

Transport Committee

Oral evidence: [Minimum service levels for rail](#), HC 1153

Wednesday 22 March 2023

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[Watch the meeting](#)

Members present: Iain Stewart (Chair); Mike Amesbury; Mr Ben Bradshaw; Jack Brereton; Grahame Morris; Gavin Newlands.

Questions 1–29

Witnesses

[I](#): Phil Smart, Assistant Policy Manager, Rail Freight Group

Written evidence from witnesses:

- [Rail Freight Group](#)

Examination of witness

Witness: Phil Smart.

Q1 Chair: Welcome to today's session of the Transport Select Committee. We are looking at minimum service levels for rail during industrial action. For the purposes of our record, could you give your name and organisation, please?

Phil Smart: My name is Philip Smart. I am the assistant policy manager with the Rail Freight Group.

Q2 Chair: Thank you, and welcome to today's session. Thank you for your time. The purpose of our inquiry is not so much on the principle of whether there should be minimum service levels, but how they could operate and help to balance all the different needs in different parts of the sector. First of all, could you give us an overview of how the rail freight sector has been affected by recent industrial action?

Phil Smart: The best news that rail freight has had is the news that the RMT has settled with Network Rail. Trains that are now not in dispute can run on the network. The freight operating companies were not in dispute with their unions, or the unions in dispute with the freight operating companies, but none the less there was significant disruption to freight services. On some strike days only 20% of freight services ran. Of course, certain sectors were given priority. I think the draft Bill recognises things like fuel, for example, and biomass. Particularly affected were quarries and terminals that use freight and are in some of the more remote areas. While the contingent labour was able to cover the major signalling centres, the more remote parts of the network were not included in that coverage. There are quite a lot of very small signal boxes and so forth covering fairly short sections. When they were out, things were not so good. One of the things that was a bonus was that the overtime ban was lifted.

Obviously, looking at wider issues and modal shift to rail, it has not helped with the confidence of consignees. There is a general tendency that more and more people want to send stuff by rail, for all sorts of reasons to do with decarbonisation and so forth. Their shareholders want them to demonstrate that they are trying to use low-carbon means of moving freight around. The new users in particular, who may have gone into it a little bit uncertainly, are now saying, "Well, we were worried about this. How reliable are you?" Hopefully, now it is behind us, we can move forward.

Q3 Chair: Thank you. You mentioned that there were certain aggregate industries that were affected. What about more general consumer goods that are transported by rail? We see on the west coast main line, through my constituency, huge container trains coming from the ports. Were they particularly badly affected?



Phil Smart: They would have been impacted, but not all freight services run every day. Under existing legislation the unions have to give a fortnight's notice, so there are some occasions when you can run your train early and stockpile, play catch-up if you already have a stockpile or, sadly in some cases, you can send your stuff by road.

I think all sectors would have been affected. Of course, it can be a bit difficult because freight trains tend to run enormous distances across the country. Much depends on the pattern of strike action. If you have a strike on a particular day, which happens to be when the crew is rostered to take the country from south to north, they are not there to run back the following day from north to south. It requires a bit of planning, but these things can be worked around.

The tendency is for stuff not to be stored in shops in the same quantity as it used to be, because of home shopping. You now have a tendency for more investment in warehousing. The more warehousing you have, the better buffer resilience you have between the end consumer and the port.

Q4 Chair: In your opening comments you mentioned longer-term confidence in the rail freight sector. Is there any evidence that, as a result of the recent industrial action, some organisations and companies are looking to shift away from rail freight?

Phil Smart: I think those who are habitual consumers of the rail freight service will stay. I don't think that is a question we can probably answer so soon after the action has finished. If you were to ask in a year's time how many came back, my guess is that most of them will do so, because there will be pressure due to some of the issues affecting other transport sectors. We have seen the lorry driver shortages and retirements. There is a whole load of things that affect people's decisions as to how to use road and rail. I always describe the rail freight sector as being in a perpetual state of rainbow: you have a very sunny horizon but it is always raining. You know there is sun on the horizon, and we know where we are going.

Q5 Mike Amesbury: Good morning, Phil. To what extent does the rail freight sector support the introduction of minimum service levels?

Phil Smart: As drafted, the Bill excludes freight. We are not within scope, and that is a situation we are quite happy with.

Mike Amesbury: You recorded that in your written evidence.

Phil Smart: Yes, that's right. Because freight is a private sector operation, our members do not see a particular role for the state to get involved in industrial relations between employer and employee in the freight sector. It is the awkward thing around what happens when the signallers are on strike. I guess it is analogous with air traffic control: the pilots are not in dispute, but the planes cannot fly. It is that kind of thing.

Q6 Mike Amesbury: Is there a risk that under minimum service levels as



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proposed it could make matters worse than they are on a typical strike day?

Phil Smart: Yes. This is one of the things that is very unclear and unknown at this stage. At the moment, because there is a contract between the freight operator and Network Rail, there is a duty to consult over disruption and how we plan around that. If we get to the situation where the minimum service levels Bill says that a signaller will operate a particular shift—say, 6 in the morning until 6 at night, 7 to 7, or whatever the shift would be—two questions arise. One is whether or not that signaller, who might be required to signal passenger trains because they are in scope, will be required to signal a freight train on the same piece of track during that shift. That is unclear at this stage. It is something that can happen with the contingent labour at the moment, but we don't know.

Then there is how that is all structured in terms of the length of shift. Comparatively few freight trains can run the entire length of the country in a single shift. You would have to move them all off at the beginning of the day and hope they get there by the end. Of course, what tends to happen, particularly from ports, is that you have freight being dispatched at all hours of the night and arriving at all sorts of times of the day on the following day. It tends to straddle working days.

Q7 **Mike Amesbury:** So it might be, for example, that a signaller's democratic right to strike is eroded, and essentially outlawed via this legislation.

Phil Smart: This is an area where, I guess, there are going to be wider human rights discussions as the Bill goes through. It is not a particular area where the Rail Freight Group wants to get involved in the whole philosophy. The only thing we are interested in is to ensure that freight gets fair treatment on strike days and that we remain out of scope for the legislation.

Q8 **Mike Amesbury:** Are there any particular workers or organisations that you would like to be bound by this legislation for minimum levels of service?

Phil Smart: Do you mean any particular organisations in rail freight?

Mike Amesbury: Yes. Or workers.

Phil Smart: We have over 100 members, and a few of them are operators. We have quarries, terminals and port operators and so forth. The freight sector is a very complex area. Any particular sub-sectors in freight? The Bill talks about some priority areas, such as key flows for fuel and so on, and waste, but even the waste trains that I am aware of do not have to run every single day, so could probably cope with the situation as it is.



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As I made clear at the beginning, we do not often have strikes on the rail network that take out the signallers. That situation has now been resolved. Let's hope that is the situation for some years to come yet.

Q9 Mike Amesbury: Is there anything else the Government could do to improve the resilience of the network for freight services during industrial action, other than legislating?

Phil Smart: I guess the only other measures to mitigate would be if there were perhaps a greater number of contingent staff available. Obviously, they would be people who had the right skills but, for whatever reason, were working in a different part of the industry and not included in the dispute.

Looking further into the future—this might be a long way into the future—there is a parallel programme, as I am sure you are aware, of investment in digital signalling and what that might look like. The less reliant we become on what used to be called lights on sticks or levers on columns, the easier it is to cover the network with contingent labour, but that requires very long-term investment and is probably not within the scope of your inquiry.

Mike Amesbury: Thank you.

Q10 Chair: You have already mentioned that there is prioritisation of freight services on strike dates. I appreciate that the sector is not covered by the scope of the Bill, but would it be helpful if there was an informal schedule to prioritise freight services that could sit alongside the regulations?

Phil Smart: The practice has been that there probably was an informal schedule. If the Bill as presented includes specific reference to key sectors, and specifically gives the examples of fuel and waste, there has to be some way, presumably in the Bill process, to try to enshrine that. Whether it is helpful to have an informal one or not, I am not quite sure how you would cast something that is informal in a Bill.

Q11 Chair: I am not suggesting including it in the Bill itself, but that there is an industry-wide agreement that "the first freight trains to run are these," and then you would work down until capacity is reached.

Phil Smart: Over the last year—because this has been going for nearly a year—there has been enough experience of dealing with it that probably some kind of informal arrangement and understanding has emerged between Network Rail and the individual freight operating companies.

We have a difficulty, though. One of the things we made clear in our evidence is that the market is going to be changing the whole time. We might draw up an informal arrangement and then find, for example, that a quarry comes to the end of its extraction licence and another one opens elsewhere in the country, or there is greater dependence on sea-dredged aggregates and stuff comes in from ports and terminals that, up until



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now, have been dormant. Any arrangement like that would have to be a pretty flexible one, I would have thought.

Q12 **Chair:** As well as the sector, it would need to cover particular routes. You would need that flexibility.

Phil Smart: It would. I am reluctant to give individual examples, but I am aware of some ports that used to be rail connected that for whatever reason—because that particular traffic no longer exists or it is more convenient to use road—are interested in becoming rail connected again, but not to re-establish the original traffic flows, which might have been unloading cargo from ships or for different purposes; perhaps sea-dredged aggregates, for example, or some other local commodity.

Q13 **Jack Brereton:** Obviously this is a bit of a balancing act. We have passengers and freight that need to be accommodated. How should those demands be balanced?

Phil Smart: I guess you are saying specifically in relation to the legislation.

Jack Brereton: Yes.

Phil Smart: The tensions between freight and passenger services exist all around the network on a daily basis, as I am sure you are aware. I go back to what I said originally: we do not want freight to be any worse off than it is at the moment. We would like it to be a bit better off, obviously. But as long as there is recognition that freight, at the times of day and on the routes that are kept open under a minimum service level, should have the same right as anybody else to use that bit of asset or resource.

Q14 **Jack Brereton:** Where should the decision-making function of who gets prioritised for access rest? Should it be in Network Rail? Should it be in some sort of agreement among operators?

Phil Smart: Any time there is disruption, it affects a contract. A freight operator will have a contract with Network Rail that guarantees it what we call a path—a slot of space in the timetable. We will say, “We want to run from Felixstowe to Trafford Park” or Southampton to Leeds or somewhere. Every time you have some disruption and two weeks’ notice to sort it out, the partners in that contract have to work out the best possible way of fulfilling as much of the contract as possible. That is presumably done by negotiation. The Rail Freight Group does not itself get involved in those discussions. The individual freight operators do: Freightliner, GB Railfreight, DB Cargo and so on.

Q15 **Jack Brereton:** There could be quite a lot of tension, couldn’t there, over what freight we prioritise? If we prioritise it over passenger services, clearly it is going to be a difficult task to identify which of those routes remain.

Phil Smart: We could look at the other side of the coin, of course. There was a bit of it that we experienced during the pandemic. Let’s suppose



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you have a situation where the unions come out on strike because they are in dispute with a passenger operator. Network Rail is not in dispute at that time with the signallers, nor are the freight companies with their staff. From freight's point of view that is bonanza time; you have the network to yourself. These things could work in different ways.

Q16 Jack Brereton: You could exclude potential paths from the network. Is that what you are saying?

Phil Smart: If the signallers were not on strike but the staff working for the passenger train operators were on strike and the passenger trains did not move—

Jack Brereton: And the drivers.

Phil Smart: I come back to the point I made at the start. The drivers' action has not been against the freight companies; it has been against the passenger operator. I can see some circumstances where freight trains would run more reliably, provided the signalling resource was available and there would not be a conflict with passenger on the days when passenger was not running, if you follow me. It depends whether you want to have a discussion about Network Rail staff or passenger train operator staff, because it could work in different ways. I gather that the aim of the Bill is to try to set minimum service levels for passenger services primarily, which involves two groups of workers: the passenger train staff employed by passenger train operators, and the signalling and maintenance staff in Network Rail. They are separate organisations, as things stand.

Q17 Jack Brereton: How do you think freight should be consulted to make sure that the views of your members are effectively considered, particularly around access?

Phil Smart: I come back to the point we made earlier. Because there is a contractual obligation between the freight operator and Network Rail, or what we might call the infrastructure provider—because there is parallel legislation expected on setting up Great British Railways—it is through the medium of that contract that sufficient notice will be given to work out how to manage.

Q18 Jack Brereton: Do you think that process is sufficient?

Phil Smart: One always wants to do more, but it is probably the best vehicle we have, and are likely to have, for resolving those tensions and those issues.

Q19 Jack Brereton: You seem to have come to the view that it is better for freight to be out of scope of this legislation. Why did you come to that view?

Phil Smart: Because our members feel it is their responsibility to sort out their industrial relations arrangements with their own staff. We think that is the responsible thing to do. We might end up in an area where we



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do not want to go if we see the state taking a role in determining industrial relations in private companies.

Q20 Mr Bradshaw: Mr Smart, are you aware of practice in countries that have this kind of legislation, and whether the freight sector is included or excluded from those minimum service level guarantees?

Phil Smart: That is one of the questions in your consultation. The Rail Freight Group represents the interests of all companies that are interested in moving goods by rail within the UK. We do not have a degree of expertise as to what happens in other countries. There are a lot of other countries with a lot of other regimes, from America to China. I guess everything is different, and different arrangements may or may not be in place in different countries in Europe, with whom we are obviously most often compared. I don't think that is an area we would want to give evidence on.

Q21 Mr Bradshaw: Is there an organisation from which you think we might be able to find that out? Is there a European rail freight body that you are aware of? The Government are citing other countries' experience in defence of their plans. It would be interesting for the Committee to know what the situation is regarding freight in those countries. We can probably do a little bit of research ourselves, unless you have an obvious pointer.

Phil Smart: I don't have an obvious pointer. I am fairly sure that you will be interviewing trade unions and so forth, who may have contacts in other countries or through some international labour organisation, to see how it works.

Q22 Mr Bradshaw: Given what you have said about rail freight's strong view that you do not want to be involved in this, and the potential extra disruption that could impact on freight from the legislation in the event of industrial action, does your organisation have a view as to whether they want this legislation at all for the rest of the rail sector?

Phil Smart: That is not something we have included in our evidence. The only thing I would keep coming back to is that if there is a minimum service level that the network provider is obliged to provide, we obviously want freight to benefit in equal measure to passenger, or as good as we have at the moment.

Q23 Mr Bradshaw: The danger being that if it is just directed towards passenger services, you will be squeezed out.

Phil Smart: We shouldn't be. I keep coming back to this whole thing about whether the legislation is going to apply to just the passenger operators and the relationship with their staff, or whether there is going to be something obliged on Network Rail through the signalling resource.

Q24 Mr Bradshaw: It has to be both, otherwise it is not going to work, is it?



Phil Smart: Exactly. We obviously have an interest in making sure that if there is a minimum service that applies to the track resource, we have access while it applies.

Q25 **Mr Bradshaw:** Finally, you said you had not expressed a view to this Committee on whether you wanted this Bill at all. Have you expressed that view to Government and the Department for Transport?

Phil Smart: As I gather, there is a separate deadline and a separate set of questions, some of which are similar to those you have asked and some of which are a little bit different. We still have some time to give evidence in that regard on the Bill itself.

Q26 **Mr Bradshaw:** Is it possible that you might say to the Government that you do not want this legislation at all?

Phil Smart: We will continue to consult our members on coming to a view on that. I don't think we want to step into the area of arguing the human rights aspects of all of this. We recognise the right of individuals to withdraw their labour in an industrial dispute. I expect there are plenty of human rights lawyers who will be making their position clear as things progress with respect to the Bill. That is all we want to say for now.

Mr Bradshaw: Thank you.

Q27 **Grahame Morris:** Good morning, Mr Smart. I only have a couple of questions because I think you have covered most of the ground. Can I seek some clarification of an earlier answer?

You mentioned the importance of the signal staff and so on, and how important it is to maintain safety at all times. I had some good friends who were killed and injured in the terrible train crash at Southall back in 1997. That involved a freight train—a coal train in fact—and a passenger train travelling from Cardiff to Paddington. It is really important that safety standards are maintained at all times, whether there is a dispute or not, and that the best systems are in place. I wondered whether you had any particular thoughts about the unintended consequences of legislation like this in terms of losing the good will of the people who work in the industry and on the railways.

Phil Smart: I am trying to recall the specifics of Southall because there were two that were very similar.

Grahame Morris: There was one a couple of years later at Ladbroke Grove. I think there were more fatalities at Ladbroke Grove—41, and 417 injured—but the terrible train crash at Southall involved a freight train and a passenger train. Ladbroke Grove involved two passenger trains.

Phil Smart: There would have been a separate inquiry into Southall and a separate inquiry into Ladbroke Grove. Nobody wants to see any accidents on the railways. There were more accidents on the road that week, sadly, but that does not mean that we can get away with not running a safe railway. Safety is absolutely paramount.



There were other contributory factors in some of those accidents, I believe, to do with signal siting, the design of track layouts and so forth that may or may not have contributed to the particular incidents. If there is a safe signalling system, it is a test of the resilience of that signalling system and how it is operated—as you say, you could—

- Q28** **Grahame Morris:** I am not trying to get you to say anything that you are uncomfortable with. My question is about the importance of proper co-ordination in safety in maintaining the good will of the staff employed in the sector. Arising from those two crashes, where there was terrible loss of life—a dear friend of mine, Ged Traynor, was killed at Southall and I spent three weeks visiting colleagues in hospital in London, some of whom have never recovered from their injuries—the Government commissioned an inquiry by Lord Cullen and established the Rail Safety and Standards Board. It is about 20 years ago next month, actually; I think it was set up in 2003.

The chief executive of the RSSB has warned of the risks of this legislation and that it will not make the slightest bit of difference. In fact, there is a risk it could make things worse. He says, “If you introduce minimum service levels there’s the huge issue of how is that level set, and particularly if you set that minimum level and you’ve rostered staff to work. I would suggest you’d probably have a much higher level of sickness arise...because people won’t want to be seen”—this is trade unionists—“to be breaking the strikes that their colleagues are involved in.”

If the effect of this is to undermine good will and there is quite a simple way to get round it by going sick, isn’t it a complete waste of everyone’s time, rather than using the traditional methods of negotiation to resolve industrial disputes?

Phil Smart: The Freight Group completely supports that there should be a safe railway. We have a very good relationship with the RSSB. On matters of safety, we defer to the evidence that they might wish to give to you in that regard. I certainly would not want to say anything that contradicts what they say. They are obviously very important in that respect.

- Q29** **Chair:** That brings us to the end of our questions. Is there anything else that you would like to put on the record that we have not already covered?

Phil Smart: I don’t think so. The pattern of questions has followed more or less what I was expecting and prepared for, so thank you, Chair.

Chair: Thank you very much for your time.