



National Audit Office

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Helping the nation spend wisely

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Dear Mr McDonald,

RAIL FRANCHISING - CONFLICT OF INTEREST

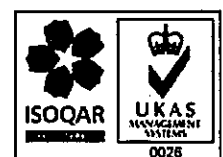
I wrote to you on 21 February 2017 and on 3 March 2017 to let you know that our audit team responsible for transport matters would be looking into the Department for Transport's approach to considering the alleged conflicts of interest. We have now received evidence from the Department and this letter summarises our view of the issues raised in the article in *The Guardian* of 11 January 2017 ('Rail franchise mandarin's board gave Southern contract to client of his company')

We have focused our enquiries on three areas:

- The Department's approach to preventing conflicts of interest in the appointment of interim staff, and how these were applied when Peter Wilkinson was appointed as interim Franchising Director, from January 2013 to October 2014;
- The Department's approach to preventing conflicts of interest in permanent staff appointments, and how these were applied when Mr Wilkinson subsequently became Managing Director of the Department's Passenger Services division, in November 2014;
- The award processes to secure fair and open competition for two rail franchises where the successful bidders – Govia Thameslink Railway (GTR) for the Thameslink Southern Great Northern franchise and C2C, until February 2017 owned by National Express, for the Essex Thameside franchise – had links to the consultancy First Class Partnerships (FCP). Mr Wilkinson was a director of FCP and held shares in the company until November 2014 when he became a permanent civil servant.

As part of our enquiries we have reviewed Departmental information which it provided to the Cabinet Office, following your enquiries to the CO. We also reviewed a number of additional documents.

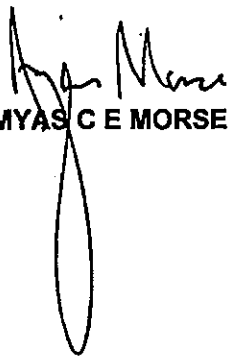
We found that the Department had controls in place in all three areas, which are discussed in more detail below. In summary, these were established processes, which were applied to Mr Wilkinson's interim and subsequent permanent appointments, to the franchise awards and to the appointment of other interim staff from First Class Partnerships (FCP) to the Department. The Department identified and managed potential conflicts of interest between Mr Wilkinson's roles in the Department and his role in FCP, for example by requiring Mr Wilkinson to declare potential conflicts of interest and requiring him to sever ties with FCP when he became a permanent civil servant. There were some weaknesses in the Department's implementation of



its controls, discussed in the Appendix to this letter. We have not seen any evidence to indicate that these potential conflicts influenced the Department's decisions or actions on the rail franchise awards.

Our enquiries are limited by the fact that we audit the Department but not the private companies (FCP and the train operating companies) involved. We have rights of access to information that the Department holds, but no general rights of access to FCP. As you know, we are currently examining both the Thameslink Southern Great Northern (TSGN) rail franchise, and the Thameslink Programme of infrastructure improvements and new trains. Information on this is available on the NAO website at <https://www.nao.org.uk/work-in-progress/update-on-the-thameslink-programme/>. We expect to publish reports on these in summer 2017. Our work on the franchise includes examining the basis on which the Department awarded the franchise to GTR, in May 2014, during Mr Wilkinson's tenure as interim Franchising Director. We will of course take account of the information we have gathered for this letter, in drawing conclusions on the franchise award process for our published report.

I hope that you find this response helpful. I or Rebecca Sheeran, my Director responsible for Transport Value for Money audit, would be happy to discuss further if you wish.



AMYAS C E MORSE

Appendix: Additional information on Peter Wilkinson's roles in the Department

Mr Wilkinson's initial appointment to the Department, as an interim member of staff

Mr Wilkinson worked for the Department between January 2013 and October 2014 as a contractor, under an agreement with First Class Partnerships. He held the post of Franchising Director. The Department paid FCP £824,282 in 35 transactions including VAT, in the period February 2013 - October 2014:

- 26 transactions, totalling £652,365, were made under a contract dated 25 January 2013 for the services of Mr Wilkinson. Each payment usually covered one month of Mr Wilkinson's work, with a few payments either for shorter, part-month periods or low-value credit notes. (This is the reason why there are 26 payments when Mr Wilkinson worked as a contractor for 22 months). These payments include the 12, totalling £356,535, referred to by The Guardian.
- The remaining 9 payments, of the 35 to FCP in total during this period, were "...labelled as [FCP] services for another business unit (Major Projects and Growth)". These were for other services and did not relate to Mr Wilkinson's work for the Department.

The Department operated its usual processes for identifying and preventing conflicts of interest, in Mr Wilkinson's interim appointment:

- Mr Wilkinson went through the Department's standard processes for appointing contractors, including review and approval by the Department Approvals Committee. Separately from this approval, he also completed a form declaring conflicts of interest in January 2013 and reconfirmed this in July 2013 when his contract was extended. The form recording conflicts of interest is, however, incomplete. It is designed to include the relevant DfT director's view of the information provided and how any conflicts will be managed. This section was not completed.
- Mr Wilkinson committed to remove himself from the day-to-day management of First Class Partnerships. The Department told us that he had no visibility of the business pipeline and no awareness of sales and contract opportunities within FCP. Once he started at the Department, he only attended statutory board meetings at FCP. He was excluded from any parts of the meeting that addressed commercial and pipeline activity, and was only invited to attend for reserved shareholder matters. The Department told us that Mr Wilkinson and the chairman of FCP both gave personal assurances to the Department's Permanent Secretary on these measures.
- The appointment was also approved by the Civil Service Commission, initially for a period of six to 12 months and then for an extended period of up to two years. The Commission's approval makes clear that identification of conflicts of interest is a matter for the Department and not for the Commission.

Mr Wilkinson retained his shares in First Class Partnerships during his interim appointment. The Department told us that Mr Wilkinson's shares in FCP did not constitute a conflict of interest that could not be managed and mitigated. It said the arrangement that the Department had with FCP was no different to the relationship that government departments have with other consultancy firms, where individuals were contracted to work for government on an interim basis without needing to sell any shareholdings.

The Department told us that there were 65 interim staff on its Rail Franchising Programme, not including Mr Wilkinson during the period of his interim appointment. Six of these individuals were contracted from First Class Partnerships. They held various roles including direction, specification and negotiation of rail franchises and 'direct awards' (franchise extensions without competition). The Department told us that Mr Wilkinson had no involvement in the identification or selection of candidates for any of the appointments and that in each case the recruitment was led by the hiring manager and approved by the Director General and the Department Approval Committee.

The Department's processes for the appointment of interim staff changed during the period of Mr Wilkinson's interim appointment. Before April 2013, Mr Wilkinson also signed off proposals for interim staff recruitment, along with sign-off by the Director-General for Rail, before they were submitted to the Departmental Approvals Committee. After April 2013, new frameworks and processes were introduced which had the effect of removing Mr Wilkinson from individual hiring decisions.

Mr Wilkinson's appointment to a permanent position

In November 2014 Mr Wilkinson was employed as a permanent civil servant in the Department, as Managing Director of the Passenger Services division. This division is responsible for the Rail Franchising Programme, awarding and managing all rail franchises in England.

Mr Wilkinson's appointment was made on the basis of a competitive process which was approved by the Civil Service Commission. As part of the appointment, the Department required Mr Wilkinson to sever ties with FCP. He did so by resigning from the board of FCP, ceasing to be a director, confirming that he no longer had any managerial involvement or responsibility in FCP, and selling 100% of his equity to the employees of FCP.

The competition processes for the TSGN and C2C rail franchises

The Department awarded the TSGN rail franchise to Govia Thameslink Railway in May 2014, while Mr Wilkinson was working for the Department as a contractor. At this point he still retained his interests in First Class Partnerships. The Department also awarded the Essex Thameside franchise to C2C in June 2014.

Both GTR and C2C have been clients of FCP, but we do not have information on the services they have obtained from FCP, or the timing or extent of these relationships. The FCP website currently shows the parent companies of GTR (Go-Ahead and Keolis), and C2C, as FCP clients. It describes the company's activities in franchising as: "FCP partners have prepared more than 50 rail, light rail and bus franchise bids in the UK, Denmark, Germany, Sweden and Australia". The company describes its services overall as "FCP partners all bring board level experience delivering transport services on behalf of government, regional agencies, train operating companies, and contractors. Partners and associates at FCP provide professional excellence and a multi-disciplinary understanding of the global transport market." Of the five bidders for the TSGN franchise, four bidders or their parent companies (including GTR) are listed as clients on the FCP website.

Rail franchise awards are made on the basis of a process aimed at ensuring independent and objective evaluation of bids, including approval by different individuals and boards within the Department, combined with independent evaluation. The franchising process as it was designed to operate in 2013 and 2014 comprised nine separate stages, each involving a structured approach to professional advice and evaluation, and to external and internal assurance of the advice and evaluation:

- the process included independent financial, technical and legal advisers supporting the work of a project team operating under a Project Director, a role which was separate from Mr Wilkinson's own role;
- the process included cross-checks of the evaluation to ensure consistency and fairness;
- there was also independent assurance of the franchising process, separate from the project team itself, through the Department's Procurement Assurance Board, regular reviews by the Department's own professional specialist centres of excellence, and an audit of each franchise award by its internal auditors.

We expect to include an assessment of the award process which resulted in GTR winning the franchise in our forthcoming NAO report on the handling of the franchise. Our understanding of Mr Wilkinson's involvement in the process is as follows:

- He chaired the Franchising Programme Board which made the initial recommendations to select GTR for TSGN and C2C for Essex Thameside, on the basis of the evaluation processes outlined above, including

scores by multiple independent evaluators. The Department's Director General for Rail also sits on the Franchising Programme Board.

- The Department's Board Investment and Commercial Committee (BICC) was then asked to approve the Franchising Programme Board's recommendations, on the basis of presentations by Mr Wilkinson and his colleagues. The BICC discussions which approved the franchise awards were chaired by the Department's Permanent Secretary.
- The final award decisions were taken by Ministers acting on the advice of the BICC.

The Department told us in addition that it cannot exclude a supplier simply because an actual or potential conflict of interest exists. It said its work on rail franchising was at risk of the perception of conflicts of interest because there was a relatively small pool of suppliers available for train operating companies, Network Rail and the Department. A supplier should only be excluded if it could not satisfy the Department that it could prevent the conflict from arising or manage the conflict through an appropriate mitigation strategy.