



House of Commons
Committee on
Standards and Privileges

**Mr Stephen Byers
(Matter referred on 19
October 2005)**

Sixth Report of Session 2005–06



House of Commons
Committee on
Standards and Privileges

**Mr Stephen Byers
(Matter referred on 19
October 2005)**

Sixth Report of Session 2005–06

*Report and Appendices, together with
formal minutes and oral evidence*

*Ordered by The House of Commons
to be printed 30 January 2006*

Committee on Standards and Privileges

The Committee on Standards and Privileges is appointed by the House of Commons to oversee the work of the Parliamentary Commissioner for Standards; to examine the arrangements proposed by the Commissioner for the compilation, maintenance and accessibility of the Register of Members' Interests and any other registers of interest established by the House; to review from time to time the form and content of those registers; to consider any specific complaints made in relation to the registering or declaring of interests referred to it by the Commissioner; to consider any matter relating to the conduct of Members, including specific complaints in relation to alleged breaches in the Code of Conduct which have been drawn to the Committee's attention by the Commissioner; and to recommend any modifications to the Code of Conduct as may from time to time appear to be necessary.

Current membership

Rt Hon Sir George Young Bt MP (*Conservative, North West Hampshire*) (Chairman)
Rt Hon Kevin Barron MP (*Labour, Rother Valley*)
Angela Browning MP (*Conservative, Tiverton and Honiton*)
Rt Hon David Curry (*Conservative, Skipton & Ripon*)
Mr Andrew Dismore MP (*Labour, Hendon*)
Nick Harvey MP (*Liberal Democrat, North Devon*)
Mr Brian Jenkins MP (*Labour, Tamworth*)
Mr Elfyn Llwyd MP (*Plaid Cymru, Meirionnydd Nant Conwy*)
Mr Chris Mullin MP (*Labour, Sunderland South*)
Dr Alan Whitehead MP (*Labour, Southampton Test*)

Powers

The constitution and powers of the Committee are set out in Standing Order No. 149. In particular, the Committee has power to order the attendance of any Member of Parliament before the committee and to require that specific documents or records in the possession of a Member relating to its inquiries, or to the inquiries of the Commissioner, be laid before the Committee. The Committee has power to refuse to allow its public proceedings to be broadcast. The Law Officers, if they are Members of Parliament, may attend and take part in the Committee's proceedings, but may not vote.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at: www.parliament.uk/sandp. A list of Reports of the Committee in the present Parliament is at the back of this volume.

Committee staff

The current staff of the Committee are Dr Christopher Ward (Clerk), Ms Libby Preston (Second Clerk) and Michelle Owens (Secretary).

Contacts

All correspondence should be addressed to The Clerk of the Committee on Standards and Privileges, Journal Office, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 6615.

Contents

Report	Page
Mr Stephen Byers (Matter referred on 19 October 2005)	3
I. Introduction	3
II. Background to the Referral	4
III. Government work on possible alternatives to Railtrack plc	5
<i>Before the 2001 General Election</i>	5
<i>After the 2001 General Election</i>	6
IV. The Issues	8
<i>Introduction</i>	8
<i>The Case against Mr Byers</i>	9
<i>Mr Byers' Explanation</i>	11
<i>Checking of the transcript</i>	13
Conclusions and Recommendations	14
Appendix 1: Memorandum from the Clerk of the House [Byers.5]	18
Appendix 2: Memorandum from Mr Alan Duncan MP [Byers.6]	24
Appendix 3: Memorandum from Mrs Gwyneth Dunwoody MP [Byers.7]	29
Appendix 4: Memorandum from Chris Grayling MP [Byers.8]	31
Appendix 5: Memoranda from Mr Stephen Byers MP	33
Submission to the Committee on Standards and Privileges [Byers.9]	33
Letter to the Chairman of the Committee from Mr Stephen Byers MP, 18 January 2006 [Byers.29]	36
Appendix 6: Memorandum from Tom Winsor [Byers.23]	38
Appendix 7: Memoranda from the Department for Transport	44
1. Letter to the Clerk from the Department for Transport, 7 November 2005 [Byers.11]	44
2. Memorandum from the Department for Transport to the Committee on Standards and Privileges, 7 November 2005 [Byers.11]	46
3. Chronology of submissions and events relating to options for Railtrack 7 June to 25 July 2001	48
4. Letter to the Department for Transport from the Clerk, 17 November 2005 [Byers.14]	49
5. Letter to the Clerk from the Department for Transport, 23 November 2005 [Byers.13]	50
6. Letter to the Clerk from the Department for Transport, 25 November 2005 [Byers.16]	53
7. Letter to the Clerk from the Department for Transport, 2 December 2005 [Byers.20]	53

8. Letter to the Clerk from David Rowlands, Permanent Secretary, Department for Transport, 5 December 2005 [Byers.24]	54
9. Letter to the Chairman from David Rowlands, Permanent Secretary, Department for Transport, 9 December 2005 [Byers.25]	54
10. Letter to the Clerk from the Department for Transport, 13 December 2005 [Byers.26]	55
11. Letter to the Clerk from the Department for Transport, 9 January 2006 [Byers.27]	56
12. Letter to the Clerk from David Rowlands CB, Permanent Secretary, Department for Transport, 19 January 2006 [Byers.30]	58
Witnesses	60
Unpublished memoranda	61
Formal minutes	68
Reports from the Committee on Standards and Privileges in the current Parliament	70

Mr Stephen Byers (Matter referred on 19 October 2005)

I. Introduction

1. On 19 October 2005, the House referred to us the matter of “the evidence given by the Rt Hon Member for North Tyneside [Mr Stephen Byers] to the Transport Sub-Committee of the Select Committee on Transport, Local Government and the Regions¹ on 14th November 2001”.² The Sub-Committee was inquiring into the implications for rail services of the Government’s then recently issued draft policy statement on passenger rail franchising and the draft directions and guidance to the Strategic Rail Authority.³ However, following the placing of Railtrack plc into railway administration, the scope of the Sub-Committee’s inquiry was extended to include the impact of this on the Government’s franchising policy, and a range of issues relating to Railtrack’s successor.⁴

2. At our first meeting after the referral of this matter, on 25 October 2005, Mr Alan Whitehead declared a non-pecuniary interest in relation to the matter referred to us in that, at the material time, he had been a Parliamentary Under-Secretary of State in the Department of Transport, Local Government and the Regions, but with no direct responsibilities in relation to transport matters. All those giving oral evidence to us were made aware of this declaration.

3. On 16 January 2006, after we had completed taking oral evidence, Mr David Curry and Mr Chris Mullin were appointed to the Committee. They have decided to play no part in our consideration of this report in view of the late stage at which they have come to the inquiry.

4. We have taken oral evidence⁵ in this inquiry on four occasions: from Chris Grayling, who had moved the motion to refer the matter to us; Mr David Rowlands CB, now Permanent Secretary at the Department for Transport, but at the time the Department’s senior official on railway matters; Mr Dan Corry, then a Special Adviser to Mr Byers; and from Mr Byers himself. We are grateful to all the witnesses for their evidence.

5. We have also received a considerable amount of written evidence, much of which we have published. A number of submissions included documents that had also been included in the trial bundles in the case of *Weir and Others v The Secretary of State for Transport and Others*.⁶ Following judgement in this case, given on 14 October 2005, the Department made available for public inspection all the documents that comprised the trial bundles.⁷

1 Referred to hereafter as “the Transport Sub-Committee”.

2 See Official Report, 19 October 2005, Vol. 437, col. 848-50.

3 Transport, Local Government and the Regions Committee, Press Notice No. 3 of Session 2001-02 (23 July 2001).

4 Transport, Local Government and the Regions Committee, Press Notice No. 8 of Session 2001-02 (18 October 2001).

5 This evidence was taken in private, but is published in full with this report.

6 [2005] EWHC 2192 (Ch.). Referred to hereafter as “the Railtrack case”.

7 Appendix 7, p. 45.

As these are already in the public domain, we have not printed any such documents with this report, but have arranged for those submitted to us to be publicly available in the Record Office in accordance with the usual Select Committee practice.⁸

II. Background to the Referral

6. On 25 July 2001, Mr John Robinson, Chairman of Railtrack Group plc⁹, the publicly quoted parent company of Railtrack plc, met Mr Byers. According to the Department¹⁰, this meeting was at Mr Robinson's request. The meeting was not fully minuted, but the Government side recalled that, in an unminuted part, Mr Robinson said that he anticipated difficulties¹¹ when the company released its interim figures in November 2001 over stating that it remained a 'going concern'. Subsequent discussions between the company and the Government on possible ways to overcome this difficulty are well documented in the Railtrack case judgement.¹²

7. Mr Byers, as Secretary of State for Transport, Local Government and the Regions, had successfully petitioned on 7 October 2001 for Railtrack plc to be placed in railway administration on insolvency grounds. The petition followed his refusal, on 5 October 2001, to give the company additional Government financial support. These actions, and his motives for them, lay at the heart of the Railtrack case.

8. Mr Byers was called by the defendants as a witness in the Railtrack case. On 14 July 2005, counsel for the plaintiffs, in the course of his cross-examination, raised with Mr Byers the answers he had given at the Transport Sub-Committee on 14 November 2001 to Questions 854 and 857, both asked by Mr Grayling. In a line of questioning which the judge subsequently apologised to the House in his judgement for allowing,¹³ Mr Byers admitted that the answer he had given to Question 857 was "not a truthful statement.". When pressed in court as to his motives for this, Mr Byers was unable to give an explanation.

9. The exchange between Mr Byers and Mr Grayling at Question 857, as published by the Select Committee on Transport, Local Government and the Regions, is set out below:

"857. Was there any discussion, theoretical or otherwise, in your Department before 25 July about the possibility of a future change in status for Railtrack, whether nationalisation, the move into a company limited by guarantee, or whatever?"

(Mr Byers) Not that I am aware of."

10. Judgement in the Railtrack case was given on 14 October 2005. On 17 October, Mr Byers made a personal statement to the House.¹⁴ In his statement, he informed the House

⁸ For a full list of these documents, see p. 61.

⁹ This was the parent company of the Group, and the one quoted on the Stock Exchange. Railtrack plc was the operating subsidiary which held the network licence and owned almost all the rail network in Great Britain.

¹⁰ See p. 63, Item 1(d).

¹¹ See HC 239-II (2001-02), p. Ev 246-8.

¹² [2005] EWHC 2192 (ch).

¹³ See paragraph 242 of the judgement (reproduced at Appendix 1, p. 23).

¹⁴ Official Report, 17 October 2005, Vol. 437, Col. 639-640.

that his reply to Mr Grayling's Question 857 had been "factually inaccurate" and apologised. He added that he "did not intend deliberately to mislead" the Transport Sub-Committee, and that he had done so "due to an inadvertent error".

11. In his personal statement, Mr Byers recalled that, shortly after becoming Secretary of State following the 2001 General Election, he had asked for an options paper on the future of Railtrack plc to be drawn up, initially solely by his Department, but subsequently jointly with the Treasury and the Prime Minister's Policy Directorate. At that time he had seen this act of commissioning as "simply sensible contingency planning". He continued:

"However, it is my request for this work to be carried out that I now recognise could be interpreted as a discussion, and that would make my reply to the Select Committee factually inaccurate.

A critical meeting took place on 25 July when the Chairman of Railtrack outlined to me the financial difficulties that the company faced. It was only after that meeting that substantive discussions began about the possibility of changing the status of the company."

12. Mr Byers explained to the House why he gave the answer he did in the following terms:

"Having reviewed the documents that were put before the court, it would have been because I considered the meeting of 25 July to be the moment at which discussions began and that the commissioning of work to be carried out on the future options for Railtrack did not represent discussions in the true sense of the word."

13. Immediately following Mr Byers' personal statement, Mr Grayling informed the House that he did not accept and was not satisfied with Mr Byers' explanation. In introducing his motion on 19 October to refer the matter to us, Mr Grayling described Mr Byers' statement that the commissioning of work on the future options for Railtrack plc did not represent discussions in the true sense of the word as "utterly unconvincing". He also referred to the note of a meeting¹⁵ with the Prime Minister in July 2001, attended by Mr Byers, other Ministers and senior officials, that "refers very clearly to a discussion about the future structure of Railtrack".

14. After brief speeches supporting the referral from the Leader of the House, Mr David Heath and Mrs Gwyneth Dunwoody, who had been Chairman of the Transport Sub-Committee, the matter was referred to us by the House without a vote.

III. Government work on possible alternatives to Railtrack plc

Before the 2001 General Election

15. Concerns about Railtrack plc's financial position predated the 2001 General Election, and Mr Byers' appointment as Secretary of State.¹⁶ Key elements in this were the escalating

¹⁵ This is a reference to the Transport Stocktake held on 5 July 2001. Mr Grayling included the manuscript in his written submission (see p. 62), and the Department for Transport provided a typed transcription (see p. 64).

¹⁶ See p. 63, Item 1(a).

cost of the West Coast Main Line project and the immediate aftermath of the Hatfield derailment, but these were exacerbated by the way the Regulator proposed to defer revenues due to Railtrack plc in the Second Control Period, due to begin on 31 March 2001 and to run to 31 March 2006. The seriousness of the position was reinforced by the submission¹⁷ to the Department in March 2001 by Railtrack plc of financial information suggesting that the true value of shares in Railtrack Group plc was a small fraction of the then current figure quoted on the Stock Exchange.

16. There is evidence that, in this period, the Prime Minister wanted the fundamental choices on rail examined.¹⁸ Whether or not as part of this process, a paper on possible ‘radical options’, discussing briefly the respective advantages and disadvantages of each, was prepared by a Department of Transport official in February 2001.¹⁹

After the 2001 General Election

17. It appears that the Government’s immediate priority in the aftermath of the Hatfield derailment was the restoration of normal train services. The April 2001 financial settlement was designed, according to the Department²⁰, to stabilise the financial position of Railtrack plc.

18. Nevertheless, Mr Rowlands, in a brief to the new Secretary of State dated 8 June 2001, noted that the April deal was not fully comprehensive. Besides leaving the company needing to raise some £4 billion of new on-balance sheet debt by the end of the year (although there was apparently no evidence then of any expectation that it would have difficulty in doing so), it was contingent on arranging some £1.4 billion of off-balance sheet finance by late July, without which “the company’s need for new debt rises to a probably insurmountable £5.4 billion”.

19. The more detailed ‘Railways: Backgrounds and Issues paper’ prepared by the Department²¹ described Railtrack plc’s medium-term financial prospects as “shaky”. It continued:

“Even should the Regulator provide the company with all it seeks, the company’s debt burden may still be unsustainable in the longer term. Some form of financial restructuring within the next 5 years looks inevitable if the company is to survive and we are to avoid further substantial increases in support requirements.”

20. On 11 June 2001, Mr Byers commissioned, through his Private Secretary, “an options paper on the future of Railtrack p, covering all options short of renationalisation (although he noted that it may be as well to include a paragraph with pros and cons of renationalisation).” He had also asked for a meeting on options for Railtrack plc later in the

17 Appendix 7, p. 46.

18 See p. 61, Item 4. See also Q. 202.

19 Appendix 7, p. 57. See also p. 66, Item 22.

20 Appendix 7, p. 47.

21 See p. 63, Item 1(a), Annex B.

week. The paper²² was sent to him on 12 June and included an Annex setting out a range of structural options, with a brief summary of the perceived advantages and disadvantages of each. However, the paper also made clear that structural change was not seen by the Department as necessary to resolving Railtrack's management problems, and recommended discussions with the new Chairman before either committing any further funding to Railtrack plc or considering in detail any of the structural options. Mr Byers first met Mr Robinson on 25 June 2001.

21. At a departmental meeting on 20 June 2001, for which the box note specifically stated "You wanted to reconvene your meeting with rail officials considering:...Options for reforming Railtrack...", Mr Byers asked for joint Treasury/DTLR work to look at options for Railtrack plc²³. The note of the meeting²⁴ states "The Secretary of State said it would be essential to get Treasury buy-in to any further work on Railtrack structures."

22. Mr Rowlands agreed to take this matter forward with Ms Shriti Vadera, a member of the Council of Economic Advisers²⁵ at the Treasury. It appears that before Mr Byers asked his Department to initiate this work he had discussed the matter himself with Ms Vadera.²⁶ Mr Byers was also kept informed of the likely timescale for taking forward this joint work.²⁷

23. On 25 June 2001, a report²⁸ appeared in the Financial Times, which indicated that, whilst it was the Government's priority to get trains running again, Mr Byers was considering a range of ideas for the future. While renationalisation appeared to have been ruled out, there were apparently "many other options". The statements were attributed to unnamed Department for Transport officials.

24. A few days later, the No. 10 Policy Directorate picked up on press suggestions that Mr Byers was looking at 'radical solutions'. This rekindled interest there in the possibility of a more fundamental review of rail structures, as the Prime Minister had apparently wanted before the General Election. By the time Mr Byers wrote to the Prime Minister on 29 June ahead of the Transport Stocktake meeting, the joint working proposal had been extended to include the involvement of the No. 10 Policy Directorate.²⁹ The proposal was then further discussed and approved at the Prime Minister's Transport Stocktake on 5 July.³⁰

25. In his note to the Prime Minister³¹ ahead of the Transport Stocktake, Mr Byers wrote:

"A key question is whether Railtrack's problems stem from bad management or bad industry structure....A discussion with John Robinson, Railtrack's new Chairman

22 See p. 64, Item 5.

23 Appendix 7, p. 51.

24 See p. 64, Item 6.

25 The Council of Economic Advisers is made up of individual policy experts who bring their specialist advice to work alongside individual Treasury teams focusing on the Government's key policy priorities.

26 See p. 66, Item 26.

27 See p. 61, item 8.

28 Financial Times "Watchdog warns Byers that Railtrack Management is "barrier to improvement"", 25 June 2001 (reproduced at p. 42).

29 Appendix 7, p. 51-2. See also p. 64, Item 7.

30 Appendix 7, p.51.

31 See p. 64, Item 7.

had reinforced my view that this is basically a management problem. But it is a problem of unusual complexity and urgency. If the new management cannot demonstrate early progress, we may be forced to move to a radical alternative. My Department, the Treasury and the Policy Directorate are accordingly starting joint work to identify all the possible options for Railtrack. We will probably need to engage (in strict confidence) investment banking advisers.”

26. We asked Mr Byers whether in his view this reference to possible change at Railtrack plc constituted ‘discussions’,³² but he was reluctant to concede the point.

27. The review of Railtrack options was conducted by a very senior group of officials from the three departments. These included from the Department for Transport, Mr Rowlands; Mr Linnard, the Director of Rail Delivery; and Mr Corry, one of the Secretary of State’s Special Advisers. From the Treasury, it included Mr Macpherson, who was then Managing Director, Public Expenditure; Mr Wheatley, Head of Transport; and Ms Vadera. Dr Hackland and others attended from the No. 10 Policy Directorate.

28. It is clear from the papers considered by the group, and from the progress report on the group’s work sent to Mr Byers by Mr Rowlands on 30 July³³, that considerable discussion of a range of options had gone on in the course of the group’s deliberations. The final output of the group was a report of 3 August 2001 to the Prime Minister from Mr Byers, with a covering note prepared by the No. 10 Policy Unit.³⁴ This identified three lead options, on which further work was to be done, with a view to a decision by Ministers in September 2001. One of these options involved turning Railtrack plc into a not-for-profit trust.

IV. The Issues

Introduction

29. It is important to see this matter in context. The Transport Sub-Committee evidence session of 14 November 2001 was a lengthy one, and, not surprisingly given that it was Mr Byers’ first appearance as Secretary of State, ranged extensively over railway matters. At the heart of the referral to us, though, lies the answer to a single question. There appears to have been no dissatisfaction with the accuracy of the rest of Mr Byers’ evidence on that occasion, although in one case, the timetable for preparing emergency legislation to restrict the power of the Regulator, some of the Transport Sub-Committee wished him to be more specific, and drew inferences from his failure in this respect.³⁵ It is common ground that the answer to Mr Grayling’s Question 857 was factually inaccurate, and that the Transport Sub-Committee was therefore misled. Mr Byers has already apologised to the House.

32 See Q. 160-162, 164, 166, 171.

33 See p. 65, Item 10.

34 Appendix 7, p. 52.

35 See Q. 29 and HC 265-II (2001-02) Q.866-870.

30. The main issue for us has therefore been what lay behind the incorrect answer to Question 857. The Clerk of the House has advised us that, for a complaint to be sustained that a witness had wilfully misled the House or a select committee, and thus committed a contempt, it must be demonstrated not only that the statement or evidence was incorrect, but also that there was a deliberate intention to mislead. He continued³⁶, “In order to find that Mr Byers committed a contempt in the evidence session of 14 November 2001, the Committee will need to satisfy itself not only that he misled the Sub-Committee, but that he did so knowingly or deliberately.”

31. We have also considered the wording of Mr Byers’ personal statement, in which he conceded that his commissioning of work could be interpreted as a discussion; but went on to assert that “it was only after [*the meeting with Mr Robinson on 25 July 2001*] that substantive discussions began about the possibility of changing the status of the company.”³⁷ We needed to reflect on whether anything in the personal statement was also misleading.

32. There is also a third issue, in that the position could have been retrieved at the time if the factual inaccuracy in the answer had been spotted when the Department received the transcript of the evidence, and submitted an appropriate correction to the Sub-Committee. We have therefore also examined how the transcript was checked in the Department, with a view to establishing why this inaccuracy was overlooked.

The Case against Mr Byers

33. The bulk of the case against Mr Byers has been advanced by Mr Grayling. Mr Alan Duncan, Opposition Spokesman on Transport at the time of Mr Byers’ personal statement, also submitted evidence³⁸ suggesting that Mr Byers’ evidence to the Transport Sub-Committee was “knowingly inaccurate” and that his personal statement “repeated, and therefore compounded, the same untruth.” Much of the ground covered by Mr Duncan in his submission is also covered by Mr Grayling, and the thrust of their respective arguments is broadly similar.

34. Mr Grayling told us that, when the Transport Sub-Committee took evidence from Mr Byers:³⁹

“There was considerable doubt about whether this process, the process of pushing Railtrack into administration, had really been generated because the company came to see the Government and said “Help! We’re falling apart.” The very strong suspicion was that this had been part of a premeditated process that went back well before the discussions with Mr Robinson so this was a central point in the investigation.....”

³⁶ Appendix 1, p. 20.

³⁷ Official Report, 17 October 2005, Vol. 437, col. 640.

³⁸ Appendix 2, p. 24.

³⁹ Q.7.

35. Mr Grayling said that he had been surprised at the answer he had received,⁴⁰ but had not challenged it out of both a general lack of confidence, as a new Member, and because he had no evidence to hand to use as a basis.⁴¹ He asserted⁴² that Mr Byers had:

“knowingly and deliberately misled the Committee. I understand why he did it; it would have been politically embarrassing for the Government to admit at that point that these discussions had taken place...”

and that his motive for doing so was to avoid political embarrassment.⁴³

36. Mr Grayling also maintained that:⁴⁴

“We ought to be able in this House, when we ask a straight question to the Secretary of State in a select committee, to expect an up-front answer...there is supposed to be a fundamental principle in this place that Ministers tell the truth to committees and are up-front with committees...”

The overall effect of the Secretary of State’s answer had in his view⁴⁵ been that:

“the Committee was unable to pursue what otherwise would have been a legitimate line of questioning to understand what the Government had done, when and why.”

37. Mr Grayling told us that a secondary element that had prompted his and colleagues concerns as to whether the Government had been entirely open about its intentions in relation to Railtrack plc was the reluctance of Mr Byers to give the Transport Sub-Committee details of the timetable for the drafting of emergency legislation to restrict the power of the Rail Regulator to conduct an interim review should the Government decide not to provide additional funds to Railtrack plc.⁴⁶ Mr Grayling told us:⁴⁷

“The other area that the Government always kind of pushed us away from was “When did you actually start this work.””

It was this and a difference of view over precisely what transpired at the meeting on 25 July 2001 between Mr Byers and Mr Robinson that had prompted thoughts on Mr Grayling’s part that what had happened to Railtrack plc might have been part of a longer-term political agenda to restructure the industry rather than simply a response to Railtrack’s financial problems.⁴⁸

40 Q.10, 20.

41 Q.11. See also Q. 32.

42 Q.21.

43 Q.22.

44 Q.20.

45 Q.12.

46 See HC 239-II (2001-02), Q.866 to 870.

47 Q.29. See also Q.38.

48 Q.29.

38. As to Mr Byers' explanation in his personal statement of the reason why he had given factually inaccurate evidence, and his description of it as an 'inadvertent error'. Mr Grayling commented:⁴⁹

"I just do not buy that. I think it is an utterly lame excuse. I do not think it is an accurate excuse....".

He also described Mr Byers' apology as "fairly half-hearted",⁵⁰ maintaining that Mr Byers should have been "more up-front" with the Transport Sub-Committee and accepted that political pressures at the time had wrongly made him circumspect with the evidence he gave.⁵¹ Asked as to why he thought Mr Byers might have made a deliberately misleading personal statement when the documentary evidence, following the Railtrack case, was in the public domain, he said:⁵²

"Failure to understand the old adage, "when you're in a hole, stop digging", I think is the correct answer to that".

39. When asked if in his view Mr Byers was a liar, Mr Grayling responded "Yes, absolutely".⁵³

Mr Byers' Explanation

40. Mr Byers has made a written submission,⁵⁴ and also gave oral evidence. Following his oral evidence, he has, at our invitation, made a further written submission focussing specifically on the contemporary note of the Transport Stocktake with the Prime Minister on 5 July 2001.⁵⁵

41. Mr Byers, like Mr Rowlands and Mr Corry, confirmed that there was no reason why he could not have given a 'correct' reply to Mr Grayling.⁵⁶ His error, he considered, was in placing an unduly narrow construction on the word 'discussion'.⁵⁷

42. As his personal statement to the House made clear, Mr Byers accepts that his answer to Mr Grayling at Question 857 was factually inaccurate. In his written evidence he comments:⁵⁸

"When appearing before the Select Committee I did not regard the commissioning of this work to be a discussion in the true sense of that word. It was only when I was giving evidence in the High Court in July that I realised that the asking for work to be

49 Q.13. See also Q.24 and 35.

50 Q.9.

51 Q.8.

52 Q.26.

53 Q.28.

54 Appendix 5, p. 33.

55 Appendix 5, p. 36.

56 Q157, 167. See also Appendix 5, p. 37.

57 Q.167, 185.

58 Appendix 5. p. 34. See also Q.158

carried out on the future options for Railtrack could be seen by some people to constitute a discussion.”

43. In essence, Mr Byers’ original perception as to what constituted ‘discussions’ is summarised in his response to a question relating to ideas for alternative structures to Railtrack plc. The question was based on a press report⁵⁹ that Mr Byers was considering a range of options for the longer term. He replied⁶⁰:

“It is wrong in the context of my interpretation of discussions but it is right in the context of work having been commissioned because by that stage work had been commissioned.”

44. In his oral evidence, Mr Byers sought to distinguish between discussions which preceded his meeting on 25 July 2001 with Mr Robinson, at which Mr Robinson had indicated the extent of the financial difficulties of Railtrack plc, and those which followed.⁶¹ This meeting had previously been described by Mr Rowlands as ‘a watershed’ and after which, in Mr Byers’ view, discussion at Ministerial level had begun.⁶² He also sought implicitly to distinguish between exchanges which he had been involved in himself and those which others, such as officials had been involved in, reserving solely to the former the description ‘discussions’.⁶³

45. Mr Byers also argued in his oral evidence that account needed to be taken of the political context in which the question was posed.⁶⁴ He was aware that the political lines of attack at the time included an allegation that Railtrack plc had been forced into railway administration as part of a pre-planned Government strategy, but in his view Mr Grayling would not have known that there was no substance behind this.⁶⁵ He speculated that he may have given Mr Grayling “perhaps a rather broad brush reply” in the expectation that he had a more specific follow-up question. In the event, Mr Grayling did not, so Mr Byers’ original answer remained unqualified. In his most recent evidence,⁶⁶ Mr Byers maintains that his answer to Mr Grayling was conditioned by what he perceived to be the political context, namely, the Opposition’s apparent belief that there was a Government plan, devised before 25 July 2001, to push Railtrack plc into railway administration as a prelude to restructuring.

59. Financial Times “Watchdog warns Byers that Railtrack Management is “barrier to improvement””, 25 June 2001 (reproduced at p. 42).

60 Q.169

61 Q.170.

62 Q.176. See also Q.201.

63 Q.182-3. See also Q. 201.

64 Q.179-181.

65 Q.165.

66 Appendix 5, p. 36.

Checking of the transcript

46. Mr Byers cannot remember reading the transcript,⁶⁷ although Mr Rowlands indicated that it was routine for a Minister's Private Office to make these available.⁶⁸ Mr Rowlands, when asked why the Department did not take the opportunity to correct the record said:⁶⁹

“I am afraid the honest answer is I do not know at this distance.”

He apologised for the fact that the point had been missed,⁷⁰ and admitted that “it should have been picked up and at least drawn to Mr Byers’ attention but it was not.”⁷¹

47. It appears from an e-mail⁷² submitted to us that three officials attended the evidence session, but none of them as witnesses. The transcript was sent to each of them for comment. The three officials were Mr David Hill, one of Mr Byers’ Private Secretaries; Mr Dan Corry, one of his Special Advisers; and Mr David Macmillan, then on temporary promotion to the post of Director, Rail Restructuring.⁷³ The transcript was also copied for information to a number of other senior officials, including Mr Rowlands.

48. Mr David Hill produced a number of minor suggestions on the assumption that “as with Hansard, changes will have to be kept to a minimum”. Mr Corry, who had no recollection of the transcript,⁷⁴ had one suggestion to make. The Department has no record of any suggestions being made by Mr Macmillan. None of the suggested corrections related to Question 857.

67 Q.187.

68 Q.57

69 Q.48. See also Q.71-2.

70 Q.56.

71 Q.48.

72 See p. 64, Item 3.

73 Appendix 7, p. 58.

74 Q.137. See also Q. 83-85, 94-95, 115.

Conclusions and Recommendations

Mr Byers evidence

49. As we have already pointed out, it is common ground that Mr Byers' answer to Mr Grayling at Question 857 was factually inaccurate, that the Transport Sub-Committee was misled, and Mr Byers has apologised to the House for this. The focus has now switched to the reason why Mr Byers gave factually inaccurate evidence, and in particular whether the reason given in his personal statement—that the unduly narrow interpretation he had placed on the word 'discussions' in this context had inadvertently led him to give the inaccurate answer.

50. Mr Byers should of course have given the Transport Sub-Committee a correct answer.

51. There is general agreement between Mr Rowlands,⁷⁵ Mr Corry⁷⁶ and Mr Byers⁷⁷ that a correct answer to Mr Grayling at Question 857 would have referred to work being commissioned. There is also general agreement⁷⁸ amongst our witnesses, with which we concur, that there would have been no difficulty had Mr Byers given such an answer. Indeed, Mr Grayling himself conceded⁷⁹ that if Mr Byers had given a correct answer "It would not have changed the course of history".

52. Mr Grayling's case essentially rests on two elements of circumstantial evidence: the difference of view as to precisely what was said at the meeting between Mr Robinson and Mr Byers on 25 July 2001; and Mr Byers' reluctance to be precise as to when the emergency legislation to restrict the powers of the Rail Regulator was drafted. Taken together, these in his view suggested a pre-existing plan.

53. Given the significance placed by Mr Grayling on the exchanges⁸⁰ in the Transport Sub-Committee about the emergency legislation, we have asked the Department for details of the timetable for its preparation. It is now clear that, contrary to the impression gained by some from Mr Byers' answers in the Transport Sub-Committee, this legislation was *not* drafted before Mr Byers' refused further Government financial assistance to Railtrack on 5 October 2001. All Mr Byers had at that time was policy clearance from the Prime Minister and the Chancellor; the drafting process was not completed until 10 October 2001, five days after Mr Byers had refused Railtrack plc further financial assistance.⁸¹

54. As to precisely what transpired at the meeting between Mr Byers and Mr Robinson on 25 July 2001, there remain a number of unresolved points, despite the Department for

75 Q.44.

76 Q.86.

77 Q.156.

78 Q.45 (Mr Rowlands); Q.87 (Mr Corry); and Q.157 (Mr Byers). See also Appendix 5, p. 37.

79 Q.12.

80 HC 239-II (2001-02) Q. 866-870.

81 Appendix 7, p. 45.

Transport putting its partial note of the meeting in the public domain as part of its evidence to the Transport Sub-Committee,⁸² and the evidence given in the Railtrack case last year. For our purposes, though, the precise detail is immaterial; it is clear from Mr Byers' note to the Prime Minister of 3 August 2001 that officials' work looking at the options for Railtrack plc, as agreed at the 5 July 2001 Transport Stocktake, had "been given added urgency by Railtrack's deteriorating financial position."⁸³

55. More importantly, in all the material we have received, we can see no evidence that the Government had, before 25 July 2001, embarked on an active strategy of restructuring, although there is extensive evidence of officials working on possible options, particularly after the Transport Stocktake of 5 July 2001. All the papers we have seen are consistent with a twin-track strategy as summarised by the Prime Minister at the Transport Stocktake: concentrating first on getting the railways operating normally again, with work on options for possible restructuring being pursued in parallel on a longer timescale. The underlying assumption in Government appears to have been that, although Railtrack plc was widely acknowledged to have serious financial problems, and that these were likely to require attention in due course, until the end of July 2001 it was believed to be financially stable, at least in the short term.

56. Furthermore, as we have already pointed out, Mr Byers appears to have had no obvious motive for deliberately misleading the Transport Sub-Committee in his response to Mr Grayling at Question 857. As he himself put it,⁸⁴ "An accurate reply at the time would have caused no problems either politically or legally." Given that we have seen no evidence of an active Government strategy for restructuring Railtrack, as distinct from assessment of options, before 25 July 2001, we do not consider that the case has been made that Mr Byers had a political agenda which he was anxious to conceal from the Transport Sub-Committee.

57. While Mr Byers now accepts his answer was untruthful, we do not find the charge of contempt, as defined by the Clerk of the House,⁸⁵ is sustained. We do not believe, on the evidence we have seen, that Mr Byers lied to the Transport Sub-Committee as alleged.

58. We turn now to the explanation that Mr Byers offered to the House in his personal statement as to why he had given a factually inaccurate answer. Ministers are under an obligation, by virtue of the Resolution of the House of 19th March 1997,⁸⁶ subsequently taken into the Ministerial Code, to respect the "paramount importance" of giving accurate and truthful information to Parliament. **There can be no circumstances where it can be justified to derogate from this obligation for political reasons. Mr Byers' answer to Mr Grayling was factually inaccurate, and the political context cannot be used to justify this.**

82 HC 239-II (2001-02), Ev 246.

83 See p. 64, Item 5.

84 Appendix 5, p. 37.

85 See paragraph 30.

86 CJ (1966-97) 328.

59. The Department for Transport has told⁸⁷ us that the final output of the joint working group, which appears to have given extensive consideration to various alternatives to Railtrack plc, was the report sent by Mr Byers to the Prime Minister on 3 August 2001 and the covering note prepared by Dr Hackland.⁸⁸ Mr Byers must therefore have known when he gave evidence to the Transport Sub-Committee that these matters had been discussed within the Government in the terms of any commonsense interpretation of the expression “discussions theoretical or otherwise” in Mr Grayling’s question, as he had himself submitted the final report of the working group to the Prime Minister. Also, the exchanges which we refer to earlier in our report⁸⁹ constitute ‘discussions’ within the terms of Mr Grayling’s question.

60. However, it is also clear from the terms of Mr Byers’ personal statement that he is in reality unaware of precisely why he gave the answer he did. We do not find it inherently surprising that a witness is unable to remember why he gave a particular answer if challenged on it nearly four years later. What the statement makes clear is that Mr Byers was in fact seeking to extrapolate an explanation from the court papers.

61. We have no doubt, from the factual material we have seen, that as Mr Dismore put it to Mr Byers:⁹⁰

“the answer hangs on a definition of discussion....that most people in the room at the time would not have shared given the nature of the question that was posed to you.”

62. We consider that Mr Byers was unwise to try and devise retrospectively an explanation for his inaccurate answer. We also believe that, in his personal statement, he came close to repeating the error for which he had just apologised. **Given that Mr Byers could not recall why he gave the answer he did to Question 857, he should have said so to the House in his personal statement on 19 October 2005 and apologised unreservedly. We recommend that he now does so.**

Correction of the transcript

63. As we have said earlier, there is a third issue in that the incorrect answer was not corrected by the Department when it saw the transcript. Three factors appear to have played a part in this: a misunderstanding on the part of those examining the transcript over the scope of corrections allowed; a lack of understanding as to where the responsibilities lay;⁹¹ and the relative lack of experience in railways matters of the one policy official to whom the transcript was sent with a specific request for corrections. In this context, it might have been helpful if Mr Rowlands had asked a colleague who had greater personal experience of the events involving Railtrack plc also to check the transcript.

⁸⁷ Appendix 7, p. 52.

⁸⁸ See p. 64, Item 5.

⁸⁹ See paras 21 and 25-26.

⁹⁰ Q.180.

⁹¹ Q.95.

64. We welcome Mr Rowlands' assurance that, normally, all committee appearances are properly checked both by the Private Secretary and by at least one policy official,⁹² and note that he has apologised for the failure on this occasion to spot the error. **We recommend that all Ministers, whether or not they themselves read over the transcript, recognise that they are nonetheless responsible for the terms of their oral evidence and ensure that they have in place robust arrangements for checking transcripts. Ministers should also remind those responsible of the paramount importance of ensuring that evidence is accurate and truthful, and ensuring the correction of any inadvertent errors as soon as these are spotted. Departments should make sure that staff are fully aware of the rules relating to the correction of transcripts.**

65. It is clear in this case that at least one of the officials thought that only essentially verbal corrections were permitted. This view may have been informed by the letter (which was based on a standard letter used by all Committees) which accompanied the transcript, and which indicated that permitted alterations were restricted to the correction of inaccuracies in the printing or report of the written evidence and the correction of matters of fact which do not materially alter the general sense of any answer. It also indicated that explanations or additional information should be given by way of a footnote, or submission of a further memorandum, but did not explain further as to the sort of points that might be covered in this way.

66. **In the light of this case, we recommend that Committees consider amending this standard letter in the case of Ministers to make clear their obligations to the House to ensure the accuracy and truthfulness of their evidence. We are confident that Committees will be able to distinguish between genuine clarifications and corrections, on the one hand, and attempts at purely cosmetic improvement of the evidence, on the other.**

67. **We recommend that the Liaison Committee take forward our recommendations in this section.**

Appendix 1: Memorandum from the Clerk of the House [*Byers.5*]

Complaint relating to evidence given by Mr Stephen Byers MP to the Transport Sub-Committee of the Committee on Transport, Local Government and the Regions

Introduction

1. The Committee has asked for a memorandum on the complaint referred to it by the House on ‘the matter of the evidence given by the Rt Hon Member for North Tyneside to the Transport Sub-Committee of the Select Committee on Transport, Local Government and the Regions on 14th November 2001.’⁹³ The complaint was made by Mr Chris Grayling MP, who was a member of the Committee at the time, on the basis that an answer given by Mr Byers to a question asked by Mr Grayling has been demonstrated by subsequent disclosures to have been untrue. In the relevant question Mr Grayling asked Mr Byers whether there had been any discussion theoretical or otherwise in his Department before 25 July 2001 about the possibility of a future change in status for Railtrack. Mr Byers replied, ‘Not that I am aware of.’⁹⁴

2. During a court case, which I refer to in more detail in paragraph 14 below, Mr Byers admitted that this reply had been incorrect. On 17 October 2005, after the conclusion of the court case, Mr Byers made a personal statement to the House on this matter in which he stated,

It was pointed out to me in court that that answer was inconsistent with the documents that had been disclosed to the court. I must inform the House that my reply was factually inaccurate. However, I must also tell the House that I did not intend deliberately to mislead the Select Committee. I would like to explain to the House what happened.

On coming into office after the 2001 general election, I received a wide range of briefing papers covering all aspects of my Department’s responsibilities. A number of these papers related to the railways. As a consequence, I asked for an options paper on the future of Railtrack to be drawn up. Initially, this was to be done solely by my Department but subsequently I asked that it be carried out jointly with the No. 10 policy directorate and the Treasury. At the time, I regarded the commissioning of this work as simply sensible contingency planning. However, it is my request for this work to be carried out that I now recognise could be interpreted as a discussion, and that would make my reply to the Select Committee factually inaccurate.

93 Votes and Proceedings, 19 October 2005, item 5; HC Deb, 19 October 2005, cols 848–850.

94 First Report of the Transport Local Government and the Regions Committee, *Passenger Rail Franchising and the Future of Railway Infrastructure*, HC (2001–01) 239–II, Q 857.

A critical meeting took place on 25 July when the chairman of Railtrack outlined to me the financial difficulties that the company faced. It was only after that meeting that substantive discussions began about the possibility of changing the status of the company.

Since the court hearing, I have thought long and hard about why I gave the answer that I did to the Select Committee. Having reviewed the documents that were put before the court, it would have been because I considered the meeting of 25 July to be the moment at which discussions began and that the commissioning of work to be carried out on the future options for Railtrack did not represent discussions in the true meaning of that word.

I want the House to know that I did not lie to the Select Committee and that I did not deliberately mislead the Select Committee but that due to an inadvertent error I gave factually inaccurate evidence to the Committee. I deeply regret that this has happened. I wish to offer my sincere apologies to you, Mr Speaker, and to the whole House.⁹⁵

Mr Grayling put his complaint to the House on 19 October, making clear that he did not accept the personal statement and claiming to have evidence, other than the documents referred to in court, to demonstrate the falsity of Mr Byers's evidence.⁹⁶

Nature of the contempt

3. Erskine May states, 'Witnesses who have ... given false evidence, wilfully suppressed the truth or persistently misled a committee have been considered guilty of a contempt'.⁹⁷ Until November 2004, the House resolved at the start of each session,

That, if it shall appear that any person has given false evidence in any case before this House, or any Committee thereof, this House will proceed with the utmost severity against such offender.

Since then, following a report by the Procedure Committee,⁹⁸ the Sessional Resolutions, including the one above, have been dispensed with. The Resolution quoted above was one of two which affirmed the House's powers and intent with respect to witnesses.⁹⁹ The Procedure Committee emphasised in its report that, although the Resolutions 'have some value as statements of intent, ... they do not add anything to the House's powers to deal with contempts'.¹⁰⁰

4. In July 2004 the Parliamentary Commissioner for Standards initiated a consultation exercise on possible revisions to the Code of Conduct for Members. One of the questions

95 HC Deb, 17 October 2005, col 640.

96 HC Deb, 19 October 2005, cols 848–850.

97 *Erskine May's Parliamentary Practice*, 23rd edition, p 130. See also p 132 for the equivalent offence of deliberately misleading the House.

98 Third Report of Session 2002–03, *Sessional Orders and Resolutions*, HC (2002–03) 855.

99 The other concerned tampering with or obstructing witnesses.

100 HC (2002–03) 855, para 8.

which he raised was whether the Code should be amended so as to bring complaints that a Member had lied to or seriously misled the House within its scope. The result of that consultation exercise was a recommendation that no change should be made in the existing arrangements for handling such complaints. This recommendation, alongside the Commissioner's other recommendations for the Code, were endorsed by the Committee on Standards and Privileges of the last Parliament.¹⁰¹

5. Thus formal complaints that a witness has wilfully misled the House or a select committee are treated as contempts rather than as breaches of the Code of Conduct. Such complaints, however, have been and are very rare. In order for one to be sustained it must be demonstrated not only that the statement or evidence was incorrect, but also that there was a deliberate intention to mislead. In order to find that Mr Byers committed a contempt in the evidence session of 14 November 2001, the Committee will need to satisfy itself not only that he misled the Sub-Committee, but that he did so knowingly or deliberately.

6. In the past Committees of Privileges have commented on the difficulties of proving that witnesses deliberately misled a select committee, particularly when several years had passed since the alleged contempt took place. For example, in 1982 a complaint was made that two witnesses had deliberately misled the Select Committee on the Abortion (Amendment) Bill in 1975. The complaint was based on evidence from a libel case in which the witnesses had been defendants. Although they had initially filed a defence to the action, neither appeared or gave evidence at the trial itself. The result was a verdict in the plaintiff's favour and the two witnesses were ordered to pay damages in respect of certain statements claimed by the plaintiff to have been made falsely and maliciously. The complaint alleged that they had made these same statements in their evidence to the select committee. The two witnesses denied that they had lied to the select committee and claimed that they had offered no defence to the libel action only because they could not afford to. In its report, agreed in April 1983, the Committee of Privileges emphasised that it did not want 'to see any relaxation of the House's adherence to the sessional resolutions in which it declares its intention to deal severely ... with those who are found to have given false evidence'.¹⁰² But the Committee concluded that to examine the two witnesses in person would 'present difficulties in view of the lapse of time, limitations of the Committee in the context of cross-examination and the differing contentions of these persons and others as to the truth of their previous evidence'.¹⁰³ It took no further action to establish the truth of the complaint.

7. As Secretary of State at the time when he gave the relevant evidence, Mr Byers was also subject to the Ministerial Code and the 1997 Resolution of the House on Ministerial Accountability to Parliament. That Resolution states:

It is of paramount importance that Ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers

¹⁰¹ Fourth Report of Session 2004–05, HC (2004–05) 472. See especially pp 25–26.

¹⁰² First Report of Session 1982–83, HC (1982–83) 336, para 6.

¹⁰³ *Ibid*, paragraph 4.

who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister.¹⁰⁴

The above statement is repeated word for word in the Ministerial Code. Breaches of the Ministerial Code are a matter for the Prime Minister. But the inclusion of those words in it help to demonstrate the continuing force of the 1997 Resolution.

8. The Resolution was intended to be a clarification of the roles of Ministers in relations with Parliament. It was not intended to affect or derogate from the duties owed by a Minister to Parliament in his or her capacity as a Member of the House. Similarly the obligations placed on Ministers by the Ministerial Code, such as their additional duty to offer their resignation to the Prime Minister, do not affect the right of the House to proceed against them in a case of alleged contempt as it might against any other Member.¹⁰⁵

9. Following any evidence session an uncorrected transcript of the evidence is sent to the witness. This allows the witness to correct any errors of transcription, by amendment of the record, but also any errors of fact, either through a footnote to the relevant passage or by a supplementary memorandum. The obligation imposed by the Resolution on Ministers and officials to correct any inadvertent error does not cease once the transcript has been agreed. The Committee may wish to cover this point in the course of its inquiry.

10. The motion referring the complaint to the Committee refers to the evidence session as a whole (rather than the specific question quoted by Mr Grayling). The Committee may therefore wish to look at other exchanges during the session. For example, in reply to a later question from Mr Donohoe, Mr Byers stated, ‘As I think I said to Mr Grayling, the point about the 25 July was it was the beginning of a process’.¹⁰⁶ Mr Byers also stated, ‘It was not until 25 July when John Robinson came in that it was clear that we would have to look at it [ie Railtrack] again. Either we would have to put extra money in or there would be a period where we would have to look at the possibility in due course, when it became clear, of railway administration’.¹⁰⁷

Personal statements

11. Following Mr Byers’s personal statement, Mr Grayling gave notice on a point of order that he was not satisfied with what he had heard. Personal statements are not subject to interventions or debate,¹⁰⁸ ‘but if another Member is involved in the personal statement, he is generally allowed to give his own view of the matter and to say whether he accepts it or not’.¹⁰⁹ In 1948 the Chairman of Ways of Means made a personal statement about a matter which might have been thought to have called his impartiality into question. Mr Churchill (then Leader of the Opposition), whose letter to the Chairman on the point in question had

104 CJ (1996–97) 328

105 See *Erskine May*, p 74.

106 Q 880.

107 Q 904.

108 See *Erskine May*, p 364.

109 *Ibid*, p 365. The relevant precedents are listed in footnote 3.

led to the statement, responded by stating that the matter would ‘require some consideration before it finally passes from the consideration of the House’.¹¹⁰ The following day the House appointed a select committee to inquire into the statement.¹¹¹

12. In this case Mr Grayling’s complaint is founded upon his dissatisfaction with Mr Byers’s personal statement. It will be for the Committee to establish the grounds of Mr Grayling’s dissatisfaction. It may be that he has evidence from which to argue that Mr Byers deliberately misled the Sub-Committee which is unrelated to the content of Mr Byers’s personal statement. It may be, however, that either he or others will challenge the content of the personal statement itself. It is the practice that the text of any personal statement must be agreed in advance with Mr Speaker.¹¹² That practice was followed in this case. But Mr Speaker’s decision to allow the personal statement to be made and his agreement to the text of it do not imply any judgement on the accuracy or truthfulness of the statement.

13. In 1963 the House resolved that, by making a personal statement to the House which contained words which he later admitted to be untrue, Mr John Profumo, who was no longer a Member of the House, had been guilty of a grave contempt.¹¹³

Court proceedings

14. The Committee will be aware that the fact that Mr Byers had given inaccurate evidence to the Sub-Committee emerged from his cross-examination during the case of *Weir and others v The Secretary of State and others* before the High Court. Towards the end of that cross-examination Mr Byers was asked a series of questions about his evidence to the Sub-Committee and in particular his answer to Mr Grayling’s question referred to at the start of this memorandum. These court proceedings were irregular and in breach of Article 9 of the Bill of Rights. They have not been referred to the Committee and do not form part of the subject of the complaint. I was, however, pleased to note that the judge (Mr Justice Lindsay) recognised that he should not have allowed the questions to have been asked as they were and that he apologised to Parliament for having done so.¹¹⁴

Conclusion

15. A formal complaint that a Member and a Minister has deliberately lied to a select committee is a very rare event. If the Committee finds that, in answering as he did, Mr Byers did not set out to mislead the Sub-Committee, it must find that no contempt has been committed. It may, however, wish also to consider whether more could have been done by Mr Byers and the Department for Transport, Local Government and the Regions, as it then was, to have the record corrected following the evidence session.

110 HC Deb 1947–48, 448, c2584–6.

111 The Committee reported on 25 March, HC (1947–48) 104.

112 *Erskine May*, p 364.

113 CJ (1962–63) 246.

114 The relevant extract from his judgment is annexed to this memorandum.

16. If the Committee is drawn to conclude otherwise, it should do so only on the basis of evidence that is at least as compelling as would be required to judge that a Member had committed a serious breach of the Code of Conduct.¹¹⁵ The Committee will no doubt also wish to judge whether Mr Byers deliberately misled the House in his personal statement, which would be a particularly serious offence.

2 November 2005

Roger Sands

Annex: Extract from the judgment given in the Chancery Division of the High Court of Justice in the case of *Weir and Others v The Secretary of State for Transport and Others* before Mr Justice Lindsay

242. I add only this. I am quite sure that Mr Rowley, questioning Mr Byers as he did, intended no inroad into Parliamentary privilege; no objection had been raised to the questions as he asked them and the relevant authorities had by then not even been collected let alone cited. When the point as to Parliamentary privilege was taken, Mr Rowley, having considered the matter overnight, conceded the issue as I have described. I, too, intended neither to permit nor to make any such encroachment and would hope to excuse myself in a similar way. Judges are loath to intervene in a well-ordered cross-examination, especially at points where the witness may be put into some revealing difficulty, but I should, no doubt, have been far quicker to have seen the road-block to which Mr Rowley was heading and to have warned him to divert. I apologise to Parliament for not having done so.

Case Number [2005] EWHC 2192

14 October 2005

¹¹⁵ In its Second Report of Session 2000–01, *Complaint against Mr John Maxton and Dr John Reid* (HC (2000–01) 89), the Committee on Standards and Privileges stated that, in respect of serious allegations against Members, it would need to be persuaded that they ‘were **significantly more likely** to be true than not to be true’ (paragraph 20). In his memorandum to the Committee’s Third Report of 2002–03, *Complaints against Mr Michael Trend* (HC (2002–03) 435), the Parliamentary Commissioner for Standards wrote, ‘when considering the issue of possible dishonesty, the proof required should be one of a high degree of probability’ (page 14, paragraph 37). The Committee endorsed the Commissioner’s findings.

Appendix 2: Memorandum from Mr Alan Duncan MP [*Byers.6*]

Letter to the Clerk of the Committee from Mr Alan Duncan MP

Inquiry into the Rt Hon member for Tyneside North

Following my exchange of letters with the Chairman,¹¹⁶ I attach my written evidence for the Committee to consider.

I contend that not only was the evidence given by Mr Byers to the Transport Sub-Committee knowingly inaccurate, but that his personal statement repeated, and therefore compounded, the same untruth.

I believe that the minutes of the two meetings I enclose show explicitly that a possible change in the status of Railtrack was discussed well before 25 July 2001.¹¹⁷

The witness of Mr Tom Winsor, the former Rail Regulator, who was the main interlocutor with the then Secretary of State on the 19 June meeting, may prove critical to the Committee's inquiry. I understand he would be prepared to confirm these facts if the Committee were to call him for interview.

I am prepared to assist the Committee in any way that might prove helpful.

2 November 2005

Written evidence to the Committee on Standards and Privileges from Alan Duncan MP

I believe that the witness of the Rt Hon Member for Tyneside North to the Transport Sub-Committee on 14 November 2001 was untrue, and that he knew it to be so at the time.

I also believe that the personal statement of the Rt Hon Member to the House of Commons on 17 October was deliberately misleading, and instead of exonerating him through apology or convincing explanation, actually compounded his guilt.

At the Transport Sub-Committee, Mr Byers was asked:

‘Was there any discussion, theoretical or otherwise, in your Department before 25 July about the possibility of a future change in status for Railtrack, whether nationalisation, the move into a company limited by guarantee, or whatever?’

¹¹⁶ Not printed.

¹¹⁷ Not printed (see list of unpublished memoranda)

Mr Byers answered:

‘Not that I am aware of.’

Subsequently, in court on 14 July 2005, Mr Byers was challenged over the accuracy of this reply and stated:

‘It is true that there was work going on, so, yes, that was untrue’ and ‘I accept this is not an accurate statement’; and ‘it is not a truthful statement’.

Mr Byers maintains that he gave his answer to the Transport Sub-Committee truthfully at the time because he had not had any discussions before 25 July 2001 about any possible change in the status of Railtrack. He said that he had only commissioned an options paper on the company’s future. He has subsequently told the House of Commons that this ‘did not represent discussions in the true meaning of that word’.

During and since the court case further documentary evidence of what I believe to be Mr Byers’ mendacity has been released. These meetings show that Mr Byers played an active part in ‘discussions’ over the future status of Railtrack—in the plainest and ordinary sense of the word—well before 25 July 2001.

1. Meeting with Rail Regulator on 19 June 2001

Stephen Byers discussed the future of Railtrack with Tom Winsor, the independent Rail Regulator on 19 June 2001, over a month before he claimed to Mr Grayling that discussions began. This meeting discussed the possibility of Railtrack going bust or alternatively being taken over, and clearly constituted a discussion in his Department of a change in Railtrack’s status.

I am submitting to the Committee a copy of the official departmental handwritten minutes from this meeting.¹¹⁸

Also present were Sir Richard Mottram (Permanent Secretary, DTLR, at the time), David Rowlands (then Deputy Secretary, DTLR), Bob Linnard (then Under Secretary, DTLR) and Dan Corry (Byers’ special adviser).

You will see from the minutes that the following were under discussion:

- Page 4—‘Major structural change’ is recorded as having been discussed with Mr Byers.
- Page 8—‘2 things poss[ible]—1) takeover 2) RT fail’ is also recorded.

The evidence from Mr Tom Winsor may shed further light on what was discussed at this meeting and by whom, but irrespective of who raised these issues it is clear that structural changes were under discussion in June 2001.

¹¹⁸ Not published (see list of unpublished memoranda)

2. 'Stocktake' with the Prime Minister on 5 July 2001¹¹⁹

Mr Byers has admitted in Court that there was a 'Stocktake' meeting on 5 July 2001. It was put to him in the High Court that 'The status of the options for Railtrack's future status were discussed at the Stocktake on 5 July with the Prime Minister?' to which Mr Byers replied 'It was'.

I have included the minutes of this meeting which record Mr Byers actively participating in this meeting, as well as a preparatory note prepared for the Prime Minister from Stephen Byers.¹²⁰ Several other officials from Mr Byers' department were also in attendance (such as John Spellar, Lord MacDonald, Sir Richard Mottram and Dan Corry).

*Preparatory Note*¹²¹

The preparatory note for this meeting refers to the 3 July 2001 and it would appear that the date of the Stocktake meeting slipped a couple of days. The note is from Stephen Byers to the Prime Minister.

- Page two of this document shows Mr Byers considering a 'move to a radical alternative' for Railtrack.
- Mr Byers wrote on Page 3 of this document: 'The work my officials have started with Treasury and No. 10 on Railtrack may throw up longer term structural issues'.

*Handwritten Minutes of the Meeting*¹²²

The handwritten minutes of this meeting show that 'discussions' of a detailed nature about the future status of Railtrack were ongoing and Stephen Byers was an active participant in these discussions.

The following comments were recorded as having been made at this meeting:

Page 2—SB [Stephen Byers]: 'RT will need to change'

Page 3—SV [Shriti Vadera]: 'Needs [undecipherable] capitalisation & risk transfer—then left to sink or swim in market place'

Page 4—JS [John Spellar]: 'React to bankruptcy'

Page 4—SV [Shriti Vadera]: 'Other companies won't come in to take over as long as [undecipherable] there'

Page 5—TB [Tony Blair]: 'Issue of struct[ure] important, but not tip over edge'

119 Not printed (see list of unpublished memoranda).

120 Not printed (see list of unpublished memoranda).

121 Not printed (see list of unpublished memoranda).

122 Not printed (see list of unpublished memoranda).

Page 6—SV [Shriti Vadera]: ‘Sometimes need lack of public confide[ence] to effect change. Incentives vs structure. Proper risk & look at capitalisation of RT. May be other co[mpanies] prepared to look at RT’

Page 6—RMott [Richard Mottram]: ‘others might take it over’.

*Note to the Prime Minister further to this Meeting (attached to these notes).*¹²³

The typewritten meeting note from No. 10 Downing Street entitled ‘Transport Stocktake’ also makes it clear that Stephen Byers discussed Railtrack with the Prime Minister on 5th July 2001.

- Shriti Vadera is recorded as saying ‘more radical changes to the structure of the company needed to be considered as a matter of urgency’.
- Stephen Byers is recorded as saying ‘there was a need to consider all of the options’.

Mr Byers’ Statement to Parliament

Mr Byers made the following statement to Parliament on 17 October 2005:

‘On coming into office after the 2001 general election, I received a wide range of briefing papers covering all aspects of my Department’s responsibilities. A number of these papers related to the railways. As a consequence, I asked for an options paper on the future of Railtrack to be drawn up. Initially, this was to be done solely by my Department but subsequently I asked that it be carried out jointly with the No. 10 policy directorate and the Treasury. At the time, I regarded the commissioning of this work as simply sensible contingency planning. However, it is my request for this work to be carried out that I now recognise could be interpreted as a discussion, and that would make my reply to the Select Committee factually inaccurate. ...

Since the court hearing, I have thought long and hard about why I gave the answer that I did to the Select Committee. Having reviewed the documents that were put before the court, it would have been because I considered the meeting of 25 July to be the moment at which discussions began and that the commissioning of work to be carried out on the future options for Railtrack did not represent discussions in the true meaning of that word.’

I believe this statement to be plainly misleading. Mr Byers states that in the three months between the end of the court case and 17 October 2005, he has ‘reviewed the documents that were put before the court’. We must assume that these included the minutes of 19 June and 5 July 2001 meetings, yet he fails to mention them. Instead, he seeks to give the House the impression that all he did before 25 July 2001 was commission a briefing paper. This is simply not true. Instead, he took part in at least two substantive and minuted discussions about the future status of Railtrack in which it was expressly stated that possible

¹²³ Not printed (see list of unpublished memoranda).

bankruptcy, takeover and a change to the fundamental status of Railtrack were under consideration.

Irrespective of Mr Byers' view over who raised these issues, it appears to me an indisputable fact that discussions were ongoing before 25 July and that these took place in the presence of Mr Byers. The fact that he gave the answer 'not that I am aware of' on 14 November 2001 was, I believe, a deliberate attempt to mislead Parliament. So therefore was his subsequent personal statement.

I believe this submission constitutes compelling evidence that Mr Byers misled the House on two occasions.

2 November 2005

Appendix 3: Memorandum from Mrs Gwyneth Dunwoody MP [*Byers.7*]

Letter to the Clerk from the Hon Gwyneth Dunwoody MP, Chairman of the Transport Committee

Thank you for your letter of 26 October inviting me to write to the Committee on Standards and Privileges about the evidence given by the Rt Hon Stephen Byers MP, then Secretary of State for Transport, on 14 November 2001 to the Transport Sub-committee of the Select Committee on Transport, Local Government and the Regions which I chaired.

The changes to the UK railway over recent years have been amongst the most significant developments in the transport of this country. Changes are continuing, but in 2001 the state of the railway was critical, and the Transport Sub-committee undertook its inquiry into Passenger Rail Franchising and the Future of Railway Infrastructure with the fragility of the network's management firmly in mind. This was a very important inquiry. We took evidence from a large number of witnesses, and none was more important to our work than Mr Byers. It was to Mr Byers' evidence that we looked for an authoritative, truthful and complete account of the events leading to Railtrack's being placed into administration, and other relevant matters.

It has become clear recently that the reliance which the Sub-committee reposed in Mr Byers to provide it with factually accurate answers to all the questions we posed was, sadly, misplaced. Mr Byers wrote to me on 17 October apologising for giving factually inaccurate evidence to the Sub-committee.¹²⁴

I am outraged by what has happened as a most serious breach of our rules. When those who give evidence to select committees of the House of Commons fail to do so accurately, for whatever reason, a vital aspect of the process of Parliamentary scrutiny of Government is undermined. In that situation, I have no doubt that the people of this country, who trust Parliament's scrutiny processes to ensure that the government of the United Kingdom is conducted to the highest standards of probity will consider themselves to have been let down.

We are entitled to expect from those who give evidence to select committees of the House conduct which is in accordance with the highest standards of integrity. These standards are not difficult to understand, or to apply. Witnesses must prepare themselves carefully for their appearance and answer the questions they are asked as completely and truthfully as possible. Exceptionally, where they are unable to provide answers to questions at once, they must say so clearly and then supply the information sought as quickly as possible thereafter. Where they inadvertently mislead a committee, they must correct the record as quickly as possible.

¹²⁴ Not reported.

To no one does this straightforward process apply more stringently than to senior members of the Government. The responsibilities entailed in a major office of State cannot be carried out properly in the absence of great personal capacities. It saddens me greatly, therefore, that it was the then Secretary of State for Transport who, when put to the test, failed dismally to live up to the standard of Parliamentary behaviour of which he should have been a foremost guardian. The message must go out from Parliament that this behaviour will not be tolerated, and we must ensure that there is no repetition of this disgraceful affair.

I hope that this is helpful to your committee.

2 November 2005

Appendix 4: Memorandum from Chris Grayling MP [*Byers.8*]

Letter to the Chairman from Chris Grayling MP

Thank you for your letter concerning the evidence given by the Rt Hon Stephen Byers to the Transport Sub-Committee on 14 November 2001.

To give a context to the circumstances for this written statement to the Committee, can I remind you of the background to my line of questioning to Mr Byers that day.

In November 2001 it was six weeks after Railtrack went into administration, and we were in the midst of an enquiry into the future of the railways and the circumstances that had led up to the administration.

The story that the Government had told us was that they begun the process to force Railtrack into administration *only* after a meeting that had taken place some three months earlier on July 25, between the Chairman of Railtrack John Robinson and the Rt Hon Gentleman. Mr Robinson, we were told, had warned at that meeting that Railtrack would need extra Government support if it were to survive. Without that support, its future was in doubt.

The Government, we were told, had taken urgent steps to ascertain the nature of the problem, had concluded that nothing could be done, and then forced the company into administration.

My colleague and I, Honourable Member for Vale of York, were the two opposition representatives on the Committee. We had long discussions about what we had heard—and we concluded that this story simply didn't add up. We suspected that the Government had been planning to force a restructuring of Railtrack well before that meeting on July 25.

It was those suspicions that prompted my question to the Rt Honourable Gentleman on 14th November.

I asked him:

“Was there any discussion, theoretical or otherwise, in your Department before 25th July about the possibility of a future change in status for Railtrack, whether nationalisation, the move into a company limited by guarantee or whatever?”

The Rt Hon Gentleman replied

“Not that I am aware of.”

The Committee will be aware of the detail of the exchanges that took place over this matter in the High Court, and I have enclosed a transcript of this with my letter.¹²⁵ You will be

¹²⁵ Not printed (see list of unpublished memoranda).

aware that in those exchanges, the then Secretary of State admitted that the response he gave to my question during that meeting of the Transport Sub-Committee was untrue. Since then, he has made his personal statement to the House and has written to me personally. I have enclosed a copy of his letter to me.¹²⁶

For me, the essence of the question is whether his explanation of his action is credible. You will see that in his letter to me he described his action as an “inadvertent error”. This was also the explanation he gave the House. The relevant section of Hansard gives the following explanation.

“Having reviewed the documents that were put before the court, it would have been because I considered the meeting of 25 July to be the moment at which discussions began and that the commissioning of work to be carried out on the future options for Railtrack did not represent discussions in the true meaning of the word.”

I have reviewed both the Court papers and also a copy of a minutes of a meeting held at No. 10 Downing Street on July 5 2001, involving the then Secretary of State and the Prime Minister, plus representatives of the DTLR, the Treasury and the No. 10 Delivery Unit. It is this latter document that was handed to me recently by the Member for Rutland and Melton. The minute specifically refers to a discussion of structural issues within the Rail industry and the future structure of Railtrack.

The Court papers also make extensive reference to meetings and discussions about the future structure of the rail industry prior to July 25. I would particularly draw the Committee’s attention to the memorandum written by Mr Byers to the Prime Minister prior to a meeting on July 3, in which he says “My Department, the Treasury and the Policy Directorate are accordingly starting joint work to identify all the possible options for Railtrack. We will probably need to engage (in strict confidence) investment banking advisers”.¹²⁷

It is my view that taken together, all of these elements make the claim that the then Secretary of State could have considered what was taking place as being something other than “discussions” is straining credibility.

It was for that reason that I did not accept either his statement to the House or his personal apology to me. Indeed it is my view that his personal statement to the House also verged on the misleading.

I would be happy to meet your Committee to discuss these issues should you wish to do so.

31 October 2005

¹²⁶ Not printed (see list of unpublished memoranda).

¹²⁷ Not printed (see list of unpublished memoranda).

Appendix 5: Memoranda from Mr Stephen Byers MP

Submission to the Committee on Standards and Privileges [Byers.9]

I welcome the opportunity to put written evidence to the Committee on Standards and Privileges.

As members of the Committee will be aware, I made a personal statement to the House on 17 October in respect of my evidence to the Transport Select Committee on 14 November 2001. In my statement I expressed my deep regret and offered my sincere apologies for an inadvertent error which led to me giving a factually inaccurate reply to a question put to me at the Select Committee.

This came about because I had not regarded the commissioning of work to be carried out on the future options for Railtrack as a discussion.

Following my statement, reference has been made by two members of the House to documents which they claim show that I lied to the Transport Select Committee. These documents were referred to in a Conservative Party press release on 18 October and by the Member for Epsom and Ewell (Chris Grayling) when he moved the reference of my evidence to the Committee on Standards and Privileges on 19 October.

The accusation being made is that I lied to the Select Committee. Such a charge is perhaps the most serious that can be made against a Member of the House. In all our dealings as Members we must be able to trust our parliamentary colleagues to be honest at all times.

I know that I did not lie and what I would like to do in this written evidence is to give the background to my personal statement and then deal with the documents referred to in the Conservative Party press release and by Chris Grayling.

1. My Personal Statement

I was appointed as Secretary of State for Transport, Local Government and the Regions on 8 June 2001. As is normal for incoming Ministers, I was presented with background papers prepared by civil servants on all the key areas of the Department. They included a briefing note on Railtrack's financial position.¹²⁸

Having read this I asked on 11 June for an options paper on the future of Railtrack. The next day I received a note prepared by Mark Coulshed which reflected work which had already been undertaken by the Department before the election. I attach a copy of this paper.¹²⁹ This paper makes clear at Annex A that "because of the complexities of the

¹²⁸ Not printed (see list of unpublished memoranda).

¹²⁹ Not printed (see list of unpublished memoranda).

specialist legal issues involved, it would be advisable to obtain advice from Counsel before policy development on any of these options moves much further”.

I originally felt that this further work should be carried out by the Department but subsequently took the view that, given the potentially far-reaching financial and political consequences of any change in the status of Railtrack, work on possible future options should be carried out jointly between the Department, the No. 10 Policy Directorate and the Treasury.

When appearing before the Select Committee I did not regard the commissioning of this work to be a discussion in the true sense of that word. It was only when I was giving evidence in the High Court in July that I realised that the asking for work to be carried out on the future options for Railtrack could be seen by some people to constitute a discussion.

2. Chris Grayling's allegation

In moving the reference to the Committee for Standards and Privileges Chris Grayling refers to the minutes of a meeting held at No. 10 Downing Street on 6 July 2001. He says that these minutes are “the latest evidence to emerge from this period”. The implication being given to the House was that this was a meeting that was not considered three months ago during the court hearings.

The Committee needs to know that there was no such meeting on 6 July 2001. Having checked my Ministerial diary I can inform the Committee that that day I was addressing the Local Government Association's annual conference in Harrogate and then I went up to my Tyneside constituency.

3. Conservative Party Press Release 18 October 2005

I attach a copy of a press release which was issued the day after my personal statement.¹³⁰ In it the Member for Rutland and Melton claims that I “had a meeting with the Rail Regulator on June 19 and with the Prime Minister and others on July 5, at which the possible insolvency, takeover or administration of Railtrack were discussed”.

This is simply wrong. I attach the handwritten note by my private secretary of the meeting on 19 June and the letter for action which followed the meetings on 19 June and 5 July.¹³¹ They have all been available to the public since the court case in July.

If I could take each meeting in turn.

- a) The June 19 meeting with the Rail Regulator was the first time I had met him and was essentially a ‘getting to know you’ session. In my opening remarks I made clear that I did not want to go in for huge restructuring as it would lead to stagnation and paralysis when delivery was the primary task.

¹³⁰ Not printed (see list of unpublished memoranda).

¹³¹ Not printed (see list of unpublished memoranda).

On page 857 of the court papers towards the bottom of the page the Rail Regulator (referred to as 'RR') says he will require a remedial plan. He then moves on to say two things are possible: (1) takeover (2) Railtrack could fail.

The Rail Regulator then says he has a duty to stop them going bust and at the top of page 858 he mentions the special insolvency regime under which the SRA would take over.

All of these comments about a possible change in status for Railtrack came from the Rail Regulator.

If there was a discussion on Railtrack's status then I would have responded to these points. I did not do so. Rather, as the note makes clear, I went back to the remedial plan and asked the Rail Regulator how much time it would take to put in place. The remedial plan was all about how Railtrack would improve performance after the chaos caused by the Hatfield derailment.

So whilst the Rail Regulator mentions a possible change in status for Railtrack these points are ignored by myself and my Departmental officials. There is simply no discussion.

The fact that there was no discussion is reflected in the letter from my Private Secretary David Hill to David Rowlands which followed the meeting which makes no reference to the Rail Regulator's points on takeover, failure or the special insolvency regime.

- b) On July 5 a Transport Stocktake was held with the Prime Minister. The Member for Rutland and Melton in his quotation given in the Conservative Party press release says that at this meeting the possible insolvency, takeover or administration of Railtrack were discussed. This is untrue. The minutes show clearly that there was no such discussion.

Shriti Vadera from the Treasury says at the bottom of page 1170 that "more radical changes to the structure of the company needed to be considered as a matter of urgency". But there is no discussion about such changes. John Spellar, my Minister of State at the time, replies that he thinks the immediate priority must be to make the existing system work more effectively.

I follow him by saying we should consider all the options and that DTLR (Department of Transport, Local Government and the Regions), Treasury and No. 10 officials should work together to develop them but in the short term the priority should be to improve punctuality, safety and comfort.

But once again there is no discussion.

Conclusion

Serious allegations have been made against me. The Member for Epsom and Ewell in moving the motion to refer in the House said "the charge that lies on the table in front of the Right Hon Member for North Tyneside is that on 14 November 2001 he lied to a Select Committee of this House".

He concluded by saying “if the Rt Hon gentleman is innocent his name will be properly cleared; if he is guilty, he deserves the censure of the House”.

It is for this Committee to reach a judgement. I hope that on the basis of the evidence the Committee will find that there is simply no ground for the extremely serious allegation that I lied to a Select Committee of this House.

3 November 2005

Letter to the Chairman of the Committee from Mr Stephen Byers MP, 18 January 2006 [Byers.29]

I have been invited to comment on the original manuscript note of the Stocktake meeting held with the Prime Minister on 5 July 2001. I welcome this opportunity because in my opinion the meeting of 5 July goes to the heart of why I replied to Mr. Grayling in the way that I did. Indeed, I had the 5 July meeting very much at the forefront of my mind when I drew up the personal statement that I made to the House on 17 October 2005.

As I said in that statement I had asked that work on an options paper be carried out jointly with the No. 10 Policy Directorate and the Treasury. At the meeting on 5 July the problems facing Railtrack were considered and the Prime Minister confirmed my view that joint work was needed.

The manuscript note shows that Railtrack’s failure to provide a decent service and its overall weakness were subject to considerable discussion. The note refers to comment about the need, “to look at both structures and incentives”; the “need [for] proper capitalisation and risk transfer” and that “other companies won’t come in to take over as long as government there”. I am recorded as saying, “not fundamental changes but do thinking as may need fundamental changes” and the Prime Minister says “most important is to give breathing space while work out whether need different structure”.

So what we have is a discussion about the inherent problems with Railtrack; whether action was necessary and if so over what timescale. At no stage did we discuss the structural options that might form a replacement for Railtrack which I took to be the important part of Mr. Grayling’s question when he asked about “the possibility of a future change in status for Railtrack, whether nationalisation, the move into a company limited by guarantee or whatever”.

I took this to be the important part of Mr. Grayling’s question because at the time, as Mr. Grayling himself has made clear in his own evidence, the political attack against the government was that there was a plan to push Railtrack into administration which had been devised before the meeting of 25 July. If this was the case then discussions about a future change in status for Railtrack and the possible advantages and disadvantages of the different options to replace it like nationalisation or establishing a company limited by guarantee would have had to be taking place before 25 July. The manuscript note of 5 July shows that this was not the case and I reflected that in my answer to Mr. Grayling.

The Oxford English Dictionary gives the relevant definition a discussion as being

“2. a Examination or investigation (of a matter) by the arguments for and against; ‘the ventilation of a question’ (J)

b Argument or debate with a view to elicit truth or establish a point; a disquisition in which a subject is treated from different sides.”

But I was wrong to adopt such a literal interpretation to the meeting on 5 July and to the other events before 25 July. I should have recognised and now do that there is a wider definition that can be applied. It was my failure to do so at the time that led me to give a factually inaccurate reply.

An accurate reply at the time would have caused no problems either politically or legally. My failure to give such a reply was an error, although not a deliberate one, which as I said in my personal statement I deeply regret.

18 January 2006

Appendix 6: Memorandum from Tom Winsor [*Byers.23*]

Meeting—19 June 2001

1. Thank you for your e-mail of 24 November 2005 containing the formal request of the Committee that I submit written evidence about my recollection of the meeting which I had on 19 June 2001 with Mr Byers and his officials, insofar as it may be relevant to the Committee's inquiry.

Minutes of the meeting

2. I have seen a copy of the official note of the meeting which is in the form of a minute dated 3 July 2001 from David Hill, Mr Byers' private secretary, to David Rowlands.¹³² I have also seen a copy of David Hill's manuscript notes taken at the meeting on 19 June 2001.¹³³

3. Apart from Mr Byers and me, those present at the meeting were Nicola Shaw, one of my deputy directors, Sir Richard Mottram (Permanent Secretary at DTLR), David Rowlands (Grade 2), Bob Linnard (Grade 3), Dan Corry (special adviser) and Mr Byers' private secretary. I was not introduced to Mr Evans and do not know who he is.

4. Although in office it was my practice to make my own detailed notes of important meetings, I do not believe I did so on this occasion.

DTLR relations

5. When I went into Mr Byers' room for the meeting on 19 June 2001, I was surprised to see so many DTLR officials at the meeting, but of course I had no objection. It was a businesslike meeting, but there was certainly no warmth or affinity between the two organisations, even though we were both parts of government and should have regarded ourselves as being on the same side. The atmosphere was cold and a little hostile.

6. At the time I put this down to the fact that the senior DTLR officials present had never been much in sympathy with my policy or approach—Sir Richard Mottram was a particular sceptic—and some of them might perhaps still have felt aggrieved in relation to my having increased Railtrack's revenues by 50% in October 2000, a decision which had to some extent caught them out and caused considerable budgetary difficulties in the DTLR.

7. Although I could not of course have been aware of it at the time, there may have been a second reason, one that can be inferred only now the papers in the recent Railtrack shareholders case have been produced. Contrary to what Mr Byers is recorded as having said to me in the meeting—about not going in for huge restructuring—DTLR and Treasury officials had been working on options for changing Railtrack's status or making

¹³² Not printed (see list of unpublished memoranda).

¹³³ Not printed (see list of unpublished memoranda).

other radical changes to the industry—which would undoubtedly have affected Railtrack—since at least 5 February 2001.¹³⁴ The briefing provided to Mr Byers on 12 June 2001 by Mr Coulshed, the Head of DTLR’s Railways Sponsorship Division, contained a fairly detailed survey of options for changing Railtrack’s status which, it says, had been discussed with DTLR’s legal directorate.¹³⁵ Those papers explain, in what appear to be approving terms, that certain options—renationalisation of Railtrack or converting the company into a not-for-profit trust—would open up the chance of curtailing the powers of the Rail Regulator or even abolishing the office altogether. So Mr Byers and the DTLR people in the meeting knew that these things were under active consideration, but of course they did not tell me.

Factual context

8. My recollection of the meeting is reasonably good—although at this distance in time, of course not perfect—for two reasons. The first is that I had not met Mr Byers before, and I was interested to gauge his interest in his brief and what his approach was likely to be. The second is that *The Financial Times* was briefed about the meeting afterwards.

9. The post-Hatfield condition of the network and of Railtrack itself was a major issue. Railtrack was haemorrhaging money and, despite two enforcement orders from me, the operational integrity of the network was still very fragile. On 15 January 2001, and again on 24 May 2001, I had announced *via* the Stock Exchange my willingness to consider carrying out an interim access charges review to assess Railtrack’s additional financial needs in the light of Hatfield and possibly to raise Railtrack’s income to finance more work on the network. Despite those public statements, we at ORR had received at least one report that Railtrack had been going around Whitehall pleading poverty and suggesting some form of financial bail-out from the Government. This would have improperly circumvented the regulatory regime and it was important that the new (*i.e.* post-election) Ministers gave it short shrift. Railtrack’s drastically reduced share price had just caused the company to fall out of the FTSE 100, and there had been a very pessimistic report from ABN Amro about the company’s financial position and the value of its equity.

10. The predicament of Railtrack and the network had led to a great deal of speculation about the future of the company and the possible restructuring of the industry. We were fairly used to some commentators and the chairman of the Strategic Rail Authority advocating these changes, but I detected that the mood had changed. On 19 February 2001 BBC2 *Newsnight* broadcast a piece which appeared to me to have been briefed by the Government (although of course I do not know if it was). It was in fairly dramatic language, as these things often are, but I thought it had an official feel. The programme spoke of “the officials who control the railways plotting to carve up the industry” and of “a covert operation under way to prepare for a new structure after the election, a structure where Railtrack ... is killed off or severely curtailed”. It said that “the [Rail Regulator] has most to lose if Railtrack’s role is downgraded” and that the Strategic Rail Authority “has

¹³⁴ See for example Mr Kohli’s e-mail of that date, referring to a meeting on such options that morning. The matter had been under consideration within Treasury since 11 January 2001 (see Mr Kemsley’s minute to Mr Wheatley of that date). Mr Kemsley’s minute of 14 March 2001 to the Chancellor refers to the Treasury’s project to review the structure of the industry, including the role of Railtrack. In relation to DETR, see Mr Carey’s e-mail to Mr Evans (both DETR) on 22 February 2001 on the possible renationalisation or restructuring of Railtrack.

¹³⁵ Not printed (see list of unpublished memoranda).

most to gain from Railtrack's demise". It said that a "source close to Government [had] told Newsnight that ... the Government is trying to keep a lid on all this until after the election." A transcript of the piece is enclosed.¹³⁶

11. On 12 June 2001—a week before my meeting with Mr Byers—I made a speech at the Institution of Electrical Engineers in which I referred to the serious condition of Railtrack and the fact that some people were advocating Railtrack's conversion into a not-for-profit trust, undergoing a collective buyout by the train operators, becoming vertically integrated, being taken over or even going into insolvent liquidation. I enclose a copy of my speech.¹³⁷

12. Because there was so much misinformation and negative briefing about how Railtrack could and should be held to account, I had written and—on 12 June 2001—published a major document entitled *The Accountability of Railtrack*. It was produced to counter the arguments that Railtrack was a law unto itself and could flout the public interest as it liked. It explained that we at ORR had been carrying out a major programme of the reform of the company's accountability to its customers and the public interest through major changes to its financial, regulatory and contractual environment.

13. I was very critical of Railtrack's senior management's apparent pleas to Government for more money when I had already virtually promised them an interim access charges review to reconsider the company's post-Hatfield financial position once network performance had been restored. On 30 April 2001, my chief economist had been reported in *The Financial Times* dealing with the impression—we thought fuelled by Railtrack—that it would always be bailed out with public funds. I enclose a copy of the FT article.¹³⁸

14. I went into the meeting on 19 June 2001 also knowing that, despite having given Railtrack an extra two months to produce its annual network management statement (an extension of the normal 31 March deadline to 31 May 2001), the document which the company had produced was the worst to date, the train operators had severely criticised it and I intended to reject it (which I did publicly on 26 June 2001, a week after my meeting with Mr Byers).

15. The railway had been going through the deepest crisis it had faced in peacetime, and on 19 June 2001 it was far from out of it. There was now a new Secretary of State and his approach was going to be very important. In the light of all this, I wanted to talk to Mr Byers about Railtrack's financial position and the industry position generally. And I wanted to see if I could determine whether he was sympathetic to the talk about restructuring, conversion, regulatory reform and the rest.

16. The second reason why I remember the meeting as I do is that a number of the most important points which were discussed were leaked to Juliette Jowit, transport correspondent of *The Financial Times*. She rang me shortly after the meeting and asked me what I had discussed with Mr Byers. I was surprised she even knew there had been a meeting, and I refused to tell her what had been said. She then asked me to confirm

¹³⁶ Not printed (see list of unpublished memoranda).

¹³⁷ Not printed (see list of unpublished memoranda).

¹³⁸ Not printed (see list of unpublished memoranda).

a number of things which had been discussed, and her information was very good indeed. Nothing was exaggerated. I still refused to discuss it, but her briefing was obviously good enough to allow her to write the piece anyway. Her article appeared on page 1 of the FT on 25 June 2001. I enclose a copy.¹³⁹

17. I was very disappointed that it had been considered by someone on the DTLR side of the meeting to be appropriate to brief that meeting to the press without my knowledge. I was also very struck when, a week later, Mr Linnard told me that DTLR believed that I had been the one who had briefed the meeting to Ms Jowit, which of course I emphatically denied. I told him that if it had not been DTLR officials, the leak must have been made on a political level. After that, I decided to take a much more cautious approach in my communications with the Secretary of State.

The meeting

18. For the reasons I have given above, for me the meeting was a significant and memorable one.

19. As to the issues discussed, I believe the manuscript note which I have seen contains a good record of the issues which we covered. I do not recall raising any other significant matter. But the note is necessarily an abbreviated account of what was quite a long discussion, taken as it was in longhand.

20. I notice that, when compared with the manuscript note, the official note is a very much more compressed account of the meeting and omits a number of the issues discussed at the meeting, including the most important—Railtrack's possible takeover or insolvency, and the need for Ministers not to allow the company to think that it would always be bailed out. Given the significance of that point, I find the difference between the two notes quite striking.

21. As I have explained, the main issue which I was anxious to get across to Mr Byers and his officials and on which I wished to gauge Mr Byers' stance was the future of Railtrack and, connected to that, the speculation about major restructuring in the industry. And so I explained to Mr Byers in some detail what my accountability reform programme entailed—how it would empower Railtrack's customers and create effective incentives to get the company to deliver on its commercial and public interest obligations—and I gave him a copy of *The Accountability of Railtrack* publication. I told him that the beneficial effects of these reforms would come in earlier than any major structural changes to the industry which the Government might have in mind.

22. I was probing to see what Mr Byers would say about this issue of restructuring, and his line was one of making the existing system work better, not seismic changes. He appeared to me to be focussed on short-term improvements in service delivery—both from Railtrack and the train operators—although it is now apparent from the papers in the shareholders case that in fact he and his officials were thinking in far more radical terms. Naturally, he did not tell me that.

¹³⁹ See p. 42-3.

23. I told Mr Byers that Railtrack's problems were managerial, cultural and chronic. I said I hoped the new chairman of the company would make a positive difference and I was keen to get off on the right foot with him. But the company faced immense difficulties and, as my chief economist had told the FT on 30 April 2001, I stressed to the meeting that under the Railways Act 1993 I had no obligation to stop the company going bust if its inefficiency and incompetence drove it down. The seriousness of its plight might cause the company to fail, or the weakness of its share price might lead to its being taken over. If Railtrack did fail, I explained that the Railways Act 1993 contains a special insolvency regime—railway administration—which is designed to ensure continuity of operation of the essential service, so the trains would keep running. So whilst financial failure would of course be disastrous for the shareholders, it would not have a direct material adverse effect on the travelling public or rail freight customers.

24. Having heard what Railtrack had been reported as doing in relation to a financial bail-out by the Government, I emphasised to Mr Byers and his officials that it was very important that the company did not get the message from Ministers or officials that it would always be rescued; it could go bust. The public interest would be secured through the railway administration regime if that happened and Railtrack's management should not be allowed to think that they had some sort of armlock over either the Rail Regulator or the Government in this respect. In response to this, Mr Byers said that he would soon be seeing the new chairman of Railtrack and would ensure he got that message.

25. Throughout the discussion, Mr Byers and his officials were attentive and engaged, though hardly forthcoming. The possible collapse of the national railway infrastructure provider was a weighty matter. Using my powers as Rail Regulator and his powers as Secretary of State (including his powers over the SRA) to try to create and intensify the conditions in which the company could turn away from its past failures, avoid bankruptcy and become competent and successful was the central issue of the meeting; I had understood it is what Mr Byers had asked me in to discuss.

5 December 2005

Annex: Article in the Financial Times by Julia Jowit, 25 June 2001, entitled "Watchdog warns Byers that Railtrack Management is 'barrier to improvement'" [Enclosure 4 to Byers.23]

The rail regulator has warned Stephen Byers, the transport secretary, that senior management of Railtrack is a major barrier to improving the industry.

Tom Winsor also told Mr Byers that the takeover of the rail infrastructure company by a private company could, in the right circumstances, help an industry increasingly dependent on government subsidy.

Mr Winsor told the transport secretary of his concern with the top three layers of Railtrack management. One worry about the management is the lack of engineering and railway expertise.

Mr Byers will this week meet the Strategic Rail Authority's chairman Sir Alistair Morton, who will also call for an overhaul of the industry. Both rail figures have

previously cautioned against a drastic shake-up of the industry for fear of causing more disruption to rail services. They are also making key public speeches on the future of the railways tomorrow.

They and other senior figures believe there are three barriers to reform: Railtrack's management and monopoly, and the "vertical" split between the infrastructure and train operators.

Mr Byers told Railtrack and operators last week that the government's priority was to get trains running on time. He asked them to report back every six to eight weeks on progress.

However, department of transport officials said Mr Byers was considering a range of ideas for the longer term.

Re-nationalisation appeared to have been ruled out, but there were many other options, said an official.

Ideas mooted in the industry include turning Railtrack into a not-for-profit trust or splitting it into five regional companies; government buying a stake; train operators running the tracks; and a joint industry "cabinet" to co-ordinate its work.

Last week the Cullen Report on the 1999 Paddington crash that killed 31 people described Railtrack as suffering from "institutional paralysis".

Another senior industry figure said Mr Byers was not expected to take big decisions until after a second report by Lord Cullen into the railway industry later this year.

Railtrack's success or failure in raising a Pounds 2bn-Pounds 3bn bond this autumn is also considered a "critical" test of the company's future, the industry figure said.

Appendix 7: Memoranda from the Department for Transport

1. Letter to the Clerk from the Department for Transport, 7 November 2005 [*Byers.11*]

Thank you for your letter of 27 October requesting various documents for the inquiry into the evidence given by then Secretary of State to the Transport Sub-committee of the Select Committee on Transport, Local Government and the Regions on 14 November 2001.¹⁴⁰ I am sorry we have taken a little longer to reply than you asked.

Taking the requests in your letter in turn:

- enclosed in the attached folder at **flag 1** is a memorandum outlining the background to, and history of Government concerns over Railtrack's viability in the period running up to 25 July 2001 and the various actions taken in response. The memorandum covers the period from late 2000 to July 2001.
- enclosed at **flag 2** in the folder are copies of material commissioned by or on behalf of the Secretary of State from the date of his appointment to 25 July 2001 relating to future options for Railtrack, including a list of the relevant documents.¹⁴¹ Documents that your letter specifically requested are separately flagged (see below) for ease of reference.
- the briefing provided to the Secretary of State on Railtrack for the evidence session on 14 November 2001 is at **flag 3**.¹⁴² This was prepared by officials; there is no record of separate briefing prepared by Special Advisors.¹⁴³
- Copies of the transcript of the evidence provided by the Secretary of State were circulated for checking to those who had attended the hearing: David Macmillan and David Hill, Departmental officials; and Dan Corry, a special advisor. Comments made by David Hill and Dan Corry are contained in the e-mail at **flag 4**.¹⁴⁴ We have not been able to identify any other comments on the transcript.
- a copy of the formal note the Transport Stocktake meeting held at Downing St on 5 July and the transcript of the manuscript notes of the meeting are at **flag 5**.¹⁴⁵
- at **flag 6** are the options papers referred to by Mr Byers in his statement on 17 October 2005 that you requested, one prepared by Mark Coulshed, a DTLR official, dated 12 June 2001, and a letter to the Prime Minister dated 3 August 2001, with

¹⁴⁰ Not printed (see list of unpublished memoranda).

¹⁴¹ Not printed (see list of unpublished memoranda).

¹⁴² Not printed (see list of unpublished memoranda).

¹⁴³ Not printed (see list of unpublished memoranda).

¹⁴⁴ Not printed (see list of unpublished memoranda).

¹⁴⁵ Not printed (see list of unpublished memoranda).

the conclusions of the work on options for Railtrack carried out by the group of officials from DTLR, No 10 and HM Treasury.¹⁴⁶ This work had begun in early July 2001.

- a chronology of papers meetings relevant to the future of Railtrack between Mr Byers appointment and 25 July is at **flag 7**.¹⁴⁷

You also asked for any other papers that would be relevant to help the Committee's inquiry. Given the volume of material already attached, we have not added further papers at this stage. You may be aware that, following judgement in the court case, we have made available for public inspection the documents that comprised the trial bundles. These documents, which consist of 34 lever arch files, may be viewed at the Department's headquarters, Great Minster House, during normal working hours.¹⁴⁸ Should you wish to inspect them, please contact me to arrange this. Please let me know if there are any other specific documents that the Committee may require, having reviewed the current material.

Finally, you asked for clarification of the answers to Q 868 to 870 at the hearing on 14 November 2001 about the timing of draft legislation to allow the Secretary of State to issue directions to the Rail Regulator.

The Director of Railways at DTLR, Bob Linnard, asked one of the Department's lawyers, during August 2001, whether it would be possible to pave the way for regulatory reform by introducing a Bill whereby the existing power of the Secretary of State to give guidance of a general nature to the Regulator could be replaced with a power to issue directions and guidance. Mr Linnard had recognised that, if a decision were taken not to provide additional funding to Railtrack, the company would be able to seek to circumvent that decision by approaching the Rail Regulator. This question was referred to in the submission dated 31 August 2001 from David Rowlands to the Secretary of State.¹⁴⁹

David McMillan, a DTLR official, sent a submission to the Secretary of State on 24 September about a possible emergency legislation.¹⁵⁰ This referred to the fact that policy clearance had been secured at a meeting with the Prime Minister and the Chancellor, and attached a draft speaking note for the Secretary of State to use in seeking drafting authority from the Leader of the House.¹⁵¹ At a meeting on 27 September 2001, the Secretary of State asked to see all the legal advice, including the views of Counsel. This was supplied, together with a submission to the Secretary of State from David McMillan dated 28 September, which provided further analysis, largely in the form of a paper on the legislative options prepared by one of the Department's lawyers. Gareth Evans.¹⁵²

Following the making of the administration order on 7 October, Mr Evans continued to work on the draft instructions to Parliamentary Counsel to draft the necessary legislative

146 Not printed (see list of unpublished memoranda).

147 Not printed (see list of unpublished memoranda).

148 Not printed (see list of unpublished memoranda).

149 Not printed (see list of unpublished memoranda).

150 Not printed (see list of unpublished memoranda).

151 Not printed (see list of unpublished memoranda).

152 Not printed (see list of unpublished memoranda).

provisions. The Secretary of State spoke to the Leader of the House, Robin Cook, on 8 October about the possible need for a short bill. The instructions were completed and delivered to Parliamentary Counsel on 9 October 2001, and draft clauses were received by the Department the following day. Please let me know if you would like copies of the submissions referred to above.

I hope the attached documents and information above are helpful and provide all the information that the Committee requires. If not, please do get in touch.

7 November 2005

2. Memorandum from the Department for Transport to the Committee on Standards and Privileges, 7 November 2005 [Byers.11]

The Committee has requested a memorandum outlining the background to, and history of, Government concerns over Railtrack's financial viability in the period running up to 25 July 2001, and the various actions taken in response.

Pre 2001

1. The Final Conclusions of the Rail Regulator's periodic review were published on 23 October 2000. The purpose of the review was to set the track access charges—the money to be paid from train operating companies to Railtrack—for the period from April 2001 until March 2006 (Control Period 2). The final settlement was in excess of that proposed in the previously published draft conclusions, and greater than that anticipated by the Department.

2. The final conclusions did not take into account the consequences of the Hatfield derailment, which happened just days before they were published. It was envisaged that, once those costs could be quantified, further financial provision would be needed by Railtrack.

3. Railtrack had until 15 January 2001 to decide whether or not to accept the Rail Regulator's conclusions and, had they decided not to accept them, the matter would have been referred to the Competition Commission. Railtrack decided to accept them in the knowledge that the Government would attempt to resolve concerns about the timing of grants payable in the period from 2001–2006 (see paragraph 4), and also that the Rail Regulator would be sympathetic to a request from the company for an interim review of track access charges to consider the financial implications of the Hatfield accident (but not those arising from the company's own shortcomings). The Department was aware that Railtrack faced considerable financial difficulties—Mr Smith of Railtrack had written to the Department on 16 March 2001 sending a copy of a schedule which had been presented to Railtrack's board of directors and which indicated that the estimated true value of the shares in Railtrack Group was 60p, well below the price at which they were then trading.

The April 2001 settlement

4. In the early part of 2001, colleagues in the Department and HM Treasury were involved in discussions with Railtrack and the Strategic Rail Authority about the timing of grants and other matters. These discussions led to what was referred to as the April settlement. The main points were that:

- Grants from the end of the control period would be brought forward, with the first payment due in October 2001;
- The SRA and Railtrack would use their best endeavours to implement what became known as Renewco. This was intended to be an off-balance sheet financial vehicle into which instalments due under the Rail Regulator's final conclusions were to be paid. Renewco would borrow against such funds to make monthly payments to Railtrack on an agreed profile.
- A statement of principles, one of which stated that "the Government stood behind the rail system but not individual rail companies and their shareholders who need to be fully aware of the projected liabilities of the companies in which they invest and the performance risks they face".

5. Following the April settlement, the view of the Department was that Railtrack's financial position had been stabilised, although it was recognised that the accounting policies might lead to financial difficulties in Control Period 3 (starting 2006).

Work within the Department: May to July 2001

6. The Prime Minister was known to be concerned with rail issues in general and in particular with the apparent paralysis demonstrated by Railtrack following the Hatfield accident. In May and early June 2001, the Director of Railways organised the preparation of briefing material for new Ministers, which ran to about 30 pages. This covered a range of issues over the industry as a whole, one of which was the critical condition of Railtrack finances (on which the view was expressed in the paper that some form of financial restructuring within the next 5 years looked inevitable). In that regard, the brief said that while Railtrack's finances were "in a critical condition", the reforms envisaged in the April deal "... should enable Railtrack to carry out its unique role as a largely public funded, regulated private sector monopoly supplier of services to the rail industry". This was presented to Mr Byers following his appointment as Secretary of State on 8 June 2001.¹⁵³

7. Submissions put to Mr Byers shortly following his appointment reflected general unease with Railtrack and Railtrack Group but nothing more pointed or urgent than a feeling that something might have to be done at some time; no crisis was expected imminently. There were general concerns caused by the fall in the Railtrack Group share price which was symptomatic of an industry-wide lack of confidence in the company.

¹⁵³ Not printed (see list of unpublished memoranda).

8. Soon after the election, Mr Byers commissioned a number of pieces of work on rail issues. One request was for an all-options paper on the future of Railtrack, which tallied with work already being done in the Department. The paper was produced by one of the divisional managers, Mark Coulshed, on 12 June, and considered a range of theoretical options for the company.¹⁵⁴ It advised against major structural change, arguing that Railtrack's problems were primarily ones of management.

9. My Byers attended a Transport Stocktake with the Prime Minister on 5 July 2001 and, in preparation for this, a briefing paper was produced.¹⁵⁵ Following the stocktake a working group, consisting of officials from the Department, HM Treasury and No. 10, was established to consider the options for Railtrack and to produce a paper for Ministers to consider over the summer. The group met on three occasions during July; on the 16, 26 and 31. Various draft papers were produced as part of the work of the Group, culminating in a letter to the Prime Minister from the Secretary of State, dated 3 August, setting out options for Railtrack.¹⁵⁶ The contents of this letter reflect the deteriorating financial position of Railtrack as set out to the Secretary of State on 25 July, and the subsequent meetings between Railtrack's financial advisers and officials in the Department.

7 November 2005

3. Chronology of submissions and events relating to options for Railtrack 7 June to 25 July 2001

Date—2001	Event
7 June	Labour win election
8 June	Mr Byers appointed Secretary of State (SoS) "Railtrack: Financial position" submission to SoS from David Rowlands, DTLR official
11 June	'Railways Background and issues' submission to SoS Paper produced by Bob Linnard, DTLR official, containing briefing for new Ministers.
12 June	"Railtrack: Options for Government" submission to SoS from Mark Coulshed, DTLR official
15 June	Mr Byers has first briefing meeting with officials on Rail issues.
18 June	Mr Robinson becomes Chairman of Railtrack Group.
19 June	Mr Byers meets Tom Winsor, Rail Regulator for the first time
27 June	Mr Byers meets Mr Robinson, Chairman of Railtrack.

154 Not printed (see list of unpublished memoranda).

155 Not printed (see list of unpublished memoranda).

156 Not printed (see list of unpublished memoranda).

5 July	Mr Byers attends Transport Stocktake with PM, Chief Secretary to HMT, Transport Ministers and others
16 July	First meeting of group of officials from DTLR, HMT and No. 10 to discuss options for Railtrack.
24 July	DTLR circulate papers for officials group on 26 July, including 'Railways: A discussion paper'
25 July	Mr Byers meets Mr Robinson Chairman of Railtrack

7 November 2005

4. Letter to the Department for Transport from the Clerk, 17 November 2005 [Byers.14]

I have now had a chance to go through the material the Department has submitted and should be grateful for its assistance on the following points, some of which arise from material supplied by other witnesses.

1. To the extent that it is not clear from material already supplied by the Department, could it indicate when; by whom; and in what terms each of the items commissioned by or on behalf of the Secretary of State was commissioned.
2. Can the Department clarify precisely the chronology of the decision or decisions to broaden the work on Railtrack beyond the Department? The memorandum refers (paragraph 9) to a working group being established after the Transport Stocktake on 5 July. The Railtrack judgement (paragraph 65) refers to a departmental meeting on 20 June 2001 at which Mr Byers apparently suggested that the Treasury should be brought into the discussions about Railtrack and also refers to discussions between him and the Treasury shortly afterwards.
3. Can the Committee have a copy of the note of the meeting on 20 June 2001?
4. The box note for the 20 June meeting referred to the three main areas of discussion and "copies of last week's papers". Could the Department supply those relating to options for reforming Railtrack or, if they have already been supplied, identify the relevant documents?
5. The basis of the Transport Stocktake was a note by Stephen Byers to the Prime Minister dated 29 June, itself triggered by a note from the Prime Minister of 22 June and referred to in Mr Byers' note. Can the Committee have copies of both documents?
6. Paragraph 9 of the Department's memorandum refers to the working group meeting on 16, 26 and 31 July. The papers submitted appear to relate solely to the 26 July meeting. Could the Committee have the papers for each of the other meetings, and also copies of any minutes?

7. What was the composition of the working group and who chaired it? Was any feed back made after meetings (in particular after the 26 July meeting) and, if so, to whom?

8. Was any report, formal or informal, made to the Secretary of State or any other Minister, after any of these meetings?

9. The briefing for the select committee hearing refers to “background material you requested”. To the extent that this may not have already been supplied, could the Committee have this?

10. Was an update ever prepared of briefing note L and, if so, could the Committee have a copy, and also a copy of the note on bondholders that followed the main brief?

11. The Committee has seen e-mails suggesting that, around 28 June 2001, the No. 10 Policy Unit was taking the view that, subject to the views of the Prime Minister, there should be a fundamental internal review of Railtrack, with all options on the table. Was the Department for Transport aware that No. 10 staff were considering such an option; and what discussions had there been with the Department leading up to this?

I should be grateful to receive a response to these points as soon as possible, and certainly by Wednesday 23 November in time for circulation that evening to the Committee. If you have any queries, or need any further information, please do not hesitate to contact me.

17 November 2005

5. Letter to the Clerk from the Department for Transport, 23 November 2005 [Byers.13]

Thank you for your further letter of 17 November requesting further documents for the inquiry into the evidence given by then Secretary of State to the Transport Sub-committee of the Select Committee on Transport, Local Government and the Regions on 14 November 2001.

Taking your requests and questions in the order given in your letter:

1. The table below sets out who commissioned the various briefing documents at flag 2 to my 7 November letter, as well as the 12 June paper prepared by Mark Coulshed included at flag 6.¹⁵⁷ Officials often provide advice to Ministers on a proactive basis without being specifically commissioned to do so, and it is not always clear when advice was commissioned.

¹⁵⁷ Not printed (see list of unpublished memoranda).

Date 2001	Description	Commissioned
8 June	'Railtrack—Financial Position' submission to Secretary of State (SoS) from David Rowlands, DTLR official	Officials, June 2001
11 June	'Railways: Background and Issues' submission to SoS by Bob Linnard, DTLR official	Officials, May/June 2001 part of briefing for new Ministers
12 June	'Railtrack Options for action by Government' Submission to SoS by Mark Coulshed, DTLR official	SoS, 11 June 2001
26 June	'Meeting with John Robinson, Railtrack 27 June 2001' Submission to SoS from Phil Carey, DTLR official	Officials, June 2001
19 July	'Dieter Helm' Submission to SoS from Bob Linnard with comments on Dan Corry's, Special Advisor, report on discussions with Dieter Helm.	SoS ,July 2001
24 July	'Meeting with John Robinson, Railtrack 25 July 2001' Submission to SoS from Phil Carey.	SoS office, 18 July 2001
24 July	'Railtrack options: Papers for meeting 1:15pm Thursday 26 July'. e mail covering papers to DTLR/No 10/HMT officials from John Nevitt, DTLR official	Part of DTLR/HMT/ No 10 work initially instigated by SoS 20 June (see 2 below)

2. At the meeting on 20 June the Secretary of State asked for joint HMT/DTLR work to look at options for Railtrack. Brian Hackland from No 10 was also present at this meeting. In his note to the Prime Minister of 29 June (see point 5 below), the SoS refers to this joint working, also including the 'policy directorate' (part of No 10). This proposal was further discussed and agreed at the Prime Minister's transport stocktake meeting of 5 July. The plan for joint DTLR/HMT work was developed on or around 20 June, a week before proposal for joint working on Railtrack options proposed by officials within No 10 on 27 June. This is further discussed below, in response to point 11 of your letter.

3. A note of the meeting of 20 June is attached at **flag A**.¹⁵⁸

4. As regards Railtrack, the 'last weeks papers' referred to in the box note for the 20 June meeting is, we believe, the paper dated 12 June 2001 by Mark Coulshed attached at flag 6 of my letter of 7 November.

5. A copy of the Prime Minister's note of 22 June and Mr Byers' note of 29 June are attached at **flag B**.¹⁵⁹

6. I attach at **flag C** papers prepared for the 16 July meeting of the DTLR/HMT/No 10 joint working group, and at **flag D** a transcript of a manuscript note of the 31 July meeting.¹⁶⁰ I

¹⁵⁸ Not printed (see list of unpublished memoranda).

¹⁵⁹ Not printed (see list of unpublished memoranda).

¹⁶⁰ Not printed (see list of unpublished memoranda).

previously sent you papers prepared for the 26 July meeting. No formal note of these meetings was taken.

7. As regards attendance at the meeting as no formal notes were taken it is hard to be sure who was at each one. However the papers for the 16 July meeting were circulated to David Rowlands, Bob Linnard, and Dan Corry from DTLR, Nick Macpherson, Martin Wheatley and Shriti Vadera from HM Treasury and Brian Hackland from No 10. Attendees at the meeting are likely to have been drawn from these individuals. The papers for the 26 July meeting were circulated to the same individuals as well as Lewis Atter and Mark Coulshed at DTLR. The manuscript note for the 31 July meeting suggests that David Rowlands, Martin Wheatley, Shriti Vadera, Andrew Adonis (No 10) and Brian Hackland were all in attendance. It is likely that others were also there—the reference to “DTLR” in the list of attendees on the note may refer to other DTLR staff who attended.

8. We have not been able to identify a written record of feedback from the joint working group meeting on 16 July being provided to Ministers in DTLR. On 30 July 2001, David Rowlands provided the Secretary of State with a submission and note on the work done to date by the joint working group, noting that final output from the group would be put to him for agreement shortly. This submission is attached as **flag E**.¹⁶¹ The final output of the joint working group was the 3 August report to the Prime Minister from the SoS and the covering note prepared by No 10, attached at flag 6 to my letter of 7 November.

9. We have unfortunately not been able to identify the ‘background material’ mentioned in the cover note for the briefing pack on Railtrack issues for the 14 November Transport Committee hearing.

10. We have also been unable to identify a revised version of briefing note L or the note on bondholders referred to.

11. The Department understands that officials in No 10 first proposed a joint working group to review options for Railtrack in an internal No 10 minute dated 27 June. We have not been able to identify any record of discussions between the Department and No 10 about such a review on or prior to that date, although as noted above, Brian Hackland from No. 10 attended the meeting with the SoS on 20 June at which joint working between DTLR and HMT was first proposed. The idea of a review, subject to the approval of the PM, was developed further in No 10 in the days immediately following this and there appears to have been some informal discussions with the Department during this time as a joint DTLR/HMT/No 10 group was referred to in the SoS’ minute to the PM of 29 June.

I hope this information is helpful.

23 November 2005

¹⁶¹ Not printed (see list of unpublished memoranda).

6. Letter to the Clerk from the Department for Transport, 25 November 2005 [Byers.16]

Please find attached further documents prepared for the Secretary of State for his appearance at the Select Committee on Transport Local Government and the Regions on 14 November 2001. They comprise a speaking note and further 'Question and Answer' type briefing related to Railtrack.¹⁶²

These should have been provided in response to your letter of 27 October, but unfortunately were overlooked at the time. They supplement the material provided at flag 3 to my letter to you of 7 November.

Please accept my apologies for any inconvenience caused by this oversight.

25 November 2005

7. Letter to the Clerk from the Department for Transport, 2 December 2005 [Byers.20]

Thank you for your letter of 28 November requesting clarification and various documents for the inquiry into the evidence given by then Secretary of State to the Transport Subcommittee of the Select Committee on Transport, Local Government and the Regions on 14 November 2001.

Firstly, you asked about the Prime Minister's reference in his minute of 22 June 2001 to an offer made by Mr Byers to let him have a note on his thoughts on rail. We cannot find any other reference to, or record of, this offer and so assume it was likely to have been made in private.

Secondly, you ask why Mr Coulshed's options paper of 12 June 2001 was copied to Brian Hackland at No 10. It was quite normal at this time for Dr Hackland to attend meetings on a variety of transport issues, not just railways, and for him to be copied papers. Indeed it was the then Secretary of State's wish that this should be so.

Thirdly, you ask if a note was taken of the Departmental meeting on 15 June 2001. This is attached.¹⁶³

Finally we believe the meeting between Miss Vadera and Mr Byers was private and there is therefore, no record.

I hope this information is helpful.

2 December 2005

¹⁶² Not printed (see list of unpublished memoranda).

¹⁶³ Not printed (see list of unpublished memoranda).

8. Letter to the Clerk from David Rowlands, Permanent Secretary, Department for Transport, 5 December 2005 [Byers.24]

I am writing with some further information following my appearance on 29 November.

The Committee asked for any separate briefing prepared for the Opposition day debate which took place on 13 November 2001. In fact essentially the same brief was prepared for both the debate and Mr Byers' appearance before the Committee. You will see that this was so from the index note at flag A prepared by Mr Byers' private office.¹⁶⁴ You will also see from the final paragraph of the note it was clearly the case that a morning was cleared in Mr Byers' diary in order to allow him to prepare for the Committee. There were however some notes and other briefing specifically prepared for the opposition day debate. These are at Annex B.¹⁶⁵

We can find no record of any wash up session after the committee hearing. This is unsurprising. In my experience of committee hearings I cannot readily recollect any formal wash up. At most, it is usually confined to a few minutes in the corridor outside the committee room.

The Committee referred to the fact that on the day after the Transport Select Committee, Chris Grayling MP raised a point of order about the evidence given to the Committee and previous statements by Mr Byers in the House of Commons. The point of order was solely to do with what had been said at a meeting between Mr Byers and John Robinson, Railtrack Chairman, on 25 July 2001. In response to this and to a request made by the Clerk to the Committee, the Department's record of this meeting along with a covering note was sent to the Committee on 27 November 2001. A copy of this attached at C.¹⁶⁶

Finally, I attach at flag D for your information a full list of parliamentary events relating to Railtrack entering administration.¹⁶⁷

5 December 2005

9. Letter to the Chairman from David Rowlands, Permanent Secretary, Department for Transport, 9 December 2005 [Byers.25]

I hope you found the evidence which I gave the Committee helpful. Since my appearance we have received a series of requests from the Clerk of the Committee for documents.

Naturally both I and my Department stand ready to help the Committee in any way. But I am concerned that in asking for documents piecemeal the Committee may not gain a full understanding of the period leading up to, and beyond, Mr Byers' meeting with Mr Robinson on 25 July 2001. We hold in the Department a full set of the documents which

¹⁶⁴ Not printed (see list of unpublished memoranda.)

¹⁶⁵ Not printed (see list of unpublished memoranda.)

¹⁶⁶ Not printed (see list of unpublished memoranda.)

¹⁶⁷ Not printed (see list of unpublished memoranda.)

were before the High Court in the recent Railtrack shareholders action. They include some 4,400 pages of departmental papers, emails, etc in chronological order.

I doubt the Committee needs the full set of documents before the Court. But I would like to make available to you all of the chronological paperwork so that the Committee is confident it has a comprehensive view of what was happening during the period in question.

If you judge that this would be helpful then perhaps the Clerk of the Committee could discuss with my Parliamentary Clerk how best to make the paperwork available to you.

9 December 2005

David Rowlands

10. Letter to the Clerk from the Department for Transport, 13 December 2005 [Byers.26]

Thank you for your letter of 1 December requesting clarification and various further documents for the inquiry into the evidence given by the then Secretary of State to the Transport Sub-Committee of the Select Committee on Transport, Local Government and the Regions on 14 November 2001.

Firstly, you asked for the three annexes referred to in the DTLR paper on railways dated 3 August 2001. These are attached at flags A, B, C.¹⁶⁸

Secondly, you asked if Mr Byers' minute to the Prime Minister constitutes the paper referred to in Mr Rowlands' minute of 30 July. It does not. The paper in question was the DTLR paper included with Dr Hackland's minute of 3 August 2001 to the Prime Minister. This had been circulated earlier to officials in No. 10 and the Treasury for agreement (which is why it was referred to in Dr Hackland's minute as "a draft DTLR note").

Thirdly, you refer to further documents requested when Mr Rowlands appeared at the evidence session on 29 November. These were provided in his letter of 5 December.

Fourthly, there is no record of the Secretary of State having had sight of Mr Linnard's minute of 13 November 2001 or of any response. This is quite normal. Ministers' Private Offices record decisions, comments etc. arising out of minutes sent by officials. They do not send out acknowledgements that a minute has been read. In this particular case any action would almost certainly have been handled in the context of the briefing meeting which had been arranged for the Committee hearing.

Fifthly, you asked the Department to check whether there would have been anything in the Secretary of State's folder for the hearing on 14 November that has not already been submitted. There was in addition to the material you have already a note on bondholders and the revised note on Railtrack financial documents, which was in the main Committee

¹⁶⁸ Not printed (see list of unpublished memoranda).

hearing briefing pack. These are attached at D.¹⁶⁹ Also attached at annex D are a number of other briefing notes provided for Secretary of State's appearance covering

- Renewco
- The Strategic Rail Authority
- Railtrack staff pay and conditions
- Railtrack and waiver of notice period for railway administration order.¹⁷⁰

Briefing was also provided on franchising issues but I have not included this given that the focus of the Committee's interest is on the Railtrack aspects of the hearing.

Finally you asked for the briefing supplied in relation to the occasions on which the House discussed Railtrack's administration:

- The briefing material for *Mr Byers statement on 15 October* is attached at E comprising the actual statement, general Q&A brief on Railtrack circulated on 15 October and a separate page of Q&A briefing;¹⁷¹
- We have not been able to identify material for *the 5 November Private Notice Questions*, but the actual statement is attached at F;¹⁷²
- The briefing for the *Opposition Debate on 13 November* was essentially the same as the briefing prepared for the appearance before the Transport Sub-Committee. This was at flag 3 of my letter of 7 November. However I am attaching at annex G some small additional items which we believe were prepared for the debate.¹⁷³

I hope this information is helpful.

13 December 2005

11. Letter to the Clerk from the Department for Transport, 9 January 2006 [Byers.27]

Thank you for your letters of 7 December and 20 December.

Your 7 December letter asked for a number of further documents from early in 2001.

¹⁶⁹ Not printed (see list of unpublished memoranda).

¹⁷⁰ Not printed (see list of unpublished memoranda).

¹⁷¹ Not printed (see list of unpublished memoranda).

¹⁷² Not printed (see list of unpublished memoranda).

¹⁷³ Not printed (see list of unpublished memoranda).

A copy of the paper prepared by Mr Carey in February 2001 setting out six options for Railtrack's future, which we believe is the one referred to at paragraph 36 of the Judgement, is attached as Flag A, along with a covering e-mail exchange between Mr Carey and Mr Evans dated 22 February.¹⁷⁴ These documents cover points 1 and 4 in your letter. There is no record of Mr Carey's paper being specifically commissioned.

The documents requested at points 2 and 3 of your letter - the e-mail of 5 February 2001 from Mr Kohli, Mr Kelmsley's minute of 11 January to Mr Wheatley and Mr Kemsley's 14 March submission to the Chancellor - are attached at flags B, C and D respectively.¹⁷⁵

Turning now to your 20 December letter and the question of the annexes to the DTLR paper dated 3 August 2001, the copy of this paper as sent by Mr Hackland to the Prime Minister which we have, and which only came to this Department as part of the disclosure exercise in the Railtrack case, does not include the annexes. We have identified what we believe to be the annexes and it is these that were attached to the letter of 13 December. The labelling on the annexes sent to you does not correspond to the labelling in the 3 August paper as the ordering of the annexes changed as the paper was being drafted. Two of the annexes, on Railtrack options and Railtrack finances, were sent to you under Flag 2 of our letter of 7 November, as part of the e-mail of 24 July 2001 from Mr Nevitt. This e-mail was sent to Dr Hackland at No 10, as well as colleagues in DTLR and HM Treasury, as was the e-mail circulating the annex on the 10 year plan targets. I hope this clarifies the position for you.

The note on bondholders and revised note on Railtrack's financial position were sent in response to your request for any further information that was in the Secretary of State's briefing pack for his Select Committee appearance on 14 November 2001. In responding to this request, a check was made of the relevant electronic and paper records and in doing so these notes were identified. You will appreciate that there are a substantial number of records to search - over 13,000 documents were disclosed in preparation for the recent trial and there are some 38,000 e-mails that are potentially relevant. But notwithstanding this, the notes on bondholders and Railtrack's financial position should have been found earlier and sent to you in response your letter of 17 November, for which I apologise.

In order to help the Committee, and to try to ensure it has all the relevant material for which it has asked, we have undertaken a further review of the extensive Whitehall documentation relating to Railtrack. It remains the case, as we said in our letter of 2 December that we can find no record of what was discussed between the then Secretary of State and Shriti Vadera referred to at paragraph 66 of the Court judgement. We have, however, identified an internal Treasury e-mail which refers to the meeting, which is attached at flag E.¹⁷⁶

We have now also identified an e-mail from Mr Byers' Private Office (flag F) which, refers to a briefing meeting on 8 November 2001, which was prior to the briefing meeting included in the chronology which you already have, to discuss the handling of both the

¹⁷⁴ Not printed (see list of unpublished memoranda).

¹⁷⁵ Not printed (see list of unpublished memoranda).

¹⁷⁶ Not printed (see list of unpublished memoranda).

Opposition Day debate and the Select Committee hearing.¹⁷⁷ This e-mail set out a series of briefing requirements. The Committee already has most of this material. But the e-mail has allowed us to identify further additional briefing material on third party endorsements (flag G) and on the Railtrack court bundle (flag H).¹⁷⁸ We have not been able to identify any material supplied in response to points 5 or 13 in the e-mail.

We have also managed to identify one further briefing note clearly requested at very short notice on the day of the Opposition Day debate itself (flag I).¹⁷⁹

Finally, I confirm that in November 2001 Mr McMillan was on temporary promotion to the post of Director, Rail Restructuring (SCS Pay Band 2). His substantive grade was SCS pay band 1.

9 January 2006

12. Letter to the Clerk from David Rowlands CB, Permanent Secretary, Department for Transport, 19 January 2006 [Byers.30]

Thank you for your letter of 7 December 2005 which was received on 11 January 2006.

On the index to the Secretary of State's briefing for the Select Committee submitted to him on 9 November 2001, our records do not show whether or not the Secretary of State actually used this as part of the briefing he took to the evidence session on 14 November. However, it is a fair assumption given that the Secretary of State specifically requested briefing on the indexed issues that he would have done so, along with other briefing material subsequently prepared, copies of which we have previously provided to the Committee.

Regarding the comments made by Chris Grayling MP in the House of Commons on 15 November 2001, we have been unable to identify from our records any direct action taken by the Department in response to the Point of Order. However, as my letter of 5 December 2005 noted, the Department released on 27 November 2001 the note of a meeting between John Robinson and the Secretary of State held on 25 July 2001 in order to help clarify what was said on that occasion.

Finally, you asked about Mr McMillan and correction of the evidence transcript of the Committee hearing. I have spoken to him in the light of your letter but I am afraid he has no recollection of this particular episode of what is now over four years ago. I am afraid too that I cannot offer anything directly on this from my own perspective as the Director General responsible at the time for railways.

But it does seem to me looking back that it is doubtful there would have been particular concern at the time at any lack of comment on the transcript from Mr McMillan, assuming

¹⁷⁷ Not printed (see list of unpublished memoranda).

¹⁷⁸ Not printed (see list of unpublished memoranda).

¹⁷⁹ Not printed (see list of unpublished memoranda).

there was none. Mr Hill and Mr Corry both offered substantive comments on the transcript. Unlike Mr McMillan who had only joined the Railways Directorate on 28 August 2001, both had been fully engaged in railways and Railtrack issues with and on behalf of Mr Byers from the time of his arrival in the Department as Secretary of State. Mr Hill, as you know, was one of his Private Secretaries with specific responsibility for railways matters. Mr Corry was, of course, one of Mr Byers' special advisers and had come with him from the Department of Trade & Industry. Both, as I say, had a full understanding of the issues and of what had been happening.

19 January 2006

Witnesses

Thursday 24 November 2005

Page

Chris Grayling MP

Ev 1

Tuesday 29 November 2005

David Rowlands CBE, Permanent Secretary, Department for Transport

Ev 8

Tuesday 6 December 2005

Dan Corry, Former Special Adviser, Department for Transport, Local Government and the Regions

Ev 12

Tuesday 10 January 2006

Rt Hon Stephen Byers MP

Ev 20

Unpublished memoranda

List of memoranda laid upon the Table but not printed:

The following memoranda have been reported to the House, but to save printing costs they have not been printed and copies have been placed in the House of Commons Library, where they may be inspected by Members. Other copies are in the Record Office, House of Lords, and are available for public inspection. Requests for inspection should be addressed to The Parliamentary Archives, Record Office, House of Lords, London SW1A 0PW (tel. 020 7219 3074). Hours of inspection are from 9.30 am to 5.00 pm on Monday to Fridays.

Received from Mr Alan Duncan MP [Byers.6]:

1. Handwritten note of meeting with Rail Regulator on 19 June 2001 [repeated, see Attachment 3, Byers.9, which also includes a transcribed version of this note].
2. Letter to the Prime Minister from Stephen Byers, entitled: “Transport Stocktake: 3 July 2001”, dated 29 June 2001. (NB. *Date of this meeting subsequently changed to 5 July*) [repeated, see Annex A, Attachment 6, Byers.8; Flag B, Byers.13].
3. Handwritten note of Transport Stocktake meeting on 5 July 2001 [repeated, see Attachment 13, Byers.8—see also Flag (5), Byers.11 for a transcribed version of this note].
4. Letter to Peter Unwin, DTLR, from Simon Virley, Private Secretary, No. 10 Downing Street entitled: “Transport Stocktake”, dated 6 July 2001 [repeated, see Attachment 14, Byers.8; Attachment 5, Byers.9; and Flag (5), Byers.11].

Received from Chris Grayling MP [Byers.8]:

1. Note of rail issues meeting with Secretary of State and officials on 20 June 2001.
2. Ministerial box note to Secretary of State entitled ‘Rail’.
3. Email to Ed Balls from Shriti Vadera, entitled ‘Rail’, 21 June 2001.
4. Email correspondence, with handwritten annotation, between Andrew Adonis and Brian Hackland, entitled ‘Railtrack—fundamental review’, 28 June 2001.
5. Email correspondence between Jonathan Powell and Brian Hackland, entitled “Railtrack”, 27 June 2001.
6. Letter to the Prime Minister from Brian Hackland entitled, “Internal discussion on rail; and transport stocktake with Stephen Byers”, together with Annexes, 29 June 2001
 - Annex A: Letter to the Prime Minister from Stephen Byers, entitled: “Transport Stocktake: 3 July 2001”, dated 29 June 2001. (NB. *Date of this meeting subsequently changed to 5 July*). [repeated, see Attachment 2, Byers.6; Flag B, Byers.13]
 - Annex B: Personal Minute to the Secretary of State for Transport, Local Government and the Regions from the Prime Minister, 22 June 2001 [*not attached with this memo*, see Annex B, Flag B, Byers.13].
7. Letter to Shriti Vadera, HM Treasury, from John Nevitt, DTLR, entitled “Railtrack: Meeting Monday 16 July”, together with an attached paper entitled: “Railtrack: Structural Options”, 13 July 2001.
8. Email correspondence between David Hill and David Rowlands, entitled “Joint Work on Options for Railtrack”, 12 & 20 July 2001.

9. Email to Mark Coulshed from Phil Carey, entitled “Robinson meeting 25 July”, 24 July 2001, with an attached copy of a letter to the Secretary of State from Phil Carey entitled “Meeting with John Robinson, Railtrack 25 July 2001”, 24 July 2001.
10. Email to David Rowlands, Mark Coulshed, Peter Thomas and Tamsin Alker from David Hill, entitled “Rail”, 25 July 2001.
11. Email to Brian Hackland, Bob Linnard, Dan Corry, David Rowlands, Lewis Atter, Nicholas Macpherson and Shriti Vadera from John Nevitt, entitled “Railtrack Options: Papers for meeting, 1.15pm Thursday 26 July”, 24 July 2001 [repeated, with copies of papers, see (f), Flag (2), Byers.11].
12. Extract (pages 67–70) from the Approved Judgement before Mr Justice Lindsay between *Geoffrey Rutherford Weir and Others and (1) The Secretary of State for Transport (2) The Department for Transport*, 14 October 2005.
13. Handwritten note of Transport Stocktake meeting on 5 July 2001 [repeated, see Attachment 3, Byers.6—see also Flag (5), Byers.11 for a transcribed version of this note].
14. Letter to Peter Unwin, DTLR, from Simon Virley, Private Secretary, No. 10 Downing Street entitled “Transport Stocktake”, dated 6 July 2001 [repeated, see Attachment 4, Byers.6; Attachment 5, Byers.9; and Flag (5), Byers.11].
15. Copy of letter to Chris Grayling MP from the Rt. Hon Stephen Byers MP, 17 October 2005.

Received from the Rt. Hon Stephen Byers MP [Byers.9]:

1. Letter to the Secretary of State from Mark Coulshed, Head of Division, Railways Sponsorship, entitled “Railtrack: Options for Action by Government”, together with Annex, 12 June 2001 [repeated, see Flag 6, Byers.11]
 - Annex A: Paper entitled “Railtrack: Structural Options”. [repeated, see Annex A, Flag 6, Byers.11].
2. Conservative Party Press Release entitled “Conservatives seek Standards Committee probe of Byers case”, 18 October 2005.
3. Handwritten, and transcribed, note of meeting with Rail Regulator on 19 July 2001 [repeated, see Attachment 1, Byers.6].
4. Letter to David Rowlands from David Hill, Private Secretary, DTLR, entitled “Meeting with the Rail Regulator”, 3 July 2001.
5. Letter to Peter Unwin, DTLR, from Simon Virley, Private Secretary, No. 10 Downing Street entitled: “Transport Stocktake”, dated 6 July 2001 [repeated, see Attachment 4, Byers.6; Attachment 14, Byers.8; and Flag (5), Byers.11].

Received from Miss Anne McIntosh LL.B MP [Byers.10]:

1. Transport, Local Government and the Regions Committee Minority Report, see First Report of Session 2001–02, Transport, Local Government and the Regions Committee: “Passenger Rail Franchising and the Future of Railway Infrastructure” (HC 239–1), pp 50–57.

Received from Mr Tom Winsor [Byers.23]:

1. Transcript of BBC2 Newsnight piece on Railtrack, 19 February 2001.
2. Financial Times article entitled “Ticklish task of keeping Britain’s trains on track”, 20 April 2001.
3. Speech by Tom Winsor (as Rail Regulator) to the Institution of Electrical Engineers entitled “The Regulatory Framework”, 12th June 2001.

Received from the Department for Transport [Byers.11]:

1. **Flag 2:** list and copies of papers commissioned by or on behalf of the Secretary of State from the date of his appointment to 25 July 2001 relating to future options for Railtrack
 - a) Letter to the Secretary of State from David Rowlands, DTLR Official, entitled “Railtrack—Financial Position”, together with Annexes, 8 June 2001
 - Annex A: Statement of Principles agreed between the Government and Railtrack
 - Annex B: Letter and briefing notes for the Secretary of State from Bob Linnard entitled “Railways: Background and Issues”, 11 June 2001.
 - b) Letter and attached briefing notes for the Secretary of State from Phil Carey, DTLR Official, entitled “Meeting with John Robinson, Railtrack 27 June 2001”, with Annexes, 26 June 2001
 - Annex A: Railtrack: Stewardship of the Existing Network
 - Annex B: Railtrack: Structural Options.
 - c) Letter to the Secretary of State from Dan Corry entitled “Discussion with Dieter Helm”, July 2001 and subsequent letter, with handwritten annotations, to the Secretary of State from Bob Linnard entitled “Dieter Helm”, 19 July 2001.
 - d) Letter and briefing notes for the Secretary of State from Phil Carey entitled, “Meeting with John Robinson, Railtrack 25 July 2001”, 24 July 2001.
 - e) Email, with attached papers, to DTLR/No.10/HMT officials from John Nevitt, DTLR entitled “Railtrack options: Papers for meeting 1.15 pm Thursday 26 July” [repeated, without attached papers, see Attachment 8 Byers.11] Attachments:
 - i. “Railways: A discussion paper”, 24 July 2001
 - Annex A: “Options for Future of Railtrack”
 - Annex B: “Special Purpose Vehicles (SPVs)”
 - Annex C: “Railtrack Finances”
 - Annex A: “Discussion of key accounting and other financial factors”
 - Annex B: “Railtrack’s CP1 Finances”
 - Annex C: “Railtrack CP2 Finances”
 - Annex D: “Railtrack Finances in CP3”.
2. **Flag 3:** Briefing provided to the Secretary of State by Bob Linnard on the Opposition Day Debate on 13 November 2001 and appearance before the Transport Select Committee to give evidence on 14 November 2001 (see also Byers.16 for additional briefing material)
 - **A:** Narrative PQ
 - **B:** Self Standing Text on Renewco
 - **C:** Accusation: What was said on 25 July? (Meeting with John Robinson)
 - **D:** Accusation: Decision was made before 5 October?
 - **E:** Accusation: Did you urge Alan Bloom to “get stuck in” on 11 September?

- **F:** Accusation: was Regulator “threatened” with emergency legislation?
 - **G:** Accusation: Guidelines a “stitch up”; competition skewed in favour of CLG
 - **H:** Emergency Legislation: powers in relation to the Regulator
 - **I:** Uniqueness of the Rail Regulator
 - **J:** Government Financial Commitments to Railtrack
 - **K:** Note on Hatfield Reopener
 - **L:** Railtrack’s financial demands to Government
 - **M:** Note on Misaligned Incentives
 - **N:** Shareholder Value
 - **O:** Positive Lines on rail projects (e.g. Thameslink)
 - **P:** Chronology of Events in relation to Railtrack waiving 2 day notice period.
3. **Flag 4:** Email exchange between John Parkinson, David Hill and Dan Corry entitled “Transcript of Select Committee Hearing—Comments”, 19 November 2005.
4. **Flag 5:** Letter from Simon Virley to Peter Unwin entitled “Transport Stocktake”, with attached list of attendees at the Transport Stocktake meeting on 5 July 2001 and the transcript of the meeting [repeated, see Attachment 4, Byers.6 and Attachment 5, Byers.9].
5. **Flag 6:** Letter to the Secretary of State from Mark Coulshed, Head of Division, Railways Sponsorship, entitled “Railtrack: Options for Action by Government”, together with Annex, 12 June 2001 [repeated, see Attachment 1, Byers.9]
- Annex A: Paper entitled, “Railtrack: Structural Options” [repeated, see Attachment 1, Byers.9].

Also, letter to the Prime Minister, with handwritten annotations, from Brian Hackland, entitled “Railtrack and Options for Restructuring”, together with Annexes, dated 3 August 2001,

- Annex A: letter to the Prime Minister from Stephen Byers entitled “Railtrack”, and attached table entitled “Performance of Options Against Key Criteria, dated 3 August 2001
- Annex B: DTLR note entitled “Railways”, August 2001

Received from the Department for Transport [Byers.13]:

6. **Flag A:** Letter to David Rowlands from David Hill, Private Secretary entitled “Rail”, re: meeting of 20 June 2001, 25 June 2001.
7. **Flag B:**
- Annex A Letter to the Prime Minister from Stephen Byers, entitled: “Transport Stocktake: 3 July 2001”, dated 29 June 2001. (NB. *Date of this meeting subsequently changed to 5 July*). [repeated, see Attachment 2, Byers.6; and Annex A, Attachment 6, Byers.8]
 - Annex B: Personal Minute to the Secretary of State for Transport, Local Government and the Regions from the Prime Minister, 22 June 2001 [repeated, see Annex B, Attachment 6, Byers.8].
8. **Flag C:** email from John Nevitt, DTLR official to Shriti Vadera, Treasury official, entitled “Railtrack options: meeting 16 July”, with attachments, 13 July 2001. Attachments:

- Letter from John Nevitt to Shriti Vadera, entitled “Railtrack: Meeting Monday 16 July”, 13 July 2001
- Briefing note entitled “Railtrack: Structural Options” prepared for the 16 July meeting of the DTLR/HMT/No. 10 joint working group, with Annexes, entitled “Railway Administration”; “Illustrative Timetable for Laying the Statutory Instrument”; and “Insolvency Generally”, July 2001.

Further email from John Nevitt to Treasury and DTLR officials entitled “Railtrack: 5.00pm Meeting today”, with attachment, 16 July 2001. Attachment:

- Internal DTLR briefing paper entitled “Railtrack Finances”, with Annexes entitled “Discussion of key accounting and other financial factors”; “Railtrack’s CPI Finances”; “Railtrack’s CP2 Finances”; and “Railtrack Finances in CP3”.
9. **Flag D:** transcript of a manuscript note of the 31 July 2001 Rail Options meeting.
 10. **Flag E:** Letter to the Secretary of State from David Rowlands entitled “Railtrack”, on the work done to date by the joint working group, noting that the final output from the group would be put to him for agreement shortly, with an Annex, 30 July 2001 (*The final output of the joint working group was the 3 August report to the Prime Minister from the Secretary of State and the covering note prepared by No. 10—see Flag 6, Byers.11*)
 - Annex A: Options document entitled: “Options for Future of Railtrack”.

Received from the Department for Transport [Byers.16]:

11. Further documents prepared for the Secretary of State for his appearance before the Transport, Local Government and the Regions Committee on 14 November 2001. These comprise a speaking note and further ‘Question and Answer’ briefing relating to Railtrack.

Received from the Department for Transport [Byers.20]:

12. Letter to David Rowlands from David Hill, entitled “Rail”, re: departmental meeting on 15 June 2001, 25 June 2001.

Received from the Department for Transport [Byers.24]:

13. **Flag A:** Briefing note for the Secretary of State entitled “Railtrack: Briefing for Opposition Day Debate and Select Committee”, 9 November 2001.
14. **Flag B:** Further documents prepared for the Secretary of State for the Opposition Day Debate on 13 November 2001. These comprise speaking notes and further ‘Question and Answer’ briefing relating to Railtrack.
15. **Flag C:** Letter to the Clerk of the Transport Sub-committee from Paul Davies, Department for Transport Parliamentary Clerk, entitled “Passenger rail franchising and the future of railway infrastructure inquiry” enclosing:
 - Department for Transport notes of the meeting between the Secretary of State and Railtrack Chairman, Mr John Robinson on 25 July 2001, 27 November 2001.

Also letter from the Clerk of the Transport Sub-committee to Paul Davies entitled “Passenger rail franchising and the future of railway infrastructure inquiry”, re: follow-up to evidence session of 14 November 2001.

16. **Flag D:** List of Parliamentary events relating to Railtrack entering administration.

Received from the Department for Transport [Byers.26]:

17. Annexes to a Department for Transport, Local Government and the Regions paper on railways, 3 August 2001 entitled:
 - **Flag A:** “Railtrack Finances”
 - **Flag B:** “Options for the Future of Railtrack”
 - **Flag C:** “Delivering the 10 year plan rail targets”.
18. **Flag D:** Further documents prepared for the Secretary of State for his appearance before the Transport, Local Government and the Regions Committee on 14 November 2001. These comprise speaking notes and further ‘Question and Answer’ briefing relating to Railtrack.
19. **Flag E:** Further documents prepared for the Secretary of State’s Statement on 15 October 2001. These comprise the statement, speaking notes and further ‘Question and Answer’ briefing relating to Railtrack.
20. **Flag F:** Secretary of State’s statement for the Private Notice Question, 5 November 2001.
21. **Flag G:** Further documents prepared for the Secretary of State for the Opposition Day Debate on 13 November 2001. These comprise ‘Question and Answer’ briefing relating to Railtrack.

Received from the Department for Transport [Byers.27]:

22. **Flag A:** Email exchange between Gareth Evans and Phil Carey entitled “Other options for future of railtrack”, 22 February 2001, with attachment entitled:
 - “Other options for future of railtrack”.
23. **Flag B:** E-mail to Treasury officials from Jitinder Kohli, 5th February 2001, with attachment entitled:
 - “What are we trying to achieve?”
24. **Flag C:** Letter to Martin Wheatley from Ian Kemsley entitled “Treasury strategy for the railways”, 11 January 2001.
25. **Flag D:** Letter to the Chancellor of the Exchequer and Chief Secretary to the Treasury from Ian Kemsley entitled “Railway Financing”, 14 March 2001.
26. **Flag E:** E-mail to Ed Balls from Shriti Vadera entitled “Rail”, 21 June 2001.
27. **Flag F:** E-mail to David McMillan from David Hill entitled “Opposition Day Debate / Select Committee hearings”, 8 November 2001.
28. **Flag G:** E-mail to David Hill from Michael Burrell, 9 November 2001, with attachment entitled:
 - “Railtrack Third Party Endorsements”.
29. **Flag H:** Letter to David Hill from Gareth Evans, Legal section official, entitled “Railtrack plc–Court Bundle, 9 November 2001.
30. **Flag I:** E-mail to David Hill from Richard Bruce entitled “Re: Fwd: David Winters @ Franklin Mutual” with speaking notes for the Secretary of State attached entitled:
 - “Railtrack impact on 10 year plan”.

Received from the Department for Transport [Byers 31]

1. Materials prepared for discussion at the Project Rainbow DTLR meeting on 27 July 2001

Received from the Department for Transport [Byers 32]

1. E-mail of 24 January 2006 to the Clerk of the Committee from Graham Stockbridge, Department for Transport.

Formal minutes

Extract from Minutes of Proceedings relating to declaration of interest

Tuesday 25 October 2005

Dr Alan Whitehead declared a non-pecuniary interest in relation to the matter referred to the Committee by the House on 19 October 2005 in that, at the material time, he had been a Parliamentary Under-Secretary of State in the Department of Transport, Local Government and the Regions, but with no direct responsibilities in relation to transport matters.

Tuesday 24 January 2005

Members present:

Sir George Young, in the Chair

Mr Kevin Barron

Angela Browning

Mr Andrew Dismore

Mr Elfyn Llwyd

Dr Alan Whitehead

The Committee deliberated.

Draft Report [Mr Stephen Byers (Matter referred on 19 October 2005)], proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 20 read and agreed to.

Paragraph 21 read, amended, divided and agreed to (now paragraphs 21 and 22).

Paragraph 22 read and agreed to (now paragraph 23).

Paragraph 23 read, amended and agreed to (now paragraph 24).

A paragraph—(*The Chairman*)—brought up, read the first and second time, and inserted (now paragraph 25).

Another paragraph—(*The Chairman*)—brought up, read the first and second time, and inserted (now paragraph 26).

Paragraphs 24 to 28 read and agreed to (now paragraphs 27 to 31).

Paragraph 29 read, amended and agreed to (now paragraph 32).

Paragraphs 30 to 46 read and agreed to (now paragraphs 33 to 49).

Paragraph 47 read, amended, divided and agreed to (now paragraphs 50 and 51).

Paragraphs 48 to 51 read and agreed to (now paragraphs 52 to 55).

Paragraphs 52 and 53 read, amended and agreed to (now paragraphs 56 and 57).

Paragraphs 54 to 57 read and agreed to (now paragraphs 58 to 61).

Paragraph 58 read, amended and agreed to (now paragraph 62).

Paragraphs 59 to 62 read and agreed to (now paragraphs 63 to 66).

A paragraph—(*The Chairman*)—brought up, read the first and second time, and added (now paragraph 67).

Resolved, That the Report, as amended, be the Sixth Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Several Papers were ordered to be appended to the Report.

Ordered, That the Appendices to the Report be reported to the House.—(*The Chairman.*)

Ordered, That the Minutes of Evidence taken before the Committee on 24 November 2005, 29 November 2005, 6 December 2005 and 10 January 2006, be reported to the House.—(*The Chairman.*)

Several papers were ordered to be reported to the House.

[Adjourned to a day and time to be fixed by the Chairman.]

Reports from the Committee on Standards and Privileges in the current Parliament

Session 2005–06

First Report	Conduct of Mr Jonathan Sayeed	HC 419
Second Report	Conduct of Mr John Horam	HC 420
Third Report	Conduct of Mr Tony Baldry	HC 421
Fourth Report	Pay for Standing Committee Chairmen	HC 568
Fifth Report	Electoral Administration Bill: Simplification of Donation Reporting Requirements	HC 807
Sixth Report	Mr Stephen Byers (Matter referred on 19 October 2005)	HC 854

Oral evidence

Taken before the Committee on Standards and Privileges

on Thursday 24 November 2005

Members present:

Sir George Young, in the Chair

Angela Browning
Mr Andrew Dismore
Nick Harvey

Mr Elfyn Llwyd
Mr Andrew Mackay
Dr Alan Whitehead

Witness: Chris Grayling, a Member of the House, examined.

Q1 Chairman: Good morning, Mr Grayling. The Committee is making progress on the matter which was referred to it by the House last month. I gather you want to make an opening statement.

Chris Grayling: Really, Sir George, if it would be helpful to the Committee, I would be very happy to take just a couple of minutes to talk the Committee through one or two aspects of the rather large pile of documents I sent.

Q2 Chairman: Okay.

Chris Grayling: Obviously the Committee is aware of the background to this. There has been no dispute from Mr Byers that he did commission work on the future of the rail industry. The question is whether that work constituted what was described subsequently in the evidence session to the Transport Committee as “discussions”.¹ There were just a few things I wanted to point Members to in the documentation. I know that you have page numbers, so I will try to match up the page numbers. Firstly, on page 4, which is a minute from the Private Secretary to the rail team, item 2 says, “The Secretary of State said it would be essential to get the Treasury to buy into any further work on Railtrack structures. He asked you to look at ways of taking forward some joint work. You agreed to speak to Shriti Vadera”.² That was on 20 June in the year concerned. Indeed on the following page it specifically refers to options for reforming Railtrack. Then there is an email from Shriti Vadera: “Following my meeting with Byers, he has asked his officials to do some joint work with HMT on options for Railtrack involving alternative owners and management”.³ On page 7, you have some of the remit of that work, the details of the setting up of that working party,⁴ and two pages later on, what you have as page 9, Sir George, we have confirmation that Mr Byers was very directly involved in that: “Steve is doing a note for the weekend box, ahead of their bilateral next Tuesday”, and then it mentions the fact that he “is leaning

towards options which deliver stability in the short term . . . with incremental change in the longer term”.⁵ There is a copy of that note, Sir George, three pages later on, what you have in your bundle as page 13.⁶ That is a copy of the note done by the then Secretary of State, Mr Byers himself, to the Prime Minister where he makes—

Q3 Mr Dismore: Is this the one headed “Restricted Policy”?

Chris Grayling: That is the one, yes. In the third paragraph from the bottom on that page, it says specifically, “My Department, the Treasury and the Policy Directorate are accordingly starting joint work to identify all the possible options for Railtrack. We will probably need to engage (in strict confidence) investment banking advisers”. There are just a couple of other references. The pack contains a full detailed document produced by Mr John Nevitt of the Railway Sponsorship Division, which is on your page 17, which contains really a very detailed analysis of the future of Railtrack and the options that were under consideration, a not-for-profit company, Railtrack administration and so forth.⁷ The page immediately after that document, page 33 of your bundle, says very specifically, “I passed on to the Secretary of State the timetable for taking forward joint work on options for Railtrack. He is keen to make quick progress on this. He thinks Cullen II may provide an opportunity for quick action”.⁸ Then, finally on the detail, Sir George, you will see that there are a couple of examples on the following two pages where David Rowlands in the DTLR was talking about the time-frame for the options paper to the Secretary of State and indeed makes a reference on your page 37, “The Secretary of State wants to have decided the way forward by the first week in September”.⁹ Now, all of those discussions, which emerged in documents that were submitted to the

¹ Transport, Local Government and the Regions Committee, First Report of Session 2001–02, HC 239–II, Ev 96–112.

² Attachment 1 [not printed] to Memorandum received from Chris Grayling MP [Appendix 4].

³ Attachment 3 [not printed] to Memorandum received from Chris Grayling MP [Appendix 4].

⁴ Attachment 4 [not printed] to Memorandum received from Chris Grayling MP [Appendix 4].

⁵ Attachment 5 [not printed] to Memorandum received from Chris Grayling MP [Appendix 4].

⁶ Annex A, Attachment 6 [not printed] to Memorandum received from Chris Grayling MP [Appendix 4].

⁷ Attachment 7 [not printed] to Memorandum received from Chris Grayling MP [Appendix 4].

⁸ Attachment 8 [not printed] to Memorandum received from Chris Grayling MP [Appendix 4].

⁹ Attachment 10 [not printed] to Memorandum received from Chris Grayling MP [Appendix 4].

24 November 2005 Chris Grayling MP

court, all of that took place before the key meeting in question. As far as we were concerned on the Select Committee, we questioned the Secretary of State about the whole process and he was very adamant in what he told us, that really the starting point for the process was the meeting he held with the Chairman of Railtrack on 25 July 2001. All of the items I have just described to you are documented evidence of the participation of the Secretary of State prior to that date.

Q4 Chairman: Thank you very much. Of course the Committee will be interviewing Mr Byers and we will want to raise with him the issues that you have summarised in your opening statement. Perhaps I can just ask you a few questions firstly about a date. In your speech on October 19, column 849, you referred to the minutes of the meeting held in Downing Street on 6 July 2001.¹⁰ Was that an inadvertent error?

Chris Grayling: Yes, I think that was an inadvertent error. The meeting concerned is the one on the 5th. There is a minute of that meeting, both the handwritten minute and the detailed Downing Street note in the latter part of the bundle and that is the meeting to which I was referring.

Q5 Chairman: Yes, I just wanted to clarify that.

Chris Grayling: That document was sent to me on the afternoon of Mr Byers' personal statement to the House.

Q6 Chairman: I just wanted to make it clear that there was not a meeting on July 6.

Chris Grayling: No.

Q7 Chairman: Can I then put to you a rather general question. The House is, by and large, a fairly forgiving place. If somebody makes a mistake and comes along and apologises, it is the instinct of the House to draw a line and move on. In this case, Mr Byers wrote to you,¹¹ apologising, he came to the House and actually made a personal statement in which he deeply regretted what had happened, offered his apologies to the Speaker and to the whole House.¹² What was it, when he made that statement, that impelled you to feel that you had to press the matter in the way that you did?

Chris Grayling: I think it was the way in which Mr Byers made that statement, combined with the importance of the point during the initial investigation by the Select Committee. This really was the central part of the questioning to Mr Byers about what had taken place. There was some considerable debate about, for example, the timing of the preparation of the draft Bill that would have been used to remove powers from the Rail Regulator had he objected and sought to intervene in the process of putting Railtrack into administration. There was considerable doubt about whether this process, the process of pushing Railtrack into administration, had really been generated because the company came to

see the Government and said, "Help! We're falling apart". The very strong suspicion was that this had been part of a premeditated process that went back well before the discussions with Mr Robinson, so this was a central point in the investigation. The question was raised with Mr Byers that he gave information to the Committee that was absolutely not correct. If you then lay alongside that the explanation he gave to the House which he described as an "inadvertent error", I am afraid I just do not buy the idea that you can have detailed discussions with the Prime Minister, you can have papers with the Prime Minister, you can attend meetings at 10 Downing Street about the future of the rail industry and then describe it to the House as an inadvertent error when you say that the discussions—

Q8 Chairman: Well, perhaps I could put my question in a different way. What could he have said which would have enabled you to accept the apology?

Chris Grayling: I think if he had put his hands up and said, "Yep, it's a fair cop. I was wrong. I should have been more up-front with the Committee. I accept that, because of political pressures at the time, I was circumspect with the evidence I gave. It was wrong to do so, I accept that, and I apologise", I think I would have accepted that. The fact is that he has not actually accepted that he, in my view, lied to the Committee. He said, "Yes, I'm guilty as charged", but actually he has tried to weasel his way out of it and I do not accept that.

Q9 Chairman: Basically what you are saying is that he has apologised for a lesser offence than the one that you think he committed?

Chris Grayling: Yes, and a fairly half-hearted apology in terms of his excuse. It was a fairly half-hearted excuse certainly.

Q10 Chairman: Can we just go on to the exchange in the Select Committee which generated this. Were you surprised at the answer you got?

Chris Grayling: Yes, I was.

Q11 Chairman: Why did you not pursue it?

Chris Grayling: It is quite difficult when you are a new MP and, as I rapidly learned, asking questions of Ministers does not always generate the answers that you think you should get or you think you are likely to get. It is quite difficult actually when you think you are right and the Minister says something very different to you. Do you take a step back and say, "Well, I don't believe you"? Would you, as an MP of four or five months, say to a Cabinet Minister, "I don't believe you. I think you're lying to me. I don't think you are telling the truth"? I did not really believe him at the time, to be honest, but I guess I thought it was inappropriate to challenge him and say, "I do not think that's right". I did not have the evidence to hand. If I had had even a hint of the documentation we have got now through the court case, I would certainly have challenged him over that, but it is quite difficult. It is a fundamental principle of this place, that you should be able to ask a Minister a straight question and get a straight answer. It is quite difficult

¹⁰ HC Deb, 19 October 2005, cols 848–50.

¹¹ Attachment 15 [not printed] to Memorandum received from Chris Grayling MP [Appendix 4].

¹² HC Deb, 17 October 2005, cols 639–40.

24 November 2005 Chris Grayling MP

to turn around when you think the answer you are getting is not straight and accuse him of not being up-front with you.

Q12 Chairman: If he had given you a different answer than the one which you might think was correct and said, “Well, of course, as a responsible Secretary of State, my Department and I are looking at all the options in case this company collapses”, would that have changed the course of history?

Chris Grayling: It would not have changed the course of history. What it would have done though is enabled MPs who were scrutinising what was happening. You have got to bear in mind that the Government, as has now been demonstrated in the courts, and I accept that the Government did not lose the court case, but it is quite clear that the Government took a view that it needed either to prepare or indeed push proactively towards making alternative arrangements for a listed company. That is quite a significant intervention in the business arena by the Government. I think the House has a right to know and to understand and question the motivation for doing that. The shareholders argued then, and continue to argue, that their assets were renationalised by stealth. Now, whether or not they are right to do so, and they went to court and they did not win the court case, nonetheless surely it must be right that Parliament can ask full and proper questions about what the Government has done, and in this case the answer given by the Secretary of State meant that the Committee was unable to pursue what otherwise would have been a legitimate line of questioning to understand what the Government had done, when and why.

Q13 Chairman: I have one final question which relates to your letter dated October 31 to the Committee and it is the penultimate paragraph. It is one thing to mislead a select committee when you are engaged in a spontaneous exchange and you may not have information at hand, but it is another thing to mislead the House with a personal statement where you have access to all the information you could possibly want and you have the time to prepare it. In your penultimate paragraph where you say, “Indeed it is my view that his personal statement to the House also verged on the misleading”¹³, that is potentially quite a serious allegation. Is there anything you want to say about that?

Chris Grayling: Well, in the personal statement, and indeed in his letter to me, you basically see that what Mr Byers has done is to position his original comments to me and the Select Committee as an inadvertent error and he said to the House that what had happened had not been discussions in his understanding of the word “discussions”. I am sorry, I just do not buy that. I think that is an utterly lame excuse. I do not think it is an accurate excuse. If anybody looks through these papers, the minutes prepared for the Prime Minister, the discussions that took place in Downing Street, the scale of the work being done by his Department, and this is a Cabinet

Minister, it is somebody who has a duty of stewardship over a government department, whose job it is to know what is going on and, quite clearly from these papers, knew perfectly well what was going on, I think it is utterly unsustainable to say, “These were not discussions in my understanding of the word ‘discussions’”. I simply do not accept the excuse he has given.

Chairman: That is obviously an issue to which this Committee will have to address itself in due course.

Q14 Mr Dismore: Mr Grayling, first of all, when you asked question 857, was that a scripted question from the pre-prepared list of questions?

Chris Grayling: No, not as far as I can remember.

Q15 Mr Dismore: It was a freelance question that you came up with?

Chris Grayling: Yes, absolutely.

Q16 Mr Dismore: The reason I asked that is that it is quite a complex question and there are lots of different parts to it, so is there any possibility that Mr Byers, when he answered, could have been answering part of the question rather than the whole question in the way it was put?

Chris Grayling: Well, I do not think so. The question: “Was there any discussion, theoretical or otherwise, in your Department before 25 July about the possibility of a future change in status for Railtrack, whether nationalisation, the move into a company limited by guarantee, or whatever?”, or, in a nutshell, “Were you discussing—

Q17 Mr Dismore: How you just put it into words, was that how you put it to him?

Chris Grayling: That is the wording that appears in the transcript.

Q18 Mr Dismore: That is how you put it to him?

Chris Grayling: That is how I put it to him.

Q19 Mr Dismore: The way you just put it to us?

Chris Grayling: Yes. Now, Mr Byers replied, “Not that I am aware of”. It was a very simple answer to a question that was intentionally a question designed to be broad-brush enough that it would cover the kind of discussions that were taking place because I did not know exactly what had happened, but I thought there was a fair chance that they had had pre-planning of what they subsequently did in terms of pushing Railtrack towards administration. The papers that were there, the evidence that has come out since says different from his answer.

Q20 Mr Dismore: That is a different issue. I just wanted to check the basis of how you put the question and you have told us that. I think we are going to see the video anyway at some stage, all being well. There is another question I wanted to put to you about that. You said that, because you were a new Member, you did not follow it up, but if you had strong suspicions, I am very surprised you did not say, “Are you sure

¹³ Memorandum received from Chris Grayling MP [Appendix 4].

24 November 2005 Chris Grayling MP

about that?" or something like that to push the question not necessarily in a very aggressive way, but perhaps to trigger something.

Chris Grayling: Well, I suppose I think that we ought to be able in this House, when we ask a straight question to the Secretary of State in a select committee, to expect an up-front answer. I was surprised by his answer, I remember being very surprised by his answer, but there is supposed to be a fundamental principle in this place that Ministers tell the truth to committees and are up-front with committees. I would have been turning round and challenging the veracity of the evidence he was giving to the Committee at that point based on no evidence and I do not think that would have been a responsible thing to do. Had these papers never emerged in the court case, none of this would ever have come out.

Q21 Mr Dismore: In relation to Mr Byers, as far as the Select Committee is concerned, is it the case that he was being economical with the truth and perhaps not being as forthcoming as he could have been or are you, as an alternative, saying that he knowingly and deliberately misled the Committee?

Chris Grayling: My view is that he knowingly and deliberately misled the Committee. I understand why he did it; it would have been politically embarrassing for the Government to admit at that point that these discussions had taken place. I have no doubt that had he said to the Committee, "Actually we started working on this straight after the election. We held joint meetings with Number 10 and the Treasury about planning possible future strategies for Railtrack, which included consideration of forcing it into administration", it would have been a huge story, highly embarrassing for the Government, and it would have rewritten a lot of what they had said in the previous few weeks, so I think he was put into a position where he was asked to give an answer to a question he did not want to give and, therefore, he gave an answer to that question which was not truthful.

Q22 Mr Dismore: So you say that the motive for him responding in the way that he did to the Select Committee was to avoid political embarrassment?

Chris Grayling: Yes, that is my view.

Q23 Mr Dismore: Can I go on to the personal statement now. By the time this personal statement was made, he would have been aware that all of these documents were in the public domain.

Chris Grayling: Yes.

Q24 Mr Dismore: You had got them, the newspapers had got them, all those involved in the court case had seen them and all the rest of it. Are you saying that in his personal statement to the House, given that background, Mr Byers would knowingly and deliberately have misled the House in his statement?

Chris Grayling: Well, I cannot see any other explanation. When we have got in front of us a minute or a memo written by Mr Byers to the Prime Minister in which he talks about confidentially recruiting investment banking advisers, I do not see

how that can be squared with a statement that the discussions were not discussions in his understanding of the word. I just think that is weaselling his way out of facing up to what really happened. I cannot comprehend how he can seriously think that is a justification.

Q25 Mr Dismore: But is there not a difference between putting a bit of a gloss on how you make your personal statement and knowingly and deliberately misleading the House? It would be a rather bizarre thing for somebody to do, knowing full well that you had got all the paperwork and everybody else had, in that context then to stand up in the House and make a statement that was knowingly and deliberately misleading, would it not?

Chris Grayling: Well, it would be a strange thing to do. I guess it is for this Committee to decide whether it is satisfied that the personal statement is consistent with what we now know happened. Basically, and I have not got the exact wording of the personal statement in front of me, but he described it as inadvertent to me and he described it as being not discussions in his understanding of the word "discussions". It smacks to me of the defence of certain senior American politicians when confronting difficult circumstances who play on the words, but I do not think that is satisfactory. If you are going to make an apology to the House, you just apologise to the House. You do not try and justify it by coming up with things which I do not think are credible, and I do not think the explanation he gave to the House was credible.

Q26 Mr Dismore: So what would his motive be for making a knowingly and deliberately misleading statement to the House, bearing in mind the Opposition had actually got the paperwork which could have led to in fact what has happened here?

Chris Grayling: Failure to understand the old adage, "When you're in a hole, stop digging", I think is the correct answer to that.

Q27 Mr Dismore: That is hardly a motive though, is it?

Chris Grayling: I do not know. You will have to ask Mr Byers that. I cannot understand why he said what he did rather than just standing up and apologising to the House. I listened to him and thought, "If he just stood up and said, 'I'm sorry, it was a difficult time politically. It would have been embarrassing for me to provide full information. I accept I should have done and, in retrospect, it was the wrong thing to do. I should have been up-front with the Committee, and I apologise', that would have been the end of the matter".

Q28 Mr Dismore: So your view is that Mr Byers is a liar?

Chris Grayling: Yes, absolutely.

Q29 Nick Harvey: Obviously all this information in front of you has only come to light now four years later, but when you put the question to Mr Byers, had you got anything then which you were going on or

24 November 2005 Chris Grayling MP

were you simply using a combination of common sense and guesswork? Were you on a complete fishing trip or had you got some information which led you to believe that something of this sort had been taking place?

Chris Grayling: I think, if my memory serves me correct, the thing that gave rise to concern was that we asked various questions about the meeting that took place on 25 July between Railtrack's Chairman, Mr Robinson, and the Secretary of State. The Secretary of State's story was always, and I am paraphrasing somewhat, basically that Railtrack had come to the Government and said, "We're running out of money. We're in significant financial problems and we need extra financial help from the Government if we are going to survive". Mr Robinson always disputed the detail of that. He said that he had asked for a letter of comfort for the banks that the Government was not going to pull the plug on Railtrack, but there was a divergence of evidence between the two as to what had actually been said and discussed at that meeting. The Government then published the official minute of that meeting which was only half complete and appeared to have been written some time after the event, which caused some degree of concern to say, "The Government isn't being entirely up-front over what happened at that meeting". It was a combination of that and also the issue, as I mentioned earlier, where the Government threatened the Rail Regulator at the time Railtrack was put into administration that if he intervened, and he did have the power to intervene and he had the power to impose a new financial settlement on the industry and require the Treasury to pay up, so the Rail Regulator could have done so, but the Government said to him, "If you do that, we will rush a new law through Parliament and take away your powers". It seemed unlikely that that Bill, and it was clear that that Bill had been drafted, but it seemed unlikely that that had been drafted over the 48 hours prior to them doing that, and it looked to us as if it had been done over a longer period. The other area that the Government always kind of pushed us away from was, "When did you actually start that work?", and it was those two factors which prompted me to ask this question of, "Was this just started by Mr Robinson coming to you and saying that Railtrack had got major financial problems or was it part of a longer-term agenda to restructure the industry?"

Q30 Nick Harvey: I am intrigued by your usage of "we" and "us".

Chris Grayling: When I talk about "we", the colleague who was most closely questioning about this was Anne McIntosh, the Member for the Vale of York, so if I refer to "we", it is because we were both asking questions about this area and obviously we shared opinions outside meetings as to what we thought the evidence was suggesting.

Q31 Nick Harvey: Had either of you or, to your knowledge, had any of your Party spokespeople had any meetings with Mr Robinson or indeed with the regulator to discuss any of this prior to your attending that Select Committee meeting?

Chris Grayling: Neither of the two Members on the Select Committee had. I have never met Mr Robinson, so I certainly had not and I am not aware that Anne McIntosh had. I honestly could not speak for the Party spokespeople.

Q32 Nick Harvey: Did you arrive at that meeting intending to ask this question or was it provoked by exchanges during the meeting and, therefore, spontaneous?

Chris Grayling: It was spontaneous, certainly as far as I can recall. I certainly do not remember a kind of strategy to get the Government on this issue where it was something that came out, and I think if you look at the transcript of questioning, it was one of a range of questions I asked and there certainly was no clear plan that this was the point I was going to get them on.

Q33 Angela Browning: You have told us that you were astonished at the reply you received at question 857. Do you recall whether, after that Select Committee hearing, you were prompted to take any further action to pursue it through parliamentary procedures? For example, did you table any written questions or attempt to speak at oral questions to try and pursue the answer that you had received?

Chris Grayling: From memory, I tabled a very large number of written questions about this issue, so I would be surprised if I had not done. Looking back, I would be astonished if I had not asked questions about the meetings and about the work done, but I would have to check that.

Q34 Angela Browning: I wonder if perhaps, Chairman, Mr Grayling could provide us with any supplementary pursuance of this after the date.

Chris Grayling: I will certainly try.¹⁴

Q35 Angela Browning: I just want to try and get into my mind the focus of the nature of the allegation post Mr Byers' personal statement which you have talked

¹⁴ E-mails to the Clerk from Chris Grayling MP: 25 November 2005: "As requested by Mrs Browning, I have checked to see what further action I took about the matters we have discussed. I have found a number of related questions in Hansard, but they do not tie in with the exact date of the meeting. However I have found evidence that I was concerned about the accuracy of statements made at the time by Mr Byers—the excerpt below (see HC Deb, 15 November 2001, col 1010) is from Hansard the day after the evidence session. This was part of the pattern of doubts that I had about the process that led up to the administration order. You will recall that I mentioned the uncertainties about what actually happened at the meeting with Mr Robinson during my evidence yesterday. I hope this is helpful to the Committee."

5 December 2005: "I have checked back, and from memory I think I decided that the best way forward—together with Anne McIntosh—was to put the issue on the record in a minority report to the Select Committee's report on the rail industry. This sets out clearly the concerns raised about the meeting on 25 June that I raised in my point of order. It was the key point where we also had clearly contradictory evidence—as I mentioned to the Committee, I had no evidence to set down in writing allegations about the matters which your Committee is currently considering—just suspicions. You can read the minority report at: <http://www.publications.parliament.uk/pa/cm200102/cmselect/cmtlgr/239/23912.htm>"

24 November 2005 Chris Grayling MP

about this morning. You particularly made reference to the fact that the wording in his personal statement, “inadvertent error”, is the real reason why you are unable to accept the personal statement. Is that correct?

Chris Grayling: Well, the reason that I pursued it is, first of all, I was sent or I think I received on the same afternoon shortly before the personal statement a copy of the Downing Street note that is in this pack, the minute of the meeting held on 5 July with Stephen Byers, John Spellar, Andrew Smith and Lord Macdonald. You will see that that does make specific reference where it says, “Stephen Byers said there was a need to consider all of the options. DTLR, HMT and No 10 officials should work together to develop them”¹⁵, and there are one or two other references to the future of the industry. I simply cannot accept that the Secretary of State, who has had that meeting and been in discussion with senior people at Number 10 Downing Street, would turn around and say, “They were not discussions in my understanding of the word ‘discussions’ and, therefore, it was an inadvertent error”. When I stood up and gave my response to the personal statement in the House, I raised a point of order and then made a speech the following day. I listened to what he said and I felt that it was a very half-hearted apology and, as Sir George described it, it was pleading guilty to a lesser offence rather than accepting what I think he really did which was to mislead the Committee. That was the essence of it. I do not think that it is possible to square the explanation that he gave in his personal statement to the House with the documentation that you see in front of you. I just do not think those two equate.

Q36 Angela Browning: You are familiar, I am sure, with Mr Rowley’s cross-examination of Mr Byers on this point of your question in the court case. I do not know if you have a copy of it there.

Chris Grayling: I have a copy of part of it in front of me.

Angela Browning: It is just the bit where he cross-questions him about that.

Mr Llwyd: Page 40.

Q37 Angela Browning: It is where Byers is saying, “I accept this is not an accurate statement”, and then Mr Rowley says, “It was deliberately not an accurate statement, was it not, Mr Byers?”, and his response to that was, “It was such a long time ago, I cannot remember, but it is not a truthful statement and I apologise for that. I cannot remember the motives behind it”¹⁶. Now, we have mentioned motive and clearly if your allegation is that he was deliberately misleading the Select Committee rather than it being an inadvertent error, then that area of cross-examination in the court case does go into some depth about possible motivation. If I look a bit further down, it says, “There is no other possible

reason, is there, Mr Byers?”, and Mr Byers says, “In the context of a select committee hearing, there are other reasons but they are—none of them are acceptable, I would accept that.”¹⁷ What is your own interpretation of that discussion between the barrister and Mr Byers on this subject of motive? What do you draw from that?

Chris Grayling: Well, it reinforces my view that the reason this happened was that it would have been politically embarrassing for him to actually give a full explanation in response to my question. In a sense, it amplifies my concern about the personal statement because the personal statement is not consistent with this. In the personal statement, he says, “It was an inadvertent error. I didn’t really think discussions were taking place in the true sense of the word ‘discussions’”. Here he is saying, “I can’t remember the motive behind it”, and then, “In the context of a select committee hearing, there are other reasons but they are—none of them are acceptable, I would accept that”, and again I do not think those two pieces of evidence are quite consistent with each other. I think what he said to the court is entirely consistent with the situation where you have a Government Minister who has been quietly pursuing a strategy to mount a major change in policy, who does not want that work to be made public, who was asked a difficult question about it in a select committee and decides not to give a truthful answer, and that is my belief as to what happened.

Q38 Dr Whitehead: What I would like to do is just clarify in my mind the sequence of fault, as it were, around question 857 and moving on from that to Miss McIntosh’s questions in the Committee subsequent to your question. You said you were astonished by the answer and at that point your questioning finishes. Miss McIntosh then takes up a series of questions which in some ways go down the same route about who had meetings with whom at what stage. Normally there is the possibility in a select committee to come back to something a Member has questioned about and say, “Could you give us a written statement on that or could you come back to the Committee on that?”, and this did not happen. Was it in your mind to do that?

Chris Grayling: I think, to give the context, this was not the only issue of doubt, so when I said I was astonished by his reply, it was not that this was the one thing in all the evidence that did not stack up. I think in the questioning of a number of witnesses over a period of time, some members of the Committee had reached the conclusion that there had been a lot of pre-work done prior to the Government going public and admitting to having done things over the future of Railtrack. One example was the timetable for the drafting of the piece of legislation that would have removed the power from the Rail Regulator. It looked pretty clear that it had been worked on quite some considerable time before the threat was made to the

¹⁵ Flag 5 [not printed] to Memoranda from the Department of Transport [Appendix 7].

¹⁶ Mr Justice Lindsay’s Approved Judgement in *Weir and Others v The Secretary of State for Transport and others*, 14 October 2005, pp 68.

¹⁷ Mr Justice Lindsay’s Approved Judgement in *Weir and Others v The Secretary of State for Transport and others*, 14 October 2005, pp 68.

24 November 2005 Chris Grayling MP

Rail Regulator, so we questioned about that. We questioned about some of the evidence given in relation to the appointment of advisers. From memory, I think the Government admitted only to having appointed advisers to any significant degree in late August, and again it felt like they might have done that earlier. This was only one of a number of examples where it seemed as if the Government had been doing things earlier which prompted some of the continued questioning. Therefore, what you should not look at this statement as being is the kind of one light-bulb moment in the whole process of giving evidence. It was part of a jigsaw puzzle of building information that apparently, and it subsequently proved to be the case, the Government had been doing work quite extensively significantly before it admitted the various stages of having actually done so. I think in terms of the meeting, I would have kind of sat back and said, "That's funny", and kind of thought about it, but not instantly gone back on the attack. As I say, I will check back for Angela Browning, but I would be surprised if I did not ask in written questions at the time because I asked a very large number of them, but that would be the explanation. This was not the decisive piece of evidence in a big mass of evidence; it was one part of a jigsaw puzzle really.

Dr Whitehead: Before I finish, Chairman, I think for Mr Grayling's benefit, I should repeat the declaration I made at the beginning of our deliberations which is that I was a junior Minister in the Department of Transport, Local Government and the Regions at the relevant time, but I had no concerns with any matters relating to transport and to Railtrack.

Q39 Mr Dismore: I would like to pick up a couple of points arising out of Mr Harvey's questions. You said that the answer to the "we" question was that you worked with Anne McIntosh. Did you have a pre-meeting before the Select Committee?

Chris Grayling: No.

Q40 Mr Dismore: Presumably Miss McIntosh had the same paperwork that you had?

Chris Grayling: Yes. There is no great problem. It is no different from colleagues chatting at the end or bumping into each other in the corridor or whatever about things you have done in Parliament, in the select committees or whatever.

Q41 Mr Dismore: Because Miss McIntosh did not follow up on this issue either and she is not a new Member, she is a very experienced Member and obviously she was an experienced Member at the time.

Chris Grayling: Yes, absolutely.

Mr Dismore: The other point I wanted to raise was that you raised the question about when the legislation was drafted in answer to Mr Harvey, but that was actually dealt with in the transcript by Mr Byers saying that it was prepared on a contingency basis, and that is answer 870.

Q42 Chairman: Are there any other questions colleagues want to ask? Is there anything else you want to say, Mr Grayling?

Chris Grayling: No.

Chairman: Well, thank you very much.

Tuesday 29 November 2005

Members present:

Sir George Young, in the Chair

Angela Browning
Mr Andrew Dismore

Mr Brian Jenkins
Dr Alan Whitehead

Witness: Mr David Rowlands CB, Permanent Secretary, Department for Transport, examined.

Q43 Chairman: Good morning. The Committee is making progress with the matter that was referred to us by the House of Commons and we are grateful to you for coming along. In your view, was the Secretary of State adequately briefed by your Department for the session he had with the Select Committee?

Mr Rowlands: Yes.

Q44 Chairman: It is common ground between Mr Grayling and Mr Byers that the answer that was given was wrong. We are going to have to decide whether it was a lie or inaccurate. If that was the wrong answer, what was the right answer to the question that was put? If you want us to refresh your memory, the clerk can read out the question again.¹

Mr Rowlands: No. I have the question with me. The right answer would have been something along the lines of: there had been work going on in the Department and indeed in Whitehall prior to the election on possible options in relation to the future of Railtrack. I asked, subsequent to the election, for further work to be done on options involving the Treasury and officials at 10 Downing Street, although prior to 25 July there was no major, substantive discussion between me, as the Secretary of State, and my officials on the detail of these options. That is probably the correct answer.

Q45 Chairman: Would there have been any reason why that answer could not have been given?

Mr Rowlands: I cannot see any reason why it could not have been given.

Q46 Chairman: There would be no legal reason that it might adversely—?

Mr Rowlands: None whatsoever.

Q47 Chairman: Going on to what happened after the session, would there have been what is called a wash up session after a Secretary of State's appearance before a select committee to see how it went?

Mr Rowlands: I do not honestly remember whether there was any wash up session or not. Unsurprisingly, I checked with one of the officials who was present at that committee hearing. Mr Byers gave evidence on his own but there were

three then members of the Department present: Dan Corry, one of his Special Advisers, David Hill, one of his Private Secretaries and David Macmillan, who was then in railways. I have checked with Mr Macmillan. He confesses he has no recollection of this and no recollection of things like a wash up session afterwards. I was not directly involved and do not remember. This was at that stage six, seven or eight weeks after Railtrack had gone into administration and we were rather busy running around, putting out fires.

Q48 Chairman: Can we go on to the transcript of the Select Committee hearing because the Committee is interested to find out why what was the wrong answer was not corrected. We have an e-mail from John Parkinson to Dan Corry, David Hill, David Macmillan and Paul Davies which was copied to you, which enclosed the draft transcript of the hearings asking for comments.² Given that the wrong answer was given, why did not the Department take that up and take the opportunity of commenting on the transcript to put the record straight?

Mr Rowlands: I am afraid the honest answer is I do not know at this distance. You will have seen from the e-mail record that at least two people who were present at the hearing offered a variety of corrections to the transcript but did not pick this up. I am afraid I cannot offer you an explanation other than to say that, with the benefit of hindsight, it should have been picked up and at least drawn to Mr Byers's attention, but it was not.

Q49 Chairman: How important was the meeting on 25 July with the chairman of Railtrack? Was it another milestone on the long journey that you described a few moments ago, beginning before the last election and ending on 5 October or was it a Rubicon?

Mr Rowlands: We were clear then and we are certainly clear looking back that it was a watershed meeting.³ Mr Robinson came in on 25 July, said that

² Flag 4 [not printed] to Memoranda received from the Department for Transport [Appendix 7].

³ E-mail to the Clerk from the Department for Transport: "Following the meeting between Mr Byers and Mr Robinson on 25 July 2001, Mr Rowlands met CSFB on 27 July 2001. I am attaching the first 5 pages of a presentation which they gave him (not printed). You will see on page 4 that CSFB set out what they saw as the options for Railtrack and to which they spoke. This was the first time these stark options had been set out before the Department and it is why Mr Rowlands referred to it as a 'watershed event'."

¹ Transport, Local Government and the Regions Committee, First Report of Session 2001–02, HC 239–II, Ev 102, Q857 [Chris Grayling]: "Was there any discussion, theoretical or otherwise, in your Department before 25 July about the possibility of a future change in status for Railtrack, whether nationalisation, the move into a company limited by guarantee, or whatever?"

29 November 2005 Mr David Rowlands CB

the position was extremely serious, agreed that his newly appointed financial advisers, Credit Suisse First Boston, should meet with officials and there was then a meeting with me a matter of several days later. It was at that meeting that CSFB said, "We see only three alternatives for Railtrack, the so-called three Rs, renationalisation, restructuring or receivership." This was a complete watershed event from our point of view. Prior to 25 July, our belief was and our advice for Mr Byers was that we thought the basic problem of Railtrack was managerial and that the new chairman might have to sort that out. We could see that in due course something would need to be done in terms of Railtrack but it was not an immediate agenda. We could see from the work we had done some months earlier that Railtrack, for technical, accounting reasons, was going to be comprehensively bankrupt in the third regulatory control period after 2006, but that was some way away. This was not an immediate drama for us. It changed with the meeting of 25 July.

Q50 Mr Dismore: When did you become Permanent Secretary?

Mr Rowlands: 2 June 2003.

Q51 Mr Dismore: That was a straight move up from being Deputy Secretary for railways?

Mr Rowlands: Railways and other things which I had been from about only two or three days after the 1997 election.

Q52 Mr Dismore: It was continuous service?

Mr Rowlands: Yes.

Q53 Mr Dismore: On the question that the Chairman raised with you about the briefing, so far as I can see, there is nothing in the briefing which sets out the history which you gave for the correct answer. The Secretary of State was very much on his own recollection in relation to that.

Mr Rowlands: That is probably right and I think it is perhaps because the Select Committee hearing itself was into railway franchising ostensibly but then developed in the light of what happened with Railtrack, so a lot of the briefing was to do with the original purpose of the committee hearing rather than what turned out to be the issue in front of the committee.

Q54 Mr Dismore: It is correct to say that there was nothing about the policy development history?

Mr Rowlands: That is quite correct.

Q55 Mr Dismore: We have had sent to us a *Hansard* extract from the following day by Mr Grayling, where he raised as a point of order with the Chair, Madam Deputy Speaker, the question about the accuracy of some of the Secretary of State's answers, not this particular answer but different answers. Did anybody pick that up from the *Hansard* exchange?⁴

Mr Rowlands: I am afraid I cannot tell you at this distance in time.

Q56 Mr Dismore: Can you tell us whether any arrangements have been put in place to make sure that, after any further evidence sessions by Ministers in future, transcripts are properly checked for accuracy?

Mr Rowlands: This one was checked by at least two people. This point was missed. It should not have been, for which I apologise. Yes, normally all committee appearances are properly checked both by the Private Secretary and by at least one policy official.

Q57 Chairman: And by the Secretary of State?

Mr Rowlands: I cannot honestly give you a guarantee that the Secretary of State will always read the transcript of his own evidence, but it is made available to him by his Private Office.

Q58 Angela Browning: The Department has sent us quite a lot of background papers to this and also, in some supplementary bundles, part of the briefing that Mr Byers brought with him to the committee meeting. Is it the procedure at the Department for Transport that ministerial folders for such an evidence session would be prepared with flagging along the different sections? How do you prepare these briefings?

Mr Rowlands: It can vary because it depends upon the tastes of an individual Secretary of State, but the normal course would be for policy officials to coordinate a briefing and supply it flagged, though I have known it to be reflagged in the private office, depending upon what a particular Minister wants out of his or her briefing pack.

Q59 Angela Browning: I wonder if it would be possible for you to provide us with the index of that flagging. We do not appear to have a copy.

Mr Rowlands: I will see if we can find it for you.⁵

Q60 Dr Whitehead: The fact that in the speaking notes and Q and A for the Select Committee briefing there is no mention of any discussions or meetings in the Department about Railtrack has been noted and agreed, but were there any briefings relating to the Secretary of State's appearance before the Select Committee outside the preparation of that note and I assume a discussion immediately prior to the Secretary of State's appearance before the Select Committee of the contents of that note?

Mr Rowlands: I cannot give you the answer to that question this morning. I will ensure when I go back to the Department that we look back into the Secretary of State's old diaries to see how many, if any, briefing sessions took place prior to the Select Committee appearance. It is normally the case that you would expect any Minister appearing in front of

⁴ HC Deb, 15 November 2001, col 1010; Attachment C [not printed] to letter from the Department for Transport [Appendix 7].

⁵ Attachment A [not printed] to letter from the Department for Transport [Appendix 7].

29 November 2005 Mr David Rowlands CB

a select committee to have at least one briefing session, but we will try to check the old diaries to establish what took place.⁶

Q61 Chairman: Was not his appearance the day after the statement to the House of Commons on the problems at Railtrack?

Mr Rowlands: It was shortly after. I am not sure if it was 24 hours later but, yes, there was a statement to the House followed by the appearance.

Q62 Chairman: For which there would have been a separate briefing?

Mr Rowlands: Almost certainly.

Q63 Chairman: To deal with the issues raised?

Mr Rowlands: I will ask the Department to try and produce the dates in a chronology.⁷

Q64 Mr Dismore: Could we have a copy of the briefing for the Ministerial Statement as well?

Mr Rowlands: We will see if we can find it for you.⁸

Mr Dismore: That may or may not have the history.

Q65 Mr Jenkins: What I find strange, hearing the evidence, is that I would normally expect a wash up meeting and yet no one can remember whether there was or was not. I would say there was not a wash up meeting and have it established rather than trying to leave it as a grey area. Would you not feel more secure if you could state that there was not a wash up meeting?

Mr Rowlands: I am being very careful not to give this Committee evidence that will not stand up or claim to recollect things I cannot recollect. I cannot tell you whether there was or was not a wash up meeting. We can look to see in the old diaries whether there is anything there, although I think in truth that sort of meeting does not get in a diary. It just happens rather impromptu after an event.⁹

Q66 Mr Jenkins: Normally, do you run the Department along those lines? There are quite informal meetings that do not get into diaries or are not recorded when they are part and parcel of the process?

Mr Rowlands: An informal wash up after something like that, if it took place, certainly would not be in a diary and I doubt it would be in a minute. There might have been some action points as a result if such a meeting had taken place but it does not always follow that any Minister has a wash up after a select committee appearance. I myself, with the current Secretary of State, recently appeared in front of the Transport Select Committee to talk about the annual report. We did not go back to the

Department and have a wash up. We went in different directions afterwards, so you do not always have such a thing.

Q67 Mr Jenkins: You said you were running around putting out fires at that time in the Department. Do you consider the Secretary of State had poor support at that meeting on this occasion?

Mr Rowlands: No. I do not think at any stage whilst Mr Byers was DTLR Secretary he had poor support on any transport issues.

Q68 Mr Jenkins: I am surprised because on a couple of occasions you have said, "At this distance I cannot remember."

Mr Rowlands: I was making a general statement in relation to Mr Byers, when he was Secretary of State, and the support he had from the Department. What I find more difficult is to give a detailed recollection of particular events in great detail from four years away.

Q69 Mr Jenkins: If I was asked out of the blue now what I was doing three months ago, I would have great difficulty without going back to my diary to recall events. What I find even more troubling is that the very next day a point of order was raised challenging the evidence given in that session and nothing was done about it. You did not go back and bolt it down to make sure that every note you had was recorded, because this could blow into a big thing.

Mr Rowlands: I will check for you as to what did or did not happen and we will let the clerk have a further note.¹⁰

Q70 Chairman: On that point, the Parliamentary Division would normally look through *Hansard* to see if there were any points of order or Speakers' comments concerning the Department and then flag them up for attention.

Mr Rowlands: Yes, I would have expected so.

Chairman: It would be helpful if you could see whether there was any follow up.¹¹

Q71 Angela Browning: Has any investigation been made into the officials who attended the Select Committee with Mr Byers since this inquiry by this Committee started about any recollection they have of their conversations when the session finished, because it is very often the case that, after something like that, the Minister concerned will briefly discuss with officials how they thought it went. I wonder whether there is, if not official notation, any information from that kind of conversation.

Mr Rowlands: I think I said earlier there were apparently three members of the Department present when Mr Byers was giving evidence: Dan Corry, who is now a Special Adviser in another department, David Hill, who is now in another department and David Macmillan, who is still an

⁶ Attachment A [not printed] to letter from the Department for Transport [Appendix 7].

⁷ Attachment D [not printed] to letter from the Department for Transport [Appendix 7].

⁸ Attachment B [not printed] to letter from the Department for Transport [Appendix 7].

⁹ Letter from the Department for Transport [Appendix 7].

¹⁰ Letter from the Department for Transport [Appendix 7].

¹¹ Letter from the Department for Transport; Attachment C [not printed] to letter from the Department for Transport [Appendix 7].

29 November 2005 Mr David Rowlands CB

official in my Department. I have talked to Mr Macmillan. I think I said earlier he really does not remember much of the detail of this from four years ago.

Q72 Angela Browning: Were any of those three the Private Secretary to the Secretary of State?

Mr Rowlands: Mr Hill was one of the Private Secretaries. Mr Corry was a Special Adviser and Mr Macmillan at the time was working in railways.

Q73 Angela Browning: When a select committee meets, as you will be aware, they discuss in advance the questions and who might ask what. There is a written guide for the committee. Was that guide of what might be asked ever made available formally or informally to your Department?

Mr Rowlands: I am afraid I cannot answer the question. I just do not know at this distance in time.

Q74 Dr Whitehead: The memorandum on 13 November from Mr Linnard, the Director of Rail Delivery, in documents that have been supplied to the Committee, states that one of the Clerks to the Select Committee on 13 November had phoned him, Mr Linnard, setting out an outline of the likely areas of questioning that would take place. In that list of likely areas of questioning, it is not the background document given to the Select Committee; it is simply a note of headings of likely areas of questioning. There is a statement, "Pre-5 October, the events leading up to Railtrack going into administration", which I would interpret as meaning discussions or meetings relating to the administration of Railtrack.¹² Would you agree that in the light of that memorandum and the notification that this area or subject will be raised, the fact that nothing relating to that area subsequently appeared in the briefing to the Minister is of concern?

¹² Flag 3 [not printed] to Memoranda from the Department of Transport [Appendix 7].

Mr Rowlands: Unless that was covered in the briefing that had been done for the statement only some days earlier. As I have offered, we will see if we can find the briefing produced for that earlier statement.¹³

Q75 Mr Dismore: Do you not think the Secretary of State should at least have been tipped off that this was one of the issues that was going to come up?

Mr Rowlands: This note from Mr Linnard is to the Secretary of State.

Q76 Chairman: It says at the end, "You already have briefing on most of the Railtrack issues."¹⁴

Mr Rowlands: I assume that is a reference back to what had been produced some days earlier.

Q77 Mr Dismore: You have been asked about the wash up session. Would that normally take place after the transcript had been prepared or before?

Mr Rowlands: You are making an assumption there is always a wash up session after a select committee appearance.

Q78 Mr Dismore: If there is to be one, would it be after?

Mr Rowlands: In my experience, wash up sessions on anything take place pretty immediately after the event concerned.

Q79 Mr Dismore: Before the transcript?

Mr Rowlands: If there is one.

Chairman: If colleagues have no more questions, Mr Rowlands, thank you very much.

¹³ Attachment B [not printed] to letter from the Department for Transport [Appendix 7].

¹⁴ Flag 3 [not printed] to Memoranda from the Department of Transport [Appendix 7].

Tuesday 6 December 2005

Members present:

Sir George Young, in the Chair

Angela Browning
Mr Andrew Dismore
Mr Brian Jenkins

Mr Elfyn Llwyd
Mr Andrew Mackay
Dr Alan Whitehead

Witness: Mr Dan Corry, former Special Adviser, Department for Transport, Local Government and the Regions, gave evidence.

Q80 Chairman: Good morning, Mr Corry. As you know, the Committee is making progress with an inquiry that has been referred to it by the House and we are grateful to you for coming along to answer the questions which I and my colleagues want to put to you. Can we go back to the session at which evidence was being given which generated the inquiry. When Chris Grayling asked the question and Stephen Byers gave the answer, you were in the room at the time; did it strike you that the answer was not quite right?

Mr Corry: I have to confess, to be honest, before reading and preparing for this, I would not have been able to tell you that I was in that meeting—I know I was now—so I do not remember it. I sometimes went to Select Committee hearings and I still do with Secretaries of State. I do not actually remember being there. I also do not remember, although I now know that I did, looking at the transcript. So the answer is I do not recall how I felt, I am afraid.

Q81 Chairman: I think we have established that you were there.

Mr Corry: Absolutely, I can see that from the record.

Q82 Chairman: But you have no recollection at that meeting of thinking that that answer was not quite right?

Mr Corry: I do not.

Q83 Chairman: Okay. Can we go on to the transcript. The transcript of the exchange was sent to the Department for checking and what is now generally conceded to have been the wrong answer was not picked up by the Department. Does that surprise you?

Mr Corry: There is an issue as to what people thought, what people heard, what people were looking for. I have seen from things like those which were helpfully sent by the Clerk, that the thing that I commented on, which I guess was in all our minds at the time, was exactly what happened at the meeting with John Robinson on the 25th.¹ I suspect that is what people were obsessed about. I am not sure, to be honest, how surprising it is. In terms of transcripts I do not always know what departments do with the transcripts. Sometimes the Secretary of

State reads through the transcripts in a lot of detail, from my experience; sometimes they hardly look at them at all, apart from some passages. Officials read through them for the accuracy. I do not know whether when officials read through they are just looking to see whether there has been some sort of mistype or something like that or whether they are looking to see whether the Secretary of State said something which now turns out to be wrong. I think probably they do do a fair amount of the latter, particularly on factual issues, so if the Secretary of State says there are 25 per cent of schools in such and such position and actually the position was 30 per cent, they will correct that. So I am not sure what the process with transcripts from select committees is.

Q84 Chairman: If a Department found that an answer had been given which was incorrect they would take the opportunity of correcting it when they got the transcript, and for whatever reason that has not happened in this instance?

Mr Corry: Yes, you are assuming they thought there was something that was said that was wrong and maybe they did not.

Q85 Chairman: I think it is generally conceded, even by Mr Byers, that the answer was incorrect.

Mr Corry: I am just saying if the officials had heard something and they thought that was absolutely wrong, they would have done something with the transcript but presumably they did not. I do not know.

Q86 Chairman: What, in your view, was the right answer to Mr Grayling's question?

Mr Corry: That takes us back to what was going on from when Stephen Byers became Secretary of State to the 25th July. Of course, it is all dancing on pinheads as to what words mean but certainly from the position I was in we were doing some scoping work. A group had been commissioned to do some scoping work on possible options for Railtrack. I guess if I had been asked that sort of question I might well have said something like I had commissioned some scoping work on potential options for Railtrack.

Q87 Chairman: There would not have been any difficulty in giving that sort of answer to the Select Committee?

¹ Flag 4 [not printed] to Memorandum from the Department of Transport [Appendix 7].

6 December 2005 Mr Dan Corry

Mr Corry: I cannot see why. To be honest, if a new Secretary of State had come into the Department and was told early on that one of the big issues was Railtrack and had not commissioned some scoping work, that is where he should have some serious questions to answer.

Q88 Chairman: You were at the stocktaking meeting with the Prime Minister in July. Does that stick in your memory?

Mr Corry: I am afraid there were a number of stocktaking meetings with the Prime Minister over this period and they all, in my mind, merge a bit.

Q89 Chairman: Can I just stop you there. Was there more than one stocktaking meeting with the Prime Minister during this period?

Mr Corry: Not before 25 July. I am not sure they were always referred to as stocktaking meetings but I think there were a number of meetings sometimes, referred to in the trial, as trilaterals, so there were a number over the whole period up to the demise of Railtrack but I think there was only the one before 25 July. What I am saying is I do not have a picture of being there at that particular one as opposed to the other ones.

Q90 Chairman: Referring to the meeting that took place in early July, would it be fair to say that at that meeting there were discussions about options for Railtrack?

Mr Corry: Again it is dancing on what you mean. There was not any kind of serious discussion or discussion about should we do this, should we do that, should we do the other. There was a discussion about Railtrack (and I am saying this, to be honest, from reading the minutes because I do not remember the meeting) but certainly we were not in a position for Ministers to have had discussions on options really. The question was getting the scoping work going to work out what the potential range of options was. I presume at some point Ministers would have come back and had a discussion about that.

Q91 Chairman: One final question from me. Was it your view that your Secretary of State was, by and large, adequately briefed for his encounters with the House of Commons?

Mr Corry: I think so. In my experience Secretaries of State and the way they prepare for select committees is dependent on their personality and so forth. They are always given a vast amount of briefing and they tend to read through it, focusing on some bits they think they are not so clued up on. Stephen Byers tended to do a lot of that himself, as most Secretaries of State I have worked for have done. Sometimes—and I cannot remember in this case—they have officials in or a chat with advisers or whatever just to say “Here are three difficult questions; what should I say if they ask that?” I presume that had he felt there were some things he had not got briefing on he would have asked for more briefing. In life in government, as you know, there is always an incredible amount of time pressure and the idea that

you have hours and hours to go through all your enormous briefing and check everything is absolutely right and so forth, or that when you give evidence that you more or less read out from your briefing, that is just not how it works.

Chairman: Thank you very much. Do colleagues have any questions? Mr Llwyd?

Q92 Mr Llwyd: You prefaced your remarks by saying that you were not sure about this particular Transport Select Committee meeting that we are referring to. How many Transport Select Committee meetings had you been to before that time?

Mr Corry: It may have been the first. I am afraid, I just do not—

Q93 Mr Llwyd: Still you have little recollection of it?

Mr Corry: As you can imagine, this whole period was quite an intense period and also obviously with the trial and so forth I have read through it all, but being honest I do not have a picture of that particular meeting that I can tell you I am imagining and remembering that particular meeting rather than another one.

Q94 Mr Llwyd: You mentioned that sometimes officials look through transcripts to check for mistyping. Surely that is not their job, is it?

Mr Corry: It is one of the things you do with Hansard, again not something I do, but sometimes Hansard get some of the words wrong and so forth and you correct them and sometimes Ministers say things unclearly, sometimes they are transcribed wrongly.

Q95 Mr Llwyd: What I am getting at, in effect, is highly paid professional people such as yourself would be looking at the content, whether it is accurate, whether it accords with government policy and so on.

Mr Corry: It is not part of the contract of the Special Adviser that you shall read through every transcript and absolutely check. I suspect, to be honest, I very often do not look at transcripts. I know I did look at this transcript because I gave a comment on it, particularly around 25 July, but in terms of other officials what they do, I am afraid I do not know whether it is the private office that tends to read through the transcript to check what is there, or whether it is policy officials.

Mr Llwyd: Thank you.

Q96 Mr Jenkins: Mr Corry, one of the things I cannot quite get my head round because I have been there and seen it and got all the bells and whistles, et cetera, if I had gone to a meeting with the Minister and the Minister had, whatever, inadvertently misinformed, misled, if I did not quite get it in the meeting—ding ding—if I was asleep, if I was running around putting out fires in the Department and I had a lot of work to do, that is fair enough. If you asked me now go back three months and find out what I was doing three months ago I would, like yourself, have difficulty remembering exactly what went on in a particular meeting. The one thing I would do is if

6 December 2005 Mr Dan Corry

somebody the very next day brings something up in the House of Commons regarding that meeting I would make sure I re-visited that meeting, I would get the transcript, I would go through the transcript, and I would say to everyone who was there, "Let's get our side in order, let's make sure we record exactly what we recollect went on because this might grow at some time in the future; it might fade away but it might grow." That to me is a professional approach to the job so why did you or the Department not do that?

Mr Corry: I am probably not as sighted as I should be in all this because I do not totally recall what then did happen. You are saying the day after the Select Committee and the evidence that Stephen Byers gave something else happened. I am afraid I do not recall what it was that happened, so I am unsighted.

Q97 Mr Jenkins: Put it this way then: if you knew when you went to a committee meeting and evidence was given and taken and the next day in the Chamber someone raised a point of order with regard to the accuracy of some of the contributions from the Minister in that meeting would alarm bells ring within the Department and would somebody be responsible for ensuring that the transcript was checked to make sure it was accurate?

Mr Corry: Should that happen in theory, I do not know, it sounds like a sensible thing. Whether it did or not I am afraid I do not know. I do not know on the day, it is not clear to me, you would have to ask the officials. Certainly to me—and you would have to ask the officials who were there as well—did the answer that Stephen Byers gave, even though he now says it was wrong, make people jump up and say that is the wrong answer or did they feel, as I might, it depends exactly what you are referring to? As I say, the answer that probably would have been the best answer to have given is to say there was some scoping work going on in the Department and that would have been, if you like, the best answer to give. Whether the answer he gave was so at variance from this that people fell out of their chairs and said, "Oh dear, what have you done?"; presumably they did not. I do not know, I do not recall there were issues then raised the next day in the House and what happened then I am afraid I just do not recall. I know it sounds ridiculous but it is a long time ago and there was an awful lot of stuff happening at the time.

Q98 Mr Jenkins: That is why we rely upon the written record. So what exactly did you do for the Minister?

Mr Corry: I was his Special Adviser.

Q99 Mr Jenkins: What does that encompass insofar as you were not—

Mr Corry: As a policy specialist I worked on all the policy issues that were around. There were a lot of issues there in terms of Railtrack coming out administration, a lot of stuff on London Underground, a lot of stuff on planning, on housing, all sorts.

Q100 Mr Jenkins: So it was not your job or duty to guard the Minister's back in any way, shape or form?

Mr Corry: You do your best on that as well. It is quite a job.

Mr Jenkins: So I do not think there is any more I can ask the witness in that case.

Chairman: Thank you very much. Mr Mackay?

Q101 Mr Mackay: Mr Corry, you were the senior Special Adviser to Stephen Byers?

Mr Corry: I think the system in this Government is that most Secretaries of State have two special advisers and I was one of them. I was not senior.

Q102 Mr Mackay: And you had presumably built up a reasonably close relationship with Mr Byers because you had been with him at Trade and Industry and he elected to have you moved with him to Transport?

Mr Corry: Yes, I had worked with him for a number of years.

Q103 Mr Mackay: And your relationship was presumably close?

Mr Corry: Yes, as with most people I have worked for, I had a professional relationship. I do not go out to dinner with the Secretaries of State I work for and so forth, I do the job, but I knew him, the way he thought and his policy approach, yes.

Q104 Mr Mackay: If that was not the case he would not have invited you to move with him to Transport?

Mr Corry: I would like to think he thought I was good, I knew my stuff, I knew my policy, I could get into issues easily, I could deal with complicated policy issues (which you have to do in the Department) and that my advice was useful to him on policy issues.

Q105 Mr Mackay: Compared to us modest backbench MPs, you had a considerable salary for doing this job, and rightly so I might add.

Mr Corry: We could have a long chat about salaries, I can tell you that is absolutely not the case.

Q106 Mr Mackay: But you then presumably went to the Select Committee because you would have been of help at that Select Committee to your Secretary of State, otherwise there was no point in you going there?

Mr Corry: The reason I have tended to go to select committees—in my experience officials and Special Advisers are of absolutely no help to the Secretary of State when they give evidence. Almost all of them these days I notice give evidence on their own. They have people behind them but who almost never do anything. The idea you can get given a note halfway through is ridiculous and most Secretaries of State do not want that. The reason I usually went to select committees, and it is the reason why I used to go and sit in debates in the House, was much more to get a sense of the mood of the House and in that case the mood of the Select Committee. If you are trying to advise Ministers sometimes you do have to have a feel of how the House is feeling or how the select

6 December 2005 Mr Dan Corry

committees are feeling. You can read the transcripts but the best thing is sitting at the back to get a feel of what the mood is. I think that is helpful.

Q107 Mr Mackay: That is extremely helpful, Mr Corry, to establish why you were there.

Mr Corry: I do not recall. There may be another reason.

Q108 Mr Mackay: There must be some reason why a senior, highly paid—

Mr Corry: Can I object to you saying it is highly paid, honestly if you want to see my salary at the time you can, but I think this is really a bit out of order.

Chairman: Mr Mackay would like to put his question.

Q109 Mr Mackay: Yes, I would like not to be interrupted by the witness. I think the witness ought to be reminded that he is before the Privileges Committee of the House of Commons and should behave accordingly, so let us try again. This senior Special Adviser came to a meeting of the Select Committee with the Secretary of State. He has said how busy he is, Sir George, he has said how many different jobs he had to do, so presumably his time was very precious and there must have been an important reason for him being at the Select Committee, and I think Mr Corry, before his outburst, was trying to tell us that the reason he was there was to gauge the mood of the Select Committee and gauge the political mood of Parliament to see all the nuances on this particular issue of Railtrack. Can I confirm that is right?

Mr Corry: It was an important event for the Secretary of State and, as I say, I went to these events sometimes and I did not to others. Exactly why I went that particular day I do not know but it would have been very high profile at the time, I guess, and therefore it was useful to be there to get a feel for what was going on.

Q110 Mr Mackay: It was very high profile, as you say, and it was therefore important for you as one of two senior Special Advisers to be there. By your own admission you were not there to sit behind him and to give him notes back and forth but to take a view of what was happening from a political and also a strategic and policy dimension for the person that you were personally responsible for as Special Adviser and, at the time of Mr Grayling's questions which were very clear and with your knowledge of what you quaintly call "scoping commissions", you did not notice that there was a major error, fundamentally a wrong answer given?

Mr Corry: I have said the answer that I probably would have given if asked that question and you have got to make a judgment as to whether that is fundamentally different from what Stephen Byers said.

Q111 Mr Mackay: I think that conclusion has already been made by Mr Byers and everybody else and is taken as read. Would you accept that one of

your duties in the best sense is to protect the back of your Secretary of State as a Special Adviser, to look after him, to make sure that nothing goes wrong?

Mr Corry: It is part of what you try to do. My main job in the different jobs I have done as Special Adviser is to do my very best on policy advice, obviously coming with a political background, as you say, appointed by the Secretary of State. Secretaries of State get into all sorts of problems in their lives and on the whole it is not always the Special Adviser's role to try and get them out of them. So I have not tended to see that but I think the point you are making, which is obviously totally fair, is I was at that meeting, Stephen Byers said something which you are arguing in a sense should have made myself and the other officials who were there very nervous because it was so diametrically different from what the truth was, I do not recall it, I am afraid, as I said before; clearly we did not. That is all I can say really.

Q112 Mr Mackay: But as a political appointee you were there to look after his interests or were you—

Mr Corry: When you get a contract as special adviser it does not say "you shall look after their political back". Different people do the job in different ways. I think people employ me mainly because I am a policy person and have been for a long time rather than I am fantastic at watching the backs of Ministers. Maybe I have not done a very good job in that.

Q113 Mr Mackay: Mr Corry, you just said you are a political appointment, you are not a career civil servant, you are a political appointment, indeed a personal appointment of Mr Byers when he moved from Trade and Industry to Transport.

Mr Corry: Yes.

Q114 Mr Mackay: And on that basis you must have been at the Select Committee to look after his interests. So can I ask you the question would you have been aware when you attended the Select Committee that to mislead a Select Committee of this House was a very, very serious matter and if gone uncorrected would lead to a breach of privilege, which is why you and I are sitting in Committee Room 13 this morning?

Mr Corry: Absolutely. On select committees Ministers should sit there and tell the truth as they see it, absolutely.

Q115 Mr Mackay: So I find it difficult to understand, bearing in mind the job you were doing, that afterwards you did not point out to the Secretary of State that he had made a mistake and that would have given him the chance to have corrected it and you and I would not be here today.

Mr Corry: All I can do is surmise. Clearly I and the officials who were there as well did not feel that he said something that was wrong. We might not have said it like that. I have said how I probably would have said it, but it was not something that clearly

6 December 2005 Mr Dan Corry

made us all jump. I am afraid, as I said, I do not recall it, so I am just surmising really from what I know.

Chairman: Thank you. Mrs Browning?

Q116 Angela Browning: Mr Corry, you said that you attended the Select Committee really to gauge the mood of the Select Committee and that when occasionally you attended debates in the House it was your perception of the mood of the House and how they were responding to the debate. What was the action you would take? What was the purpose of that? What would you do then if for example you sensed a hostile House or a hostile Select Committee? What was then the function that you carried on?

Mr Corry: That is a good question. I do not think a specific action came from this. It would just be more in helping one think about what Ministers might want to do next or whatever. It would just add to a bit of knowledge. I think if you just try and sit in an ivory tower as a special adviser completely and you never have a sense of the place where Ministers are having to go and speak in the House, you probably lose something in your ability to work with Ministers, so I think it is quite important.

Q117 Angela Browning: You have told us that you have little recall of how you perceived that meeting to go as a Select Committee but it has already been raised with you that the very next day there was a point of order on the Floor of the House.² Would your antennae seeking to identify mood swings in the House have alerted you to the fact that something was not quite right?

Mr Corry: I am afraid I just do not recall this at all. That is all I can say. It sounds a bit pathetic but I really do not remember it at all. Why that was, I do not remember. I do not know whether someone else was dealing with the issue, whether I was on other things that were happening that meant it was not me it was someone else who was worrying about things. I am afraid I just do not know.

Q118 Angela Browning: How involved were you in the briefing for the Minister? I assume that officials would have prepared the written briefing that went into the folder but how involved would you have been in discussing with Mr Byers preparatory to the Select Committee?

Mr Corry: Again I am sorry I have to preface it by saying I cannot recall but generally it would not usually be that much. Usually Mr Byers would tend to do his own preparation as it were. He would have the briefing for whatever select committee or thing like that he was going to and he would tend to read through it and if there were things he was not sure about he would often ask for another note or something about that. Sometimes he would have officials or advisers in just to run through a few tricky questions. That is his style and from my

experience most Secretaries of State I have worked for it tends to be their style rather than big meetings where they rehearse the whole thing and so on.

Q119 Angela Browning: Would you have been present at such a pre-meeting?

Mr Corry: Probably, probably.

Q120 Angela Browning: Were you aware that the Clerk of the Select Committee had notified the Department of the areas of questioning that were likely to take place?³

Mr Corry: I might have been. It may well have been if the Clerk had told the Department they might have put a covering note in for Mr Byers saying “the Clerk has informed us this is the vague range of questions” or something. From my experience, the steers that the Clerk gives are usually quite general.

Q121 Angela Browning: So would you have been involved in advising Mr Byers on that aspect of his appearance before the Committee?

Mr Corry: I doubt I would have been much involved. This was obviously a very high profile issue. To some extent obviously I have found before when a Secretary of State is very focused on things that are going on, as Railtrack was at the time, part of my job is to keep the rest of the show on the road, as well as a lot of Railtrack issues still happening then, so I probably would not. I can quite imagine there might have been a sort of briefing meeting, where he would have gone through a few issues and I probably would have been there.

Q122 Angela Browning: Who in the Department decided who would attend that meeting? Did people just volunteer? What was the *modus operandi* in that Department as to who would attend occasions like that? You were there; was that because you said I am going there?

Mr Corry: No, the private office sorted it and probably asked me to be there. I think there would probably be a standing invitation to those sorts of events but, to be honest—sometimes those sorts of meetings happened and sometimes they did not. Certainly I think Stephen Byers, like other people I have worked for, is much more a reader than a meetings person. He tends to read things himself. I am pretty sure there would have been a meeting but I just do not recall it at all. I suspect if there was and you can tell from the comment I made on the transcript it seems like our obsession at the time (with some good reason with everything that has happened) was about exactly what was said on 25 July.

Q123 Angela Browning: Do you recall at all why the Private Secretary was not present at that Select Committee?

Mr Corry: I do not know. I think David Hill was his Private Secretary at the time and if he was not there he probably had a good reason. Usually a Private Secretary will accompany a Secretary of State simply

² HC Deb, 15 November 2001, col 1010.

³ Flag 3 [not printed] to Memoranda from the Department of Transport [Appendix 7].

6 December 2005 Mr Dan Corry

to get them from the Department to here and so on and hold the bags so I would be surprised if he was not.

Q124 Angela Browning: We know that the senior Private Secretary was not present and normally it is the senior Private Secretary that would be involved.

Mr Corry: Not quite true. It is usually someone from the Private Office but it is not necessarily the Principal Private Secretary.

Chairman: Mr Dismore?

Q125 Mr Dismore: To follow on from Mrs Browning's questions, I have got in front of me the memorandum from Mr Linnard delivered 13 November 2001 addressed to the Secretary of State and you are one of the people copied in on it, which sets out the subjects which the Select Committee was going to raise, and the very first item is the events leading up to Railtrack going into administration.⁴ Can we take it that you did read that memo or did you?

Mr Corry: Probably. I would at least have skimmed it. I cannot promise to have read it.

Q126 Mr Dismore: As that was the very first item on the list, do you not think that was something you might have wanted to pay attention to when the transcript came through?

Mr Corry: I am not sure. I now know that I was at the hearing and the focus at the time was very, very—there was a massive debate, as you probably recall, about exactly who said what at the 25 July meeting. That was the enormous dispute as to whether Railtrack had said it was running out of money or not and how they had said it. That would have been the focus I would have thought.

Q127 Mr Dismore: Could you repeat how you would have answered the question?

Mr Corry: Let's see if I say it the same way. I think I would have said that I had commissioned some scoping work on the options.

Q128 Mr Dismore: Do you think that was not that different from the answer that the Secretary of State gave?

Mr Corry: Now the question was: "Was there any work or discussions going on in the Department?" or something.

Q129 Chairman: The question was: "Was there any discussion, theoretical or otherwise, in your Department before 25 July about the possibility of a future change in status for Railtrack, whether nationalisation, the move into a company limited by guarantee, or whatever?"⁵

Mr Corry: My answer to that would have been there was some scoping work going on. That is what you are trying to judge, is it not? Stephen Byers more or less to that said no, did he not? Is that consistent with scoping work going on? That is the issue, is it not?

Q130 Chairman: That is the issue this Committee will have to resolve.

Mr Corry: He was not involved in discussing options. He had asked people to go and do some work in a group in the DTLR which was happening, which he knew about, but which had not reported back to him or anything.

Q131 Mr Dismore: In your view, was Mr Byers' answer wrong?

Mr Corry: I obviously did not think it was wrong enough at the time to make anything of it, clearly nor did officials, including officials who were on that working group. In a sense I do not think it is for me to judge whether it is right or wrong. Clearly I did not think it was wrong enough at the time to make something of it.

Q132 Mr Dismore: Despite the meeting with the Prime Minister you attended?

Mr Corry: Sorry.

Q133 Mr Dismore: Despite the meeting with the Prime Minister, for example?

Mr Corry: There I do not remember any particular discussion of any options at all. Again it was just about there should be a group that goes away and does some work. Actually that group was more or less already set up.

Q134 Mr Dismore: Okay I think you said you were not involved in preparing the briefing for the Committee; is that right?

Mr Corry: I would not normally have been. Sometimes I would be asked before a select committee are there any particular areas we need to commission briefing for but, to be honest, usually officials did more of the briefing than I did.

Q135 Mr Dismore: I presume from that you were not involved in preparing the briefing for the Private Notice Question?

Mr Corry: I certainly do not recall it.

Q136 Mr Dismore: Or for the Opposition Day debate?

Mr Corry: To be honest, I would have to look it up, I cannot recall, I am not saying. For Opposition debates we would often do a brief for the Parliamentary Labour Party backbenchers on what the issues were and so on and so forth, so I might have been involved in that.

Q137 Mr Dismore: You did not pick this up when you read the transcript? Did you just skim the transcript or did you read it in detail?

Mr Corry: I cannot recall the transcript at all. I do know that I did give comments so I did read at least some of it. My guess is that what I would have read

⁴ Flag 3 [not printed] to Memoranda from the Department of Transport [Appendix 7].

⁵ Transport, Local Government and the Regions Committee, First Report of Session 2001–02, HC 239–II, Ev 102, Q857.

6 December 2005 Mr Dan Corry

would be bits particularly about exactly what was said on 25 July because that was already an enormous issue at the time and minutes were being published in newspapers and all sorts of things.

Q138 Mr Dismore: You told us at the Select Committee you were really there to gauge the mood. Can we take it from that you were not really concentrating on the evidence and the questions?

Mr Corry: I cannot recall the event at all. I do not think I just come in, sit there and try and gauge the mood and not listen to the debate. I am sure I would.

Q139 Mr Dismore: You told us your job was not to mind the Secretary of State's back.

Mr Corry: Of course you do your best to do it but the idea if you have a policy Special Adviser like myself all you are doing is watching the Secretary of State's back, no, that is not what I do most of the time. It is not what I do now either, although it is obviously a part of it.

Q140 Mr Dismore: If it was not yours, whose job was it?

Mr Corry: Partly the Secretary of State's to watch his own back and so on.

Q141 Mr Dismore: Bearing in mind it is such a huge job being a Secretary of State of any Department, whose job was it?

Mr Corry: Lots of people are trying to watch their back. I do not recall the events at all but had I thought he had said something that was horrendously wrong then clearly I would have said something to him. I clearly did not think that and clearly nor did the officials who were present and read the transcript afterwards. Why that happened is a good question but that is clearly what happened from everything I have seen.

Q142 Dr Whitehead: Was that the first time that the Secretary of State had been in front of the Transport Sub-Committee?

Mr Corry: I am afraid I do not remember. I would be surprised if it was the first.

Q143 Chairman: I think it was.

Mr Corry: Right.

Q144 Dr Whitehead: So that might have been regarded as quite an auspicious occasion in as much as the new Secretary of State going to the Transport Sub-Committee with a redoubtable Chair—

Mr Dismore: Formidable Chair!

Dr Whitehead: Indeed, a formidable chair, and discussing issues of very considerable moment?

Mr Corry: I think there was a lot happening around then that probably all had the phrase "of considerable moment" around them. I cannot recall, I am sure you have got these timetables around, but I think there were statements in the House about Railtrack, there were all sorts of things. It was a very tense and stressful period. So there were a lot of things like that happening and I am sure that certainly Stephen Byers would have taken the whole

thing incredibly seriously. It was a good Select Committee so he knew he was going to have a good run through the issues as well.

Q145 Dr Whitehead: As I imagine the officials and so on would have done because of the significance of it being the first Sub-Committee appearance?

Mr Corry: I think officials always try and do a good briefing for the Secretary of State before select committees and I think the biggest problem you have is they tend to overdo it. They give you so much stuff you cannot possibly read or ever use it. You just use the core stuff and the core stuff I think at the time was around that 25 July issue. I do not know if you have got copies of the briefing. My guess is there is quite a lot about that in the briefing because that is what we were being grilled about a lot and that is what the media were obsessed about.

Q146 Dr Whitehead: And you clearly accompanied your Secretary of State when you were Special Adviser in your previous post prior to—

Mr Corry: The DTI?

Q147 Dr Whitehead: Prior to accompanying him to Transport.

Mr Corry: Yes, sometimes.

Q148 Dr Whitehead: DTLR as it then was. Could you make any comparison between the sort of preparation and the material that you would have received prior to select committee appearances at the DTI and the briefing that would have come your way at least for a skim as far as the Department for Transport was concerned?

Mr Corry: It is an interesting question. I did not notice in changing departments that suddenly the briefing on parliamentary debates or anything was significantly worse, or anything like that. In general, though, Ministers appearing before select committees or a debate in the House in the end have to take control of it to some degree. Officials do not really know what these things are like or what the focus is going to be. They tend to give a vast amount of information which is not that focused. Sometimes a briefing drives Ministers up the wall. They get all this stuff, loads of it, and none of it has got the stuff that matters in it. I think that is true across all departments. I could say that when I was a civil servant before, I am sure I drove Ministers up the wall.

Q149 Dr Whitehead: Bearing in mind your experience of preparing briefings for your Secretary of State at the DTI, would you have noticed that the briefing on this occasion was a joint briefing for an Opposition day debate and a select committee hearing⁶ and would you have remarked that might have been a bit strange?

Mr Corry: I do not think so. The key thing would have been did it cover the key issues. That was the important point.

⁶ Flag 3 [not printed] to Memoranda from the Department of Transport [Appendix 7].

6 December 2005 Mr Dan Corry

Q150 Dr Whitehead: When you had indeed sat in on the Sub-Committee and the hearing had finished, presumably you arrived at the Committee in the Minister's car and then you went back over to the Department in the Minister's car? I would imagine that was the case?

Mr Corry: I do not know. Often Ministers when they have done select committees in my experience do not go back to the department straightaway, they go and have a cup of tea in the House with fellow MPs, or something like that. In terms of coming over I did not always come with Stephen Byers and I do not always now.

Q151 Dr Whitehead: You do not recall whether there was any wash-up session after the hearing informally or formally where you would have discussed what the questions were and what the answers were and how the meeting had gone?

Mr Corry: No, to be honest, in my experience that does not usually happen with Secretaries of State. Sometimes you are outside in the corridor and you might say "that went alright" or "that was pretty awful" or something like that, but I do not really remember anyone I have worked with then wanting to go through all the questions and how did they do on that.

Q152 Chairman: Could I just put one or two final questions. We know from the papers that the DTLR, Number 10 and the Treasury set up a Rail Review Group before July 25 on which you sat. Would you have kept your Secretary of State roughly in the picture as to what that group was doing?

Mr Corry: Very roughly. I am trying to remember this because I think we only had a couple of these meetings and they had big papers that had all the options, they were classic Civil Service papers really. I think probably I would have just told Stephen Byers that we were meeting and at some point he would get a paper.

Q153 Chairman: So he would have known?

Mr Corry: I mean, as you know from the trial and so on and obviously the outcome of the trial, to be honest, from my perspective and the leads I had been given by Stephen Byers, I was not really taking a lot of this vastly seriously as if we were imminently about to do anything. They were really for background on what were the options they could do if they ever wanted to do anything. So he was not saying to me what is happening in this group? I had been involved in lots of groups like that before in the DTI where we often produced a paper and nothing ever happened.

Q154 Chairman: Then your Secretary of State was reported in the *Financial Times* as saying he "was considering a range of ideas for the longer term. Renationalisation appears to have been ruled out, but there were many other options."⁷ That comment was attributed to Department of Transport officials. Does that ring true?

Mr Corry: Sorry, what date was that?

Q155 Chairman: This is in June 2001, 25 June, he was reported as considering a range of options having ruled out renationalisation but considering other ones. Does that ring true?

Mr Corry: Not really. The key thing he wanted to do, there was a feeling that the different players in rail were pulling different ways and he wanted to get them all lined up facing the same way to have a period of stability. The advice from officials was the April agreement had only just been signed and things were okay but in the medium term we might have to do something. We had Cullen coming up. To the extent there was any discussion even in the working group, to be honest, it was more about doing something about regulation and the dysfunction that some people thought between the Office of the Rail Regulator and the SRA.

Chairman: Unless colleagues have any final questions, thank you, Mr Corry.

⁷ Enclosure 4 to Memorandum from Tom Winsor [Appendix 6].

Tuesday 10 January 2006

Members present:

Sir George Young, in the Chair

Mr Kevin Barron
Angela Browning
Mr Andrew Dismore
Nick Harvey

Mr Brian Jenkins
Mr Elfyn Llwyd
Dr Alan Whitehead

Witness: **Rt Hon Stephen Byers**, a Member of the House, gave evidence.

Q156 Chairman: Good morning Mr Byers. As you know, the Committee is deliberating on a matter that has been referred to it by the House and we are coming towards the end of our deliberations and there are some questions which the Committee and I would like to put to you. There is general agreement that the answer that you gave to the Select Committee was inaccurate. What was the right answer?

Mr Byers: At the time I felt I had given the right answer. With hindsight I should have seen that there was a different interpretation as to what was meant by ‘discussion’. Had I recognised that someone might see a discussion as being a simple commissioning of work—which I did not do when I gave evidence to the Select Committee and I think even now it is still debatable, but I understand from when it was put to me in the court that in fact the commissioning of work could be a discussion—then a comment along the lines of “there had been no substantive discussion but work had been commissioned” would probably have been more accurate, but I am not quite sure that would have answered the question put to me by Mr Grayling.¹

Q157 Chairman: If you had said that would there have been any difficulties?

Mr Byers: No, not at all.

Q158 Chairman: When did you realise that the answer you had given was not accurate?

Mr Byers: At about 2.40 on the afternoon of 14 July in the High Court. That was the first time it dawned on me that there could be a different interpretation of the word ‘discussions’.

Q159 Chairman: We may want to come on to the definition of a discussion later in our deliberations. Can I just ask you some other questions? Did you regard yourself as adequately briefed during your period as Secretary of State by your Department?

Mr Byers: Yes. I am sure there are times when the briefing could have been better, but I certainly had no complaints at the time and I would not have any complaints now.

Q160 Chairman: Can we now press you a little bit on what is or is not a discussion and can we start off with the events prior to 25 July and the meeting with

the Prime Minister on 5 July. We have got the transcript and we have got the official record of the meeting. In that meeting Miss Vadera says, “It is urgent to consider more radical changes to the structure of the company.”² You say, Mr Byers, that we should consider the options and that DTLR, Transport and Number 10 should work together to develop them. Do you not think that constitutes a discussion in the terms of Mr Grayling’s question?

Mr Byers: No. I think it is probably more relevant to look at what the response was to Miss Vadera’s comment. The response came from John Spellar. He said that the immediate priority is not to go in for structural change but to make the existing system work more effectively.³

Q161 Chairman: Nonetheless, you did say the words that I have attributed to you about considering the options and that your Department should work together to develop them.

Mr Byers: If this could be read in the context of my note to the Prime Minister⁴ of a couple of days earlier then I think this is part of the commissioning of work that I referred to in my personal statement to the House.⁵

Q162 Chairman: You do not think it is a discussion about the future of Railtrack?

Mr Byers: I think we need to think about all of the options that may be considered on the future of Railtrack. It is certainly not a discussion about nationalisation, a company limited by guarantee and those very specific examples that were given by Mr Grayling in his question to me.

Q163 Chairman: Can we look at the box note for a meeting on 20 June which said you wanted to reconvene your meeting with rail officials and consider the options for reforming Railtrack⁶ Would that not again be a discussion in the terms of Mr Grayling’s question? Mr Grayling’s question was, “Was there any discussion, theoretical or otherwise, in your Department before 25 July about

² Flag 5 [not printed] to Memoranda from the Department of Transport [Appendix 7].

³ Flag 5 [not printed] to Memoranda from the Department of Transport [Appendix 7].

⁴ Annex A, Flag B [not printed] to Memorandum received from the Department of Transport [Appendix 7].

⁵ HC Deb, 17 October 2005, cols 639–40.

⁶ Attachment 2 [not printed] to Memorandum received from Chris Grayling MP [Appendix 4].

¹ Transport, Local Government and the Regions Committee, First Report of Session 2001–02, HC 239–II, Ev 102, Q857.

10 January 2006 Rt Hon Stephen Byers MP

the possibility of a future change in status for Railtrack, whether nationalisation, et cetera?”⁷ Does it not sound as if there were meetings that were considering reforming Railtrack?

Mr Byers: I am not quite sure which note you have got, Chairman. I have got a note from David Hill to David Rowlands of 11 June which says, “The Secretary of State has requested a number of pieces of work on rail issues. First, he has asked for an options paper on the future of Railtrack covering all options short of re-nationalisation . . .” Then the paragraph goes on to say, “The Secretary of State has asked for a meeting on options with Railtrack later this week and Maria”—who was the diary secretary—“will be in touch to fix a time.” Is that the same note?

Q164 Chairman: No, this is a different one. Perhaps we could come back to that in a moment. May we look at your memo to the Prime Minister on 29 June which says, “My Department, the Treasury and the Policy Directorate are accordingly starting joint work to identify all the possible options for Railtrack.”⁸ Does that not sound like a discussion, theoretical or otherwise, about a future change in the status of Railtrack?

Mr Byers: I do not think so because I think it needs to be seen in the context of the totality of my note to the Prime Minister. I think the Committee needs to be aware of the political context of Mr Grayling’s question to me in the Select Committee. The political line of attack at that time was that the Government had been preplanning some drastic action in relation to Railtrack. In his evidence to the Committee Mr Grayling has made the point that things were happening before 25 July to push, as he puts it, Railtrack into administration. I think my reply in the Select Committee was to the political background of the question that was being put to me.

Q165 Chairman: You have conceded a few moments ago that you could have given the right answer without there being any adverse consequences.

Mr Byers: Absolutely, but Mr Grayling did not know that. I knew there had not been any preplanning before 25 July. The political line of attack, which happened to be an incorrect line of attack because it was not backed up by the facts, was that the Government was preplanning something in relation to Railtrack before the meeting of 25 July. What I am doing in this note to the Prime Minister is basically saying, “Look, I do not think we should be going for structural changes. I think the problem is essentially a management one.” That is why I say in the paragraph a bit earlier, “A discussion with John Robinson, Railtrack’s new Chairman, has reinforced my view that this is basically a management problem but one of unusual complexity and urgency. If the new management cannot demonstrate early progress we may be forced

to move to a radical alternative. My Department, the Treasury and the Policy Directorate are accordingly starting joint work to identify all the possible options for Railtrack.”⁹ This is the commissioning of work that I referred to in my personal statement in the House which I did not regard as being a discussion, but I recognise that some people could see it as a discussion.

Q166 Chairman: On 12 July there is a memo from David Hill to David Rowlands saying, “I passed on to the Secretary of State the timetable for taking forward joint work on options for Railtrack. He is keen to make quick progress on this.”¹⁰ Does that not sound like discussions on restructuring Railtrack?

Mr Byers: No. I think this is saying I want the work on joint options to be carried out quickly. What is interesting, to show that there are not discussions taking place, is David Rowlands’ reply to David Hill of 20 July where David Rowlands, who is now Permanent Secretary, says, “I have no idea what further work Ministers might want to be done on particular options.”¹¹ The reason why David Rowlands is saying that is because we are not discussing it; there are no discussions going on between Ministers about future options. What has happened before 25 July is that on a contingency basis work has been commissioned, but the Secretary of State, the Prime Minister and the Chancellor were not involved in discussions about nationalisation, a company limited by guarantee and so on. I take a discussion as being a dialogue, an exchange of views or a testing of opinion and in this great welter of documents I cannot find a discussion between the Prime Minister and myself about the benefits or otherwise of re-nationalisation, a company limited by guarantee, because it did not happen.

Q167 Chairman: What would have been the difficulty in saying as a responsible Secretary of State, “Of course I was considering options for Railtrack and of course there were discussions about what might happen if—”? What would have been the difficulty? Why do you need this rather narrow definition of a discussion?

Mr Byers: There would have been no difficulty whatsoever. I am just trying to explain why at that meeting of the Select Committee in November I did not interpret discussions in that way and perhaps I can be criticised for taking a narrow definition of discussion. I do not think it is unreasonable to say that a discussion is a dialogue, it is a two-way process. That is how I interpreted it. I now recognise—and I recognised when it was put to me in the High Court—that there is a different interpretation. It is not one that would have caused

⁷ Transport, Local Government and the Regions Committee, First Report of Session 2001–02, HC 239–II, Ev 102, Q857.

⁸ Page 2, Annex A, Flag B [not printed] to Memorandum received from the Department of Transport [Appendix 7].

⁹ Page 2, Annex A, Flag B [not printed] to Memorandum received from the Department of Transport [Appendix 7].

¹⁰ Attachment 8 [not printed] to Memorandum received from Chris Grayling MP [Appendix 4].

¹¹ Attachment 8 [not printed] to Memorandum received from Chris Grayling MP [Appendix 4].

10 January 2006 Rt Hon Stephen Byers MP

me any difficulty whatsoever when I gave evidence before the Select Committee, but I simply did not interpret it in that way.

Q168 Chairman: I want to put two final questions before I ask my colleagues to come in. In March 1997 a Resolution of the House was passed which says, "It is of paramount importance that Ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity."¹² What is your reaction to the charge that you did not do that?

Mr Byers: As soon as I was aware of the error, which was 14 July, I approached the Speaker's Office and I wanted to make a statement immediately to the House to correct the inaccuracy even though I was no longer a Minister. The Speaker's Office said no, because the court proceedings were still continuing, it would not be appropriate for any comment to be made at that stage and so the first opportunity I had to correct the inaccuracy was on 17 October this year.¹³

Q169 Chairman: On 25 June 2001 the *Financial Times* stated that Department of Transport officials had told them that you were considering a range of ideas for the longer term, this was about Railtrack.¹⁴ Was that wrong?

Mr Byers: It is wrong in the context of my interpretation of discussions but it is right in the context of work having been commissioned because by that stage work had been commissioned.

Q170 Chairman: I want to ask a last question about your personal statement to the House. This was not an off-the-cuff response to a question perhaps you did not expect; this was after you had had an opportunity to go through all the relevant documents. What you said is, "It was only after that meeting"—which is the one on 25 July—"that substantive discussions began about the possibility of changing the status of the company."¹⁵ Was that statement true?

Mr Byers: It was.

Q171 Mr Llwyd: I want to refer you to the note from David Hill to David Rowlands dated 12 July that is entitled "Joint Work on Options for Railtrack". It says in the first paragraph, "I passed on to the Secretary of State the timetable for taking forward joint work on options for Railtrack. He is keen to make quick progress on this."¹⁶ By the words "he is keen to make quick progress on this" does that not imply that there has been a dialogue both ways?

Mr Byers: No, I do not think it does. The timetable would have been a note from the relevant civil servant saying this would be the sequence of events. Perhaps in order to try and demonstrate that there

had not been a dialogue I can refer the Committee to Mr Rowlands' response to the note from David Hill dated 20 July where he says, "I owe you a reply to your e-mail of 12 July." Mr Rowlands says at the penultimate paragraph, "I do not know what the time-frame for further work on Railtrack options will be with or without hiring financial advisers since I have no idea what further work Ministers might want to be done on particular options."¹⁷ The reason why he has no idea is because there has not been a discussion or a dialogue. I have not discussed with Mr Rowlands, who was the senior civil servant in this policy area, any detail of these options. There had not been a dialogue or a discussion, which is why Mr Rowlands says he has no idea what those options might be.

Q172 Mr Llwyd: You have mentioned already this morning, very fairly, that you did not realise that there could be a different interpretation of the word discussion until you reached the High Court. I want to take you to your evidence very briefly in respect of when you were cross-examined on this very point. It was put to you that you made a deliberate statement that was untrue in response to what Mr Grayling had asked you and you responded by saying, "I am sure that that was not the reason."¹⁸ You had previously said that you could not remember the motives behind having given a wrong answer. What did you mean by the motives behind having given a wrong answer?

Mr Byers: I think I probably meant the reasons or how it had come about. I have to say that my evidence at this part of the cross-examination, which went on for almost three days, is not as clear as I would want it to be with hindsight. This was the first time that it had dawned on me that the word discussion had a different interpretation. I realised immediately the consequences of that, that I had given a wrong reply to a Select Committee of this House. I am under cross-examination, I realise that this is something I am going to have to deal with perhaps by way of a personal statement, but I recognise that as a Secretary of State I had given a false reply, something that was inaccurate. I am dealing with that in my own mind whilst recognising the importance in this place of always being open and truthful with colleagues; we have to trust each other. I am aware of this for the first time three and a half years later and at the same time I am still being cross-examined and so you cannot call a time-out to re-gather yourself. I am sure, had I had the time and had I not had these other issues in my own mind, I might have phrased my reply differently.

Q173 Mr Llwyd: You had responded, if I might say so, with due candour. You said, "It was such a long time ago I cannot remember, but it is not a truthful

¹² CJ (1996–97) 328.

¹³ HC Deb, 17 October 2005, cols 639–40.

¹⁴ *Financial Times* "Watchdog warns Byers that Railtrack management is 'barrier to improvement'", 25 June 2001.

¹⁵ HC Deb, 17 October 2005, cols 639–40.

¹⁶ Attachment 8 [not printed] to Memorandum received from Chris Grayling MP [Appendix 4].

¹⁷ Attachment 8 [not printed] to Memorandum received from Chris Grayling MP [Appendix 4].

¹⁸ *Mr Justice Lindsay's Approved Judgement in Weir and Others v The Secretary of State for Transport and others*, 14 October 2005, pp 68.

10 January 2006 Rt Hon Stephen Byers MP

statement and I apologise for that.” Then you go on to say, “I cannot remember the motives behind it.”¹⁹ Why did you include that sentence?

Mr Byers: This part of my evidence is probably not as clear as I would have wanted it to be.

Q174 Mr Llwyd: Can I take you just a few lines down from that particular exchange where you say, “In the context of a Select Committee hearing there are other reasons but none of them are acceptable, I would accept that.”²⁰ Can you elaborate on that?

Mr Byers: None of the reasons to lie or deliberately and knowingly mislead would be acceptable, but I think we all know as politicians that sometimes you want the discussion to move on. I cannot say that in this particular case because, for the reasons I have given to the Chairman, there was no political reason to want to move the discussion on because there was simply nothing to hide. I should have said I had not seen that there was a different interpretation of the word discussions. It was only when I had the opportunity over the summer, as I think I say in my personal statement, to think about how I had given an inaccurate reply and the reasons why and I had the opportunity of reading the documents that I realised it must have been because I had interpreted the word discussion in, as the Chairman said, a particularly narrow way.

Q175 Mr Dismore: Can I first of all work back a bit through some of the evidence from other witnesses and that is to deal with the briefing you had prior to the meeting with the Select Committee. One of the things we have been exploring is whether the briefing was adequate or not. Are you satisfied your briefing was adequate for the meeting?

Mr Byers: As I think I said to the Chairman, I cannot remember the detail of the briefing for this particular Select Committee, but I had no complaints at the time about the briefing that I was getting from the Department and so I have no reason to complain now.

Q176 Mr Dismore: The memo from Mr Linnard of 13 November addressed to you specifically highlighted that one of the areas the Committee wished to explore was the run up to the Railtrack decisions.²¹ Presumably you had not forgotten about the meeting with the Prime Minister and all these other documents which were referred to, you were *au fait* with all those, so there is no argument about what was in your knowledge when you gave the answer.

Mr Byers: I do not know if the Committee has seen the documentation after 25 July, but David Rowlands in his evidence used the phrase a

watershed²² and that is the defining moment in the context of changing our approach towards Railtrack.

Q177 Mr Dismore: The first question from Mr Linnard is on the events leading up to Railtrack going into administration. I do not know if you need to see that but I will hand it over anyway.

Mr Byers: There were quite a lot of events in the lead up to Railtrack going into administration.

Q178 Mr Dismore: That puts the Department and presumably you, because it is addressed to your notice that these were the issues that were going to be raised—

Mr Byers: Yes, I would expect that in the normal course of events there would be a briefing to cover that.

Q179 Mr Dismore: And so the question from Mr Grayling would not have come as a surprise to you when he asked about what had been going on.

Mr Byers: No. My recollection was that although the Select Committee was investigating franchising, it was the first Transport Select Committee since Railtrack had gone into administration and so understandably that was going to be the focus of their questions and I was prepared for it because, as the Committee will be aware, the day before there was a half-day debate about Railtrack and I had had to make a statement the week before about the situation with regard to Railtrack and so on. Having read the documents in preparing for today’s evidence, I feel the political squeeze points or the political lines of attack specifically were not in relation to discussions about nationalisation or a company limited by guarantee. The political attack had been on whether I had threatened the regulator to take powers against him and, secondly, whether or not at the meeting on 25 July John Robinson, who was the Chairman of Railtrack, had asked for financial assistance, because the week before the Select Committee hearing he had gone on the record to say that he had not. Those were probably the two big issues I was concentrating on most. The issue that Mr Grayling raised about discussions to do with nationalisation or a company limited by guarantee had not been raised publicly in any way before the Select Committee hearing.

Q180 Mr Dismore: The question is posed in a very general way, “Was there any discussion, theoretical or otherwise, in your Department before 25 July about the possibility of a future change of status for Railtrack, whether nationalisation, moving to a limited by guarantee or whatever?”²³ That is a very, very general question. My concern is that the answer hangs on a definition of discussion which I would suspect that most people in the room at the time would not have shared given the nature of the question that was posed to you.

¹⁹ Mr Justice Lindsay’s Approved Judgement in *Weir and Others v The Secretary of State for Transport and others*, 14 October 2005, pp 68.

²⁰ Mr Justice Lindsay’s Approved Judgement in *Weir and Others v The Secretary of State for Transport and others*, 14 October 2005, pp 68.

²¹ Flag 3 [not printed] to Memorandum from the Department for Transport [Appendix 7].

²² Minutes of Evidence taken before the Committee on Standards and Privileges, 29 November 2005, Q49.

²³ Transport, Local Government and the Regions Committee, First Report of Session 2001–02, HC 239–II, Ev 102, Q857.

10 January 2006 Rt Hon Stephen Byers MP

Mr Byers: That may be the case. I did not see it. I probably saw it in a broader political context of the accusation being that there was a preplanned government strategy towards Railtrack which did not start from 25 July but was a plan that I had when I took over as Secretary of State on 8 June. I may have thought that was the direction in which Mr Grayling was coming and I may have been expecting a more specific follow-up question, I do not know with hindsight. As we all know, in Select Committees it is often the case that there is a general question and then there is a more specific follow up and I may have been expecting a more specific follow up and so I gave perhaps a rather broad brush reply. I am sure I saw discussions in the context in which I have explained to the Committee, but I now recognise there is a different way of looking at it.

Q181 Mr Dismore: If you give a complete brush-off answer that closes down the possibility of any follow up, does it not?

Mr Byers: Not if Mr Grayling knows there is something. There may have been a more specific follow up.

Q182 Mr Dismore: Is it not a bit risky giving such a definitive answer knowing what you knew at the time?

Mr Byers: What I knew at the time was that I had commissioned work and that I had not been involved in discussions about nationalisation or a company limited by guarantee before 25 July.

Q183 Mr Dismore: That seems to be implying a capital “D” for the word discussion rather than a lower case “d” from the general understanding of the word discussion to me. I would be surprised if the Oxford English Dictionary would back your definition of discussion in those circumstances bearing in mind all the meetings and memoranda we have seen looking at the whole issue of Railtrack.

Mr Byers: Perhaps I took Mr Grayling to be talking about whether I had discussed with the Prime Minister, the Chancellor or with my own officials the pros and cons, the advantages and disadvantages, of re-nationalisation, a company limited by guarantee and I simply did not. I still see a discussion as being a dialogue, a testing of views and of opinions. To actually say to the Prime Minister that I think we should commission some joint work on Railtrack and for him to say fine, is that a discussion about the nationalisation or a company limited by guarantee? I still do not see it, but I recognise that there is a different interpretation.

Q184 Mr Dismore: Can I go on to your personal statement where you say you did not deliberately mislead the Select Committee.²⁴ The answer that you gave, based on the answers you have given us today, was a considered answer which hung on your definition of a discussion and not one in the absence of the knowledge that you had that that would have been going on.

Mr Byers: Yes, and that is why I apologized to the House. I deeply regret the answer I gave. I now recognise that it was inaccurate because there is a view of a discussion which is the one I did not take. I think to go, as Mr Grayling has done, from that to then saying that Mr Byers is a liar, that he deliberately and knowingly misled the Committee, is a leap of imagination which bears no relation to the reality of the situation.²⁵

Q185 Mr Dismore: Is it fair to call your answer an inadvertent error when it was deliberately phrased? It may have been unintentionally misleading but it is not an inadvertent error.

Mr Byers: It is an inadvertent error in the sense that the error comes from my interpretation of a discussion.

Q186 Mr Jenkins: Mr Byers, may I congratulate you on your memory. You are not suffering from the amnesia which some of our witnesses suffer from. One of the problems I have got going around in my head is that if you go to a Select Committee and you give evidence, you have full-time officials sitting alongside you from the Department and if you inadvertently give the wrong answer, which could be misleading, you would normally expect one of the full-time officials to remark to you that the answer was not strictly accurate in that respect and you would supply a note to the Committee. Why did this not happen?

Mr Byers: The normal thing that happens is that immediately after a Select Committee—and I do not know whether this happened on this occasion because I am afraid my memory is not as precise as you thought it might be—there is usually an informal gathering where people will say what follow-up do we need and if there is an inaccurate reply that has been identified at that stage then immediately there will be a note going either to the chair or to the clerk of the Committee saying that there is a problem or when the transcript is sent round. My view on this occasion is that they may well have interpreted discussion in the same way that I did.

Q187 Mr Dismore: Did you read the transcript?

Mr Byers: I cannot remember reading the transcript. There are some Select Committees and some parts of Select Committee evidence where one would read the transcript as a Secretary of State because one knows that there is a particularly difficult area and you want to make sure that it is absolutely accurate for the record, but, to be honest, you have a legion of civil servants and they will be reading the transcript and they will then draw to your attention an area where they think perhaps a correction is necessary. This would have been read by several people. If there was a clear inaccuracy I am sure it would have been picked up. My guess—and it is a guess at this stage—is that they would have seen the

²⁴ HC Deb, 17 October 2005, cols 639–40.

²⁵ Memorandum received from Chris Grayling MP [Appendix 4]; Minutes of Evidence taken before the Committee on Standards and Privileges, 24 November 2005, Q28.

10 January 2006 Rt Hon Stephen Byers MP

question in the same way that I did and they would not have had any particular concern about the reply that I gave.

Q188 Mr Jenkins: I would accept that apart from one point. On the next day in the Chamber in the House of Commons a point of order was raised by Mr Grayling²⁶ on your answer to this particular question. Why did not the alarm bells ring then and someone go back and re-read the evidence and say “I think we have got a slight problem here on this particular point”?

Mr Byers: Two things are worth saying. One is that I was not aware at the time as Secretary of State that a point of order had been raised, so there is an issue there about information coming to a Secretary of State. Secondly, I think it is true to say that the issue that Mr Grayling raised by way of a point of order the following day was not in relation to this particular question but was in relation to the financial assistance issue raised by Mr Robinson. This was one of the two lines of political attack that was being made, it was the threat to the regulator and, secondly, had Mr Robinson asked for financial assistance, which was an issue that was covered in the Select Committee and my recollection was that Mr Grayling raised the issue to do with financial assistance by way of a point of order. He did not raise by way of a point of order my reply to this particular question and I checked this because I saw Mr Grayling in his evidence talked about pursuing the issues and I have also looked at all of the Parliamentary Questions he tabled afterwards and in fact he does not raise any issues to do with this particular question. So Mr Grayling himself did not raise it, he did not have concerns.

Q189 Chairman: Just for the record, the point of order was about the John Robinson meeting rather than about the particular question that is before the Committee.

Mr Byers: Nevertheless, I think the point is well made. There does need to be a system to alert Secretaries of State to points of order being raised about the accuracy of statements.

Q190 Mr Jenkins: I want to take you down a parallel route in some respects. What happens if a Secretary of State in any department goes before a Select Committee whilst knowing or being mindful of the fact that the Select Committee could be briefed by some outside group or activity that is on the point of suing the department? What answer does the Secretary of State give to that Committee if any information given could be used against the department or against them personally in an impending court action? Where do we draw the line on that parallel? If we have got a situation where the market share value of a company may be put at risk if the Secretary of State gives information out in public that may undermine that particular firm, do you think the Secretary of State’s duty is to

safeguard the company or safeguard the department at the expense of giving a full, accurate or truthful answer to the Committee?

Mr Byers: There are no circumstances where a Secretary of State can lie or mislead a Committee. I think the situation you mention happened to me one or two times when I was Secretary of State for Trade and Industry. One has to say to a Select Committee that for reasons of commercial confidentiality or potential legal proceedings I cannot answer that question and then very often you may want to disclose the information to the chair of the Committee on a confidential basis. There are ways round it. I think one has to say to the Select Committee, “I am sorry, I cannot give you an answer to that question”.

Q191 Chairman: That did not apply in the particular questioning from Mr Grayling.

Mr Byers: No.

Q192 Mr Jenkins: That was an answer, if you thought it was difficult, where you could have used the phrase or words—

Mr Byers: Sure. There would have been absolutely no political difficulty in saying the work had been commissioned. Obviously I wish I had said it now, but that was not how I interpreted the question.

Q193 Mr Jenkins: I have tremendous difficulty here because we have a series of incidents following on from a misunderstanding on your part and I have no ability to judge what was in your mind at that particular point, but my point of view is that discussions in the Department had taken place, planning had taken place and rightly so and they should have been stated to the Committee because by now it was too late to have affected any decisions in the industry and so the answer could have been given. When you found out that the answer you gave was in any way misleading then a simple, “I give up. Yes, I did mislead the Committee. Yes, discussions did take place,” would have sufficed. The personal statement you made to the House should have been a full, “Okay, I got it wrong. I am sorry. I apologise to the House and the Committee.” Why do you still continue to think in your mind that discussions had not taken place?

Mr Byers: I accepted in my personal statement there is a different interpretation and I have apologised for that and I have expressed my deep regret because that is how I feel about it and I felt it was appropriate to give that apology to the House, but the accusation and the reference to this Committee goes a lot further than that. The accusation that is being made against me is not that I misunderstood or gave a narrow interpretation, it is that I was motivated, for whatever reason, I do not know, to deliberately lie to the Select Committee. That is why this has been referred to you. Mr Grayling has been very clear both in terms of when he explained the reference and spoke to the Committee that he thinks I am a liar and he has said this in reply to a question.²⁷ I am not a

²⁶ HC Deb, 15 November 2001, col 1010.

²⁷ Minutes of Evidence taken before the Committee on Standards and Privileges, 24 November 2005, Q28.

10 January 2006 Rt Hon Stephen Byers MP

liar. I accept I made an error. As soon as I was aware of it, which was in the cross-examination in the High Court, I came to the House, I corrected it and I apologised because it is right and proper that I should have done.

Q194 Angela Browning: Mr Byers, when Mr Rowley was cross-examining you in the court he presented you with quite a bundle of documentary evidence throughout June and July in the lead up to 25 July showing that work had been undertaken in this area. You have told us, as you have said in statements, that it was at that point in the court that you realised that this interpretation of the word discussion used in the questions put to you by Mr Grayling in the Select Committee was subject to a different interpretation than the one you had addressed in the Committee. Why did you not then say to the court it was an inadvertent error under cross-examination?

Mr Byers: I was in totally uncharted territory here. I had spent probably most of the time since the general election reading the 3,000 pages of documents. I had not read any Select Committee proceedings because the reality is that I should not have been cross-examined on them. The High Court judge apologised for the fact that, because of parliamentary privilege, I should not have been cross-examined on the evidence I gave to the Select Committee.²⁸ I did not know what the evidence was that I had given to the Select Committee, I could not recall it; it was three and a half years before. As I said earlier, this is not evidence that I was as clear about as I should have been, I accept that.

Q195 Angela Browning: At that point when Mr Rowley is questioning you you did have *Hansard* in front of you with the question and your answer because he asks you if you see the question and you say "I do". It was not something he was asking you without you having in front of you at that point in court the written text of *Hansard*.

Mr Byers: No, I had that part of the Select Committee, but I did not know whether there was another question a bit later on. I was unsure about the evidence to the Select Committee. I did not want to say something which was an assertion and which may prove to be inadequate and so on. In my own mind I was conscious that I had said something which was inaccurate to the Select Committee and the consequences of that when I was Secretary of State. With hindsight certainly you are right, that would have been a far more appropriate reply to give.

Q196 Angela Browning: But you did not, and we have had some discussion this morning about some of the things you subsequently said after you had identified that it was wrong and you admitted that in the cross-examination. The word motive is an unusual one to use and for you to introduce into that cross-examination.

Mr Byers: I cannot remember the reasons why I would have used it. Reason could have been as good a word.

Q197 Angela Browning: The word motive suggests that there was some predetermined reason why you replied in a certain way as opposed to an inadvertent error which was just an error because of either a loss of memory of the situation at the time or whatever. The word you used to the House in your statement has a very different feel to it to what you said under oath in court.

Mr Byers: On the third day of cross-examination the fact that I had realised that I had given an incorrect reply to a Select Committee was in my mind. I do not know if members of the Select Committee have been cross-examined. It is something I hope you do not have to go through. To have three days of cross-examination is pretty hard going. I accept my evidence here is not as clear as I would have wanted it to be, but the Committee has all the information and all of the records of meetings that were held. The court case was about a preplanned approach to take Railtrack's shareholders' assets without compensation and that is where Mr Rowley was coming from.

Q198 Angela Browning: I do understand because I was subject to a two-year inquiry by the Master of the Rolls and so I know what it is like years later to go through three or four years of Ministerial papers and I know the preparation you need to do prior to that. Let us move on from there. When you made your personal statement to the House and you chose to use those words "inadvertent error" what exactly did you have in mind at the time?²⁹

Mr Byers: That it was a mistake, an error, but not one that was deliberate. As the Chairman has put it, it was my narrow interpretation of the word discussion that was the inadvertent error.

Q199 Chairman: Can I just pick you up on that? There are two definitions of discussion that we have been talking about. One is the narrow one which you have referred to and the other is the broader one. When you apologised to the House it was because you recognised that the narrow definition might not have been the right one. Is that right?

Mr Byers: Yes.

Q200 Chairman: In which case, when you made the personal statement why did you say it was only after that meeting that substantive discussions began about the possibility of changing the status of the company? Is that not reverting to the narrow definition of discussion which you had just apologised for?

Mr Byers: No. I think it reflects a true position. Every question has a context and the context of Mr Grayling's question was a highly political one at the time, which was that 25 July was not a watershed but that actually the Government and I, as the new Secretary of State, had a preplanned approach

²⁸ Mr Justice Lindsay's Approved Judgement in *Weir and Others v The Secretary of State for Transport and others*, 14 October 2005; Memorandum from the Clerk of the House [Appendix 1].

²⁹ HC Deb, 17 October 2005, cols 639–40.

10 January 2006 Rt Hon Stephen Byers MP

towards Railtrack, which was to change its structure and its status. So that was the background to Mr Grayling's question. The truth is that the real discussions about Railtrack and a possible change of structure, re-nationalisation, a company limited by guarantee, occurred after 25 July and that is why I referred to substantive discussions.

Q201 Chairman: I am now slightly confused. Are you now saying that the correct definition of discussion is the narrow one and that was, after all, the right one and all the things that we have been referring to before 25 July were not really discussions?

Mr Byers: No. I am doing two things. I am saying that when I gave my reply in the Select Committee I had given a narrow interpretation of discussion. It was not until the High Court that I recognised that the commissioning of work could be regarded as discussions. The discussion at Ministerial level, the substantive discussion, so not the scoping work, did not start until after 25 July.

Q202 Dr Whitehead: On the question of substantive discussions as opposed to discussions and the secondary question of the extent to which the Department at the time of the answer being given to the Select Committee may or may not have reviewed the transcript and they may have agreed with your interpretation of what discussions was, which was why they did not pick up the inaccuracy of the transcript, it is the case, is it not, that the Department, not necessarily you, was engaged in discussions internally in the Department prior to 25 July which you may or may not have known about? For example, on 29 June there is a substantial memo to Andrew Adonis from Brian Hackland³⁰ which sets out a number of possible outcomes concerning nationalisation or partial nationalisation and indeed it states that the PM wanted the work done on fundamental choices before the election but JP blocked it, which strongly implies substantial amounts of discussion taking place within the Department and indeed between the Department and Number 10 and the Office of the Deputy Prime Minister prior to the election. Therefore members of the Department were aware of discussions even if that had not been briefed to you.

Mr Byers: I was not aware of that. Those documents I was not aware of.

Q203 Dr Whitehead: Therefore one might have thought that they would have been aware of those documents and discussions at the time of reviewing the transcript even if you were not. Is that something that was ever subsequently discussed?

Mr Byers: No.

Q204 Mr Dismore: Do you now accept that the discussions pre-25 July objectively could be seen as discussions?

Mr Byers: Yes.

Q205 Mr Dismore: Do you still subjectively believe in your own mind that they are not?

Mr Byers: My reply would be this. Given the political background and the context of that question being put I cannot say I would have given a different reply because that is my interpretation of discussion. I do recognise that there is a wider interpretation and that is not the one I took, that is my error. It is not one that was done deliberately and I have apologised for that.

Q206 Chairman: Do colleagues have any other questions? Perhaps I can just pick up on something that I asked you earlier and ask the Clerk to pass you the box note.³¹ It is really part of the questioning as to whether what was going on constituted a discussion. This is the box note saying you wanted to reconvene your meeting with rail officials. One of them was the option for reforming Railtrack and that was part of the questioning that I was putting to you about whether there were discussions going on. Now you have got that box note, would you agree that this could be seen as discussions about restructuring Railtrack?

Mr Byers: I think the important thing is to see what happened at the meeting on 20 June and whether there was a discussion about nationalisation or a company limited by guarantee.

Q207 Chairman: A meeting that considers options for reforming Railtrack might be interpreted as a discussion about the future of Railtrack.

Mr Byers: My interpretation is the commissioning of work. If the Committee looks at the meeting on 20 June and asks if there was a discussion at that meeting about nationalisation, a company limited by guarantee, I think the Committee would find that there was not such a discussion. This goes back to my narrow interpretation of discussion.

Q208 Chairman: Can I ask colleagues if there are any questions you want to put to Mr Byers? Mr Byers, is there anything else you want to say before we discharge you?

Mr Byers: I would like to make two points. Can I first of all thank Dr Ward and his staff for the help that they have given to me and my staff in preparing for today's hearing and, secondly, really just restate the apology I gave to the House. I deeply regret that I gave a wrong reply to that question. I now recognise that it was not accurate. I am very sorry that it happened. I have apologised personally both to Chris Grayling and Gwyneth Dunwoody because it is personal to them as Chair of the Committee and as the member who asked the question. I have apologised to the House. I do deeply regret the fact that because of my interpretation of discussion your Committee has had to meet. What I do know is that I did not lie to that Committee, I did not set out deliberately and knowingly to mislead it and that is

³⁰ Attachment 4 [not printed] to Memorandum received from Chris Grayling MP [Appendix 4].

³¹ Attachment 2 [not printed] to Memorandum received from Chris Grayling MP [Appendix 4].

10 January 2006 Rt Hon Stephen Byers MP

the accusation that is being made against me and it is one that I take extremely seriously. This House operates on the basis that we trust each other and I know that I have operated on that basis both when I was a Minister and as a member of the House. I hope

when the Committee comes to consider all of the detail you will recognise that although I did make a mistake, for which I have apologised, that is not the same as lying to a Select Committee.

Chairman: Thank you, Mr Byers.