

A Failure of Governance

Case Study: InterCity West Coast



Louise Hart

BA LLB MBA CDipAF GAICD

West Coast Rail Fiasco



- 20 January 2012
UK Department for Transport (DfT) issues ITT for InterCity West Coast franchise
- 15 August 2012
DfT announces intention to award £5.5 billion franchise to First Group
- 28 August 2012
Virgin Rail Group commences proceedings for judicial review
- 3 October 2012
DfT cancels decision to award franchise

The Inquiries



- Report of the Laidlaw Inquiry, 6 December 2012 (HC 809)
- Report by the Comptroller and Auditor General, 7 December 2012 (HC796)
- HR Inquiry (not published)
- The Brown Review of the Rail Franchising Programme, January 2013 (Cm 8526)
- Transport Committee Eighth Report of Session 2012-13 (HC 537)

Passenger rail franchising



- TOC revenue primarily from ticket sales:
demand forecasts critical to tenderers
- GDP risk: InterCity East Coast franchise default
- Compensation for element of revenue variation
attributed to GDP
- GDP Resilience Model
- Subordinated loan facilities

What went wrong?

- GDP Resilience Model used to calculate the amount of the subordinated loan facility
- The guidance given to bidders did not reflect the actual output of the GDP Resilience Model
 - Real v nominal
 - Elasticity factor 1.4 v 1.8
- The Department, contrary to guidance given, applied discretion to alter the output
- The discretion applied unequally to the bidders

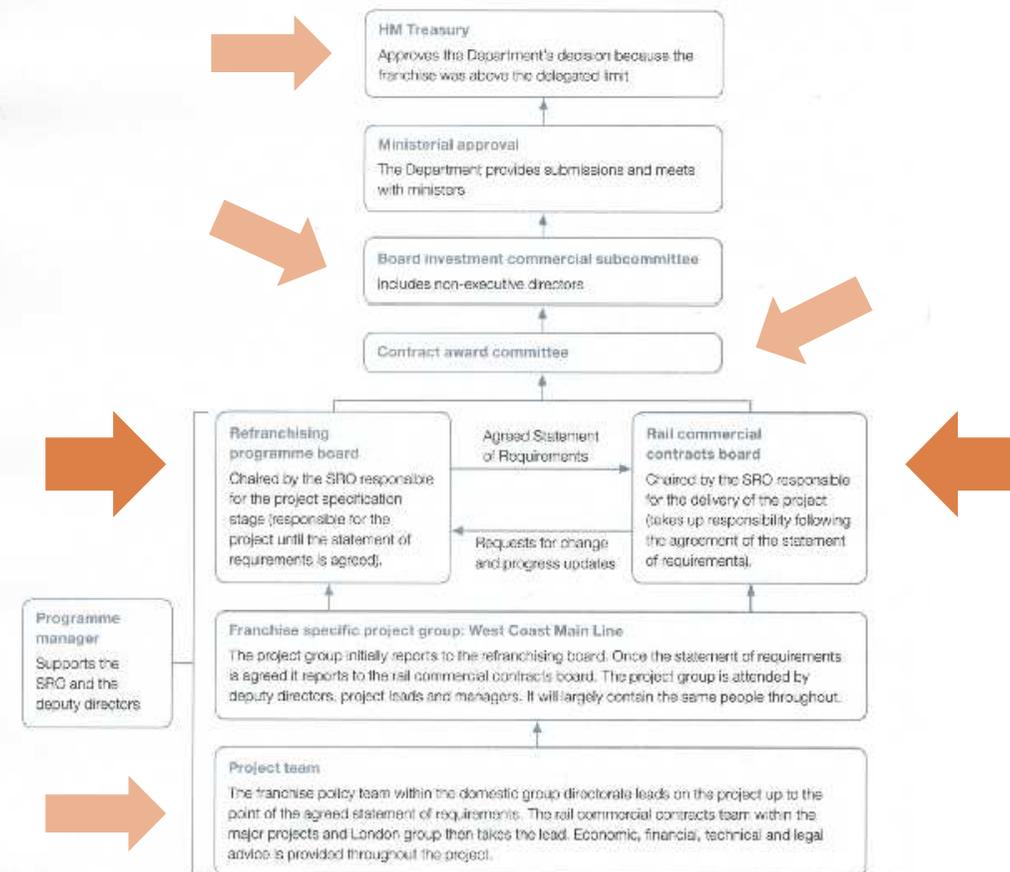
How did it happen?



- Internal governance
 - Committee structure
 - Roles and responsibilities
- External advisers
 - Decision to use
 - Place in process
- Independent review
 - Gateway
 - Other review

Actual governance structure

Figure 2
Governance structure for formal approval points for the InterCity West Coast franchise



NOTES

- 1 SRQ refers to senior responsible owner.
- 2 The Department changed the programme governance in March 2012 in response to findings by the Major Projects Authority (see paragraph 4.25).

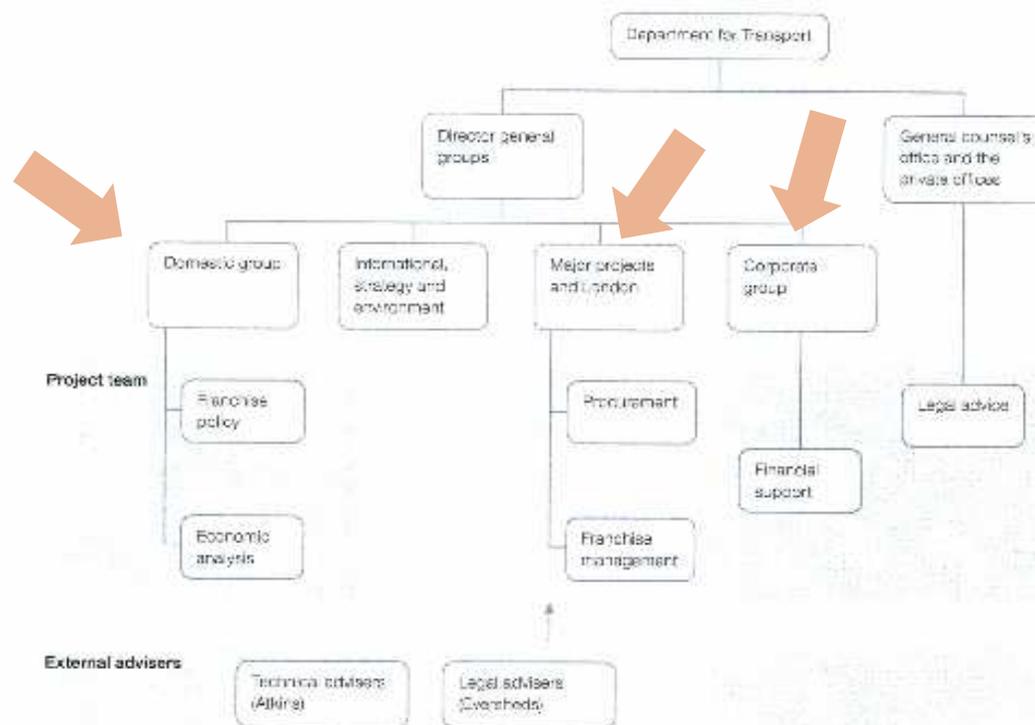
Source: National Audit Office review of the Department's delivery plans

Organisation structure

Figure 1

The Department's rail team showing franchise responsibilities

In 2010, rail policy and delivery was split across three directors general, whereas previously one director general was responsible



NOTES:

1. Split in the Domestic Group are the client for the franchise, with it also in Major projects and London group are responsible for delivering the procurement.

2. General Counsel are the chief legal adviser to the Department and is supported by a team of lawyers.

Source: National Audit Office analysis

In summary



- Governance structure not documented
- Ad hoc changes to terms of reference
- No senior person in charge
- Methodology not approved
- Anonymity concerns hindered governance

External Advisers



- No external financial advisers
- Legal advisers not in attendance at key meetings
- Technical advisers not involved in SLF sizing methodology
- No formal advice letters at key decision points

External review



- OGC/MPA strategic assessment Gateway review April 2011 – amber
- ‘hostile review’ November 2011
- Treasury Approval Point Panel January 2013
- OGC/MPA Gateway review March 2012 – amber/red
- OGC/MPA Gateway review July 2012 - green

Probity Auditor



- UK does not use probity auditors
- Evaluation methodology settled early
- Check on information provided to bidders
- Independent recipient of bidder process issues
- Independent confirmation that process has been followed

Governance failures



- ❑ Roles and responsibilities not settled
- ❑ No senior person in charge
- ❑ Process not settled
- ❑ No channel for bidders to challenge process effectively
- ❑ No independent process sign off
- ❑ No escalation of issues

A Failure of Governance: Case Study



Louise Hart

BA LLB MBA CDipAF GAICD

www.louisehart.com.au

How to let a billion dollar Government contract
without getting sued