing a full investigation. Also, we have papers that you have provided us with. Thanks for that.

Mr Meggs, you talked about accountability at an earlier stage. I hope that means that you will be able to start providing us with unredacted reports of things. We are very clear as a Committee that when information is provided to us, it doesn't leak out; we have methods for managing that. Would you commit to providing us with unredacted information as we have requested?

***Tony Meggs:*** Yes.

Q145 **Chair:** Thank you. Ms Kelly, can we have the same from the Department?

***Bernadette Kelly:*** I am not going to give a blanket commitment to never redacting. We only ever redact when we need to.

Q146 **Chair:** Well, we expect some redactions of names of junior civil servants and things like that.

***Bernadette Kelly:*** I am certainly very open to looking at how we can ensure that, if we have assurances from the Committee on confidentiality—

**Chair:** Of course.

***Bernadette Kelly:*** Then the information that we provide can include as little redaction as possible.

Q147 **Chair:** Certainly we are well used to handling this information. Of course, it is within my powers to call for persons, papers and records, and I think you can't say no, but we are willing to negotiate up to a point.

***Bernadette Kelly:*** Of course, you know this as well. All this documentation is available, in full and unredacted, to the NAO as they carry out their inquiry.

Q148 **Chair:** Absolutely, and we look forward to the NAO helping us with this as well, but we like to see the information directly, as we have done with Carillion very effectively.

I am now going to move on. The other witnesses may wish to take a comfort break at this point, because I don't think, Ms Kelly, you need any help with this one—not that you need any help generally, I am sure. Mr Meggs may think he can give you a break, but I am sure you are very robust and can cope with this. I am sure that, if the others wish to leave, Ms Kelly can manage us. We are moving on to the issues of Seaborne and Eurotunnel. I am going to ask Ms Moran to kick off, but we will just give everyone a moment to settle, and allow Ms Kelly to get her papers together. I hope you have enough water there—you might need a few glasses for the next bit.

***Bernadette Kelly:*** I obviously need to pay attention to the questions.

**Chair:** And if you are quick in your answers and we are quick in our questions, we should get this wrapped up by 5 o'clock, so there's an incentive for you. If you go longer, we will just go longer, so it's an incentive for you to be quick in your answers.

***Bernadette Kelly:*** I am keen to get this over and done with very quickly.

**Chair:** There we go—let's be short and sharp. Leading us is Ms Moran.

Q149 **Layla Moran:** Referring back to the previous session, you said you were confident in the legal advice that you had received about the procurement process in Eurotunnel. Do you stand by the statements you made the last time we spoke?

***Bernadette Kelly:*** I most certainly do. I am confident that our process was legal and proper. I am confident that the Department took into account the legal advice that it received.

Q150 **Layla Moran:** Would you be willing to release that legal advice?

***Bernadette Kelly:*** No. Sorry, that is a rather blunt answer. Let me try to be more of a mandarin. It is a very strong convention that legal advice provided to Government is covered under legal privilege. It would be very exceptional for legal advice to be disclosed in this way.

Q151 **Chair:** Would the NAO be allowed to look at it?

***Bernadette Kelly:*** I believe we release all that to the NAO, and I have written to the Comptroller and Auditor General to look at the further events since the last memorandum leading up to and including that point in time.

**Chair:** With our trust in the National Audit Office we are happy with that.

Q152 **Layla Moran:** What is confusing me is this: if the legal advice was robust, why did you settle?

***Bernadette Kelly:*** I said that we had legal advice and that I am confident our process was legal. I did not say, and I do not say now, that no legal risk existed in this process. The legal advice did not tell me that no legal risk existed; it told me about the nature of legal risk. I do not think those two things are inconsistent. There are risks in all commercial contractual arrangements, so that is not unusual.

Q153 **Layla Moran:** Without going into the detail, was the legal advice more or less risky?

***Bernadette Kelly:*** I think you are drawing me into the content of the legal advice, which I do not think I am able to share.

Q154 **Layla Moran:** I think you have misinterpreted what I asked last time we spoke. When I asked, "Do you have confidence in the advice?", I was asking whether you had confidence in the processes—that they were legal and that you would not receive a challenge, and that there was a sufficiently low level of risk to proceed.

***Bernadette Kelly:*** I had confidence that our processes were lawful. I had confidence in the legal advice I received. As you say, that is not a statement about whether any risk existed in this process. We knew there was legal risk in this process.

Q155 **Layla Moran:** What would have been the estimated cost to the taxpayer had you gone to court?

***Bernadette Kelly:*** That would have depended upon the judgment that the court made. I cannot pre-empt that.

Q156 **Chair:** Did you have an estimate of the legal costs on the Department's side of going through the whole process?

***Bernadette Kelly:*** Perhaps this is helpful. Why did the Government take the decision to settle? As the Government have been very clear, we took the decision to settle because we recognised that a risk existed, and that as a consequence of the court case, the court might choose to render the contracts that we had entered into ineffective. Under the current circumstances, faced as we are with the possibility that a no-deal exit could happen on 29 March, and that in a reasonable worst-case scenario that could lead to the interruption in the supply of vital medicines into the UK, the judgment that the Government took was that they were not prepared to bear that risk. We have no idea whether that risk would ever have crystallised, but the Government were not prepared to take the risk. That is what led them to the decision that they wished to settle.

Q157 **Layla Moran:** What does the Department of Health have to do with this?

***Bernadette Kelly:*** It has an enormous amount to do with this. The whole purpose of this contracting exercise and the Government's actions to secure ferry capacity is, in a no-deal Brexit and a reasonable worst-case scenario, to secure the flow into the UK of absolutely vital goods, of which probably the most vital are essential medical supplies needed for the NHS to protect human life and welfare. We have been working very closely throughout with the Department of Health, and with DEFRA and other Departments. This has been a cross-Government effort throughout. My Department acts as an agent for the whole of Government in securing this capacity. I know the Department of Health has an extremely close and significant interest in this process.

Q158 **Chair:** So who made the call about abandoning the court action?

***Bernadette Kelly:*** The decision to settle was taken in an ad hoc meeting of Ministers from across Government.

Q159 **Chair:** So it was a ministerial decision?

***Bernadette Kelly:*** It was a collective ministerial decision.

Q160 **Layla Moran:** While of course I cannot share publicly the settlement itself, perhaps I can seek the Chair's guidance about what we can talk about.

**Chair:** If you ask Ms Kelly a question, she will answer it if she can, but if it goes beyond what is possible at this stage—

***Bernadette Kelly:*** I believe appendix 4 has actually been put in the public domain.

**Layla Moran:** Okay, that is helpful. That is probably the most important bit. Appendix 4 reads to me—

**Chair:** We may get further papers in time, but this is where we are at the moment, because of the timescale.

Q161 **Layla Moran:** It seems to me that this is a very odd settlement, inasmuch as it is a promise of money but linked very closely to further works, which normally would be carried out by the Department seeking to achieve something, putting it out to tender and deciding what it needed. It strikes me that appendix 4 is very much the other way around; it asks Eurotunnel to come up with the project. Is that correct? Have I understood it right?

***Bernadette Kelly:*** I would not characterise it like that. Obviously, we were disappointed that Eurotunnel chose to take legal action in the way they did, because we believe there was a clear public interest, and indeed national interest, in ensuring that the contracts we had entered into were secure. However, we recognise that they are a commercial entity; if they see an opportunity to take legal action and believe it is in their interests to do so, that is what they will do.

In the process of determining how and whether we would settle, we were very clear that we wanted to secure the maximum possible benefits from any settlement for the wider economy and for the UK. On the conditions on which we were willing to settle, the negotiation we had with Eurotunnel was about what they would invest in—what purposes they would put the settlement agreement funding to. That was an absolutely key part of our position, because we thought it was extraordinarily important in terms of taxpayer interests and public interests to secure wider benefits. That is why we sought binding agreements from Eurotunnel that this is the purpose to which that money will be put.

Q162 **Layla Moran:** How confident are you that this is going to be stuff they did not already have in the pipeline? I am looking at paragraph 1, (a) through to (f), "Projects to assist in access to the UK terminal"—that is really broad.

***Bernadette Kelly:*** We have stipulated purposes rather than very specific things. We fully expect, and will actually be auditing the fact, that this is now what this money is spent on. We are very firmly linking this agreement to very specific things that we believe have benefits for Eurotunnel but also for the wider economy. That is what we have really secured through this settlement.

Q163 **Layla Moran:** But if these were things that you wanted to do, why didn't you initially just procure them from Eurotunnel before all this began and stop them suing you? Then we could have had a proper process, which we could have scrutinised.

***Bernadette Kelly:*** There is a sequence of events here. At the point at which we entered into the contracts in December, we acted on the known facts in front of us and the process in front of us, and that is what went forward. Legal risks were advised upon and understood. Eurotunnel subsequently decided to challenge that procurement. In those circumstances, we determined that the very best way to secure the public interest and get the maximum possible benefits for taxpayers was settling, in order to ensure there was no risk that the contracts could be made ineffective. Secondly, we determined that if we were going to settle, we should secure something of benefit to the UK and the economy in return for it. That is what we were seeking here.

Q164 **Layla Moran:** No, I understand. Last time, I questioned stakeholder management and asked whether this was a surprise. Was there no point before they actually went through with legal proceedings that they came to you or to others in your Department and said, "Look, we're really unhappy about what you're doing with the freight"?

***Bernadette Kelly:*** We have a dialogue all the time with Eurotunnel.

Q165 **Layla Moran:** Why, then, at that point did you not go through a proper procurement process with them about this? Was the fact that they actually went to court surprising to you?

***Bernadette Kelly:*** No, it wasn't, actually. We have a dialogue. We weren't astonished at all that Eurotunnel in the end chose to make a legal action; as I say, we know that companies do that where they see it as in their commercial interests. The expediting of the hearing was unanticipated, and it was the timing of that—

Q166 **Layla Moran:** In what way? Sorry, I don't understand.

***Bernadette Kelly:*** It is extremely unusual to have a case expedited in that way.

Q167 **Layla Moran:** But why would that have made a difference?

***Bernadette Kelly:*** It crystallised a particular legal risk, and the particular legal risk it crystallised was the possibility that these contracts could be made ineffective at a point so close to 29 March.

Q168 **Layla Moran:** It is unusual, but obviously logical, right? Because if the case wasn't heard before the contracts came into force, then there is nothing you can do after it has started—what, are you going to stop the ferries? So it makes a lot of sense to me that it would have been expedited, or is that a risk that you decided to take? "Oh, we're not going to court for months."

***Bernadette Kelly:*** There are a whole range of remedies. In a case of this type, there are a whole range of different legal remedies a court could look at, of which making the contracts ineffective is just one.

Q169 **Chair:** There are about 135 or 145 ports around the UK. If it had not been for this court case and this desire to settle, would Folkestone have been the port you would have felt was the most important?

***Bernadette Kelly:*** This is an area, genuinely, where we have been in discussions over a period of time about whether there are benefits from—

Q170 **Chair:** What I am asking is: was it the priority port? If there was a bidding round from the ports for this money, would it—

***Bernadette Kelly:*** If we had a bidding round, which we do not, then we would look at all of the bids that we received. Actually, I think the challenges around this particular port are quite significant.

Q171 **Chair:** Are you worried about legal action from some of the other ports?

***Bernadette Kelly:*** No, actually. We are confident that we have structured this agreement in a way that minimises the risk of further legal action.

Q172 **Chair:** Okay. I also wanted to really hone in on Ms Moran's point: how much of this is something that Eurotunnel may have done anyway?

***Bernadette Kelly:*** I cannot tell you that absolutely none of it is things that Eurotunnel would have done anyway. That is probably true, but what we will have is audited evidence that they have been spending all of this settlement on these things.

Q173 **Chair:** So it is a settlement, but you would only agree to settle on the basis that they spent it on something that you could go back and look at.

***Bernadette Kelly:*** Correct.

Q174 **Chair:** And it is £11 million every year for three years.

***Bernadette Kelly:*** It is structured over 45 months, roughly as you describe. Correct.

Q175 **Layla Moran:** Why 45 months?

***Bernadette Kelly:*** I think this was just part of the negotiation. Clearly, it is quite difficult to spend £33 million in a very short space of time, so the debate will have been about what is a reasonable timeframe. If we are demanding that this money is spent on these sorts of things, then there needs to be a reasonable timeframe to allow that work to be carried out, commissioned and done effectively. It is probably no more than a judgment around what is a sensible timeframe for these sorts of things.

Q176 **Chair:** But the sensible timeframe—I mean, this is 45 months, and if we have a no-deal Brexit, or even any exit actually, we are looking at 23 days. Nothing will be done in 23 days, really, will it?

***Bernadette Kelly:*** This is not about trying to ensure this work is done in 23 days. Absolutely not.

Q177 **Layla Moran:** And this work, just to be clear, will happen provided they can come up with a plan that you are happy with, and if you are not, there is some sort of arbitration mechanism. I can read that.

***Bernadette Kelly:*** Yes, I think there is a dispute resolution described in the document.

Q178 **Layla Moran:** When do you anticipate that you will see the project report? That is what it's been called, isn't it?

***Bernadette Kelly:*** I do not have a schedule at this moment, and I suspect we do not have a schedule at this moment. We will now be asking Eurotunnel to submit what they are proposing to do and the projects. I should say that this is not, and was never conceived of as, a settlement or an agreement that would allow Eurotunnel to make these investments before 29 March. Obviously, there is a particular pressure around 29 March, and that is exactly why we have contracted the freight capacity.

Q179 **Layla Moran:** To be clear, this will have—

***Bernadette Kelly:*** This will have longer-term resilience benefits and longer-term benefits in terms of security, flow and all of those things.

**Layla Moran:** And this will happen, and the money will go to them so long as they can come up with something you are happy with.

***Bernadette Kelly:*** Correct.

Q180 **Layla Moran:** Regardless of no-deal Brexit, this Brexit, or no Brexit at all, this will happen now.

***Bernadette Kelly:*** Yes. This is a binding agreement on all parties.

**Chair:** When you talk about the Department of Health and the relationship there, we were all, I think, rather puzzled that your Secretary of State did not appear in front of the House on Monday, and it was a comedy act. I do not expect you to comment on that, but when did NHS England and the Department of Health start engaging with the health providers? At the last session, on 13 February, you told us that these were conversations that they were going to have. You have now told us that you settled on the basis that health providers were worried about getting drugs in time.

***Bernadette Kelly:*** If you want a detailed response on questions about the actions that the Department of Health has taken to engage with health providers and the health service, you need to ask them.

Q181 **Chair:** No—just to be clear, it is about the rationale for making the settlement. What you are telling us is that the Department of Health needed the settlement to make sure that drugs arrive in the country. You may wish to go back and revisit what you told us on 13 February. Maybe it was a mis-speak, because you are not part of the Department of Health—I do understand that. You said then that they would be discussing issues with health providers.

***Bernadette Kelly:*** They have been discussing them for many months. As I say—

Q182 **Chair:** But then you were talking about the future, to know what they would need.

***Bernadette Kelly:*** What is happening now is a much more—

**Chair:** That was then. On 13 February, it was what they would need.

***Bernadette Kelly:*** There are two things here, if you would just let me explain. The Department of Health has been closely involved in this entire process of determining whether, and if so how, the Government should enter into contracts to secure ferry capacity, because a key thing was for the Department of Health and for the whole of Government to secure capacity capable of guaranteeing the flow of medicines. They have been—

Q183 **Chair:** So the top priority for Government was flow of medicines? I do not mean that pejoratively.

***Bernadette Kelly:*** We have a category one set of goods. It is not only medicines, but—

Q184 **Chair:** It is in the top category.

***Bernadette Kelly:*** It is an absolutely pivotal part. What is happening at the moment is that now that we have this capacity contracted with DFDS and Brittany Ferries, the Department of Health is engaging with the supply chain to basically determine exactly how that will be used. That is a slightly different engagement from whether it is needed.

Q185 **Chair:** You can go back with hindsight, but when you went out to market on that weekend of December to get the extra ferry capacity, you told us back on 13 February that the maritime routes had a longer lead-in time. That is why you did not go for the rail routes, but had you just included Eurotunnel in that list and had 10 companies bidding instead of nine, you would not be in this position now. Why did you not consider going out to Eurotunnel?

***Bernadette Kelly:*** We made judgments at that point about the market—

Q186 **Chair:** What would you have lost by going out to Eurotunnel?

***Bernadette Kelly:*** What we were seeking to do was contract with companies that either had, or had near plans to, run ferry services. Eurotunnel simply did not meet that kind of category. The other issue was of course that Eurotunnel is operating into the short straits, which is where the pressures on resilience will be greater. We made a judgment about what the market was, and the market that we judged to be most likely to meet the needs of this procurement were ferry operators or prospective ferry operators.

Q187 **Chair:** So you were emphatically not wanting to cover anywhere basically in Kent? Anything that had a port in Kent was out of the picture? Is that basically what you are saying? They could have put on more trains, I am assuming.

***Bernadette Kelly:*** I think what we were looking for was for—

**Chair:** They could have put on more capacity, but you did not want it all coming into Folkestone, or anywhere near Dover.

***Bernadette Kelly:*** When we assessed what is going to be most effective in securing the outcomes here that we are seeking for the economy, we were looking at, as I say, maritime capacity—so maritime operators who either were operating, or planned to operate, ferry capacity. That was probably the principal determinant of the market that we selected.

As I said, there was an issue as well around the fact that we were looking for ports that would not be potentially caught up in any disruption or resilience problems that, in a worst-case scenario, we might see occurring. But the principal reason was that we were looking to contract with ferry operators, or companies capable of operating ferries.

Q188 **Chair:** But you managed a contract with Seaborne, which had obviously never run a ferry. We have now finally received that letter from 28 December. When you came in front of us, we were trying to winkle out whether you had received a written assurance before you and the Treasury signed off the agreement on the 20th. You then let the contract to Seaborne on the 22nd, but the letter of comfort did not arrive until the 28th. Having seen that letter, it was a very flimsy letter from Arklow Shipping. Is that the normal threshold for the Department? First, it arrived after the event. Secondly, it was very flimsy. Is that the normal threshold that you would accept as proof?

***Bernadette Kelly:*** What we did with Seaborne, recognising that they were a start-up that did not have the established operation that we saw with DFDS and Brittany Ferries, is put in additional milestones and conditions to ensure that we were satisfied that they were going to be able to deliver on time.

**Chair:** Both that letter and the document from 19 January did not say a great deal. The January one said, "These are good people." I am paraphrasing rather crudely. They were not strong legal documents. They were not a sign that there was actually a contract signed to supply the ships. You could have just waited until you had the letter before signing the contract on 29 December.

***Bernadette Kelly:*** Almost certainly we would have not been able to achieve things in the timeframes we are looking for by working that way. What we—

Q189 **Chair:** Sorry, hang on. What was the problem with getting that letter? It was a one or two-sentence letter from Arklow to the Department. It did not arrive by 28 December, but you signed the contract on 22 December. If it was that flimsy, you would have thought that they might have managed to rustle it up between 20 December and 22 December. As the contractor, you could have insisted on that—you are the permanent secretary at the Department for Transport. They would not have said no to you, would they?

***Bernadette Kelly:*** When we entered into the contract with Seaborne, we immediately—knowing that they were an untested operator, albeit a perfectly credible one with a perfectly sensible business plan—

Q190 **Chair:** They failed the due diligence.

***Bernadette Kelly:*** We put in place these milestones, the first of which was that we wanted to see further written confirmation from their backers that they were seriously intending to back this operation. It is a short letter—in my judgment, it is admirably to the point and has exactly the same force as a 15-page letter that they might have sent. In that sense, this was written confirmation that we got one or two working days—if that, because it was Christmas—after we signed the contract, because that was our first milestone. We then continued to seek further milestones, which included points at which we wanted to see actual contractual arrangements. It was because they did not achieve such arrangements—Arklow decided not to back this—that we terminated the contract.

Q191 **Chair:** So what was the rush? Why couldn't you have waited until after the Christmas period?

***Bernadette Kelly:*** We were acting in a situation where we needed to secure this capacity at the earliest possible date, because we were looking at—

Q192 **Chair:** They were a start-up company, as your Secretary of State has said repeatedly. They did not have any other business; you were their big chance. They would have waited a day or two to sign the contract. It would still have been there.

***Bernadette Kelly:*** I maintain that we were entering into a contract that incurred no financial risk whatever to Government at that point. We said that as a condition of doing so, we needed early written confirmation, which we received within one or two working days; I have not counted how many of those days were bank holidays. We then continued to work very closely.

Q193 **Chair:** Is this how you would normally work? You are the accounting officer of your Department and a long-standing civil servant who has run major projects. Would you normally accept a letter after the event, or was there pressure put on you by your Secretary of State?

***Bernadette Kelly:*** There was no pressure. This was a reasonable judgment made about the commercial capability and credibility of this organisation, which my Department had been engaging with over many weeks and months. It was not someone who had just popped up as a result of this procurement; it was an organisation and entity known well in the industry and in my Department. It was a perfectly reasonable judgment to sign a contract that created no financial risk for the taxpayer at that point, because we were only ever going to pay Seaborne at the point at which they provided the services we had contracted for. We put in place a whole series of milestones. A very early one was further written confirmation of what we believed and understood to be true, which we received on 28 December.

**Chair:** It seems like that wasn't worth the paper it was written on.

***Bernadette Kelly:*** Obviously, but at the time at which they—

Q194 **Chair:** You spent £800,000 on advice, and the advice said, "Don't go with these people" and you still went with them.

***Bernadette Kelly:*** The advice did not say, "Don't go with these people."

Q195 **Chair:** You have a very clear phrase in the NAO Report. Had that been an exceptional and unusual set of circumstances?

***Bernadette Kelly:*** No, that did not relate to Seaborne in any way, shape or form. I want to clarify this, because—

Q196 **Chair:** There was a paragraph—I haven't got it in front of me.

***Bernadette Kelly:*** You're correct. It was reported in the NAO's memorandum. It was quoting the words that I used as an accounting officer in relation to the totality of this procurement. In using that language, I was making the point—I will clarify it—that we were operating in novel and exceptional circumstances. We were operating in order to secure contingency measures needed in the event of a no-deal Brexit. We were operating and acting to secure the supply of medicines and other vital goods into the UK in the event of a no-deal Brexit and a reasonable worst-case scenario. We were acting against the hard deadline of 29 March. Those are novel and exceptional circumstances for a Government procurement, which is what I was referring to.

**Chair:** Okay. You can sense our scepticism about the whole Seaborne fiasco.

Q197 **Layla Moran:** Very finally, is this a normal settlement?

***Bernadette Kelly:*** I think we have probably secured rather more in return in this agreement. I cannot describe a normal settlement. I am not in the habit of a huge number of settlements. This is a settlement that I think was appropriate to what we were trying to achieve, namely protecting the supply of medicines into the country and securing the best possible return for the taxpayer for the agreement.

Q198 **Layla Moran:** The other way round, though, is that I think it is pretty canny of Eurotunnel, because it strikes me that they had us by the balls and they were saying they were either going to keep going, under what sounds like legal advice that suggested there was a level of risk—do you accept that Eurotunnel has done really well out of this, too?

***Bernadette Kelly:*** You would have to ask Eurotunnel how they feel they have done out of this.

Q199 **Chair:** Do you think it has set a precedent in the Government, that if you take the Government to court at the right moment—get them tight into a corner—they'll pay out?

***Bernadette Kelly:*** I bring you back to my novel and exceptional circumstances. I am not sure what precedent is set.

Q200 **Chair:** As it was a ministerial committee that made the decision, we may need to put that to Ministers.

Can I just ask one final thing? We are hoping to see papers on this. I know that you will be releasing papers to the National Audit Office, but we would still like to see them ourselves—the court papers that obviously will not be released now in the normal process, because it was settled. Perhaps we will not have the whole conversation here, but we would like you to commit to considering letting us see those papers. As a Committee, as I say, we have a proper constitutional role to make sure that we do not release confidential papers into the public domain.

***Bernadette Kelly:*** Well, I will need to take a look and take advice on that. As I say, the general issue of legal privilege is a very important one here.

Q201 **Chair:** But they are not all legal papers in that court case.

***Bernadette Kelly:*** I understand that. I would need to take advice.

**Chair:** And there are a lot of them, so we are aware it could be a big reading job, but we are up for that.

Thank you very much for your time. With the time for Brexit fast approaching, we might well be putting a Report out on some of these issues very soon, but we will keep you posted. The transcripts of this and the previous session will be up on the website uncorrected in the next couple of days.