



From Lord Berkeley
07710 431542, berkeleyafg@parliament.uk

Rt Hon Boris Johnston MP
Prime Minister
No 10 Downing St,
London SW1

1 January 2022

Dear Prime Minister

Request to investigate a potential breach of the Ministerial Code

I have been in correspondence for some months with the Cabinet Secretary over my complaint about actions of ministers over costs of HS2.

My letter to him dated 9 July 2021 asked him 'to investigate allegations that ministers have failed to comply with the Ministerial Code paragraph 1.3 by:

- failing to 'give accurate and truthful information to Parliament',
- 'knowingly misleading Parliament', and
- failing to be 'as open as possible with Parliament and the public, refusing to provide information only when disclosure would not be in the public interest'

This letter and the attachment sent with it sets out the detail of my complaint and is attached.

Unfortunately, the Cabinet Secretary passed my complaint to the Permanent Secretary of the Department for Transport who herself responded (attached). Since part of the complaint was about her Department and its ministers, I do not consider this to be an independent investigation or response, and I do not accept the accuracy of her response.

Since then, the Cabinet Secretary has written to me reminding me that the decision to investigate matters, and on the appropriate action to be taken, lies with you as Prime Minister.

So I hereby formally request you as Prime Minister to investigate my complaints in an independent manner and look forward to hearing both details of how you are investigating them, the timescale and the result.

I look forward to your comment,

Yours sincerely
Lord Berkeley

Lord Berkeley

Encl: 9 July 2021 Lord Berkeley to Simon Case ref rh210709

Enclosing paper 'misconduct in public office' rh210801.

~~14~~ August 2021 Lord Berkeley to Simon Case ref rh210811

4 August 2021 Perm Sec DfT to Lord Berkeley ref rh210814

7 September 2021 Simon Case to Lord Berkeley ref rh210907

HS2-- Misconduct in Public Office

This document has been updated in 2021 with new information:-

Jan 22 2021 - FOI – DfT SofS meeting Apr 3 2019 with HS2

Jun 2021 – Timeline updated with respect to Nao report

Jun 16 2021 - Release of Accounting Officer Assessment Phase 1

The offence is committed when a public officer acting as such wilfully neglects to perform his duty and/or wilfully misconducts himself, to such a degree as to amount to an abuse of the public's trust in the office holder, without reasonable excuse or justification.

Overview

Nus Ghani was a Junior Minister of the Crown employed by the DfT:-

Jul 15 2019 - HofC debate – Ms Ghani misled parliament by stating the current HS2 budget, when asked directly about HS2 costs & failed to inform parliament of a £20bn increase, which is lying by omission. Ms Ghani lied to parliament by stating that the HS2 Benefit Cost Ratio was steady at 2.3:1 when she knew it was much lower (1.0 – 1.5)

The DfT has argued that at the time of the debate, ministers wished to continue to test whether remedial action could be taken to hold the existing budget & schedule. The NAO HS2 report, shows that by the time of the debate, the DfT had received the HS2 draft Stocktake & the IPA review, which both concluded that HS2 could not be achieved within the current budget.

Ms Ghani has broken the Ministerial Code regarding openness, honesty & leadership.

Ms Ghani misled select committees & parliament a total of 5 times from Jan – July 2019 for the sole reason that MP's would not become aware of the £20bn cost increase & the 5 year delay before & during the HS2 phase 2a debate.

Bernadette Kelly is a Civil Servant & the PPM at the DfT:-

May 15 2019 – Commons PAC Oral Evidence – Ms Kelly mislead the committee by stating the current HS2 budget, when asked directly about HS2 costs & failed to inform the committee of a known £7bn increase & the 3 year delay, which is lying by omission & lied to parliament by stating that the HS2 Benefit Cost Ratio was solid at 2.3:1 as she had confirmed it was lower at 2.1:1, a month before in her HS2 Accounting Assessment 1 on Mar 8.

Ms Kelly has argued that commercially sensitive negotiations were continuing with contractors throughout this period, and internal policy options to make savings were under consideration – but minutes of the meeting with the SofS on Apr 3 2019 do not support that argument & there is no evidence of any negotiations with contractors, the Stocktake was started in Feb 2019 & materially finished in April 2019 & HS2 Ltd Board Minutes show that presentation of the Stocktake was the only option being pursued internally. Externally the NAO HS2 report shows that while several bodies looked for savings, none were found.

Ms Kelly mislead select committees & parliament for the sole reason that MP's would not become aware of the £20bn cost increase & the 5 year delay before the HS2 phase 2a debate.

Ms Kelly has broken the Civil Service Code regarding integrity, honesty & objectivity.

HS2 Chairman Allan Cook & HS2 CEO Mark Thurston are public officials (HS2 Ltd is an executive non-departmental public body) :-

Dec 13 2018 – BBC Panorama - Mark Thurston lied to parliament & public when he stated on BBC Panorama, when he knew HS2 was delayed & over budget

Mar 13 2019 - Transport Select Committee – Oral Evidence

Allan Cook lied to the committee when he stated that the HS2 Benefit Cost ratio was still 2.3:1, when he knew that it was lower at 2.1:1. Allan Cook also lied to the Committee when he stated that the project was on schedule when he knew it was delayed by at least 3 years

Jul 18 2019 – HS2 Annual Report - Allan Cook & Mark Thurston passed off the 2018-19 Annual Report, with no mention of the cost increase & delays in the Strategic Report. The annual report would have been written from April onwards & was not published until July 18th & the May board minutes confirm that the Stocktake was materially finished & as such AC & MT would be fully aware of the £20bn cost increase & 5 – 7 year delay, however this was not reported in Strategic Report section of the Annual report, which is in breach of the Companies Act 2006

Mr Cook & Mr Thurston misled parliament & select committees for the sole reason that MP's would not become aware of the £20bn cost increase & the 5 year delay before the HS2 phase 2a debate.

Mr Cook & Mr Thurston have broken the Civil Service Code regarding integrity, honesty & objectivity.

Timeline

Jan 2018 - NAO HS2 Progress Report

Main civil construction contractors report that the forecast cost of tunnels, earthworks and structures could exceed the target price.

Mar 2018 - NAO HS2 Progress Report

Main civil construction contractors report poorer ground conditions than assumed, the need for further ground investigations and cost estimate increases.

Jul 2018 - NAO HS2 Progress Report

HS2 Ltd engages consultants to help review and challenge emerging estimates from contractors where forecast costs exceed the target price and delays against schedule are forecast

From July 2018, the project representative (Figure 3) reported consistently that Phase One was not deliverable within available funding and schedule, recommending that the Department reset the programme and examine its strategic case and value for money

Oct 2018 - NAO HS2 Progress Report

HS2 Ltd's contractors estimated that main civil construction costs were 83% above the target price and HS2 Ltd formally notified the Department that there were significant challenges to the affordability of the programme.

The Department informs the Secretary of State of the cost and schedule pressures on Phase One

[NAO High-Speed-Two-A-progress-update.pdf](#) Section 1.13

Dec 13 2018 – BBC Panorama Mark Thurston stated “HS2 is on time & on budget”
Mark Thurston mislead public & parliament on state of the project as previously he had stated nobody knows

https://www.youtube.com/watch?v=LCh7WIRuT1g&ab_channel=StopHS2

Jan 22 2019 – Lords EAC Oral Evidence

Q5 The Chairman: So you think it will be within budget. I notice that you said you did not agree with the reports that it would be double.

Sir Terry Morgan: They have a lot of work to do.

The Chairman: You must know.

Sir Terry Morgan: I do not. Nobody knows yet.

Lord Hollick: Given that it has a funding envelope to work in, can HS2, on its own initiative, say that this is one of the measures that it has to take if it is to get anywhere near that funding envelope?

Sir Terry Morgan: **This is always dangerous territory. I think, in the triangle of scope, cost and time, something has to give.**

Q18 Baroness Kingsmill: It was thought that HS2 would be a high-risk proposition, there would be an overspend and there would be a failure to deliver value for money. Do you think HS2 will be delivered within the budget and on time?

Nusrat Ghani MP: I believe that Sir Terry responded to a similar question. We are committed to ensuring that we can continue to drive down costs with HS2 Ltd and **that the budget will be delivered within the envelope provided at £55.7 billion.**

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/economic-affairs-committee/HS2-follow-up/oral/95531.html>

Feb 14 2019 – BBC

Mark Thurston – We have always said that we will really only know what it going to cost when we get our contractors mobilised

https://www.youtube.com/watch?v=B3uUyrlHwPk&ab_channel=StopHS2

Mar 8 2019 – HS2 Phase 1 Accounting Officers Assessment 1

Additional DfT analysis suggested a neutral BCR of 1.0 would be achieved if the current scheme scope was delivered in 2029 for £6 billion over the funding.

However, the enabling nature of the Phase One scheme means that the value for money positions for the 'full Y' HS2 scheme remains high (BCR 2.1 including WEIs) provided that the Phase 2a and 2b schemes could be delivered within their respective funding envelope

Bernadette Kelly, Allan Cook & Nus Ghani knew that HS2 full BCR had dropped to a maximum of 2.1 : 1 & the phase 1 BCR had dropped to 1:1, before their select committee / HofC statements that the HS2 BCR remained at 2.3:1.

Mar 13 2019 - Transport SC – Oral Evidence

Q46 Allan Cook: As with any complex and challenging programme, it is a large sum of money; £55.7 billion is a huge amount of money, but the cost benefits are clear for everybody to see. For every £1 we invest, we get a return of £2.30

AC stated BCR was 2.3 when he knew that was incorrect as was then ≤ 2.1 & that phase 1 £6bn over budget.

Q80 Chair: But, at this moment, you are anticipating that you will be able to deliver the full scope of the project and the speed it is meant to go at, because that is being talked about. People have talked about the speed being 50 kilometres per hour less. At the moment, you are working to the assumption that the project will be delivered at the speed that is set out, on the network that is set out and to the timeframe set out.

Allan Cook: I am working to that assumption, exactly as you have said.

AC stated that they were working on the assumption of the timeframe set out (delivery of HS2 Phase 1 in 2026), knowing that he had passed onto BK that schedule was 3 years delayed

<file:///C:/Users/lenovo/Documents/HS2/Misconduct/Transport%20SC%20Allan%20Cook.pdf>

Mar 27 2019 – HS2 Board Minutes

3.1 The Board noted that the Chairman is undertaking a Stocktake of the HS2 programme

3.3 The Board noted that there will be input into this assessment from Board Members, Executive and Management, the Department for Transport (DfT) and independent experts.

<https://webarchive.nationalarchives.gov.uk/20200204050620/https://www.gov.uk/government/organisations/high-speed-two-limited/about/our-governance#board-meeting-minutes>

Mar 2019 – NAO HS2 Report – Figure 6

HS2 Ltd formally notifies the Department that it has breached the terms of the development agreement because it cannot deliver Phase One on time or within available funding.

Response: The Department responds to HS2 Ltd's formal notification of a breach of the development agreement in April. It determines that HS2 Ltd requires more time to complete its plan of actions.

The Secretary of State is advised that actions to make Phase One affordable within the available funding have not worked.

Apr 3 2019 - Meeting between DfT SoS and Allan Cook (Chair of HS2)

Attendees: Michael Bradley (CFO HS2 Ltd), Clive Maxwell, Nusrat Ghani

AC updated SoS on the cost and schedule position of the programme. He said that he had **concluded that phase 1 could not be delivered to the current scope within the current schedule and budget.** The HS2 Ltd board had been told by the exec that the **latest point estimate for phase 1 was approximately £28bn, with a £6-7 billion gap in the forecast, and a 2-3 year change to the schedule.** This means no contingency in the funding envelope.

SoS asked if an alternative scheme would be cheaper.

AC replied that he was unable to answer that.

CM added that assessments had been made a while ago about other options.

CM also reminded the meeting that the bill was linked to the current route.

AC added that through all the discussions he'd had, no one had suggested the current scheme was the incorrect route.

AC stated that with the current scope, HS2 could not meet the current cost and R15 schedule.

AC would be reporting to Bernadette on a monthly basis.

Clive Maxwell makes the 2 points:-

- 1) That assessments had been made a while ago about other options – ie they had already looked alternatives to save money.
- 2) If they change route / scope – the bill would have to be changed & that would require going back to parliament for review – did not want to risk that as by then true cost of > £88bn would be known & MP's might vote to cancel.

<https://www.whatdotheyknow.com/request/714209/response/1710337/attach/html/3/FOI%20F0019296%20Mr%20Mike%20Haville%20response.pdf.html>

Apr 19 2019 – HS2 Board Minutes

3.6.2 The team who have supported the stocktake production confirmed that there was nothing material missing or withheld in producing the draft report, but that there could always be more information to add.

The draft of the report was requested as an output for May 2019 following discussions with the Department of Transport.

Confirms that Stocktake was materially complete in early April 2019

Also, it shows that Allan Cook / Thurston / HS2 Ltd knew that they were over budget by at least £20bn & delayed at least 5 years, before April 1st 2019, in the period covered by 2018-19 Annual Report – but did not mention it in their strategic case which is fraud

Apr 29 2019 – Hof C – HS2 Buckinghamshire Debate – Column 58

Nus Ghani was asked about HS2 spiralling costs by Cheryl Gillan, Racheal Maskell, Dominic Grieve, Andrew Bridgen, Jim Cunningham, Yvette Cooper & William Cash. Ms Ghani did not inform MP's of the known £7bn increase & instead restated the current budget "HS2 has one budget: £55.7 billion" & "There is only one budget—£55.7 billion"

<https://hansard.parliament.uk/Commons/2019-04-29/debates/83D4E291-90D7-42ED-A338-5F056CDEEB68/HS2Buckinghamshire#contribution-ED9B6DDD-F311-4270-B0AE-33B6156A39B1>

April 2019 – NAO HS2 Report

In April 2019, when HS2 Ltd's action plan had not achieved an affordable programme, the Department and HS2 Ltd determined that HS2 Ltd required more time to try to reduce forecast costs and schedule delays.

May 15 2019 – Commons PAC – Oral Evidence

Q8 Chair: If there is not a spending review, is there a possibility of further delay to HS2?

Bernadette Kelly: I don't think that the delivery of the project is dependent on the spending review. The question is, when is it sensible to put into the public domain revised business cases and so on? It is more sensible to do so, obviously, when you have gone through those significant moments of public spending and everything else.

Ms Kelly did not tell Commons PAC that she knew phase 1 was 3 years late, when asked the direct question "is there a possibility of further delay to HS2?"

Q15 Bernadette Kelly: Those are exactly the assessments that are currently being made about this project—the sensible steps that need to be taken to manage cost, the impact those steps will have on the benefits and whether we are still confident that this project has a solid BCR. It has a BCR of 2.3 on current parameters, which is pretty solid.

Q19 Chair: Again, as the accounting officer for the Department, you must be looking closely at the business case to make sure that the BCR ratio that you talked about stays at a good level.

Bernadette Kelly: Correct.

Q20 Chair: Is there a point at which you would have concerns?

Bernadette Kelly: Clearly, if this project was getting close to no longer having a positive BCR, absolutely, as accounting officer, I would have concerns. As I say, given that it has a BCR of

2.3, I think you would have to see a very large increase in costs and a very large decrease in benefits to get to that point.

Ms Kelly stated the current BCR was 2.3 when she knew as of 3/4/19 knew that BCR was already lower at a maximum of 2.1 & with the figures available in the draft Stocktake she would know it was much lower & note it is Benefit COST Ratio NOT Benefit CURRENT BUDGET Ratio

May 2019 – NAO HS2 Report – Figure 6

HS2 Ltd estimates that forecast costs for Phase One have further increased

The Department concludes that Phase One could be made affordable within the available funding with significant changes, including a combination of savings, scope reductions and alternative financing.

HM Treasury informs the Department that it agrees HS2 Ltd should be given six more weeks to scrutinise costs for savings opportunities.

The Secretary of State directs that preparations are made for a pre-summer parliamentary recess decision on whether, and if so, how to progress with the programme.

The SoFS asks for a decision on 'whether to progress with HS2'

May 2019 – NAO HS2 Report – 1.16

In May 2019, the Department recognised that it needed to prepare for a fundamental decision on how to proceed with the programme before the summer 2019 parliamentary recess. It assessed that Phase One could be made affordable with significant changes, including a combination of applying savings and scope reductions and securing alternative financing. The Department recognised that these changes carried risks, **and would require the consent of Parliament and stakeholder support**. For example, savings identified to date were based on estimates and may not be achieved and scope changes could adversely affect the value for money of the programme.

Again it is noted that if they changed the route / scope it would require a return to parliament for review – it was mentioned by Clive Maxwell & it is mentioned in the NAO report – but significantly nowhere is it discussed further. Also it should be noted that any reduction in scope would adversely affect the value for money ie the benefit cost ratio (BCR) – the largest user benefit is time saved at £39bn – as such factors such as reducing the speed, which would generate significant savings ie no slab track, cheaper tunnels & cheaper trains could not be considered or the BCR would fall well below 1:1

Jun 7 2019 - HS2 Preliminary draft stocktake delivered to DfT

<https://www.whatdotheyknow.com/request/725357/response/1740820/attach/html/4/>

[F0019437%20and%20F0019493%20Annex%20a.pdf.html](#)

Jun 25 2019 - HS2 Phase 2a Debate (Second Sitting) – Column 45

Nus Ghani was again asked about spiralling costs & again did not inform MP's of the known increase & answered "The total funding envelope for *HS2* remains at £55.7 billion in 2015 prices. The Department is keeping a firm grip on costs, and *HS2* Ltd is working with its supply chain to ensure that that continues".

Ms Ghani would have read the draft Stocktake by this debate & know that costs were now at least £20bn over budget, so she knew that the department was NOT keeping a firm grip on costs.

[https://hansard.parliament.uk/Commons/2019-06-25/debates/1a3aa6f5-cf1a-440e-877b-3a55bd8bf435/HighSpeedRail\(WestMidlands-Crewe\)Bill\(SecondSitting\)?highlight=hs2#contribution-34048D1D-B87B-4FFF-930F-740D48F19D06](https://hansard.parliament.uk/Commons/2019-06-25/debates/1a3aa6f5-cf1a-440e-877b-3a55bd8bf435/HighSpeedRail(WestMidlands-Crewe)Bill(SecondSitting)?highlight=hs2#contribution-34048D1D-B87B-4FFF-930F-740D48F19D06)

Jun 26 2019 - HS2 Board Minutes

3.1.1 Engagement with DfT and wider stakeholders on the interim draft Stocktake;

Shows Allan Clarke discussed the Stocktake with DfT & major stakeholders, but not Commons PAC, Transport SC & MP's

Jun 2019 – NAO HS2 Report – Figure 6

Chairperson of HS2 Ltd informs the accounting officer that there is no prospect of HS2 Ltd being able to deliver Phase One within the available funding or on time and provides the Department with a draft report from their review of the programme (Stocktake).

The Infrastructure and Projects Authority undertakes a review and concludes that successful delivery is unachievable. HM Treasury undertakes a progress review suggesting further scrutiny of risks to the programme and contingency is needed.

Major Projects Review Group (MPRG) discusses programme options to present to ministers, with a preference to maintain work on Phase One while continuing to look at ways of making savings.

Jul 10 2019 – Westminster Hall Debate

HS2 costs were questioned multiple times by Andrea Leadsom, Barry Sheerman, Andrew Bridgen, Kelvin Hopkins & Racheal Maskell

Ms Ghani - We need to ensure that we are always using taxpayers' money properly and

transparently.

HS2 will continue on track

Hardly transparent as HS2 was not on track and Ms Ghani failed to inform the debate that she had been informed 3 months before on Apr 3 HS2 phase 1 was at least £7bn over budget & delayed by at least 3 years & she had also seen the draft Stocktake delivered to DfT on Jun 7 which showed that HS2 was at least £20bn over budget & delayed by 5-7 years, but she inferred that the current cost was still £55.7bn by stating "HS2 will continue on track"

<https://hansard.parliament.uk/Commons/2019-07-10/debates/D1711C1B-3AF7-492D-9802-2FF0AC25266C/HighSpeed2#contribution-1948F956-D175-4737-A1CC-71BCC8571B66>

Jul 15 2019 – HofC HSR Debate (WM – Crewe)

HS2 spiralling costs were questioned by Jim Cunningham, Rachael Maskell, John Redwood, Steve McCabe, Ivan Lewis, Jeremy Lefroy, William Cash, Mike Amesbury, Fiona Bruce, William Wragg, Antoinette Sandbach & Owen Paterson,

Jeremy Lefroy - We started off with a figure of about £35 billion or £36 billion. The latest figure is somewhere around £55 billion. My hon. Friend and I have seen credible estimates upwards of £80 billion. Should the House not know what it is actually voting for tonight? How much will it be?

Ms Ghani (7.15pm Column 647) :- I can confirm for my hon. Friend and others that there is only one budget for HS2, and it is £55.7 billion. The bit we are talking about today, phase 2a, is £3.5 billion. The benefit-cost ratio is £2.30 for every £1 spent.

Ms Ghani was asked about costs by 14 MP's & asked directly about current costs by Jeremy Lefroy, she misled the house by restating the current budget as if it were the current cost & lied to the house when she stated that the BCR was 2.3 when she knew it was then much lower at 1.5:1.

[https://hansard.parliament.uk/Commons/2019-07-15/debates/493EDA4B-046B-4270-A747-EF3133D99573/HighSpeedRail\(WestMidlands-Crewe\)Bill#contribution-2AAFD6DC-69AE-4ACC-B884-7352609A06A4](https://hansard.parliament.uk/Commons/2019-07-15/debates/493EDA4B-046B-4270-A747-EF3133D99573/HighSpeedRail(WestMidlands-Crewe)Bill#contribution-2AAFD6DC-69AE-4ACC-B884-7352609A06A4)

July 17 2019 – HS2 Stocktake formally delivered DfT

It should be noted that the HS2 Stocktake was conveniently 'formally' delivered to the DfT 2 days after the phase 2a debate, even though it had been materially finished 3 months prior in March / April 2019 & the DfT had received 2 draft copies in June & July

<https://webarchive.nationalarchives.gov.uk/20200204050620/https://www.gov.uk/government/organisations/high-speed-two-limited/about/our-governance#board-meeting-minutes>

July 19 2019 – FT Stocktake figure leaked

Allan Cook, the new chairman of HS2 who took over in December last year, has written to Bernadette Kelly, permanent secretary at the Department for Transport, to warn that the entire rail project cannot be completed for the official £56bn budget. Mr Cook's preliminary findings predict the final cost of building the line could now rise to between £70bn and £85bn, according to two people close to the HS2 project.

<https://www.ft.com/content/27ab2f5c-a976-11e9-984c-fac8325aaa04>

Jul 23 2019 – HS2 Phase 1 Accounting Officers Assessment 2

However, the enabling nature of the Phase One scheme means that the value for money position for the 'Full Y' HS2 scheme remained intact.

Despite this, the value for money category fell to 'low' (BCR of 1.3 including WEIs) for money category.

Jul 2019 – NAO HS2 Report – Figure 6

Officials provide the accounting officer and HS2 Ltd chief executive with updated advice, which concludes that Phase One is unaffordable but the value for money of the programme remains compelling.

The Department concludes that it has sufficient evidence on the revised cost forecast and schedule developed by HS2 Ltd to conclude that Phase One is not affordable within the available funding and scope requirements and that it was no longer feasible for Phase One to open in 2026.

Chairperson of HS2 Ltd provides the Department with their final report from their review of the programme.

Nov 2019 – NAO HS2 Report – Figure 6

The Infrastructure and Projects Authority undertakes a review and concludes that, until Phase One's schedule and budget are reset, successful delivery of the programme appears to be unachievable.

Based on HS2 Ltd's completed estimate, the Department approves a cost and schedule estimate for Phase One setting a range of between £31 billion and £40 billion, between £3.9 billion and £12.9 billion more than the available funding. HS2 Ltd's point estimate is £30.1 billion.

Dec 15 2019 – HS2 Phase 1 Accounting Officers Assessment 3

Phase One is designated 'low' value for money by the DfT, with a BCR of 1 including WEIs.

The 'full Y' network, which comprises all three phases of the scheme delivers 'medium' value for money with a BCR of 1.6.

Mar 4 2020 - Commons PAC HS2 Spring Update – Oral Evidence

Q41 Huw Merriman: The challenge here is that when I refer to HS2's most recent annual report, from July 2019, it reads that everything is going swimmingly. There are 95 pages and "delay" is not mentioned once. Back in 2019, everything was running to budget and going well, despite the undercurrent of issues we are talking about. Yet, all of a sudden, it just blows up. I want to ask Ms Kelly, when was the Department aware? How much of the Department was aware? Were Ministers aware of these overruns as well? Why was there such little transparency?

Q42 Huw Merriman: The NAO Report is, but I was challenging you on HS2's most recent report, published back in July 2019, which reads very differently from the NAO Report, which was six months later.

Allan Cook & Mark Thurston passed off the 2018-19 Annual Report, with the no mention of the cost increase & delays in the Strategic Report. The annual report would have been written from April onwards & was not published until July 18th & the April board minutes confirm that the Stocktake was materially finished & as such AC & MT would be fully aware of the £22bn cost increase & 5 – 7 year delay, however this was not reported in Strategic Report section of the Annual report, which is an offence under the Companies Act 2006

Bernadette Kelly: You are quite right that we did know from that point on and all through 2019 that there were very significant cost pressures. As I say, we were pursuing actions that we hoped might lead to us finding a way to manage those cost pressures. That is the reason why Ministers did not necessarily wish to report and announce them publicly while those plans were being pursued.

There is no evidence of any pursuing of actions to manage cost pressures, the Stocktake was started in Feb 2019 & materially finished in April 2019 & HS2 Ltd Board Minutes / DfT

communications & the NAO Report show that drafting of the Stocktake was the only action being pursued

Q50 Sir Geoffrey Clifton-Brown: Sorry, Ms Kelly, I am going to have to ask you a fairly direct question. You came before this Committee twice: in October 2018, when you had had the formal warning notice; and then on 15 May 2019, when you had had the formal notification that the terms had been breached. On both occasions you assured the Committee that the budget of £55.7 billion was on track. I put it to you—you may shake your head—that, in answer to question 10 on 15 May 2019, you said, “That is absolutely a key parameter and I don’t see it changing in any other way than in a spending review and quite probably not then.” I put it to you that you had serious knowledge that this project was off track and you didn’t inform the Committee.

Bernadette Kelly: I did not say that the project was on track. I said that £55.7 billion remained the budget, which it was. I think I alluded to the possibility that that parameter would need to be changed in the spending review, which was obviously something that we were contemplating internally at that point. Ministers had not determined at that point how they wanted to proceed with this project. Alternatives and options were still being pursued, in good faith I think, to see whether there were choices that could be made to bring the project back within budget around scope, and those decisions had not been concluded.

There is no evidence of any alternatives & options being pursued, the Stocktake was started in Feb 2019 & materially finished in April 2019 & HS2 Ltd Board Minutes / DfT communications show that presentation of the Stocktake was the only option being pursued internally & whilst several bodies reviewed the budget externally no savings were found.

<https://committees.parliament.uk/oralevidence/116/default/>

7/05/20

Commons Public Accounts Committee - HS2 Spring 2020 Update

Summary-

At best, the Department for Transport’s (the Department’s) previous evidence to the Committee has been less than clear.

The Department withheld information from us which would have given a clearer and more accurate picture of the budget and schedule pressures the project was facing.

With so many peoples' homes and livelihoods affected by the construction of the railway, there is no justification for the Department and HS2 Ltd having been so opaque about the delays and budget overruns.

Conclusions and recommendations-

1. The Department and HS2 Ltd's lack of transparency has undermined public confidence in the programme. The Department and HS2 Ltd were aware of the scale of the issues facing the programme as early as October 2018. In March 2019 HS2 Ltd formally notified the Department that it could not deliver Phase One to budget and schedule. Despite being aware of these issues, the Permanent Secretary withheld from us that the programme was in significant difficulty when she appeared before the previous Committee in October 2018 and May 2019, even in response to specific questions about the programme's delivery timeline and budget. HS2 Ltd's annual report and accounts for the year ending 31 March 2019 similarly failed to give an accurate account of the programme's problems. The Department and HS2 Ltd defended their actions, stating that there were commercial sensitivities, and that options were still being pursued to remedy the situation. While we recognise that ministers had not yet decided how to proceed, no adequate excuse was provided for not disclosing to this Committee and Parliament the risk and uncertainty the programme was facing. We are disappointed by the Permanent Secretary's response to our concerns about her failure to explicitly inform the Committee of the programme's delays and overspend when asked about the general health of the project. This was something that an accounting officer should share with the Committee. **Failure of an Accounting Officer to provide accurate information to Parliament is potentially a breach of the Civil Service Code and a breach of Parliamentary Privilege.** Lack of clarity and obfuscation about the budget issues with HS2 risks jeopardising the trust between Parliamentary committees and Government officials

2. The Department failed to provide Parliament with clear warning that the programme was going off-course and value for money was at risk. Accounting Officer assessments are a tool for providing assurance over public spending by considering whether a programme is justified against the four standards of feasibility, regularity, propriety, and value for money. HM Treasury requires that updated assessments should be produced when a programme departs from these standards or the plan agreed when the programme was first approved. A summary of each assessment should then be shared with Parliament. However, the Department did not fulfil this requirement, and failed to share with Parliament summaries of any of the four Accounting Officer assessments on Phase One of the programme made in 2019. Therefore, Parliament did not know the difficulties the programme was facing or the actions being taken in response. We are deeply concerned that the High Speed 2: Spring 2020 update Accounting Officer appeared not to know that summaries of these assessments should be shared with Parliament, despite publishing a summary on the East Coast Main Line Enhancements Programme in January 2019, and despite multiple calls from this Committee to do so in recent years.

Transparency & Oversight -

5. We questioned the Department on why it had not informed Parliament about the true status of the programme, despite the significant issues it was facing. In October 2018, the Permanent Secretary appeared before the Committee and stated that the delay to notice to update proceed to construction would not affect the overall programme. She appeared again in May 2019, after the breach notice had been served by HS2 Ltd, and alluded that scope options were being examined to manage the affordability of the programme. She did not clearly set out that the programme was facing serious difficulties. In our most recent session we asked the Department and HS2 Ltd why the HS2 Ltd annual report and accounts for 2018–19 did not set out a forthright account of the programme's status. There is no mention of delays or that costs had exceeded the budget. Instead, there were minor references to "cost and schedule pressures" leading to the revision of notice to proceed, which has allowed "better definition of the scope, cost and schedule."

8. HM Treasury guidance states that, in addition to producing an Accounting Officer assessment for projects or programmes within the Government's Major Projects Portfolio alongside an approval of the Outline Business Case, it is good practice to prepare an assessment for "each novel and contentious transaction or proposal". An assessment should also be prepared if a project departs from the four standards of regularity, propriety, value for money and feasibility, or the agreed plan in terms of cost, benefits, timescales, or level of risk. HM Treasury guidance says that Parliament should be provided with a summary of the key points of an Accounting Officer assessment, which is then shared on the Government website, deposited in the Library of the House of Commons, and sent to the C&AG and HM Treasury Officer of Accounts. If the content is too sensitive for publication, the Accounting Officer should instead inform the Chair of the Committee of Public Accounts. The Department and HS2 Ltd can only authorise the start of main civil construction when certain criteria have been met, including assurance that the programme is affordable and value for money

<https://committees.parliament.uk/publications/1113/documents/9542/default/>

Chair's comments

Commenting on the report, Committee Chair Meg Hillier MP said:

"The Committee is concerned about how open the Department and HS2 Ltd executives have been in their account of this project. It is massively over budget and delayed before work has even begun. There is no excuse for hiding the nature and extent of the problems the project was facing from Parliament and the taxpayer. The Department and HS2 appear to have been blindsided by contact with reality – when Phase One started moving through Parliament, the predicted costs of necessary commitments to the communities affected have exploded from £245 million to £1.2 billion.

Member's comments

The Committee's Deputy Chair Sir Geoffrey Clifton-Brown MP said:

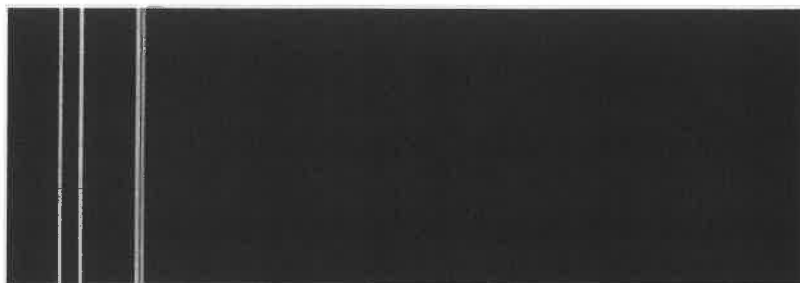
"This PAC report on HS2 is one of the most critical, in both the transparency of Government and the handling of a project, that I have seen in my nine years in total on the committee.

"The Permanent Secretary appeared before the committee in October 2018 and again in May 2019. In March 2019 HS2 Ltd formally told the Department it had breached the terms of the Development Agreement, and would be unable to deliver the programme to cost and schedule -- yet the Permanent Secretary did not inform the committee on either appearance that the programme was in trouble.

"This is a serious breach of the department's duty to Parliament and hence to the public, which as the report says, will undermine confidence. Furthermore, the PAC was in the dark about serious cost overruns and was therefore unable to do its duty to inform Parliament that value for money on the project was at risk.

"The cost overruns have been blamed partly on the speed that the hybrid Bill committee for Phase One proceeded with. I was a member of that committee, which lasted for 20 months: this is complete nonsense."

High-Speed 2 project managers "blindsided by contact with reality" - News from Parliament



High-Speed 2 project managers "blindsided by contact with reality" - Ne...

19/05/20

Baroness Vere confirmed that no DFT Ministerial Directions have been sought by either accounting officer with respect to HS2.

June 10 2020 – Letter from B. Kelly to Commons PAC

When I appear to provide evidence, I have to balance my responsibilities as a witness to Parliament, as a civil servant accountable to Ministers and acting on their behalf, and as an Accounting Officer with a responsibility to protect value for money

As the project cost to the public rose by 56%, the above statement makes no sense – Ms Kelly clearly failed in her responsibility to protect value for money

Ministers had not taken decisions on how they wished to proceed or informed Parliament on these matters. In such circumstances, I believe it would have been inappropriate for me to volunteer detailed information to the Committee, which questioning did not seek.

Ms Kelly did volunteer detailed information on the BCR, which she knew was incorrect & the Committee did seek specific information on project delays & Ms Kelly did not inform them of the known 3 year delay.

As set out above and in the NAO report, commercially sensitive negotiations were continuing with contractors throughout this period, and internal policy options to make savings were under consideration.

There is no evidence of any negotiations with contractors or options to make savings, the Stocktake was started in Feb 2019 & materially finished in April 2019 & HS2 Ltd Board Minutes / DfT communications show that presentation of the Stocktake was the only option being pursued.

CM had told the SofS that assessments had been made a while ago about other options & that the bill was linked to the current route.



From Lord Berkeley
07710 431542, berkeleyafg@parliament.uk

Simon Case Esq CVO
Cabinet Secretary
Cabinet Office, London SW1

9 July 2021

Dear Simon,

Ministers have broken the Ministerial code by misleading Parliament on costs and timescales of HS2.

I write to request you to investigate allegations in this letter and its attachment that ministers have failed to comply with the Ministerial Code paragraph 1.3 by:

- failing to 'give accurate and truthful information to Parliament',
- 'knowingly misleading Parliament', and
- failing to be 'as open as possible with Parliament and the public, refusing to provide information only when disclosure would not be in the public interest'

in respect of HS2, a project which is now estimated to cost £142.02 bn.

I also attach a summary of statements, issues and authors entitled 'HS2 Misconduct in Public Office.'

Although I generally support rail investments and improvements, I have challenged ministers and HS2 over many years on their failure to provide meaningful estimates of demand, costs or forecasts. I was Deputy Chair of the Oakervee Review but felt it necessary to resign when it became clear to me that the Department for Transport was unwilling to share the necessary information to enable an independent report to be produced. I have been helped by Cost Engineer Michael Byng, whose methodology in preparing cost estimates is now the rail industry standard, having been adopted by Network Rail and many others. I use his figures in this letter unless states otherwise.

The current estimated cost of the HS2 Project including trains, at 4th Quarter 2015 prices, is £142.02 bn. This compares with a Government Funding Envelope of £55.70 bn, given to the House of Commons when Nus Ghani MP was Rail Minister. This appears to be the only figure given to Parliament for its scrutiny.

It appears that ministers and officials have omitted to inform or misled parliament on many occasions:

- The first time was as a result of a meeting of Government officials and ministers at the Saïd Business School in Oxford in 2015/6 when it was concluded that HS2 could not be built for the money proposed to Parliament.
- The advice is corroborated by a PowerPoint presentation made in January 2018 by Jeremy Harrison, then HS2 Director of Risk and Assurance, to the Association of Project Managers – now in the public domain - which stated that the total of all contracts for the project was £84 bn. If one adds the risk allowance of 40% shared by HS2 Limited with the Oakervee Review in 2019, the total estimated cost came to £117.60 bn.
- Present and former employees of HS2 Limited have also confirmed that the advice given in 2015/16 was reaffirmed to the present Prime Minister when he assumed office in 2019.
- It is clear that the Prime Minister, his predecessors and other ministers were made aware of the probable outturn cost, but none chose to inform parliament when it was considering the HS2 Phase 1 Bill before it received Royal Assent on 23rd February 2017; nor did the present Prime Minister share the information with parliament or with The Oakervee Review in 2019.

I refer to the attached paper 'HS2 Misconduct in Public Office'; Parliament was not informed about the conclusions of the advice given at the meetings in 2015/16 and in 2019, although perhaps the reason for this failure was a comment made to a parliamentary committee by an HS2 employee that 'if we had given the true costs to Parliament, they would probably have refused to authorise the project.'

Ministers misinformed parliament right up to Royal Assent of this Bill for Phase 1, when Nus Ghani MP, then Transport Minister responsible for HS2, repeatedly told the Commons that there was no change to the budget when she and officials must have known of the £20bn increase in costs.

The misrepresentation of costs has been perpetuated by senior officers of HS2 Limited, by: -

- Mark Thurston, Chief Executive of HS2 Limited, in the interview shown on the BBC TV "Panorama" programme in December 2018, when he repeated the claim that the project was "*on time and on budget*".
- Allan Cook, the erstwhile Chairman of HS2 Limited, published his "Stocktake Report" in August 2019, suggesting the likely cost of the project was £88 bn.

During the work on the Oakervee Review, of which I was Vice-Chairman, KPMG, acting for DfT, were unable to reconcile the Chairman's Stocktake Report with the scope of the project and the Government Funding Envelope in the absence of a structured estimate for the project, which HS2 Limited was unable to provide. The same failure to provide a structured estimate was also noted by the then Transport Minister Lord Ahmad of Wimbledon at a meeting which Michael Byng and I held with him and HS2 officials on 18th January 2017

There are documents, recently obtained under Freedom of Information Act from the DfT, which record internal minutes of meetings attended by Mr. Cook and other senior HS2

Limited officer in 2018. In these meetings, HS2 Limited advises DfT officials that it cannot deliver the project within its allotted budget, £55.70 bn.

This same misleading of parliament has continued through the passage of the HS2 Phase 2A Bill as also described in the attached paper which notes that, based on many public statements both in parliament and elsewhere, ministers, DfT officials and including Allan Cook, former HS2 Chairman and Mark Thurston HS2 CEO have acted in a way that prevented parliament from undertaking proper scrutiny of the HS2 project. This is in spite of the Treasury-led Infrastructure and Projects Authority giving HS2 seven years in its amber/red and last year red category, meaning that the *'successful delivery of the project appears to be unachievable. There are major issues with project definition, schedule, budget, quality and/or benefits delivery, which at this stage do not appear to be manageable or resolvable. The project may need re-scoping and/or its overall viability reassessed.'*

This process of misinformation is still continuing. DfT Permanent Secretary Bernadette Kelly's letter to the Public Account Committee dated 22 June 2021 in respect of the budget for Old Oak Common Station, states 'we do not recognise the £1.7bn figure' when Baroness Vere in the Lords had stated in a written Answer, HL14250, to me on 25 March, referring to the costs of Old Oak Common that, 'the budget allocated by HS2 Ltd for Old Oak Common station, including contingency for risk, is £1.67bn (2019 prices)'. So, what does Bernadette Kelly know that was hidden from her minister?

Unfortunately, the apparent confusion within the DfT on costs is to be compared with Michael Byng's estimate of the costs of Old Oak Common station, based on the plans submitted for planning permission, at £6.99 bn. Ministers and colleagues regularly state that the DfT does not recognise Michael's cost estimates but refuse to meet to discuss them. Unsurprisingly, these generally turn out to be correct a few months or a year or two later. For the record, his total costs of HS2 Phases 1, 2A and 2B East and West is now £142.02 bn at 2015 prices.

I therefore believe that the project has been promoted and procured by deception and possibly fraud from the start ten years ago, a process that has allowed the project to proceed in stages to ensure that the true costs will only come out when it is too late to change or cancel. Parliament would expect that Ministers would have complied with the Ministerial Code by ensuring that the true costs and time for project delivery were placed before it for its scrutiny and debate in a timely manner during the Hybrid Bill process, so that it could have an opportunity to affirm its support for the project or otherwise.

I therefore conclude that the HS2 Phase 1 Bill received Royal Assent only because Ministers misled Parliament multiple times, either by omission or misinformation, and that this misleading has continued with Phase 2A - for a project now expected to cost £142 bn, ten times the original estimate.

I look forward to your comments.

I am copying this letter to Rt Hon Grant Shapps MP, Secretary of State for Transport.



Yours Tony,

Tony Berkeley



From Lord Berkeley
07710 431542, berkeleyafg@parliament.uk
www.tonyberkeley.co.uk

Simon Case Esq CVO
Cabinet Secretary
Cabinet Office, SW1

12 August 2021

Dear Simon,

HS2 – Ministers misleading Parliament.

I wrote to you on 9th July requesting you to investigate allegations that ministers have failed to comply with the Ministerial Code by misleading parliament.

I have not had the courtesy of any substantive response from you and it appears from a letter received from Bernadette Kelly, Permanent Secretary at the Department for Transport, dated 4th August 2021 that you requested her to respond on your behalf.

I find her response wholly unacceptable; clearly she is seeking to defend her ministers' and her department's reputation. However, I repeat my request to have a response from you as Cabinet Secretary.

In this situation, I sought the advice of one of your permanent secretary predecessors (and a former private secretary to two prime ministers), Sir Tim Lankester KCB, who is perhaps best known for his work in upholding the integrity and independence of the civil service against overbearing ministerial interests in linking overseas aid to arms sales. Sir Tim comments to me in relation to HS2:

'Dear Tony,

Like you, I think the continuing deception over the costs of HS2 is an absolute disgrace. We had come to expect this from ministers, trying to protect their own backs and trying to protect the project's credibility against mounting evidence that it is a gigantic waste of the nation's scarce resources. But what I find utterly horrible, and in some ways even worse, is the Permanent Secretary's complicity in this deception. Her weasel words distinguishing between what she said was in the budget and what the project will cost are utterly unacceptable from a senior civil servant, or indeed from any civil servant. And this is no ordinary deception when we are talking about a project costing more than £100 billion.
Yours, Tim'

So I suggest that you owe it to your colleagues, to officials and members of parliament, as well as to members of the public, to provide a substantive response to my letter of 9 July 2021. Without such a response, supported by evidence which would enable a proper debate to take place, I fear that the reputation of this Government, supported by a professional and independent civil service, for financial probity, for transparency and general competence will be severely and adversely affected.

I look forward to your comments,

Yours, Tony

Lord Berkeley



Department for Transport

Great Minster House
33 Horseferry Road
London
SW1P 4DR

Web site: www.gov.uk/dft

Our Ref: MC/355022

From the Permanent Secretary

Lord Berkeley
House of Lords
London
SW1A 0PW

[Sent via email]

4 August 2021

Dear Lord Berkeley,

I am writing in response to your letter to the Cabinet Secretary dated 9 July 2021. He has asked me to respond to the points in your letter.

Before addressing the concerns in your letter dated 9 July 2021, I set out in the table below cost estimates for HS2 Phase One and Phase 2a (all in 2019 prices, rounded to the nearest billion). Those estimates have been set out in reports to Parliament, including the latest report to Parliament on the progress of HS2 published in March 2021.

HS2 Phase	Cost Estimate Range (2019 prices)
Phase One	£35bn - £45bn
Phase 2a	£5bn - £7bn

The Department does not accept the cost estimates prepared by Mr Byng which are referenced in your letter dated 9 July 2021. Mr Byng previously provided cost estimates as evidence to the Oakervee Review and there is commentary on these estimates in section 7 of the Review's report.

In respect of the points set out in your letter, I would like briefly to address each of these in turn:

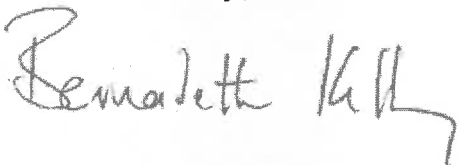
- Parliament was not misled during the passage of the Phase One Act. Genuine cost estimates were provided at the time of the Act's passage. In resetting the budget for HS2 in February 2019, the Government acknowledged that, historically, there has been over-optimism about the costs of delivering HS2. Lessons have been directly applied to the way we have now reset the project with our cost estimates expressed as a range and including an appropriate level of contingency.

- My letter of the 10 June 2020 to the Public Accounts Committee sets out my position in relation to the evidence that I provided to the Committee in March 2019 so I shall not repeat it in detail here. At the time, and indeed at the time that Nusrat Ghani MP was speaking in a debate in the House of Commons in July 2019, the budget for the project remained £55.7bn. Cost and schedule pressures were known and work was continuing to identify options to ensure the overall affordability of the HS2 project – this is detailed in the National Audit Office's January 2020 HS2 progress report. This work culminated with further advice on strategic options later in July 2019.
- Parliament has not been misled during the passage of the Phase 2a Act. As indicated in the first bullet above, lessons have been learnt on how costs are estimated. Costs of Phase 2a are expressed as a range, and also include sensible contingency to accommodate unforeseen issues that may emerge during construction, and which are to be expected in major infrastructure projects of this scale and complexity. Updated cost estimates will be also provided for Phase 2b once the Integrated Rail Plan is concluded.

In respect of Old Oak Common Station, my letter to the Public Accounts Committee dated 22 June 2021 was in response to an article in the Financial Times on 20 June which referred to a £1.7bn cost pressure across HS2 Phase One. As stated in that letter the Department does not recognise this figure. This is entirely distinct from Baroness Vere's written answer, HL 14250 (of 25 March) which confirmed the budget allocated by HS2 Ltd for Old Oak Common station only (£1.67bn in 2019 prices).

As you are aware, as part of the Government's decision to proceed with the project new governance arrangements were put in place to significantly increase Ministerial oversight, transparency, and accountability of the HS2 project. The Department has committed to providing six-monthly updates on HS2 to Parliament with the next update due to be provided later this Autumn. We will continue to keep the public, and Parliament, closely informed on the progress of the project

Yours sincerely,



Bernadette Kelly CB
Permanent Secretary



HM Government

Simon Case
Cabinet Secretary
Cabinet Office
70 Whitehall
London
SW1A 2AS

Lord Berkeley
House of Lords
London
SW1A 0PW

7 September 2021

Dear Lord Berkeley,

Thank you for your letter of 9 July, and your further letter of 12 August.

I understand your strength of feeling on this matter, and wanted to write a personal response. I want to make clear as Head of the Civil Service that I expect officials to always abide by the rules set out in the Civil Service Code, and provide the highest standards of advice to ministers. The Prime Minister expects all departments to keep Parliament regularly updated given the importance of continued parliamentary scrutiny in the effective operation of Government.

Your original letter raised a number of points about the actions of ministers and the Department for Transport in regards to the costs of High Speed Two. I asked the Permanent Secretary at the Department for Transport to respond to your letter, in view of her role as Accounting Officer for the Department. As such the Permanent Secretary is accountable to Parliament - and in particular to the Public Accounts Committee (PAC) - for the stewardship of public resources. Bernadette has, in responding to your letter, as well as in evidence before the PAC, given an account of herself in response to the points you raise.

Your letter specifically asked me to investigate a potential breach of the Ministerial Code. The Code itself is clear, as stated in Section 1.4, that it is not

for the Cabinet Secretary, or any other official, to enforce provisions of the Code. Instead, as has been the case under successive administrations since the Blair Government, the decision to investigate matters, and on the appropriate action to take, lies with the Prime Minister.

With my best wishes,

A handwritten signature in black ink, appearing to read 'Simon Case', with a long horizontal flourish extending to the right.

SIMON CASE