Chair of the Committee of Public Accounts  
House of Commons  
London  
SW1A 0AA  

Dear Chair,

Written evidence: High Speed 2 Ltd Annual Report and Accounts

I am writing to you following my letter of 9th November regarding the 30th October Committee hearing on High Speed 2 Ltd’s Annual Report and Accounts.

At the hearing, I agreed to provide the Committee with a note setting out what courses of action, including legal action, are available to the Department in relation to Simon Kirby, the former CEO of HS2 Ltd, in regard to the unauthorised enhanced redundancy schemes that were operated by the company, given that he no longer has any contractual relationship with HS2 Ltd or the Department.

The GIAA Report identified the primary cause of the failure within HS2 Ltd as follows:

*HS2 Ltd introduced an enhanced redundancy package which was prohibited by their Framework Document. HS2 Ltd did this even after the Department had instructed it not to. A senior official at HS2 Ltd acknowledged this instruction, yet the enhanced scheme proceeded.*

As I stated in my evidence to the Committee, the senior official in question at HS2 Ltd who received the instruction was Mr Kirby.

However as the GIAA report further indicates, a number of other contributory causes were also important. The GIAA report corroborates the NAO’s conclusion that there were weaknesses in HS2 Ltd’s control environment and over-reliance on ad hoc interactions. Had governance arrangements been stronger, it is likely the scheme would have been questioned and potentially stopped.

Neither the GIAA report nor the NAO conclude that a single person was responsible for the failure of controls within HS2 Ltd.

I have taken legal advice on what courses of action might be available which has covered three areas.

The Committee suggested there may be an element of fraud involved. An allegation of fraud is, of course, a very serious accusation to make against a senior public official. It would require a dishonestly false representation by Simon Kirby to HS2 Ltd or the Department, or
a conscious decision by him to breach his duties to the company. There is no evidence of this and as such there is no case for fraud.

Second, I have taken advice as to whether there is a case of misfeasance in public office. An allegation of misfeasance in public office would require, among other things, malice or bad faith to be shown. Again, there is no evidence that this occurred.

Finally, I have taken advice as regards Simon Kirby’s exercise of his duties as CEO and director of HS2 Ltd, and whether there is a claim for breach of those duties. I am satisfied, in the light of the advice I have received, that a claim is not justified.

As I told the Committee, I regard the fact an unauthorised scheme was carried out to be wholly unacceptable and something that points to a number of failures within the company. I believe that the action which has subsequently been taken both within HS2 Ltd and my Department is a serious and proportionate response to this failure.

I trust that this letter provides sufficient clarification and addresses the Committee’s questions appropriately.

Yours sincerely,

Bernadette Kelly CB
Permanent Secretary