

Transport Committee

Oral evidence: [Scrutiny of the draft Rail Reform Bill](#),
HC 584

Wednesday 24 April 2024

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[Watch the meeting](#)

Members present: Iain Stewart (Chair); Jack Brereton; Sara Britcliffe; Paul Howell; Grahame Morris; Gavin Newlands.

Questions 39–90

Witnesses

[II](#): Andy Bagnall, Chief Executive, Rail Partners; Steve Montgomery, Managing Director, FirstRail; Maggie Simpson, Director General, Rail Freight Group; and Jacqueline Starr, Chief Executive, Rail Delivery Group.

Written evidence from witnesses:

- [Rail Partners](#)
- [FirstRail](#)
- [Rail Freight Group](#)
- [Rail Delivery Group](#)

Examination of witnesses

Witnesses: Andy Bagnall, Steve Montgomery, Maggie Simpson and Jacqueline Starr.

Q39 **Chair:** Welcome to our second panel of witnesses for our session today. For our records, would each of you state your name and position, please?

Andy Bagnall: I am Andy Bagnall, the chief executive of Rail Partners.

Steve Montgomery: I am Steve Montgomery, the managing director of FirstGroup's rail division.

Maggie Simpson: I am Maggie Simpson, the director general of the Rail Freight Group.

Jacqueline Starr: I am Jacqueline Starr, the chief executive of the Rail Delivery Group.

Q40 **Chair:** Thank you. Welcome to you all. We are very grateful to you for giving us your time and experience this morning. I will begin by asking each of you the same general question that I put to the first panel. The draft Bill is deliberately very narrowly defined. A lot of the structure, work and objectives of the IRB will come later. Is that the right approach to get momentum, or are there other general areas you would like to see on the face of the Bill before it becomes legislation?

Andy Bagnall: We heard quite a good simile from the first panel—that the Bill is one piece of a jigsaw. It has been described to me by the Department as keyhole surgery on the existing legislative framework. We obviously need to think about the Bill in the context of the 1993 Act and the 2005 Act. There are also some bits of the jigsaw that we are yet to see, such as the licence and the exact nature of the new contractual model.

There are certain aspects—I am sure we will pick these up as we work through your questions—where we think it would help to have greater clarity alongside the Bill in order to answer some of the obvious questions that the Bill throws up. There is the licence and the access and use policy that you just heard John Larkinson talking about. There are some areas where we think that tightening something up in the Bill itself would be helpful for providing some of that clarity.

Steve Montgomery: Without repeating a lot of stuff, we have similar views. We have to ensure that the Bill, when it comes into legislation, has a lot of this stuff sorted out. There is a lot of uncertainty in some areas, but we welcome the guiding mind-type concept. We need to make sure that it is given the freedom to help regulate working with ORR and help regulate the industry to make sure it has a proper strategy around it. We have talked before about taking that day-to-day ownership away from Government, from the DFT, and allowing that body to act independently,



as much as it can, to deliver the railway back to where we want it to be, delivering for the customer.

Q41 **Chair:** Thank you. Maggie?

Maggie Simpson: There is uncertainty for my members at the moment, not only through rail reform but with the fallout from HS2, east coast and other areas. The level of uncertainty that businesses are being asked to operate under is a concern. The draft Bill is a step forward, and that is a good thing, but before it is enacted we need to see more about some of those other areas. The licences are critical, as is the access and use policy. There is the structure of how GBR, at least in headline levels, will be put together and how it will work for different parts—in my case freight. It is great that we are going through scrutiny of the Bill, but before it is enacted we need to see a lot more to build confidence.

Q42 **Chair:** Thank you. Jacqueline?

Jacqueline Starr: Having a draft Bill is a good thing. We are very supportive of the guiding mind. There are three key areas. The first is that our members, train operators, are focused on customer outcomes. It is making sure that customers, our people and industry are appropriately reflected in the Bill so that we have checks and balances to ensure that we are clear on the changes that we are advocating on behalf of those three groups, but predominantly the customer group.

The other consideration, as you heard in the first panel, is that you are bringing a number of organisations together potentially. It would be vast in size. A check and balance, potentially around the customer, is just to ensure that some of the interfaces that currently exist will be improved as a result.

Q43 **Chair:** Thank you. The proposal is that Network Rail Infrastructure Ltd will be the corporate entity, the legal entity, that will become the IRB. I don't think that that in itself is controversial, but where there is considerable concern is that, if this is the vehicle, the IRB does not become a Network Rail 2.0 and just import its existing culture. It has to be a new body.

Is that a fair summary of your position? If it is, how do we make sure that the IRB's culture is very different from that of Network Rail? Or perhaps the Bill is not the right place and we may not be able to legislate for culture change.

Andy Bagnall: In our written submission to the Committee, that is one of the big questions about the draft legislation. How do we end up with the introduction of Great British Railways creating a system that is ultimately outward-looking, focused on the passenger and not what some would describe as an engineering-led railway or inward-looking?

The problem in a statement like that is how you make sure that the customer comes first, rather than thinking about the maintenance of assets, whether that is about repairs and maintenance and how that



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affects the customer or the degree of risk aversion that we take to the extreme weather events that we are seeing increasingly. That is the key question. How do you ensure that that happens if you are building the new structure out of the Network Rail engineering base?

Chair, as you have just said, culture is very hard to legislate. I am not sure that the Bill is where you can put some of those safeguards in place. We have already talked about some of the other pieces of the jigsaw puzzle. For us, one of those pieces is really important to ensure that the system as a whole is outward-looking, and that is the contractual model. We think the operator, which is the part of the system closest to the customer, is very well placed to act as the grit in the oyster. It is a bit of a check and balance internally within GBR to keep the focus externally and ensure that it is not ultimately engineering-led. That is another piece of the jigsaw.

In terms of the Bill specifically and some of the measures, we have called for there to be a duty on Great British Railways put into the licence. Ideally, we would like to see that on the face of the Bill alongside some of the other duties, but we recognise why that might not be the case. At the least, we would like to see in the licence a duty, alongside the duty to promote freight growth, to promote passenger growth in a growing railway. Again, that could help focus the system as a whole—GBR and its contracted operators—externally.

Another area is the performance regime. The Bill allows for operators contracted by Great British Railways to be exempt from it. We would like to know what will be put in place to ensure that there are incentives on performance before you enact that exemption.

Lastly—you had a lot about this in the first session—there is regulatory oversight by the ORR. We think that is absolutely critical to ensure that the organisation does not become Network Rail 2.0, as you described it, and is not looking exclusively from the infrastructure perspective, but rather is looking outwards and doing what we need the railway to do, which is to deliver for passengers and freight customers.

Q44 **Chair:** Thank you. Steve?

Steve Montgomery: It is critical that whatever body is set up has independence and that it is not Network Rail Infrastructure Ltd. A lot of that will be around how they choose to populate the organisation. If it is done like GBRTT, where a number of people have been taken out of Network Rail—for obvious reasons; we understand the reasons—we need to make sure that that independence will give confidence to the private sector in particular. At FirstGroup, where we run a lot of open access operations, it is vital that we have confidence that the body can make sure that, because there is only x amount of passing, Network Rail don't want to run more trains on it. How do we make sure that that does not get caught up in where the body is placed and does not have the influence of Network Rail fully over it? It is really important who they



appoint to the roles, how we get the independence and what guidance it is giving to operators.

Maggie Simpson: There is a contradiction at the heart of the model, which is that if you integrate the track and some, but not all, of the passenger trains into one body, that body is going to care most about its own passenger trains. If it doesn't, arguably it has failed. To use John's analogy from earlier, if you are inside, tick, you get it right; if you are outside, it is a bit of a question mark. That is the contradiction that we have been worrying about since the beginning. Keith Williams understood that in his plan for rail, which is why measures like the freight growth target and a central freight team were put in to try to counteract the concern that an organisation will favour its own trains. What we are constantly looking for are the areas where that risk could materialise and the protections that are being put in place to close it off.

Thinking about what an organisation might look like in the future, obviously there will be good people at the heart of it and perhaps the worst will not happen, but you have to think what could happen if it was not today's people, today's Government, today's Secretary of State or whatever. Where are those risks going to materialise? I think you will see in our response that there are areas where we think those risks remain unacceptable.

Q45 **Chair:** We will be exploring some of them as the session goes on. Jacqueline?

Jacqueline Starr: Culture is clearly a really important aspect. If the IRB is made up of a number of different organisations, one positive component is that they are very possibly—I offer RDG as an example—inheriting very good, healthy and positive cultures in which we have invested a lot of effort. While it is probably not appropriate to legislate against culture, I think it is worth serious consideration of the mechanisms that we can put in place to ensure that we have a healthy improvement and a formal way of assessing that.

Part of that culture—Steve alluded to this—is around diversity in the sector. For me, the IRB creates a huge opportunity for the sector. It is a new opportunity to have a fresh workforce and build on all the skills and expertise that we currently have in the industry. It is also making ourselves attractive to expertise outside the industry and bringing in an appropriate blend of in-house skills and commercial expertise, having a very blended workforce that looks slightly different from what we have now. It is attracting people of colour into the industry, more than we have now. It is attracting more women into the industry and really grappling with the opportunity that the IRB presents to be diverse and create a workforce that can look to the future. Some of the issues that we are talking about today are not necessarily the issues that the IRB will need to grapple with in two, three, four or 10 years—for example, climate change and some of the technology innovations. We need to have skills and capability equipped to influence that in the future.



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Q46 Chair: Thank you. Before I pass to Jack, I want to clarify this. None of you has any objections per se, notwithstanding the concerns you have just outlined, about Network Rail Infrastructure Ltd being that corporate vehicle. Or is there some other body that you think should take the role?

Andy Bagnall: We recognise the need to move forward quickly. Reform is delayed. The sector needs to push ahead. NRIL, for a variety of practical reasons, offers the best chance of moving forward quickly, for some of the reasons the Government set out in the consultation response around the practicality of moving 40,000 people and so on. I think we would recognise the need for speed but we have concerns around safeguards. Without the right safeguards there is ongoing concern.

Steve Montgomery: If you were not doing it at speed, you would not do it this way.

Andy Bagnall: It is easier to build a new culture in a new organisation than to change the culture in an existing one.

Maggie Simpson: We are still very unclear on the structure. Does it look like Network Rail's structure today, with some passenger trains shoved into it, or is there a plan to change the structure, particularly around what a guiding mind is or isn't? I spent some years at the SRA. I think that is a different sort of guiding mind to what is being envisaged here, but it is not wholly clear.

Jacqueline Starr: I support the views that Andy and Steve have presented.

Q47 Jack Brereton: What I am going to ask follows on a bit from what the Chair was asking. It is about whether the IRB is going to be sufficiently independent and not be, as we have been talking about, a Network Rail mark 2, and also not be completely controlled by the Department. Do you feel that it will be sufficiently independent, or is there a risk that we will see continual interference, as we have seen at the moment?

Andy Bagnall: I think there is a definite risk of that, Jack. There is consensus, from what I have seen across all of the parties. I have seen Mark Harper, as the Secretary of State, and Louise Haigh, as the shadow Secretary of State, talk about the need to have an arm's length body and limit the degree of micromanagement from the Department. There is still quite a big question about how long the arm is in the arm's length body. There are a number of aspects of the Bill that cause concern about that.

I should say, as a way of giving context, that I don't think you can ever fully remove politics and the quite proper role of politicians from the running of the railway. There will always be a huge amount of public money going in. It is right and proper that elected representatives determine that, and what they need the railway to do in terms of wider outcomes for the country. That is the context. After determining those things, it is important to allow railway experts to get on with running the railway on a day-to-day basis.



The Bill gives the Secretary of State a very large amount of power in terms of setting the licence. They will still set the high-level output specification and the statement of funds available. They will sign off a long-term strategy. I think the Secretary of State has those powers. Where I think there are concerns—it got mentioned in the earlier session and I imagine we may come back to it—are the Henry VIII powers in the Bill. I recognise a degree of need for those in the set-up, but I certainly think there is less of an argument for ongoing powers to make consequential provisions. We would like to see those limited in time, after their use for the initial set-up.

Similarly, there is a question around exempting the Secretary of State from being a shadow director. There are already protections for the Secretary of State for Transport to avoid being designated as such. The question is begged that, if you need to put a provision in the Bill to limit the possibility of the Secretary of State being designated as a shadow director, it suggests that there is a greater likelihood that you are protecting against that being the case. I think that creates a slightly unhealthy potential blurring of accountabilities.

Probably the most important thing in the Bill is the question around directions and guidance, which leaves a very large and ongoing power for intervention. You touched on this in the earlier session. Inevitably, politics being what it is, there will be political pressure on the Secretary of State to intervene. We think that, while you might limit the Henry VIII powers in time, the ability of the Secretary of State to issue directions and guidance should be limited in scope. Whether that is through a set of criteria that would be published alongside or on the face of the Bill is a different question. Certainly, it is finding ways that you can limit intervention to the strategic issues that it is right and proper for the Secretary of State to be involved with and create a degree of certainty in terms of the day-to-day running of the railway at other times.

Q48 Jack Brereton: Does the rest of the panel agree with that, or are there any dissenting views?

Steve Montgomery: I don't think there are any dissenting views. We have to look at where we are at this moment in time. We understand why, coming out of the pandemic, there was greater control put over the industry, particularly the passenger service elements of it. If we are to move forward—and everybody agrees that we have to move forward—and we just create another layer of bureaucracy, it doesn't allow this independent body to move forward and set the new agenda for the rail industry. We understand the need for the Secretary of State to lay down the strategy, but we need the IRB to be able to deliver it without a lot of interference, or we will just move, as we do sometimes, to saying, "Well, we don't quite like how that's going so we're going to change it again." We do not give anything a chance. If we are to regrow the railway in the way we all want to, we need to give this body an opportunity to be able to deliver without interference.



Maggie Simpson: From our point of view, what our members want is stability and certainty, particularly around access and charges. The framework that is envisioned leaves the Secretary of State with the ability to micromanage, but the IRB has a huge amount of power to change things, not least by phoning the Secretary of State and asking if they can use their executive powers to change something. It is not necessarily that we have a benevolent IRB and a nasty Government. It could be all sorts of versions of that theme.

Q49 **Jack Brereton:** It could be encouragement.

Maggie Simpson: Yes. What we need is stability. Things like the powers to amend, which are indefinite, take that away. We are nervous about those because you have lots and lots of places where that stability can be removed in different versions.

The other thing is about the governance. The previous panel talked a bit about their role in that governance, but there is still a relationship between DFT and the IRB. That governance needs to be understood so that there is more clarity than we have about how the IRB will be governed overall.

Q50 **Jack Brereton:** Jacqueline, you and the previous panel mentioned the fact that this is going to be a huge organisation, with lots of staff. Couldn't it become a bit unwieldy as an organisation? Isn't there a risk that it becomes far too overbearing and that we suppress the potential for innovation and competition within the rail sector?

Jacqueline Starr: It is a risk, but with the appropriate check-and-balance scrutiny, I believe that that could be mitigated or removed. Hence my offering at the start around the primary components of customer, people and industry and making sure that we have a clear line of sight to the outcomes that we are driving in those areas.

A good example of that, to bring it to life, is on the topic of intervention from the Secretary of State if things change. You can have the cleanest policy, the best strategy and the most beautiful delivery plans, but things change. To date, we have seen examples where the Secretary of State has stepped in to change the minutiae of products. That should not be the question. The question is: how do the outcomes for the consumers of these products and services—our customers—need to differ as a result of that? How are we organised as a huge organisation of 50,000-plus people to make sure that we can stay on track in that delivery and not lose sight of why we are there and what is important? Those are the important aspects. Yes, that is going to be really difficult to navigate for an organisation of that size, and the scrutiny that is in place to ensure that we have that line of sight around outcomes is going to be really important.

Q51 **Jack Brereton:** Steve, is First particularly concerned about competition and what the effects are going to be? If you have an organisation of that



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size, is there room for innovation?

Steve Montgomery: Our big concern is that we have independence, and that innovation is allowed to grow. The fear is that this body is solely focused on delivering for the Government, so where does the private sector fit into the area it has been able to help deliver and innovate, as it has been proven to do over previous times? It has grown the industry through the years. How do we make sure that we do not lose that element but have greater control and less scrutiny?

In part, this independent body is set up to allow the sector to do a lot of things again and start to innovate again. We need to remove the micromanagement. That is the biggest concern. That is why everybody is supportive of the new body, but we need to remove the micromanagement. We also need those protections. That is why—

Q52 **Jack Brereton:** That is why we do not want to move the micromanagement from one location to the other.

Steve Montgomery: Exactly. That is why it is so important that the ORR powers are not diluted in any way. If freight open access operators, or other people outside the main body, do not have that protection, how do you get investment in the industry? How do you bring people in to create new jobs and have different thinking and different ideas? That is really important for us.

Q53 **Jack Brereton:** Do you have any other thoughts on how we make sure that there is proper competition and we do not have micromanagement?

Andy Bagnall: You may be coming to this in later questions, so I do not want to pre-empt. Somebody touched earlier on the need to have the contractual model as part of the jigsaw to understand the way in which the system as a whole would function, ensuring that decentralisation does not just happen from the Secretary of State to the arm's length body, the IRB, but also happens from the IRB to its contracted operators, to allow the system as a whole to focus outwards on what freight customers and passengers are doing. The passenger service contract is a crucial component of that. The way that the National Rail contract is configured at the moment is very restrictive. Steve alluded to this. The way it was introduced was absolutely right with the emergency of the pandemic, but we now need a very rapid evolution of those contracts. Ultimately, they are bridging contracts to the long-term passenger service contracts.

We need the passenger service contracts to be developed, and then move towards competing for them as quickly as possible and ensuring that there is the right spectrum of contracts to deliver the ability for the operator to be outward-looking and respond to the customer. They might be slightly more controlled in urban areas, but on long-distance routes you need a lot more commercial freedom to drive good outcomes for passengers.



Jacqueline Starr: I don't think I answered the part on innovation. Just to add to that, if you think about the supply chain as an example, and also the third-party retailers through which Rail Delivery Group manages, current practice often dictates that the thing or the change that we want them to react to is organisations and suppliers, as opposed to talking to them about the outcome or the point that we want to get to. That is stifling in itself. It is why I bring us back to the fact that, from a strategic level, we need clear oversight of customer outcomes that have the freedom to encourage innovation from the supply chain and retailers. It is not just about the new shiny stuff. It is some of the local improvements that cater for the markets that operators are supporting.

Q54 **Paul Howell:** Jacqueline, I want to go back to a subject that I touched on in the first panel, which is about the business plan itself. I am interested in your views as to whether there should be more detail on the face of the Bill about what the IRB's business plan is. That could be anything. It could be the time it should cover. It could be how it should be scrutinised. Could you give your views around that, please?

In the Bill there is a provision for the IRB to amend its business plan. Anybody who has worked in business, particularly in the private sector, knows that certainty of framework is a good place to start. The ability to flex that change is also something I would like your views on, please.

Jacqueline Starr: We would definitely welcome appropriate levels of scrutiny around the business plan, with appropriate levels of independence. We need to ensure that that appropriately represents the views of our customers, so we should have customer data to hand to reflect that. We will also be calling on the voices of wider industry, the supply chain and tech innovation companies, potentially outside the sector, to provide something that is comprehensive and relevant for the industry.

In terms of the tenure, the duration, of the business plan, it is important for us to be as strategic as we feel we can be. We have referred to five years. I think that is a good starting point. We are not wedded to five, per se, but it is certainly a longer-term horizon than we currently have. From a supply chain perspective, they are crying out for us to offer a definitive plan that underpins a very targeted strategy that allows them to invest and gives them a level of stability. That is for a whole raft of reasons. It is not just about being able to invest to deliver the right services within the industry, but goes back to the people part, so that they can attract the right people and we have the right level of expertise in growing the market.

Maggie Simpson: I support that. It is important that it is part of the governance framework. Obviously for us, it is key that those plans do not focus only on our own services but on how they encourage freight and presumably other operators as well, so that the two come together in one document respecting those roles, in effect. That is the critical part for us. Obviously, the IRB is not going to be running the freight trains, but it is



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none the less going to provide the network on which the freight sector will ply its trade.

Q55 **Paul Howell:** I don't want to put words in your mouth, but I think we have to be very careful that it does not become an "and freight" discussion.

Maggie Simpson: Absolutely.

Q56 **Paul Howell:** Freight has to be an integral part of the considerations.

Maggie Simpson: It absolutely has to be at the core of how the IRB is set up. We need the governance to reach out to however it is structured—routes, regions, business units or whatever they are called—so that they are all incentivised to do the right thing for all the operators on the network.

Q57 **Paul Howell:** I will move on to some of the specifics of the representations we have had from the Rail Freight Group, but in terms of any particular concerns about the structure, when things are coming from the regions up as opposed to from the national down, do you want to give us any views you specifically have on that?

Maggie Simpson: As Jacqueline and others have said, it is a big organisation, and it will have some sort of regional structure. What we do not understand is how that works together for operators who are national. If you are a big customer of rail freight, you are going all over the country with your trains. You will have terminals and depots all over the country. You need a consistent product. You need fair and equal charging. You need access and capacity that provides you with that network and is not broken at borders. You need to understand how that is going to be managed at a system level. We are far from clear as to how that structure will be set up in future.

Steve Montgomery: The big challenge is how you get scrutiny over a business plan and the inputs from it. There needs to be wide consultation. Our fear is that it is almost a *fait accompli*, and we do not get that input from the outset. The reason why I say that is that, particularly in the private sector world, if we understand what is in the plans, you then plan round that, and how you stay within the industry and think about how you can help grow the industry. You can make those inputs. If you don't have that plan laid out in such a way that there are sensible inputs and consultation for everybody, you would look at other places and say, "Does this have a future for us?" We have to make sure that we do not lose that innovation. My big fear is that we make it bland, and it is just contracts with no real input required from outside. That is the biggest fear I have in private sector land. How do we make sure there is something which is attractive? How can we make that happen, grow the industry and be part of it?

Q58 **Paul Howell:** I spent 40 years in the manufacturing industry, so I understand what you are talking about there. It seems to me as though



there is a desire or a need for there to be certainty in the business plans in the medium term, so that you know what your business plans can be to fit into a framework that is not about to change in 12 months' time.

Steve Montgomery: It is an investment strategy. If you have capital within your business, where are you going to invest it? You have to start planning that years out, as you know. How do we start to invest it and how does it give the supply chain and the private companies comfort that there is a future there? Yes, you have to bid for the passenger service contracts. Likewise, at least you know they are going to be there, and you have an opportunity to make some inroads into that.

Q59 **Paul Howell:** Thank you. Andy?

Andy Bagnall: I will try to avoid repeating what has been said. We support the idea of a five-year business plan. I think it is quite important that it is across track and train, in the same way that Great British Railways would have that wider remit. There is obviously the five-year infrastructure funding settlement at the moment, but one-year annual business planning rounds for train operators are very inhibiting, as we have seen, in getting optimal outcomes from train operators. Making sure that the business plan covers both is important.

The point you make around certainty is absolutely right. You have to get the right balance in terms of certainty, as Steve said, so that organisations can invest against that and, at the same time, not set things in stone so that it cannot be changed. John Larkinson touched on this in the earlier session. It is about having a transparent process and a clear role for the ORR to monitor implementation of the business plan and oversee a change process. As to whether that should be on the face of the Bill, we think it would be helpful to have the requirement for the five-year plan on the face of the Bill. It locks it in, but having it clearly in the licence would be a good second.

Q60 **Paul Howell:** Thank you. You mentioned the track and railway combination. Does the removal of the need to keep separate accounts for those impact in the real world? Does the fact that the IRB is no longer required to keep separate accounts for both track and the railway operation impact you in any particular way? It could be a yes or a no from each of the panel.

Jacqueline Starr: Our position on that would be, as long as it is not to the detriment of investment more in one area versus the other—for example, more infrastructure and less customer. That would be our key consideration.

Maggie Simpson: All track access charges are set on the basis of costs directly incurred. If you don't understand what the track costs are, you can't bill fairly. It would be a matter for the regulator, I think, to make sure that non-GBR operators were not being unfairly disadvantaged by the merging of those cost lines.



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Steve Montgomery: I can understand bringing P&L together, but, likewise, what you don't want is an inefficient area over here, with revenue growing over there that masks inefficiency. It is on both sides; it could go either way. How do you make sure that you have controls and balances on that, to make sure that one part of the area doesn't become less productive than another part of the industry?

Q61 **Paul Howell:** It should just come down to the way, to use the term, the management account of the operation is set up, as opposed to the ones that they publish. You need to be able to do a controlled separation of information that can then be used for decisions.

Andy Bagnall: I think your question is referring to the change to 14(9) and 19(4), that allows the bringing together of accounting for track and train. Steve touched on this. We support the idea of a single P&L and think that is one of the ways, in terms of the earlier question, that you avoid Network Rail 2.0 skinning the game across cost and revenue, across both track and train. I think that is good.

As Maggie touched on earlier, there is a danger in doing that. The reason they are separated at the moment is to create a level playing field for all operators on the railway. By bringing them together, you are going to have Great British Railways and some Great British Railways contracted operators. For open access operators and for freight operators, you have an insider/outsider relationship—John Larkinson used that phrase. It is absolutely clear that there is a potential danger for conflict of interest between Great British Railways and Great British Railways contracted operators and other users of the railway infrastructure. There has to be stability so that people have confidence to invest.

The other thing that is very relevant is the performance regime. Again, if you are going to exempt those insider operators from the performance regime, it could reduce the overall incentives quite significantly for those that would still be subject to the performance regime. Even though there would be some incentive for GBR to deliver and meet its performance targets, the overall reduction of probably 70% of operators that would be outside the performance regime would be quite a significant diminishment of the incentives on GBR to deliver.

Maggie Simpson: Can I add a small point?

Paul Howell: Please do.

Maggie Simpson: There is a lot of talk about whole industry P&L, and it is a good thing. I understand why you would want to do it, but lots of the industry is not in the whole industry P&L. If you make life more expensive for people who make waggons, rolling stock, fences or terminals, because you have improved the whole industry P&L for GBR's operators, it is not a victory.

Paul Howell: I think we all know what is going on as regards discussions on rolling stock at the moment. We need to make sure that people know



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what is happening. The point that seems to have run right through this discussion is transparency and the need to make sure that everybody is clear about what is happening.

- Q62 **Jack Brereton:** My first question is for Jacqueline from RDG. In your submission, you particularly reference the requirement for the IRB to produce an annual report on private sector involvement. You say that it would be far better for the Secretary of State just to hold the IRB to account for delivery of that. Would you like to expand a bit more on that? Obviously, there is a lot of interest in making sure that there is effective private involvement and competition.

Jacqueline Starr: Absolutely. In a lot of the documentation and proposals, and through the consultation, there has been reference to the appropriate mix of private sector involvement and engagement. There have been some statements and intent around innovation and continued growth. There needs to be appropriate scrutiny to make sure that we hold people to account for those statements, so that we utilise private operators, quite frankly, to serve the communities and demographics that they know best. It does not need to be at a global level. It can be at a local level as well, but it is important to have the mechanism for that scrutiny in place so that we can monitor and tweak it if necessary.

- Q63 **Jack Brereton:** You clearly think that the idea of having the annual report is not that effective. What alternatives would you suggest to create a mechanism better to hold the sector to account for that competition?

Jacqueline Starr: The reason we think that an annual report is not necessarily the best thing for this particular aspect is that it will probably be quite reflective. It will look back at what is done and tell a story about that, as opposed to holding feet to the fire on a proactive, ongoing basis. There should be an appropriate level of scrutiny through current parliamentary mechanisms to make sure that, in real time, we stand true to some of the commitments around the level of private sector involvement and the benefits we have realised through that. We can then keep adjusting to make sure that we drive optimal performance.

- Q64 **Jack Brereton:** We have talked a bit about regions and where this should sit. You mentioned that it might be better to have it at a local level as well, not just at a global level, the Secretary of State's level. At the moment, Network Rail's regions are done for its convenience, on signalling areas. They do not reflect economic geographies at all. My own city is split across two Network Rail regions, which is totally bizarre. Do you think that more should be done to have better accountability at a local level, reflecting economic geographies, to ensure that the rail network better serves those towns and cities?

Jacqueline Starr: Absolutely. It is possibly the use of language on my part. I apologise for that. Perhaps "communities" is a more appropriate word than "regions", given the context in which that is used within Network Rail. What I am really talking about is getting to the hearts of



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the communities and demographics that operators are serving. It is about your constituencies, plus the global piece. It is about the top-and-tail piece and the appropriate balance between the two.

- Q65 **Jack Brereton:** Moving on to Rail Partners, the passenger service contracts are not currently in the legislation. There is no need to have them in the legislation, but operators need that certainty. Do you think that more could be done to ensure that there is a better process to outline what they are going to look like?

Andy Bagnall: Yes, very much so. I don't want to repeat my earlier answer, but they are very much part of the jigsaw pieces that make up the system as a whole.

- Q66 **Jack Brereton:** Do you think that they should be in the Bill?

Andy Bagnall: What is most important is the contractual model. There was some market engagement that began to be conducted by the Department around what the new contract would look like, engaging with industry, in common with the broader reform agenda. That has been elongated over the last couple of years. Returning to market engagement and developing those contracts and understanding what they would look like is an important piece of the jigsaw. There is an urgent need to move on from the national rail contracts. They are being evolved by the Department, but we need to move quickly to the passenger service contract.

I would like to make a point on the private sector report. I agree that, while a report is a welcome recognition of the role that the private sector can play, it needs to be meaningful rather than just a performative report. You need KPIs in it. One of those could be delivery of the pipeline of passenger service contracts—just as an example. I think that the contractual model is very important.

You asked whether it should be on the face of the Bill. As I alluded to earlier, the Department describe this as keyhole surgery. The requirement for the contracts still exists, but in the '93 Act, rather than in this Bill. I would not see it as necessary to update and say, "They must take the form of these new passenger service contracts." The role of the private sector being contracted to deliver train services is still there in the legislative framework. What we need is to know the detail of what that contract will look like going into a future model.

- Q67 **Jack Brereton:** There just needs to be more openness from the Department about what they are going to end up looking like.

Andy Bagnall: Exactly. We need to understand what they will look like. Again, I alluded to this earlier. You need a spectrum of contracts. We at Rail Partners have previously called for three different models. A concession or tightly specified model is probably right for more urban areas. There should also be a long-distance model, which would have more commercial freedom for operators. We need to understand the



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spectrum of those contracts, through the market engagement process. Clearly, we must then have a timeline for when we will return to competing on them.

- Q68 **Jack Brereton:** How far do you think we are from getting to that point? Obviously, there is quite a bit of work to be done to try to evolve what we currently have into something completely different.

Andy Bagnall: The timetable in the original White Paper suggested that it would take two years from market engagement to develop the contract and get to the point of the first competitions. That is a realistic estimate of how far away we are now. When we return to market engagement, it might then be two years before we see the first passenger contract let.

What we need to see in the interim, to bridge that gap, is further evolution of the existing national rail contracts, to ensure that they evolve closer towards what we would like to see in passenger service contracts, which is greater freedom for the operator to drive revenue growth and restore the industry's finances. That can be done within the existing contractual model and is urgent.

- Q69 **Jack Brereton:** Steve, has there been any engagement with FirstGroup and operators like yourselves about what these should look like?

Steve Montgomery: There was early engagement on these new passenger service contracts, but that all stalled as we ran through the various stages and the various reports that were done, particularly the Williams report. It never moved forward, as the industry waited for what the outcome was going to be, with GBR getting set up. We never got further feedback on the elements of the passenger service contracts, but we had input into them at that stage and made a number of recommendations to the DFT at that time.

- Q70 **Jack Brereton:** You would like to see the process restarted.

Steve Montgomery: We need to restart the process. As Andy alluded to, we are sitting in a hiatus at this moment in time, which is not good for the customer, as far as we are concerned. We need to be able to move forward again and to take away some of the micromanagement we have both spoken about.

- Q71 **Jack Brereton:** Maggie, you raised concerns particularly about paragraph 8 of schedule 2, concerning the freight industry and how the IRB may be able to run its own freight services. What are your specific concerns? What would that mean for the industry?

Maggie Simpson: This is one of a huge number of things where a change gets made to facilitate one thing somebody is thinking about and it has a consequence that does not necessarily get picked up. Network Rail is banned from running commercial freight trains in competition with private providers. It would be anti-competitive, probably. It would not have to pay an access charge, with Government borrowing at preferential



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rates. For my members, that would be a big concern. I do not believe that the purpose of that clause change is for the IRB to do that. I do not think that they are sitting there, gung-ho, thinking, "Great. We can go and move some containers." What they want to have is a law that allows them to run the passenger trains, but the consequence of changing it is that.

If you go across all the changes that there are, there are lots of things that you could change that would have a consequence, but they do not get picked up. We intervened on some work on depot licensing, which would have ended up with Great British Railways running the port of Felixstowe, had it gone through in the way that was proposed. We need to be super scrupulous, particularly around things like the licence and the access and use policy, that we are not creating adverse or difficult scenarios for some parts of the sector.

Q72 Jack Brereton: I asked earlier about licences and whether it would be better to move to longer tenure. Is the view of the industry that it would be better to have longer licences that would give more certainty?

Maggie Simpson: Yes. The two things that perennially worry my members are access rights and track access charges. Both of those are described in the access and management regulations. The powers to amend, which sit in clause 8 of the draft Bill, give the Secretary of State a lifelong ability to change those regulations through secondary legislation. That makes us really nervous. If you look at situations like the fallout from HS2 or the east coast timetable, where people want to change the access rights that private businesses hold to deliver a different outcome, it is a real worry. If it makes it much easier for the IRB to change the access rights of private companies, that is a real concern. Our core nervousness about those powers to amend is that that risk then sits indefinitely with the private sector in a way that it doesn't today.

Chair: Grahame, do you want to come in?

Q73 Grahame Morris: May I go to Andy Bagnall first? I want to clarify a couple of things. Your organisation represents the private sector operators exclusively. Is that correct?

Andy Bagnall: Yes. We speak for the owning group—the parent companies for the train operators and the five biggest freight operators, all of which are in the private sector. We provide technical services across public and private train operators, but I am sitting here today representing the private sector exclusively.

Q74 Grahame Morris: From your website and your earlier evidence, it is clear that you are promoting greater involvement and development from the private sector in terms of the network.

Andy Bagnall: Yes. We have consistently called for an approach that is the best of both worlds. Since our original submission to the Williams review, we have been calling for a new public sector body. It is slightly



counterintuitive that the private sector is calling for that, but we think that there needs to be more coherence and a joined-up approach to the network as a whole. Within that, we must exploit the commercial expertise, innovation and investment of the private sector as operators.

- Q75 Grahame Morris:** That's interesting. I am just thinking about what is happening at the moment and the reason why we have this draft Bill, because of issues with fragmentation, private sector failure and so on. We have seven franchises that are being run in the public sector, three in the devolved nations and four in England. That is where we have the operator of last resort. Indeed, we had the operator of last resort, or its evidence, at the Committee last year. The Rail Minister at the time was actually full of praise. He said, "I am not focused or dogmatic about one particular system or the other. I am focused on the performance and the turnaround...It is interesting that the performance" of "every single one of their four operators has gone up...I am very grateful for what they are doing."

Back in August 2022, you said in evidence, "We believe legislation should...not contain new powers to issue direct awards to a public sector operator—we believe putting Passenger Service Contracts (PSCs) out to competition to the private sector will always deliver better value for money, whatever the circumstances."

Clearly, that is not true, is it? We have had special sessions of the Committee on Avanti's poor performance. The seven franchises that are being run by the public sector—the operator of last resort—have come about due to private sector failure. Why are you apparently afraid of competition with the public sector?

Andy Bagnall: There are a few points for me to respond to, if I may. First, I think that the private sector has delivered for passengers over time better than a public monopoly. You can point to the evidence that we set out in a quite extensive report last year. If you look at the British experience in the period from privatisation to just before the pandemic, we saw a doubling of passenger numbers, services increased by a third and half as many people again working in the industry. By any objective measure, this was a success story. I am not saying that the system was perfect, but certainly that was the private sector delivering.

We are seeing across Europe increasing use of competition for both contracts and open access operators. We see that again here on the east coast. That delivers good outcomes for passengers.

- Q76 Grahame Morris:** How do we measure improved performance? You mentioned the increase in passenger numbers. There are a number of factors, aren't there? There is value for money, cost and passenger satisfaction. I don't know whether we measure those through passenger service contracts or national rail contracts. I am not clear in my mind about whether those two things are different. You mentioned that the integrated rail board needs to have some key performance indicators by



which it can make a judgment about performance. I was a little perplexed when the panel were concerned that the Secretary of State should not have powers to intervene over non-strategic decisions. Is poor performance not a strategic criterion and a key performance indicator?

Andy Bagnall: If we are going to get the right solutions from rail reform, it is really important that we diagnose the problems correctly. If you look at the problems and challenges that the railway is facing, there is sometimes a trend to put the blame exclusively on the private sector operator. Actually, what we saw during the pandemic was that, in effect, the industry moved further into the public sector than it ever was under British Rail.

We have talked already in this session about micromanagement by the Department, in terms of the contractual model. We know that the pandemic had a huge impact on the finances of the railway. In turn, that has partly driven the industrial action that we are seeing, which impacts on performance. When you put that together and look at cancellations and delays across the network, you find that only 30% of them are the fault, if you like, of the operator. There are other factors that are driving some of those issues around performance.

We think that the right thing to do is to look at the challenges that the railway is facing, identify those correctly and try to address the weaknesses in the system, but also to carry through the strengths of the previous system into a reformed agenda and that—

Grahame Morris: Yes, but—

Andy Bagnall: Can I just finish that point? The private sector has a track record of delivering in Britain. It doubled passenger numbers. It transformed an operational deficit for the taxpayer, where the taxpayer was putting in nearly £1 billion a year at the point of privatisation, into a surplus that was being paid into the Treasury, about £4 billion in total in the 10 years in the run-up to the pandemic. That is why we were arguing that the private sector has an absolutely key role to play in the reformed system going forward, but under the Great British Railways governing mind, of course.

Q77 **Grahame Morris:** Yes, but your contention is that there isn't a role for the public sector. I do not want you to hog this, Andy, if you don't mind. I want to ask Steve Montgomery about how we can better compare performance and make the assessment. I am a bit concerned that we are not always comparing apples and apples. For example, Avanti West Coast has taken up a lot of this Committee's time and parliamentary time. It published data only for the last year. If we are going to make a comparison on performance, surely it would be sensible if all the train operating companies published two years' data, so that we can see whether there is an improvement or a trend. Bizarrely, West Midlands published only the absolute minimum, which, I believe, is three periods. Other train operating companies, such as East Midlands, Greater Anglia



and Great Western, are more helpful. They publish two years-worth of data. As I said, that allows a comparison over each year.

Could we reasonably ask that the train operating companies produce this data in a standardised form? It may support Andy Bagnall's argument that private train operators are far better than the public sector or operators of last resort, but it is very difficult for us to make an objective assessment of performance without data that is presented in a standard format. I have a suspicion that it is deliberately presented in different ways by different companies. Personally, I would like a commitment from you gentlemen who are in a position to influence your members, to provide that data in a form that we can understand.

Steve Montgomery: The data is provided. The ORR publishes data as well. We have recently published data on cancellations for 2023-24, which you may have seen. I cannot remember all the figures, but it shows the cancellation numbers for Northern Trains, LNER, CrossCountry and Avanti. They are published. The information is there.

Q78 **Grahame Morris:** Is it in a standardised format?

Steve Montgomery: Yes. The ORR has a standardised format. It brings out the data. Train operating companies put it on their websites.

Q79 **Grahame Morris:** Yes, they do, but they are all different.

Steve Montgomery: What part of it is different? I'm sorry, but I'm not quite clear.

Q80 **Grahame Morris:** In terms of—

Steve Montgomery: Under our NRCs, we are required to show certain metrics: right time, zero to three, zero to 15, and all cancellations—TOC and self-cancellations. That information is published. I would be surprised if it is not on everybody's company website.

Maggie Simpson: Steve, could you take an action to get the information to Mr Morris?

Steve Montgomery: Of course.

Grahame Morris: I don't just mean cancellations. I mean delays as well.

Chair: We are moving slightly off topic. Do we have any other questions on the Bill?

Grahame Morris: I just think that assessment of performance is a key issue when it comes to network access, extension of franchises and so on. I don't know whether we have the information in a format where we can make that comparison reasonably. I will be grateful if you can furnish it.

Chair: Jack, you have a quick supplementary.



Q81 Jack Brereton: We have talked a lot about the private sector, particularly with regard to operators, but we have not really talked about the infrastructure. At the moment, there is very little private investment going into the infrastructure in this country because of the reluctance and resistance that we see, particularly with Network Rail and some of the structures. I want to ask Andy, in particular, what more could be done. This is not the case in other countries. In other countries, we see more private investment going into infrastructure as well. What more could be done? Will these proposals allow for more private investment to be attracted into the infrastructure that we need to see as well?

Andy Bagnall: We certainly think that, in the same way as we were just discussing with Grahame, the private sector can add value in train operations, drive better outcomes for the customer and drive efficiencies for the taxpayer. Clearly, harnessing the private sector on the infrastructure side can again drive efficiencies and, in particular, bring in innovations. One thing that never quite lived up to its potential with Network Rail was the market-led proposals, as a way of driving further private sector involvement. Under a guiding mind, you could certainly resurrect schemes of that kind to try to involve the private sector more in infrastructure delivery.

Jacqueline Starr: Rail Delivery Group is working on a piece where we are looking at comparable operating models across four European countries and Japan. It is work in progress, but we will be very happy to share it with you once it is complete. That may go some way towards answering the question about different investment models.

Q82 Jack Brereton: We have seen in Japan that, in many cases, it is standard for a third of the investment in infrastructure to be from the private sector.

Jacqueline Starr: Yes. We will be very happy to share that with you once it is complete. It won't be long.

Maggie Simpson: One of the reasons why we are so repetitive, arguably, about the need to have certainty for investors is that a huge amount of inward investment is coming into the freight sector, not on to the core track, but in the terminals and the rolling stock. If you look at facilities like strategic rail freight interchanges, they are £1 billion investments. That is institutional investment coming in, often from America, Canada and elsewhere. For those businesses to bring their money to the UK, they need the certainty that the rail network is going to be there to deliver for them when they have made those investments. Having the right frameworks, having that certainty in place, is bringing private investment into the UK.

Q83 Chair: I would like to conclude the session with a few quick questions on the proposed role of the ORR. I think you were all present for the first panel. First, does any of you have concerns about the proposed changes to the ORR's competition duty and what that might mean for applications



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from both passenger and freight to progress? Steve, would you like to go first?

Steve Montgomery: Yes, we have concerns. We believe that, in the way in which it is stipulated in the Bill, the ORR's powers could be diluted. We think that we need a strong ORR to make sure that it is an independent body. In particular, if the IRB is going to look after the majority of the industry, how do you protect freight and open access, and everything else that sits outside that? We believe that the powers need to be kept for the ORR, and at a high enough level to ensure that it has independence and is able to act and challenge the IRB.

Q84 **Chair:** Maggie, do you share those concerns?

Maggie Simpson: I agree. We need stronger regulation, in fact. We should not be watering down powers. We should be strengthening them.

Q85 **Chair:** Andy?

Andy Bagnall: We have been consistently clear that we do not support that change. We thought that it was slightly disingenuous in the initial consultation to talk about widening the competition duty, the implication being that it is widening as strengthening. We very much see widening as diluting the competition duty. You heard John Larkinson say that they already have duties to consider a Secretary of State's funds. This is duplicative and will make it harder for future open access applications. Of course, the current Government have expressed a desire to see more open access. I agree with John Larkinson that this will make it harder.

Q86 **Chair:** Jacqueline, do you have anything to add?

Jacqueline Starr: Personally, I agree, but I must declare that it is not an area where we have sought input from our members.

Q87 **Chair:** I have a similar question on the proposed changes to the access duty. Is it the same point you have just alluded to, or is there anything additional?

Jacqueline Starr: It is the same for us.

Andy Bagnall: The key point is that we believe that to "have regard" reverses the normal relationship between the regulator and the regulated body. In effect, the regulated body is setting the access policy that the regulator will then have to have regard to. The key is what the access and use policy says. It is another missing piece of the jigsaw, and it is hard to know. Maggie touched on this in one of her answers. We have to assume the worst on some of these things until we get clarity on what the licence looks like, the target operating model for the sector and the access and use policy.

Q88 **Chair:** This is the last question on the ORR. We have touched on the removal of the Competition and Markets Authority as a route available to operators when they feel that they have been disadvantaged by unilateral



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changes made under the licence. Is that a concern for any of you?

Steve Montgomery: Yes. We would say that we believe that you should keep the CMA powers, or the ability to appeal against decisions. Watering that down would be a disadvantage.

Q89 **Chair:** Are there any additional points?

Andy Bagnall: I agree with that.

Q90 **Chair:** Thank you very much. That brings me to the end of our questions. As I did with the first panel, I will give each of you an opportunity to put on record any additional points that we have not covered in the session.

Steve Montgomery: Not for me.

Andy Bagnall: No.

Maggie Simpson: No.

Jacqueline Starr: No, thank you.

Chair: Lovely. Thank you all once again for your time this morning. It has been very helpful indeed.