

# Nigel Harris

## Comment special



nigel.harris@bauermedia.co.uk

# Incompetence at the DfT

## Make no mistake, this is a watershed moment for us all

There are two simple things to make clear about the West Coast franchising fiasco - which I believe will become a defining moment - before we get into its extraordinary complexities and still unanswered questions.

First: this epic disaster is no fault of the railway - this is a 100% self-inflicted, confessed foul-up by the Department for Transport.

Second: do not underestimate the far-reaching nature of this as a national calamity, whose ripples, shock waves, implications and consequences will be felt way beyond rail, where the immediate impact has been nuclear.

The atmosphere at DfT is said to be 'toxic' after the suspension of three officials. First Group is furious and reeling - chiefly from the loss of £240 million in value as its shares tanked by 20%. Virgin is triumphant, despite the whiff of corporate hypocrisy and PR 'BS' from Sir Richard Branson. ("In every bid where we've come second, the winner went bust." I'm sure CrossCountry MD Andy Cooper was especially irked at that one).

We are in uncharted waters. Government cannot govern without an engaged, professional, adequately resourced and appropriately expert civil service to enact its business. And while the long-established principle that officials advise and ministers decide (ministers carry the can) holds good, it cannot be right that civil servants should screw up so royally and heads not roll. So having established those simple truths (DfT foul-up; railway blameless) let's look at what this issue is not. Let's peel this very large onion of a problem to hopefully expose the core issues.

As I see it, this is not about ministerial responsibility. Yet Labour's grandstanding seeks to blame everyone from current Secretary of State Patrick McLoughlin to his predecessor Justine Greening and her minister Theresa Villiers. This is cynical, political game-playing. It is entirely unreasonable to expect a SoS to effectively double-mark her officials' work, in a lorry load (literally - the bids were delivered by truck!) of documents. That's what the civil service is for - and if it is not for the purpose of providing government with competent machinery of governance, then what is its point? Also, European tendering law demands that ministers are expressly kept out of detailed involvement, to ensure fair play and impartiality. To expect any of the politicians to have monitored the West Coast numbers to the degree demanded by critics is absurd. It also raises interesting ques-

tions. At one point, it looked very much like Prime Minister David Cameron was involving himself in a supposedly apolitical process, as a result of a letter from Virgin that seems to breach the confidentiality requirements placed on all franchise bidders!

Accountability here is administrative and tracks back squarely to the desk of DfT Permanent Secretary Philip Rutnam. It has been admitted - even by top civil servants - that officials fouled up.

**"Is there a halfway house which, with DfT on its back foot, is now achievable in a way that was impossible before?"**

Neither is this matter about High Speed 2, Thameslink, InterCity Express or any other particular Government initiative you happen not to like. Unsurprisingly, the Chiltern NIMBYs (and that's now former Welsh Secretary Cheryl Gillan's own description of herself!) have been re-energised by this gift from the gods. They are insisting that the same 'flaws' infect HS2, which should be scrapped. Nonsense! HS2's projections have been worked up from scratch, well away from the DfT staff who screwed this up, and then independently verified.

It's also nothing to do with the Thameslink train order - won by Siemens - but a clutch of Conservative MPs are demanding "a rethink". They are either ignorant of the facts or also playing games because the rethink they want is impossible under European law. The only alternative is scrap the entire process and start again. This would take years.

Neither is this screw-up a springboard to renationalisation, which would put all 22,000 route miles directly into the hands of the very same people who have just fouled up the 401¼ miles of the West Coast Main Line. What could possibly go wrong?!

Having peeled these layers away, we start to see the West Coast problem more clearly - and the first thing to stress is that's precisely what it is... a West Coast issue. The problem is not with the franchising model, rather the way in which the model has been used. It was seemingly fed with erroneous, conflicting and inaccurate data - by civil servants. This has, of course, not stopped critics of franchising from

raining punches. RAIL's Chrisian Wolmar gives his views on page 42-43. I've always struggled to even understand the so-called 'Wolmar question' because franchising is a very well-understood means of running any kind of business. Maybe Wolmar should not ask 'what are franchises for?' but 'should we replace franchises with concessions?'

A big problem with franchises is that a long franchise (Chiltern) allows investment, but they are flawed by the impossibility of forecasting 15 years. It can't be done. So the whole deal is driven to paralysis. In the light of this spectacular failure by civil servants, ought we to look towards simpler concessions? The Transport for London/LOROL arrangements for the London Overground have been a major success.

Franchising has helped deliver the brightest, most customer-focused and successful railway we have ever had. Let's be clear: BR's customer offering in comparison was too often grubby, indifferent and poor. The front line railway today, notwithstanding excessive cost, is generally very good indeed and in many cases superb. Let's not fool ourselves with a rose-tinted view of a past that never existed - follow that path and we risk throwing the baby out with the bathwater.

But if the issues around transfer of risk in franchising really are beyond us (and I think that would be a shameful admission) then let's do something else. Without delay.

TfL's concession model really does put the passenger first in its detailed specifications, and is clear about where the risk lies. Concessions seem to work, put the passenger first and generally create great railways. The downside is that by removing all operator risk, concessions stifle innovation, because the focus is on cost control, rather than growth.

Is there a halfway house which, with DfT now on its back foot, is now achievable in a way that was impossible before? Chiltern MD Rob Brighouse lost no time in pointing out (in a letter to *The Times*) that his 20-year franchise (the country's fastest growing) had delivered a new main line at no cost to the taxpayer, with 97.5% punctuality and £250m investment funded by growth, not taxes. "No one told us to offer WiFi or add extra carriages - we are doing it because the franchise we operate provides us with the incentive to grow and the flexibility to innovate," he said.

It can be done and should be done else-  
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where. Branson's "insanity" claim is wide of the mark - but changes are certainly needed.

Which finally brings us to the Great Franchise Cock-up of Autumn 2012 that DfT announced on the morning of October 3, having told the principals late the night before.

Within the DfT, the franchising programme (seven franchises, about half of all routes) has been 'paused' while Eurostar Chairman Richard Brown produces an independent report. Whatever new SoS Patrick McLoughlin says about a rapid resumption of franchising, RAIL's sources close to Government reckon that this will still be stalled in the new year. The reportedly toxic atmosphere in the DfT will not encourage rapid progress, even when the 'go' button is pushed again. That one of the suspended trio of officials, commercial and technical services director Kate Mingay, formerly of Goldman Sachs, has sacrificed her anonymity to lambast the DfT and deny that she had anything to do with the West Coast franchise, ratchets up the crisis further. Her appointment of defamation specialist lawyers Mishcon de Reya doesn't bode well for a happy resolution, either.

And what of the West Coast, where we are told that the franchising procedure will be rebooted, with all bidders having their costs refunded - a figure said to be £40m? It will not end there - and the taxpayer liability could be terrifyingly open-ended. First will undoubtedly claim not only its lost mobilisation costs for the take-over, but probably the £240m wiped off its share value because of DfT incompetence. It may even seek to recover the lost profits it might reasonably have expected for the entire life of the 15-year franchise that it has now been denied. That would be a ginormous figure (many hundreds of millions of pounds), and would make the £40m bid costs look like small change.

And that's just First. What about consequential financial mayhem elsewhere? Train leasers had raised £500m, standing ready for new trains. Not only has that cash already found a new home in better and more reliable investments overseas, this debacle has horrified the investment community. Funds will now not only be more difficult to obtain in future, they will also be more expensive.

The problems seem to focus on the costs of walking away from a failed franchise. Virgin's £5bn bid was supported by a potential payment of £40m. First's £7bn bid was supported by a payment of £191m - the clear pro-rata mismatch (Virgin claims First's payment should have been £600m) is what Branson and his lawyers picked at until, in preparing for court, the DfT came across its errors.

But this is where I struggle with the facts and logic of what DfT is up to. If there is a clearly identified cock-up in the First bid,

which puts it ahead of Virgin, why not just re-evaluate the bid? Why not use correct data, get it properly verified and checked, and re-run the model to see if First still comes out on top? Just because the process was screwed up doesn't automatically mean that First didn't win.

And why do we need to refund £40m to ALL the bidders and start again? Because the DfT could not be sure that all bidders would still make the same bid if the errors in the First evaluation were put right. That implies errors way beyond those conceded in the First risk and inflation evaluations. Quietly circulating around Westminster are rumours that what actually happened is that bidders were not all given the same, consistent information.

The implications are appalling. One former Labour transport minister was reported in *The Times* saying: "The process relies on an arbitrary scoring system to assess the winner. If you want a particular outcome then all you have to do is make a series of small adjustments to the prices assigned to each element of a bid and you can get what you want."

**"God help Government and civil servants... if it comes to pass that the numbers were manipulated to make sure Virgin didn't win"**

God help Government and civil servants alike, if it comes to pass that the numbers were deliberately manipulated to make sure Virgin didn't win...the so-called 'Anyone But Branson' mentality said to infect the DfT. There are persistent rumours that even if it didn't go as far as a playing field skewed against Virgin, there's talk of derogatory emails which make clear that the DfT was riddled with anti-Branson sentiment. The DfT denies this. I do know that DfT has become exasperated by what it sees as Virgin's bullying and arrogant style in its Government dealings - did this spill over into corruption?

And this raises another intriguing set of questions. We now know all First's and Virgin's bid 'USPs'. In other words, everyone now knows what their bids are likely to be.

What we don't know, is what other bidders Abellio and SNCF/Keolis have up their sleeves? Their bids still remain confidential. A bid that didn't make the cut last time might now represent something different to what we've seen from Virgin and First. If the two giants aren't to cry 'foul' or 'unfair' then time needs to pass so that the world looks different when the new bids come along. A couple of years before any new franchise?

And who should run West Coast in the meantime? Labour Transport Shadow Maria

Eagle says it should be the DfT/DOR "so as not to favour one operator or the other".

What passengers want on December 9 (when First was supposed to take over) is no change to services, and the most logical way to do this is for Virgin to carry on as contractor.

If DfT goes for the state-run option (like the ECML) it could appear to be anti-Virgin. If it lets Virgin carry on running the railway on its behalf, it will look like it's caving in to Branson. If Virgin doesn't carry on, it would be unlikely to keep its management team in place for the two years a new bid might take, and which it might not win. Branson has already said if he gets to carry on in the interim he'll bid again, and might even bid for EC, but that if Virgin is thrown out now, he'll leave the industry for good. Dilemmas all round!

Can franchises be fixed? When the first 25 were sold off in the mid 1990s, the whole job was done in 13 months for just over £500,000 per bid. Twenty years later, bid costs average £5m and this one - the most complex ever - cost Virgin and First about £15m each. What makes matters worse is that the bidding community consistently reports chaotic, contradictory and confused DfT officials who stumble from one meeting to the next seemingly in a daze. TfL, on the other hand, is praised for the clarity and efficiency of its dealings.

So, we have poor franchises that are poorly managed. Can Richard Brown's independent review put this right in ten weeks? Can new Permanent Secretary Philip Rutnam be an effective new broom? There have, after all, been three Permanent Secretaries and three Secretaries of State since the last election, plus 20% cuts, the departure of skilled staff and a massive workload.

Meanwhile we have a largely successful industry carrying twice the passengers BR carried before privatisation, which deserves better. The whole system is on hold, and with every day that passes, investor confidence ebbs away, taxpayer liabilities increase and the skilled people that both Government and railway need look elsewhere for their careers. It could scarcely be worse. Unless, of course, it is found that officials did manipulate the numbers to create the outcome they wanted.

One last point. This whole problem tracks back to a fear that a franchise should not fail. This leads to paralysing complexity that seeks to protect DfT and TOC from the private sector inevitability that failures happen. Is that really such a bad thing? After all, it's happened several times already! The world didn't end. Trains kept running.

Providing there are proper 'walk away' and bonded payment terms, why not work with the laws of private sector physics, rather than against them? This is a watershed. A defining moment. We should seize the initiative and be radical - there won't be a better opportunity. ■