

Transport Committee

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

Wednesday 24 May 2023

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[Watch the meeting](#)

Members present: Iain Stewart (Chair); Mike Amesbury; Jack Brereton; Ruth Cadbury; Paul Howell; Grahame Morris; Gavin Newlands; Greg Smith.

Questions 235–280

Witnesses

[II](#): Huw Merriman MP, Minister of State for Rail, Department for Transport; and Ben Smith, Director of Industrial Action, Department for Transport.

Written evidence from witnesses:

- [Department for Transport](#)

Examination of witnesses

Witnesses: Huw Merriman MP and Ben Smith.

Q235 **Chair:** Welcome to the second panel for our session today on the minimum service level for rail. I invite our two witnesses to state their name and position.

Huw Merriman: Good morning, Chairman and members. I am Huw Merriman. I am the Rail and HS2 Minister and have responsibility for minimum service levels.

Ben Smith: Good morning. I am Benjamin Smith. I am the director for industrial action in the rail strategy and services group in the Department and also have responsibility for minimum service levels for rail.

Q236 **Chair:** Thank you both for your time this morning. We have heard from other witnesses during this inquiry, particularly the rail unions, that the legislation simply will not and cannot work. How would you respond to that?

Huw Merriman: We believe that it will work in practice. We have just finished our consultation, as you are all aware. We will now be looking to go through the consultation responses to see how best to come up with a plan that allows us to balance the right to strike with the rights of rail passengers to get about their business. We believe that we can do that, but, of course, the exact detail and level needs to be fixed with regard to not just the consultation responses but the response that you, Chairman, may give, in the recommendations from this Committee. We welcome all the ideas that can be put forward to help us to deliver a good minimum service level for rail.

Q237 **Chair:** The unions have also said that it will worsen industrial relations. It will exacerbate the problem. Do you think that is a fair observation?

Huw Merriman: Obviously, decisions that they take will be a matter for them, within the legal framework that they have to operate by, so I do not anticipate that being the case. There are examples from across Europe of such regulations being operated. They seek to balance the right to strike with the right to operate a service. What the unions may do will be a matter for them, but our priority is to ensure that when there are strikes people will still have the ability to get about. That is at the very heart of the proposal.

Q238 **Chair:** When Mick Lynch from the RMT was in front of us, he said that the legislation could lead to “novel” strike action. Does that worry you?

Huw Merriman: Again, I don’t wish to antagonise the unions in any regard, either through this policy or through our desire to get to a place where we do not have industrial action, because we have settled matters with the unions. We sought responses in the consultation and had one from the RMT that was more of a high-level view of our policy than about



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detail. ASLEF, to be fair, engaged us with more detail about the challenges, should it go ahead.

Of course we are aware that the unions do not support it, but we have to think not just of the workforce and the unions but of all the passengers and, indeed, the taxpayers who help fund rail. I have always made the point about this legislation, which is why I support it as a manifesto commitment, that during covid it was right that the railways kept operating to ensure that key workers got to work, and if it was right then, it is right now. Rail is essential for people to go about their business—to go to school, college and hospital appointments, as well as work. It is a key part of our infrastructure. That is why I believe it is right that we balance the operation of that key infrastructure during strike days with the right to strike. I don't know if Mr Smith wants to come in.

Ben Smith: Absolutely, that is right. In designing the MSL it is going to be important that we get the balance right. Through the consultation, as the Minister said, we sought and received input from a range of stakeholders—those who represent the trade unions; very importantly, those from the rail industry; and those representing passenger and business groups—so that we can fully understand the impacts of recent industrial action on the railway, understand from colleagues in the rail industry how a minimum service level approach might work, and understand the unions' concerns and views. It is important to take all that into account in designing the regulations.

Q239 **Chair:** Thank you. I appreciate that the consultation has just closed and it will take you some time to work through the detail of the responses but, at this point, do you have a broad idea of what a minimum service framework might look like?

Huw Merriman: We will be very much guided by the evidence—the consultation responses and other discussions that we will have arising from those responses—because we are keen to continue to engage and consult. I would welcome your recommendations, Chairman, should the timetable work.

When the consultation was set out, two loose options were put forward. One was, effectively, just a reduction of the existing timetable; it would look as it does right now, but with a certain operating percentage. Whether that could operate across the entire network would need to be worked out. The other option was to build on the key route strategy that we have at the moment. As a rough figure we are able to operate about 20% of the network on RMT Network Rail strike days, as they used to be. One option would be to build on that. Another concept is about whether you look at certain windows, in terms of the time when you operate, or take a wider geographical view.

There is a bit of a metrics approach to this, but we will be guided by the consultation responses, and I do not say that just to be wooden. It is a challenge to get through this and write it up. We aim to have the



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regulations down during the course of this year, so there will be a lot of work, to work out what the model will be.

Q240 **Chair:** This is the final question from me for the moment. Obviously you are focusing on the rail service pattern, but to what extent are you looking at the transport network holistically? For example, there is a very regular coach service from Oxford to London. To what extent will those other transport options influence how you set the regulations?

Huw Merriman: I feel it will. It is important we look at the passenger and their ability to get about their business. If there are other options, that will no doubt weigh—for example, if we were to go down the key route strategy and increase that network size. We must also look at where there are nearby train services on a different line. For example, where I live, there is the Southern line that goes up to London, the Uckfield line. We also have the Hastings line and there are not that many miles in between. Those are options that I would want us to look at. I want to look holistically and with practical imagination at what the transport map looks like to ensure, on strike days, that we can give passengers better options than they have right now.

Q241 **Greg Smith:** On the customer experience for passengers, can we get to the bottom of what any rail user wants, be they a commuter, be they a schoolchild trying to get to school? As you know, Minister, in my constituency, very many children travel to school by rail. Looking forward to when these standards are set, what can they expect from the minimum service level? For example, will every schoolchild have an expectation that the minimum service level will enable them to get to and from school?

Huw Merriman: Again, it comes back to how we draw the map. We know there are certain parts of the network that are particularly key for pupils and students to be able to move around. I would want us to be able to take that into account. That has an impact on time of travel and certain routes. Again to use my local line, we have a lot of pupils who move from East Sussex to Kent and they use the railway line considerably, whereas there may be other parts of the network where it is not in such great use. I want to ensure that we design a map that allows students and pupils to get to school. Their inability to get to college, with the impacts on exams, is something we need to look at in this. I assure you that it is not just workforce. When we did our surveys, we found that workforce was the largest group impacted, but, of course, they may have options, as in the ability to work from home. That is not the type of option that pupils have, if it is on a one-day basis. We will certainly pay them great regard.

Q242 **Greg Smith:** Notwithstanding the answers you gave earlier about the importance of consultation and striking a balance, where do you think the Government will ultimately land in the debate between service level, as compared with some of the service levels run on strike days through recent strikes, and consistency? There is a difference, as the customer



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looks forward to what might happen on strike days, between having a level of service that might be, if I can put it in such a way, haphazard, and consistency. For example, there will always be a minimum service level at certain peak points of the day that, come what may, the customer will be able to expect. Where does the balance sit between a level of service at some point and a consistent expectation of where that minimum service level might land?

Huw Merriman: That is a fair challenge for us. We want to be very ambitious. At the moment, the key route strategy takes into account about 20% of the network, but that is largely aimed at ensuring that freight can get around, more so than passengers. That means a lot of passengers do not see any service at all. Mr Brereton wrote to us, as part of the consultation, to highlight Stoke as an example. Looking at international comparisons, you can see on its website that Trenitalia in Italy will operate between 6 and 9 in the morning and 6 and 9 in the evening to get people to work and back and, indeed, to school and college.

What is important is that we design this so it works, and that there is certainty. The worst thing would be that we try to put something on, the passengers turn up and it is not available. The aim is to be more ambitious than the 20% route strategy is at the moment, otherwise we would be bringing forward something that does not deliver more. Getting the balance right will be essential. I am sorry I cannot give you a firm proposal right now, but your thinking is absolutely where we are.

Q243 **Greg Smith:** Is there a possibility that the final outcome could see a lower service level than on strike days now, but a certainty about it?

Huw Merriman: That is the balance. Again to take my area, everyone from East Sussex and the western part of Kent has to drive to Sevenoaks, where there is a half-hourly service. If we were to spread that out, it might be that we cannot operate as many trains out of Sevenoaks, but it means that other customers are getting a train. We have to take that into account.

Do we broaden the offer I have just described and have more major stations that one can get to, where there will be more of a service? Or do we look more at the percentage of the entire timetable and try to encapsulate everything? In that case, we would have to spread resources a little more thinly across the network, meaning that we would not be covering the key arteries. That is what we have to consider.

We also have to take freight into account. While we anticipate that this will relate to passenger services, we have to ensure that the freight network can operate. I want to assure the freight community that that is very much in our minds. We have to ensure that it works, in addition to spreading it all the way across the country. That is our exercise right now.



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Q244 Paul Howell: To continue from the perspective of the customer as to where we are in this, how successful has the consultation been in getting the views of the public about minimum service levels? As you have just done in your examples, Minister, we all gravitate to our own space, we gravitate to the bit that we know about. Yours is the south-east; mine is the north-east. Everything you get coming in from potential customers of rail will be their perspective on their local rail service, and that will be the dominant factor. How do you get consideration at a centralised level when you are trying, effectively, to fix local things?

Huw Merriman: I will hand over to Mr Smith shortly. We worked very hard on the consultation. I spent a lot of time on the wording, ensuring that it was right, making sure that the options that were there set ambition. We want to encourage people to be ambitious with us, but at the same time it is a realistic challenge. I assure you that it was a good, solid consultation, out for three months. Perhaps Mr Smith could highlight how many responses we actually had in terms of both overall numbers and key stakeholders.

Ben Smith: Yes, absolutely. As the Minister said, we launched a 12-week consultation process and it was deliberately targeted to gather as much information as we could. Setting minimum service levels is not something Government have done before, so it is right that we get as much information from as many stakeholders and members of the public as we can. We have had 78 responses to the consultation. I am pleased to say that they are a very good mix of responses from individuals and important organisations closely impacted by rail strikes and by the minimum service level legislation.

The rail industry, train operating companies, Network Rail and a range of others from the industry will give us, I think—I say think because the consultation only closed last Monday and we are still going through the process of properly analysing all the responses—a good amount of information about how practically MSLs could work in the industry. We have received responses from passenger groups, and I will come back to that in a moment. We have received a range of responses from business groups. They talk about the impacts of strikes they have seen on the railway over the last year as well as some of the things they would like the legislation to achieve.

For passenger groups, one of the key things coming through from the formal consultation response, and from the engagement we have had with Transport Focus, London TravelWatch and others during the course of the consultation, is the point around certainty and giving passengers certainty about which services will operate in advance so that they can plan journeys. As the Minister said, there will be choices based on the responses we have had around how to design the service level. What passenger groups, in particular, have said they want is a degree of certainty so that they can plan their journeys once we know where trains are going to run on strike days.



Q245 Paul Howell: You have to try to make sure that you are picking up the different perspectives of different groups. The Minister talked earlier about his area, and the fact that you have choices of train; therefore, there might be four or five trains that you could use. If you drop the service level down to 20%, you still have one train. If there is another part of the world where there is only one train running and you drop that down to 20%, there are no trains running or it would be almost impossible to get there. It seems to me that you have to look not just at the proportion or core but maybe some sort of hybrid of the two, depending on where you are and what you are looking at in the country. Is that part of your considerations?

Huw Merriman: The consultation was there for everyone, but for those who employed rail workforce, we asked them what they would need if we were to offer a 20%, 30%, 40%, 60% service. We tried to give some homework for those who were really involved to say, "Look, where is your key personnel risk?" As you have heard from Network Rail, signalling has often come up in terms of key personnel. We set that exercise so that we could then take it away and see what is possible.

I add that, Mr Howell, to show that yes, you are right; there may be an approach where we look at geography, hours, route and everyone having the option. That is something we will have to pick out in terms of what the best model is, but we tried to do it with the consultation by getting as much information in, so that we are confident that what we put down will be operational in practice.

Q246 Paul Howell: What you are doing there feels complex. Is there an opportunity you will have in the future? If you put something in, will you have the opportunity to evolve that depending on how successful it is, if you ever have to use it?

Huw Merriman: Yes. First, there is a five-year review period for the legislation that is built in. There will be a requirement to review it. We are very much working on the basis of not just the consultation but with the roundtables we have had and the work we will have to do with the industry to ensure that what we propose is something that can be delivered, and that our regulator, from a safety perspective, is comfortable with. All those discussions will continue.

Q247 Paul Howell: I have a final question which is about accessibility, disabled users and so forth. Are you confident that you can make sure that you have the right consideration for them in any situation?

Huw Merriman: Yes. We will be required to. We will have to ensure that we comply with all of the accessibility and safety requirements. I heard Mr Larkinson from the ORR assure you that that will be the case. It will be. One of the things that will help us is that we have just conducted a station audit. All of the stations have been audited. We are currently looking through that in terms of re-leasing. We are more confident about accessibility because we have 220 stations that are now accessible for



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those with mobilities. We have also worked on a lot more stations for improvement. The situation is better. What I can assure the Committee and everybody in rail is that there will be no compromise when it comes to the safety and accessibility requirements. We will have to ensure that those are baked in.

Q248 **Paul Howell:** Mr Smith?

Ben Smith: Absolutely, yes. As Mr Larkinson said earlier, when minimum service level operations are running on strike days, we would not envisage any difference at all in the commitments the railway makes to accessibility. As Mr Larkinson said, there are processes in place to ensure that that is the case.

Q249 **Grahame Morris:** Good morning, Minister and Mr Smith. Could you clarify something? Mr Larkinson from the ORR told us that they did not respond to the consultation but Network Rail did. Is that correct?

Huw Merriman: Yes, that is correct.

Q250 **Grahame Morris:** I was intrigued because we were trying to push them for a definitive view on what the potential service configuration would mean. They did not have an opinion. When, at the end of the session, we asked them if there were any questions that they would like us, as members of the Committee, to put to you, they had no opinion. I respectfully suggest that they are looking for direction from you. You told us a little earlier, Minister, that timetables are very important. Can we have a little bit of clarity or certainty about the timetable for the Government responding to the consultation that has just closed?

Huw Merriman: We can go into that. Again, we are in slightly the same situation as the ORR and Network Rail in the sense that we do not have a view as to what the minimum service model will look like. We are taking the consultation responses and that will help us provide that model. Often, parts of Government can be accused, when putting out a consultation, that it is just a complete exercise. This one is an exercise in providing the answer, working with all our team across the rail industry. I say that with absolute sincerity. We do not have a model right now because we need to know what is workable in order to deliver it. That is what we will do. As I mentioned, the intention is to get the regulations, if we can, laid down in autumn, so we have an awful lot of work between now and then. Do we have the exact date as to when we expect to respond publicly with our consultation?

Ben Smith: We haven't yet, but I think the expectation is that we will work as quickly as we can to do that. Clearly, it is important that that response comes out prior to the regulations being laid. There is no specific date, but we are working as quickly as we can and we will do it as quickly as possible.

Q251 **Grahame Morris:** It is helpful that we are looking at the autumn. Mr Kelly told the Committee in the earlier session, when we were pressing



him for details about what it meant in terms of numbers of workers and the areas where they were likely to be required, that the details were in the secondary legislation, the regulations, which is obviously correct. I subscribe to your idea of inclusivity in consultations with train operators, Network Rail and the trade unions. What discussions are you having in this phase of preparing the regulations with the trade unions?

Huw Merriman: As Mr Smith detailed, the exercise now will be to take the evidence provided from the consultation responses to continue to engage with all parties that are keen to work with us and engage with us. That will form the model and, therefore, the percentage minimum service level that we feel can be run. Then those regulations will be laid. That is where the detail is. It is a challenging time.

Another thing that can sometimes happen with consultations is that the response takes a long time to come out of Government. That will not be the case here because we are being driven very hard by the Prime Minister and the Cabinet Office to deliver to a very ambitious timetable, which we are absolutely happy to do. It is important that we get this through. Parliament is putting a lot of pressure to get the legislation through, so we must play our part and get the regulations that hang off it, so that we can start putting them in place. Of course, we also have industrial action right now. While I want that settled, if it is not, this legislation, the regulations, will be essential to give a minimum service during those strikes.

Q252 **Grahame Morris:** Might I ask you about that as well? This is not to say that since you have been Rail Minister strenuous efforts have not been made to resolve the dispute, because I certainly acknowledge that, as I think the whole Committee does from all sides, but the RMT say in their press release that there has not been a meeting since January—I do not know if that is correct—to settle the disputes planned for next week.

Huw Merriman: I think that date is correct, which was the last time I met the RMT, Mr Lynch and team, and the employers. Obviously since then, the offer has been put to members on the Network Rail side and accepted. I had thought we would be in a position where the offer on the train operators' side for the RMT would be put to their members. While we have not been involved in discussions, we have been involved in assisting the Rail Delivery Group, which requested some re-shaping so that the optics of the deal could be presented differently to the members of the RMT. That was a request from the RMT.

I readily thought that at that point we would have a breakthrough. That did not occur, which was a surprise to us. I think that demonstrates, Mr Morris, that, while I have not had any requests from the RMT to get involved in discussions again, to try to facilitate some movement I have been involved in, and have been able to respond to, some of the requests they made to the Rail Delivery Group. I have been able to work with the Secretary of State to see if we can try to inject some positivity and change there, but it has not succeeded. I say again that I very much



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hope the RMT will allow their members to have their say, because when other members have had their say—indeed RMT members had their say on the Network Rail side, which is a very similar deal—the members voted to accept. I know you want to see an end to this and so do I.

Q253 Grahame Morris: Thank you for that response. Can I assume from that that, even if you are not planning a meeting in relation to the current disputes that are coming up, it is your intention to meet and consult the rail unions on the drafting of the regulations?

Huw Merriman: We want to continue to engage with the rail unions. We have had responses from them. It is fair to say that the RMT's response was not as technical as ASLEF's. But we will continue to wish to engage with the whole rail community to make this work.

I understand that there are policy opinions about this, but if we are going down this road, and we are, it would make sense for everyone to make them work and put aside their views about whether they should be there or not. In my approach to the rail unions on industrial action, I have always said that I would be very happy to facilitate, to sit in the room. That type of tone continues to be the case, but I have not had any requests that it would be particularly helpful at this time.

Q254 Grahame Morris: It is very useful that you state that in public on the record. Thank you.

Can I ask one more thing about the key element of the dispute originally? It is in relation to ticket offices. It was an issue we raised briefly with Mr Larkinson from the ORR because of their responsibility for ensuring that vulnerable and elderly rail users can access the service. One of the key issues initially was the proposed closure of ticket offices. Not that it is a trusted source of information, but *The Daily Telegraph* recently reported that the Government were running down ticket offices. They were telling some train companies to stop using ticket offices to sell cheaper advance tickets. Is that true? If it is, it is outrageous. If it is, would you take urgent steps with the train operators, the rail companies, to tell them to stop this discrimination?

Huw Merriman: I had not taken you as an avid reader of the *Telegraph*, Mr Morris. I am aware of that story. It is not the case at all. What it relates to and what they were getting at—I will write to the Committee to be absolutely sure—was that there was an on-the-day ticket, which, in certain circumstances, was not being sold on the day; it was being sold in advance. It was just a correction that that type of ticket is supposed to be sold on the day. I will write to you to absolutely confirm that, but I know it was one particular matter. Quite frankly, two and two were put together and it was more than five on that particular story. There is no intention.

We have a situation, and you have written to me and I have just recently written back on this, whereby we only have 12% of sales of tickets or, I should say, passenger journeys being transacted through the ticket



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office, but by and large we have the same number of ticket offices that we had 30 years ago. The figure was about 34% of all tickets sold from a ticket office about 10 years ago. It has changed dramatically because people are buying remotely. This is why I feel that it will be a policy that will ultimately benefit the passenger.

First, I challenged my team with this reform, making sure that there is more availability to purchase digitally. Why is it the case that for a weekly travel card one has to go all the way to the train station and present a photo, when, in fact, one can buy a single digitally, which is much more expensive on Avanti? Why can't you do that with a weekly? I am challenging them to get more tickets on to digital so that you don't need to go to a station to purchase. I also want the machines upgraded so that more can be purchased. Another example is that I have a zone 6 travel card from East Sussex, but if I am going to Milton Keynes, where Mr Stewart is, I cannot at the ticket machine buy from zone 6 upwards. That has to change as well.

Ultimately, I want to ensure that those working behind the glass and not interacting with the 80% of the customers who are not using ticket offices are out helping with passengers, engaging, making them feel secure, and giving them a better passenger experience. Also, it is a better workforce experience. It must be pretty dull working behind the screen when there are no passengers to work with any more. I want those people brought out to help. It is anticipated that every station that currently has somebody working behind the ticket office will still have that person, but they will be interacting with passengers on the platform, helping them to buy digitally, so that passengers are upskilled, as well as workforce.

Q255 Grahame Morris: I understand what you say, Minister, but please do not lose sight of that 20% of passengers, or whatever the percentage is—I accept that it is declining. A very large percentage of those will be elderly. They will have mobility issues or disabilities. I am thinking of my elderly mother. She does not have a smartphone. If she could not buy from the ticket office, she would not be able to travel. We must not discriminate so that they have no opportunity to use public transport.

Huw Merriman: I could not agree more. The figure is 12%. I maintain that, if you take that person from behind the screen and have that person more interactive on the station platform, they can help somebody in buying a ticket from the machine if they do not have the ability digitally. They can also teach them how to buy digitally and help them get on the train. It is a plus. It is the way the direction of transactions is going, but it also allows a passenger to get a better personal experience than I believe they get right now.

Q256 Gavin Newlands: We heard from your earlier responses that there are potentially different approaches to minimum service levels and you are still working through the consultation. At this point, how detailed do you envisage your specification of a minimum service level to be to operators



and so forth?

Huw Merriman: Mr Smith will want to come in. The model we go towards will drive that to a certain extent. If, for example, we go towards a larger key route strategy, there is, effectively, another timetable to put together for that. That will have ramifications.

Our intention is not to be hugely complex in the requirements. We will set a minimum service level and we, therefore, expect the employers to work towards issuing the work notices they need to deliver to ensure that they have sufficient workforce to deliver that service. That is why there will have to be a lot of engagement. We started the exercise in the consultation by asking how much of the workforce would be needed for these percentages. As we come up with our own model, we will need to go back to the operators, Network Rail and the whole rail community, and ask what that would mean in practice and whether they could deliver to that. Would you like to build on that, Mr Smith?

Ben Smith: Yes. Clearly, we need fully to analyse what comes out of the consultation because we have already been given a lot of information that will be helpful, but we need to fully understand what it says. We have been meeting the rail industry right the way through the consultation process, in many detailed engagement sessions and workshops with Network Rail, train operating companies and others. We will need to continue to do that and we have been very clear with stakeholders that we want to continue to engage. Even though the consultation has formally closed, we want to continue to engage as we go through the next stage of analysing the consultation responses and starting to develop the policy and then the regulations themselves.

As the Minister said, it is important that we continue to do that, particularly with the rail industry because they have the best understanding about how to make timetables work and how to deliver services. They also have huge amounts of very useful data on passenger flows that are important when designing what a minimum service level will look like. As the Minister also said, it will be for employers ultimately to decide whether they want to issue work notices in order to mandate staff to work on strike days, so we need to continue to work very closely with the industry on that. We will continue to do so. This will be the Government being clear about the minimum service level that they want to achieve, and working with the industry to put in place proper plans to deliver that.

Huw Merriman: It may seem perverse, Mr Newlands, given that we are actually looking to increase the amount, that it is not an absolute requirement to have to deliver those notices. It may well be that the employer feels that they can already deliver to that minimum service level. Of course, there would be an expectation, because we are ramping up, that they would need to do that, but it is not an absolute requirement.



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Q257 Gavin Newlands: This is just a quick thought. If you go down the route of percentage of current service model, which is a possibility, might that in the end be a range? If you are on a commuter service in the south-east that is every five or six minutes, for instance, it might be easy to put on 20% of services, or easier. If you are on a two-hourly service in Northumbria, or wherever it might be, putting on 20% might be difficult. Might it be a range, if you take that route, between 20% and 30%, or whatever? This is just out of curiosity.

Huw Merriman: I think that is what we have to work through in terms of whether you can have one blanket figure that applies to all. Again, there will be trade-offs. If you were to have a percentage that applied to every single route, including the smaller branch lines, that would perhaps indicate that you cannot drive more services where there are more passengers. We are going to need a balance as to whether we deliver that for everyone or whether we just actually increase the current key route strategy, which is what we have at the moment.

Q258 Gavin Newlands: Do you anticipate any decisions being left to Network Rail or operators, or will it all be top down?

Huw Merriman: The expectation is that the regulations will set what the minimum service level is in terms of the percentage model, and it is then left to the employer to decide the workforce numbers they need to operate to that level. As I say, they may not need to issue any notices at all because they can already deliver to that. Obviously, it will not discriminate in terms of those who are members of unions and those who are not in unions as to who gets that notice. It is down to the employer to decide who they need.

Q259 Gavin Newlands: I suspect I know the answer to this, but given your point about branch lines and this, that and the other, is it entirely feasible that different levels could be set potentially across different parts of the network by operator, region or even country?

Huw Merriman: I would not rule anything out because everything is there to be determined. While it is envisaged if we go down the minimum service level that it will be a percentage, which is why we put in 20% to 60%, when we actually look at what is possible, if we can do more in certain parts, it may well be that we would want to do that, otherwise it would just hold back the parts where you can deliver even more. That is why I was saying that all ideas are absolutely welcome in the recommendations of your report. We are interested in moving them forward.

Q260 Gavin Newlands: Part of the reason I asked for that confirmation is specifically the country element. In the Chamber, I have previously talked about the Scottish Government's different approach to this particular legislation and the fact that the First Minister said that they would never serve or enforce a single work notice.

I asked Mr Kelly from Network Rail, in the first panel, how they might



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operate in that regard. Obviously, Network Rail in Scotland is currently a reserved function, although it works closely with ScotRail, Transport Scotland and Scotland's Railway. He envisaged that that very close working relationship would continue, but there may be issues with that close working relationship if one Government say one thing and our Government say another. How do you envisage that moving forward?

Huw Merriman: One of the things, to reassure you, is that we have sought to engage with the devolved Administrations—Scotland and Wales—and the Mayor for London, because of TfL. I had a meeting with Jenny Gilruth, who was at that point the Transport Minister, to try to get her to engage. I made the point that I understand she does not agree with the policy, but if it is going to come in, let us at least try to work out how it can work for all.

It is fair to say that we did not have that level of detail back. We have not had the opportunity to see, from a Scottish perspective, what the exact challenges would be and how they could be managed. The response has just been, "We are not going to comply." That will be an added challenge for us to work towards. It will obviously be disappointing if passengers in England get a minimum service that they can operate to, but a passenger in Scotland does not have the same ability.

Q261 **Gavin Newlands:** We shall see. The unions—the RMT certainly—suggested they would not comply with the legislation as it stands either.

Huw Merriman: It does not really impact them. Obviously, they represent the members, but this is between the employer and the workforce. If the employer is ScotRail—the example you give—that is more of a challenge that needs to be addressed than, for example, the views of unions.

Q262 **Gavin Newlands:** How do you anticipate cross-border services operating if the crew are in Glasgow and the Scottish Government and Scottish operators are not enforcing this?

Huw Merriman: I invite Mr Smith to come in, but I was considering your concept of the Avanti depot. Obviously, Avanti is a company that is registered in England so it would be issuing the work notices as an English employer, but I recognise the point that you raise about issues from Scotland. It is a little more straightforward when the employer is based in England than when the employer is part of the Scottish Executive. Have you thought about this, Mr Smith?

Ben Smith: Absolutely. I think that is the key point. As the Minister said, it is a statutory discretion in the parent legislation for the employer to decide whether or not to issue a work notice. It will come down to where the employers are based and how they choose to issue work notices or not.

We have held two discussions with colleagues from the rail industry specifically on the question. One was focused on Wales, and one was



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focused on Scotland, where we talked about how cross-border services would work under a minimum service level scenario. There are some issues that employers will need to think through very carefully and they will, and they will be able to do so in more detail once we have got to the stage when we are setting out more clearly what is going to be in the regulations.

At a high level, train operating companies did not identify any immediate major concerns with that, and felt that they would probably be able to find a way to manage through the issues. Clearly, until the point when we can be clearer about what is going to be in the regulations, there is not much more they can add, but we will continue to engage with them because it is an important issue, and we want to ensure that this particular part of the process for setting, managing and running MSLs works as effectively as it can.

Q263 Gavin Newlands: Lastly, because I am conscious of the time, I want to ask about different patterns of dispute. It is an easier dispute in terms of the national disputes we have, but, clearly, disputes can be individual with particular operators. How will the specification take account of different patterns of dispute, be that with Network Rail or individual operators? Is it a national approach or can it be regionalised in specific situations?

Huw Merriman: Again, it depends on the nature of the industrial action. We do not have industrial action with Network Rail because that has been settled from an RMT perspective. If we were to apply these regulations now, they would obviously be aimed more at the employers, the train operators. The challenges around whether you have enough signallers would not be the challenge because they are not on strike. It will differ depending on where the industrial action is actually focused.

Q264 Chair: Before I move back to Jack, I want to ask a supplementary on that point about signallers. They are one type of rail worker who has an absolutely critical role in the system. The number of trains that run on a particular line can be adjusted according to the available workforce, but a signal box is open or closed. If it is not open, the rest of the network cannot operate. How do you see the obligation for signallers or equivalent critical workers to work under this legislation?

Huw Merriman: You are right to highlight signallers because they are often the class that comes forward. They are by no means alone. Mobile operations managers—those who tend to go to incidents such as emergencies or trespass—are also key people when it comes to workforce numbers. Perhaps, to a lesser degree, it is station staff in specific roles as well. We will have to be cognisant of those numbers.

I will reverse it and put it the other way round, Chair. This is a good audit for me to see where we need to get more resilience into the workforce. It is a conversation that I will be having with Network Rail and the ORR. It is not just an issue of minimum service levels. It tells me that there are



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not enough people in certain roles for resilience, so we need to look across that. A part of the reforms that Network Rail were putting through in order to help fund the pay rise was to try to get more multi-skilling. That will assist in the longer run. I look at that with interest when I get the responses through because it tells me where we actually need to get better bandwidth into the rail industry. That is one particular part.

When we asked the question, "What percentage of your workforce would you need in order to work to these percentages?", that is where we have the responses, particularly from Network Rail, about the impact on certain classes of workers. It is a challenge for us. Obviously, we do not want to take away the right to strike. We just want to ensure that there are enough workforce to work to it. If you have classes of workforce that would all be needed, that is in juxtaposition to what I have just mentioned. It is a challenge for us to work through.

Q265 Chair: Are you doing that work in parallel with the responses to the consultations? Will you identify where you need to increase the pool of potential operators so that they can step in while allowing the signallers, or whoever it is, the right to strike?

Huw Merriman: That is a wider piece of work. Also within my domain is workforce reform and ensuring that we have enough workforce to deliver a railway seven days a week, so that we do not have to rely on rest-day working, for example. In a way, I take something like this as evidence that we need more change and better bandwidth across the railway and not just for this instance. It will feed into another reform workstream that I have.

Q266 Jack Brereton: Of the two options that have been set out in the consultation, do you have a preference for either of those or would you envisage, as we were discussing with the first panel of witnesses, that possibly both options might be taken forward to be used, based on the circumstances of the particular strike that is taking place?

Huw Merriman: My preference is to come up with a model that, first, is workable and, secondly, gives us the maximum impact in terms of passenger numbers. It is too early to tell.

The obvious one, if you want to include absolutely everyone, is the option, "Let's just have a percentage of the timetable for all." As I say, doing that could have an impact on key parts of the route where you think there would be more populace moving across. I also have to be mindful of freight. I can see why one would say it is a more attractive model just to apply a percentage of the timetable and operate it, but when I tie in all those other factors, it is about reliance. If you have all of the network open and you need all of the signallers to be able to operate it, it becomes more of a challenge.

Q267 Jack Brereton: Are you looking at any other options? As I suggested in my letter, there are a number of parts of the country that are left out in



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the route map-based option, including Stoke-on-Trent, Middlesbrough, Swansea, Hull and Portsmouth. Quite large urban areas are not included in that map. I think that even your own area is not included in that map.

Huw Merriman: That's right.

Q268 **Jack Brereton:** Are you looking to change that further, or are you looking at alternative third options that could be considered?

Huw Merriman: The map you refer to is in annex B of the consultation. It was a map that was used as an example of a key route strategy that was operated at the beginning of January during the strikes. We are looking to build on that. We are not looking to say, "Let's carry on as we are." By and large, that delivers 20%, but it is very much geared to where freight is moving, where those networks are open and, of course, where passenger services operate as well. We want to be much more ambitious than that.

In the event that we opt for the key route strategy as opposed to a percentage of the timetable, you would expect to see a much greater level than you see right now. I cannot say that it would include your constituency, or indeed mine, because, by its very nature, it would still be key routes and not all, but it should have more ambition, otherwise we would not be looking to change what we do right now.

Q269 **Jack Brereton:** Could it be that there is a combination of both options and that parts of the network are open, with a certain proportion across the whole of those that are open?

Huw Merriman: We are ruling absolutely nothing out right now. We are still taking the consultation ideas. I take that as part of the ideas factory. Yes, it is possible that we could operate in that particular manner. We will have to see and report back.

Q270 **Greg Smith:** Minister, I want to explore with you the mitigations that the Department is planning in the event that minimum service levels are met with the same level of militancy that we have seen in the recent strike action on the railways. For example, there are steps being planned for non-compliance with work notices. The Chairman brought up the signallers. At the other end of that spectrum, if there is widespread non-compliance which leads to large scale dismissals for non-compliance, what mitigations is the Department planning to fill that gap?

Huw Merriman: I will start and then Mr Smith might wish to come in. First, I listened very closely to what Mr Larkinson said. I think those who work on the railway take their responsibilities very seriously. Safety is obviously a critical component that they deliver. I just do not believe that the railway workforce would refuse to come in if the railway was operating and they were required to come in. They will always put the safety of their colleagues and passengers first. I do not feel that that is likely because of the way that those good people in the railway operate.



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There is no contingency for what happens if the employer chooses to go down that route if someone is effectively in breach of their employment requirements. It is not something that we have factored in, in terms of, "Here's a group of people that we turn towards," because we work on the basis that people will comply. Also, we will balance the right to strike with the right to getting a good passenger service in place. Of course, we are not expecting everyone in the workforce to come in on a strike day. We recognise that there will be the right to strike, but some will be required to work. Do you want to build on that, Mr Smith?

Ben Smith: I think that largely covers it, Minister. I reiterate that it will be for employers to decide where to issue work notices. The employers are best placed to understand where their workforce is, who they need and who to specify on work notices. They are also, obviously, managing industrial relations with their workforce and will take decisions factoring that in as well. There will be a role for employers to decide the best approach to deliver the minimum level of service.

As the Minister said, we are not expecting that this would result in lots of people refusing to comply. There is, of course, an enforcement mechanism in the Bill around workers who refuse to comply with work notices losing their automatic right to unfair dismissal. That is part of the Bill as well.

Q271 **Greg Smith:** To be clear, there isn't a contingency or a plan within the DFT. If this is met with what I would call militancy from any particular union membership or sector of the workforce, there is no plan to attempt to backfill or, were there to be large-scale dismissals, to find a way of bringing in skilled labour from somewhere else to ensure that the railways can still operate.

Huw Merriman: At the moment, the rules have changed to allow agency coverage, but that is for industrial action. Obviously, there are certain safety-critical roles where you can only backfill with someone who has the safety-critical skillset. We have to work within that. It also takes a long time to train people.

On your broader point, I am particularly focused on workplace reform so that we have enough bandwidth in place and there is always enough cover, and we have a seven-day railway where we are not relying on requests to work on a Sunday. That is completely archaic and we cannot operate like that. That takes me to the other strand that I mentioned to the Chairman and to you all. It highlights a number of issues to me as to where we need more resilience across our workforce so that we are not so contingent on key people. It also takes an awful lot of time to train people up in roles that I believe we could do in a faster timeframe.

That does not directly answer your point, but it tells me that if we have more bandwidth we have less risk on those key members of the workforce. I believe that people take their roles really seriously in terms of safety for their fellow workforce and will come into work when



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required. There is, as you know, a sanction if you do not comply. I believe those two components should be enough to ensure that people comply if the employer decides to issue the notice. If they do not, that will be for the employer to take further.

Q272 Greg Smith: What about slightly lower down the spectrum of severity, away from full non-compliance or whatever it may be? Are there negotiations or talks ongoing with the TOCs or Network Rail, for example, that if minimum service standards land very badly with any part of the workforce and we see work to rule, go-slows and not going the extra mile—things that generally slow down the productivity and efficiency of the railway—there is some sort of model, incentive scheme or whatever it might be to try to circumvent that to ensure that people are working as you would normally expect them to and not on some sort of work-to-rule model?

Huw Merriman: Of course, we will look at that. If we find that there is action short of a strike, we would look towards that, albeit that these provisions only apply when there is industrial action rather than action short of a strike.

It takes me to the other part. When I came up to visit you in Buckinghamshire, we took the train to Aylesbury. One of the lines on the Chiltern Line up to Aylesbury was only operating by bus because there was a work to rule going on and drivers were not working their rest day. The way to solve that is to ensure that we do not need drivers to work their rest day; they would just work their 35 hours because we have enough drivers in place so that we are not reliant on that. That ends the action short of a strike. A lot of the solutions are to be found in wider workplace reform, meaning that we are not held in the manner that you have just described, Mr Smith.

Q273 Ruth Cadbury: The Government do not have many fans for this minimum service level legislation in the UK but have often cited international comparisons when making the case for it. Which of these comparisons is the most relevant for the scheme that you want to introduce, for rail services in particular?

Huw Merriman: I will deal with the international comparisons first of all. In terms of minimum service levels, Italy and Spain are probably the nearest comparisons. I mentioned Trenitalia for Italy. On its website you will find that they specify industrial action days. They run the 6 to 9 shift morning and evening. In Spain there was a recent decision by the transport department to run 65% of services for medium distance, 72% for long distance and 24% for freight. They set theirs at different times. They also have a freedom of movement right that they have to take into account.

France and Belgium are slightly different in that they require notification in advance from workers who are seeking to strike, so that the employers can work around it. They have the notification up front, so that allows



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them to operate. Germany and the Netherlands are slightly different. They have more of a proportionality test. If the feeling is that the industrial action is disproportionate, the courts can intervene. It may well be that, if there is a minimum service level tacked on, that is a mitigation that shows that the action is not disproportionate.

All of them have their own ways of doing things. We will have ours. What that serves to say is that we seem to be an outlier in actually having no requirement there at all. In terms of the public support part, Mr Smith may want to talk about some of the numbers.

Q274 Ruth Cadbury: I meant from stakeholders. There did not seem to be a lot of enthusiasm for the proposal from representatives of the rail industry. I know that you have been consulting them extensively on the detail, as we understand it, but they have not been lobbying the Government to bring in this legislation and, I suspect, far from it.

Huw Merriman: My duty is, of course, to a number of people and organisations that are involved, but I want to take the passenger for one moment. Ultimately, we run the railway for the passenger. They pay for it as a taxpayer. Even if they do not use it, the taxpayer pays for it and they want it to operate.

We have conducted a survey which demonstrates that people are impacted, unable to go about their business and want to see some form of change. Of course, it was a manifesto commitment for us as a Conservative party in 2019 to have some form of transport minimum service legislation. I regard that as a mandate as well. Do you want to touch on the consumer feedback, Ben, just to give an idea of who is impacted?

Q275 Ruth Cadbury: I think we all appreciate the impact that the strikes have had on our constituents and businesses. That goes without saying.

There has been a lot of concern about the unintended consequences, and that it could end up being counterproductive. We have picked up evidence that the legislation does not reduce the levels of disruption. In looking at those equivalent countries, are there features in any of them that you would not want to adopt and those that you would?

Huw Merriman: No. I look at our European counterparts as a good benchmark to see how they operate. It tends to be accepted as the norm for transport to operate in that manner. That makes me ask why we are different in this country. There is nothing that I would actually highlight and say, "Well, I wouldn't go down that particular road." Again, we are just working through our consultation, but it gives me comfort that in those countries they can still allow people to exercise their right to strike but bring in a system that allows people to exercise their right to go to work, to go to school and to go to hospital appointments. That is the proportionate balance that I am seeking to bring in with this legislation.

Q276 Ruth Cadbury: Can you give us some examples of where there has been



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recent strike action in those countries and where, you believe, minimum service levels have been effectively implemented on their rail networks? Is strike action increasing or decreasing in those examples?

Huw Merriman: I will have to write back to you with my evidence. I just gave you an example from the Ministry in Spain, which was one particular set of benchmarks that they adapted. The Trenitalia one is there for you to see. If you go on to their website, you will see what they seek to run on a strike day. We can write to you with more comparisons, if you wish.

Q277 **Ruth Cadbury:** As I say, we have had evidence that the legislation has effectively been unenforceable and, therefore, has not achieved the service level that the Governments in those countries have been seeking.

Huw Merriman: I had a meeting with one of the airline bosses recently who flies to a lot of destinations across Europe. I asked him how it works, because it works in aviation in Spain. He said, "It's just the norm. It works well." In fact, in Spain they tend to ramp it up if they are in international tourism peak so that they can flex more of their services. He felt that it worked quite well. I admit that is anecdotal, but I am told by those who work in that space in Europe that it works well and is accepted. I am happy to write back and look through your examples as well.

Chair: It would be helpful if you could give us some more detail on the international comparisons.

Q278 **Mike Amesbury:** Minimum service levels and agreements will have an impact on freight on the network. What is the Department's response going to be to that?

Huw Merriman: While this relates to passenger services rather than freight, I will be absolutely clear and reassure you that freight must continue to operate. That has been the guiding factor for all of our conversations about the key route network. How can we preserve freight, with regard to critical freight as well, in terms of keeping our power running and waste? That was always the guiding force behind how we set up the KRS.

Q279 **Mike Amesbury:** So it will not apply to freight operations.

Huw Merriman: While it is not envisaged that it will apply to freight, you can absolutely take it as read that we will ensure that whatever model we come up with allows freight to operate in the manner that it has operated in relatively successfully during industrial action. That almost has to be the starting block. We have to factor that in, and then what it is possible to do in addition to allow more passengers to be able to access the network as well.

Q280 **Chair:** There is one final question from me. Obviously, the legislation is envisaged to be there for the long term. Hopefully, we will be moving to Great British Railways in the not too distant future. What involvement have they had with their transition team in helping to shape the



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regulations? What role do you envisage that they will have, going forward?

Huw Merriman: I am conscious that I have done a lot of talking, so I will hand over to Mr Smith. I will just say that we are conscious that GBR is a future state as well. We want to get on with this right now, but they have been very much in our thought process as to how that can transition.

Ben Smith: We have engaged very extensively with Network Rail, as you would expect. They sent in a formal consultation response, but we have also had some very intensive workshops with them. My understanding is that they have been sharing what they have been involved in, and the discussions there, with the wider GBRTT team.

As the Minister said, going forward it is important that we get this in place now so that we are focused on working with the stakeholders who will most obviously need to be involved right from the outset. Of course, we will continue to engage with everyone in the rail industry, including GBRTT, as we go through the process of preparing the regulations.

Huw Merriman: Contrary to what you may have read in *The Times*, Chairman, a lot of my working day is taken up in making sure that we can set up Great British Railways and deliver railway reform. The tool we use for that is to be determined, but the formation of Great British Railways and the setting up of headquarters in Derby proceeds. It takes a lot of my time. I ask Committee members to disregard what they may read in speculative sources.

Chair: Everything written in the press is, of course, absolutely accurate. That concludes our questions this morning. I thank you both again for your time. We will certainly be producing our report in the usual way, and it will, hopefully, help guide you in setting the regulations.