HOUSE OF COMMONS

Transport Committee

Oral evidence: Scrutiny of the draft Rail Reform Bill, HC 584

Tuesday 14 May 2024

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Watch the meeting

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

Questions 173–207

Witnesses

I: Mick Lynch, General Secretary, RMT; and Mick Whelan, General Secretary, ASLEF.

Written evidence from witnesses:

– ASLEF

– RMT

Examination of witnesses

Witnesses: Mick Lynch and Mick Whelan.

Q173 **Chair:** Welcome to today's session of the Transport Select Committee. We continue our pre-legislative scrutiny of the draft Rail Reform Bill. Before we get into questions, I invite both of our witnesses to state their names and organisations for our records, please.

Mick Lynch: I am Mick Lynch. I am the General Secretary of the National Union of Rail, Maritime and Transport Workers.

Mick Whelan: Good afternoon, I am Mick Whelan. I am the General Secretary of the train drivers' union, ASLEF.

Q174 **Chair:** Thank you. We are grateful to both of you for your time this afternoon. I will start off with a fairly general question. You both represent the interests of a large proportion of the employees who operate and maintain the railway. Very briefly, do you think the provisions of the draft Bill will be welcomed by your members?

Mick Whelan: We welcome the wheels of steel coming back together. We think that is the first thing. We have seen that 23 years of privatisation and the fragmentation of the railway has led to less productivity, much duplication and different standards for workers across the whole industry. We have seen an awful lot of insourcing and an awful lot of problems that have led to periods of industrial strife. Overarchingly, we think anything that moves in the right direction is the right thing to do.

Mick Lynch: No, we don't really welcome it. From our point of view, it does not solve the major problems on the railway, the way it is structured or the fragmentation. It will not address the issues that have been causing the sustained industrial action. We think it is a bit of a rearrangement of the deckchairs on a vessel that is doomed, because privatisation is a failure and virtually everyone in the country recognises that. We have to move to a situation where we get rid of the privateers. This secures their position within the industry, to some extent, and we do not think that is appropriate.

Q175 **Chair:** Thank you. As you have alluded to, there is a spectrum of ambitions for the future of the rail industry. Our focus is primarily on the draft piece of legislation in front of us, and one of the areas of debate we are exploring is what has to be on the face of the Bill and what can come around the Bill. As one of our witnesses said the other week, this is part of a jigsaw of reform in the industry.

In terms of that balance, with this being a very narrowly defined Bill as opposed to having more detail fleshed out, where do your unions sit?

Mick Whelan: I agree with my colleague that, other than on the point of bringing the wheels of steel together, it does very little aspirationally to deal with the costs within the industry. It does nothing to deal with the green agenda extension of it or about how we would get the benefits of any synergies of coming together. What it does do is advocate that we will very much have the status quo while increasing open access within the industry. Without an increase in capacity, where are these open access trains going to come from and where are they going to run to and from? Whether they will replace the existing trains as an alternative is quite interesting for us.

When we look at the core costs of the industry, of course, we have seen that the profits of the rolling stock operators went up by 41% last year. There is nothing within the Bill that stops the industry, going forward, being a hostage to fortune to the leasing companies. Actually, much of it does enshrine their right to procure cheaper and keep maintaining the levels of cost to the industry, which we feel are untenable, which could have been dealt with under a different model.

Mick Whelan: We welcome the idea of an "integrated rail body", which we assume will be called Great British Railways—everybody is saying that—so we welcome that there will be a body that is the railway, to some extent. Saying "British Rail" is boo-hoo round here, but somebody will have to be accountable for operating the railway.

We fear that the Secretary of State will still be able to interfere. We would like a body that is truly independent but is accountable to this Parliament, in the sense that Parliament should set the ambitions, whether that is for rail operations itself, fares levels, integration or climate targets. That should be a Government ambition and then the body should get on with delivering that.

We do feel that it underpins and wires in again the prejudice against public sector operators. It will still be illegal, as far as we understand it, to have public sector rail operators in the sector. That is just an ideological attitude that is a fault with the Bill. It will say to the independent body, "You will have to promote private operation," and we think that the promotion of private interest, whether it is rolling stock, the operation of trains or subcontracting on the infrastructure, is one of the problems of fragmentation that we have all been trying to deal with for the last 30 years. Even though it has a narrow focus, it is focused in the wrong direction as far as we are concerned.

Q176 **Chair:** Thank you. My colleagues will want to probe some of those points further in a moment.

I would like to conclude my first round of questions with a further issue that we have picked up in the evidence. The legal entity vehicle for the IRB is the Network Rail body. Some witnesses have expressed concern that this means it will become Network Rail 2.0, whereas the point of the IRB is to have in mind not just the interests of the infrastructure but the operations as well. Are you comfortable with Network Rail Infrastructure becoming the legal entity that the IRB will become?

Mick Whelan: In the evidence we have submitted, no. We believe that you should not be the licensee and the guiding mind. We believe that is fraught with all sorts of dangers and will repeat the mistakes of the past. Looking at the Bill itself, when you look at accountability, we have to have an annual report on the growth of the private sector. We do not have an annual report on the growth of anything else.

We are already telling the guiding mind what the outputs and outcomes are going to be. Of course, there are other parts of the Bill that say the Minister of State can vary the needs or requests at 28 days' notice. We do not see any underpinning scrutiny of those requests, how they are developed or where there are any opinions of the stakeholders, whether it be the employees, the other stakeholders or anybody else, in those decisions.

Q177 **Chair:** Forgive me, these are important points which we will cover, but I was trying to get to using "Network Rail Infrastructure Limited" as the legal entity of the IRB for the purposes of TUPE-ing staff over. Is that a concern of yours?

Mick Whelan: It is a concern, yes.

Mick Lynch: We do not think it is optimal. Network Rail has enough to do. There should be somebody in charge of the infrastructure in the new railway. I do not think that Network Rail should be imperialistic. They should be subject to the independent body, as should the people operating the passenger service and the people operating the freight section of the railway, which is often forgotten in all these discussions. Those entities should be one operation and one entity, which will be a new entity and not a derivative of an old structure.

Q178 **Fabian Hamilton:** Mick Lynch, to an extent you have already answered part of my question, which was going to be: is it important that the IRB, once established, operates independent of Government? Can you tell us why you think it needs to be independent?

Mick Lynch: We have just been through it. We have had a succession of Transport Ministers who have not been very interested in the job, to be honest, although, to be fair, the current one is more interested. We do not agree, but he has stuck at it at least, and so has the Rail Minister.

I believe that there should be an accountable board and body that is running the railway. I think that is what the public want. They want to know, "This is the top railway person, and these are the people with the sub-responsibilities for infrastructure, passenger, freight, et cetera"—whatever we need. That person should be the public face, accountable for it, the same as many other public bodies have. There is somebody responsible for the BBC; they come in here regularly, and they are accountable for what they do. There are lots of other structures there.

The Secretary of State should be placing demands on that body. We will work out how that is. They should then be giving their reports to

Parliament on what they have achieved. That should be part of the process, but they should be allowed to get on with the business and the actuality of running the railway, and accountable for what they have done with their business, corporation or whatever we end up calling it. I think that is a genuine division of responsibility, but with proper accountability: "This is what I do, and this is what I am responsible for. That is what you do. You have the justified right to make those demands on my corporation and on me, as the chair, chief exec or whatever it is." I think that is a good division of responsibility.

Q179 **Fabian Hamilton:** Do you agree with that, Mick Whelan?

Mick Whelan: Yes, very much so. I think we have given evidence before about how we believe that there should be a 30-year plan and a guiding mind. People should be measured against that guiding plan. If you are the guiding mind with the vision—i.e. you are altering the vision to the circumstances within which you are working—I do not think that is objective. It does not then allow you to make the financial demands or the changes that you might require on delivery of that plan.

Mick Lynch: Just to follow up, we think this Bill has too much interference from the Secretary of State. They will create the passenger franchises—the DfT will do that; the Secretary of State will have direct intervention—but then this new body will have to take up the design that has been given to them and imposed on them. That is where a division should be. With the greatest respect, a politician should not be saying, "I want the passenger service in this area, on this route or"—importantly—"in that nation to look exactly like this, and I am going to impose that on the body." That should be for the railway to work out in consultation with passenger groups, the environmentalists or whoever we need to talk to.

Q180 **Fabian Hamilton:** How do we find the right balance for the accountability between elected representatives having oversight of the IRB, as we have said, while maintaining its operational independence? How would you reflect this in the legislation being put forward? Furthermore—perhaps you could both give us your view on this, although I think I can probably predict what it is—should there be representatives of the workforce on the Integrated Rail Body?

Mick Whelan: As long as it is not us two.

Fabian Hamilton: We thought of you first.

Mick Whelan: Quite honestly, we believe there should be representatives of all stakeholders, even from the supply chain to everybody else, in what we do in the future. What we have seen recently, particularly in the decision on HS2 and the change of the guiding mind as to what should have been arbitrarily—once you have made a plan, stick by it—is that it does not just affect the employees within the sector. It affects the supply chains, it affects apprenticeships—it affects so many other areas. Anybody impacted by a decision should have the opportunity to question or scrutinise that decision. Ultimately, you need the autonomy of that decision maker not to be challenged, either through the Ministry, the Secretary of State or elsewhere.

Of course, if you look at this document, it is very much about enshrining the current model without the accountability of a farebox or performance at this moment in time that we have had in the past. How much is this Bill about keeping the status quo in a different way, and how much is it really about having a railway that is fit for the future?

Mick Lynch: On worker representation, from our point of view we have that in ScotRail, but we do not do that ourselves. I do not think it is appropriate for a trade union to do it directly. We give that to the General Secretary of the TUC, between the unions. That is the kind of worker representation that we have. We would not want one of our reps up there in the boardroom getting involved in these kinds of arguments. There should be a voice, but there should also be a voice for the passengers. We think that Transport Focus needs to be recast to make it more democratic. The taxpayer might have a say, but you might say that is what the politicians are here for—I don't know.

I think you can have a good system. The Secretary of State has to be accountable for the whole thing. If the Secretary of State for Transport has carbon emission responsibilities, they have to say to you, as politicians, what they have done through the target setting and accountability of the railway to achieve that. It is the same with road and aviation policy, and all the rest of it. It has to be coherent. The railway structure has to be coherent with an integrated transport policy, which ultimately the Secretary of State is responsible for and should account to you as a body to say, "These are the targets; this is what I have given to all of these transport sectors; and this is how we have got on according to the timescale and the plan." That is where the democracy and the accountability come from.

Q181 **Chair:** I want to ask a supplementary question on that. Where do you think the boundaries should lie for the ability of a Secretary of State to intervene?

Let me give you a hypothetical example. My constituency is on the west coast main line. A choice may need to be made between increasing the number of commuter services on that section of the line as opposed to having non-stop intercity services. There will be lobbying from MPs, councils and so on, on both sides of the argument.

Is that an issue on which you think the Secretary of State should have an ability to intervene, or should that be left entirely to the IRB?

Mick Whelan: I think it should be left entirely to the IRB. What is unclear from this Bill, where it talks about co-ordinated growth, is how that will work. When we talk about co-ordinated growth, we are not just talking about commuter traffic and the intercity traffic, particularly on the west coast. We now have the problem of not having enough capacity on the west coast for the existing freight traffic. The decisions about co-ordination have to lie with this body to get the best balance.

The real problem is that nothing within this increases capacity or gives the opportunity to increase capacity. We are very much going to be working within the constraints of the railway system that we currently have.

Chair: I appreciate that, but—

Mick Whelan: It should be a decision, if you are talking about co-ordinated growth, across the three sectors.

Q182 **Chair:** Do you share that view, Mr Lynch?

Mick Lynch: Yes. I think the politicians would be best served by not getting tarnished by too much lobbying. Of course, it is still a democracy. You do have the right to have your opinion, like everyone else, and I would not want to stop that. What we need is a robust consultation process. Many people suspect, in all sorts of walks of life, that consultation is not meaningful. That did not turn out to be true on the stations campaign that we ran last year. That was a very pleasing outcome for us, and we did get listened to.

In the situations that you are talking about—the reform of running times or services—it has to be a meaningful consultation. The legislation has to set that up as a really robust part of how GBR, or whatever it is going to be called, is accountable to the people that they serve. That needs to be hardwired into any legislation and not just superficial.

Q183 **Paul Howell:** Something was mentioned a few seconds ago on the franchise model. I want to talk about the specifics of that. My understanding is that you are opposed to the franchise model itself. Given that it is likely to happen, what would you like to see changed on the face of the Bill in how the IRB will actually exercise the franchising powers? I will start with you, Mr Whelan.

Mick Whelan: Thank you very much. If you look at the plan for rail, it talks about having less fragmentation. If you look at the Bill, it actually opens the door to more fragmentation. In an intra-operable railway, surely the less interactions you have and the more intra-operable you are, the better it is. Also, the more intra-operable you are, then the better value you get for cost, because the fewer changes you have and the fewer crew you have, together with all the other things that come with the duplication of what we currently do. I see nothing in the Bill that reduces costs.

As I said earlier, we have to give a report every 12 months on how many more private sector opportunities we have had, but we do not have the same thing for the public sector, the growth of freight or other models—maybe concession models—because we still have those within the system as well.

Mick Lynch: It is difficult for me to say what you should do to make it more palatable, because I don't like it. The best way to do it is to have a General Election, put both versions to the public and see which one they prefer. That is the democratic solution.

One suggestion we would make is the prohibition of the public sector operator, because you already have them. The model is so broken that we have had to take five under the operator of last resort. We have two ScotRail franchises that are in public ownership and one in Wales. Most people across the spectrum would say that they are working better and that people are more satisfied with those operators. I do not understand why this legislation would say we must run a public sector operator. If you were going to compare the west coast with the east coast—very direct, and you might want to do one with a regional railway—to see which is best, why would you prohibit that in the legislation? That is a suggestion I would make on the terms in there. I do not understand that provision and why you cannot do it at all.

Q184 **Paul Howell:** My Lynch, I think you also said that the IRB would only theoretically be in charge of contracts and that, effectively, the Secretary of State would remain in day-to-day control. How would you change the Bill to deal with that?

Mick Lynch: If you are going to leave the IRB to commission, whether they are passenger service contracts, concessions or direct awards—that is not clear to us, and maybe it will be a mixture—then I think it should be the railway people, the industry leaders and the industry experts who should commission those services so that they fit with everything else that they are doing. There is a danger that you say, "This contract is going to operate like this," but there is another one over there that is going to operate in a different way. There have been problems and legal challenges, even from the private sector operators, during privatisation that the awards are changing. There was an issue with Stagecoach, when they bid for the west coast. It was quite technical.

I think it should be down to the railway to decide how those commissioning activities are done, not a politician. I think that is the worst of both worlds. That is not a dig at a party, because is this is going to be in for 30 years, you will have all that lobbying of "What's this contract going to be like?" directly via bodies like this, and directly to individual MPs, Ministers and all the rest of it. I don't think that is appropriate.

Paul Howell: Do you want to add anything to that, Mr Whelan?

Mick Whelan: That is quite right. If there is going to be an independent body, it has to be an independent body which has the authority to do it. How often that gets reviewed and how those outputs get tested is the real debate. Is the guiding mind working? Do we need to change the guiding mind? Do we need a change of emphasis? You have to at least allow it. Traditionally, we go from Parliament to Parliament in our decisions. Quite obviously, that does not work for major infrastructure. It does not work for the security of the industry. We now find, after a major pandemic, that we have to very much change the way in which we are looking at our industry.

Q185 **Paul Howell:** This is on a slightly different but linked subject, in terms of franchising as a whole. I am a north-east politician and we have a new north-east Mayor who is talking about franchising the bus systems. Is there anything different in the way that buses are being franchised compared to the trains? Can one learn from the other, or are you against franchising in both models anyway?

Mick Whelan: We know that the deregulation of buses took a million bus journeys out of the transport system, which directly impacted on getting the growth footfall back on the railway system. Unfortunately for us, train stations do not move. They are in either the centre of town or the centre of town. The data tells us that if people start their journeys on public transport they finish them on public transport. I am not a fan of franchising in any transport.

What we should be looking at, and what we have never managed to do in the last two-and-a-half decades, is this. Most of the train operating companies have been run by bus companies, yet we have failed to build any form of integrated transport into places where buses meet trains and encourage people to grow in that sector and grow the footfall in the way we should.

Mick Lynch: Of course, the Bus Act, which this Government put through, deliberately made municipal ownership of bus companies illegal, because it was just ideological. In somewhere like the north-east, in the election that I was observing, a lot of people were saying, "We need a total transport network or an integrated network to revive the economy." I believe the best way to do that would be through direct control, but as an alternative they have to say franchising, which at least allows you to do more specifications. It is happening in London and other places, but I think that most Mayors and the authorities would want direct control and operation of bus companies. It is not all of them; it depends on their views.

Paul Howell: I do not disagree that something needs to improve in the buses in the north-east. Whether that is the right method or not is a different thing.

Q186 **Sara Britcliffe:** Mr Lynch, in your written submission to the Committee you stated concern about Transport Focus's ability to be able to represent passengers. Can you expand on that, if possible, please?

Mick Lynch: Most people would say that it is an independent body and it is the passengers' voice. I am not having a go at the people. The people are very fine and experienced advocates for public transport and for the passenger, but it is not democratic. If the funding is coming in the way it is coming, and is set up with a remit, its powers are too circumscribed. In the recent stations campaign, it could not really give voice to what people were saying. It had to almost passively take all these lobbying activities, which included my union and lots of stuff, and passively sit there and wait until it was all concluded, rather than getting involved as a voice of the user and the communities. I think that has to change.

They have to have a more robust remit, one that allows them to be more intelligent and interventionist, in the way that you would expect an advocate of the passenger to be. Maybe it has a wider voice than that. If there is going to be a climate aspect to that and what communities think about public transport, it has to be differently exercised. What they can do is too prescribed. It is too passive. It is described as a non-departmental public body sponsored by the DfT. I think most people would say, "What does that mean? Is it our voice, or is it something that is put up by the DfT?"

I think it has to be a bit more usable for the everyday punter, user and community. You may not always use the railway—it is not all commuters. Commuters often get a strong voice, but there are lots of other people who use railways and buses seasonally and intermittently. They have to have a voice as well. Some of those things are designed traditionally as the voice of the commuter, and it is not always the way that it should be.

Q187 **Sara Britcliffe:** What would you want to see on the face of the Bill so that Transport Focus can better represent the people using the railway system?

Mick Lynch: A democratic structure, where people are elected, or at least put there by passengers, so that they are real advocates for what is going on. There are loads of community groups out there; we found an awful lot of them in the ticket office campaign. There are people who are really interested in transport and its interplay with all sorts of social activities. They have to have a means of getting there.

If you want to be the head of Transport Focus now, you are likely to be an industry insider. Again, I am not denigrating those people in any way. It is just the way it works. You probably have to be one of those to work out how these mechanisms work, whereas what is portrayed to the public is that it is some kind of public, democratic body. There has to be some form of democracy, but with a mixture of professionalism as well. You do need people who know what they are doing about this, but there has to be some democracy hardwired into it.

Sara Britcliffe: Do you have anything to add, Mr Whelan?

Mick Whelan: Recent experience showed us that the voice of disabled passengers very much got lost. They came to the fore in the ticket office dispute. If you look back through recent annual Transport Focus reports, they mention it but not to the extent of how much of a problem it is. They did not even have the right to scrutinise the outputs or the figures of the various operating companies in relation to claims of how many passenger journeys they were doing. More recently, we have seen an allegation that some of those companies have been falsifying their figures. How good can the scrutiny be if people do not have the independent authority to test what they are being told?

Q188 **Grahame Morris:** Good afternoon, gentlemen. I was just thinking about some of the other major restructures we have had and whether there are any lessons to be drawn from them. I was thinking back to 2012 when we had the Health and Social Care Bill. Simon Burns was the Minister at the time. He introduced something called the NHS mandate. I do not know what involvement other stakeholders had in determining the mandate, but that was supposed to be the mechanism. Do you see any analogy with what is happening here with the Integrated Rail Board and their business plan? Would you have any involvement in setting the priorities or the yardsticks to judge performance?

Mick Whelan: We get the opportunity now to sit in various quangos and look at some of the industry figures that come out, question them, see how they are delivered and what is done. We get a slight opportunity via the ORR to sit down and look at the control periods for Network Rail, what they are and are not doing, and what they have not achieved in previous control periods. I do not see anything in this Bill that gives us any degree of opportunity to scrutinise or comment at all.

Mick Lynch: It is a peculiarity since privatisation. There is no "the railway". The British public think that "the railway" is still there. There is no industry-wide forum where Mick, me and others go and meet the bigwigs—the top people. The only time we do get to do that is at the railway pension scheme because it is the last thing, with the 104 sections.

It is a really weird situation. The Bill does not correct this. You would think that there would be an industry forum every year, with some kind of conference and dialogue at roundtables, but there is not. It is really weird. We have to arrange these things, sometimes illicitly, to go and speak to chief execs, because there is no structure in our railway.

The best voice we have are meetings like this, where we get to say, "This is how we would like the railway to run." You may not agree with us, but at least some people have heard what we've got to say. We have to go and arrange to have a pint with people every now and again to say, "Don't you think the railway should operate like this?" It is a very peculiar situation that we do not set down that there should be an industry forum.

Maybe people do not want national bargaining, but there is not even national consultation or a national forum. It is really strange. As my colleague was saying, the public do not get that either. The public cannot go to a biannual meeting, a conference on rail, and say, "This is what it is all about. What are the communities to do? What are villages supposed to do to get their input heard?" It just does not exist, which is peculiar in my opinion.

Q189 **Grahame Morris:** Earlier on, when we started the pre-legislative scrutiny, Ministers were telling us that the purpose of this is to end fragmentation between track and train operating companies, to reduce costs and to improve performance. Is it not odd that the workforce is not represented at the top table? I know that both of you have strong views about the costs associated with the ROSCOs, for example, and how we might look at organising things in a different way that secures a steady stream of work in the supply chain and provides better value for money for taxpayers.

Mick Whelan: There are also more logistical aspects of this, if I may say so. We forever see the Network Rail regions or areas, whether they have been cast by route or other means, keep changing. None of that marries up to the railways and the areas over which they are operating. Sometimes we struggle to see how these alleged synergies are going to happen which will give these cost savings.

If the guiding mind is going to continue to have the current framework, and regional directors are looking after elements where there may be crossover from the various operators or sections of the railway, whether it be freight or whatever, how then does that work? The only time that we have ever seen anything on performance rather than cost work is when they have had joint controls between certain operators and Network Rail. It was trialled on ScotRail and South Western in the past, but how does any of this translate into getting better savings for the industry? If you can have a multitude of new privateers and more fragmentation as a possible consequence of this Bill, how does that then give you a cost saving, having the guiding mind? I don't see it. I wish someone could explain it to me.

Q190 **Grahame Morris:** I will ask you about one more thing, Mr Whelan, which you raise in the evidence. It is in relation to the IRB being required to produce an annual report about increasing private sector rail involvement in the railway. You say in your evidence that that is a contradiction to the plan for rail. Can you tell us a little more about why you think it is a contradiction?

Mick Whelan: We see that more as a political or an ideological point. As has been discussed before, if we are not going to look at the transparency, how we measure the outputs and what is being done, but we are very much going to measure the success of the future railway against how many more private open access companies we can get into the railway, we see that the plan for rail is being subverted by the actual Bill itself.

Q191 **Grahame Morris:** Can it be amended to better reflect our desire to improve services and deliver the improvements that we want to see, without scrapping it entirely?

Mick Whelan: Again, I think you have mentioned my preference. The difficulty with this is that we are very much assuming that everything that is translates over and that we will bolt on what happens in the future. I see nothing in the existing control periods that allows for the further fragmentation and what we will do or how it will operate.

If you were to look at open access, where we both have members, the issue is that open access is bespoke. You go Hull to London; you go Hartlepool to London; you go to where the new Sterling to London service will be introduced. You are not actually looking for volume for mass transit, which is what gives you those economies and possibly the opportunity to reduce fares or cross-subsidise. I see nothing in that area that promotes that.

Mick Lynch: Which is why the Elizabeth Line has been so successful. It is integrated with the rest of London transport, physically and operationally.

You were putting the fragmentation point, Grahame. It is not just fragmentation on rail. We have had fragmentation with rolling stock, procurement and manufacturing. All this year we have had crises at Derby and Newton Aycliffe. The new Spanish manufacturers, Talgo and CAF, will have their problems. We do not have a single entity or guiding mind that actually has a plan. As Mick said, maybe 30 years would be great, but we do not seem to have a plan to the end of this year.

We asked Siemans, Hitachi, Talgo and CAF to come over and invest. They seem to be keen. We have one in south Wales and some in the north of England. Talgo were looking to go into the east of Scotland, which would have been great because you get every nation involved. They must be sitting there thinking, "Why would I want to go there? They can't even work out how the railway will be operated, who will own it or what the plan is."

Every manufacturer will say, "I need to keep this unit open. It has to have a steady flow of work." Every businessperson will tell you that. "I can't invest if I'm not going to get any return." Then, of course, we have this strange model where we put ROSCOs in between and say, "Let's give you all of our money, and then you go off and find these manufacturers." Well, they are in Newton Aycliffe. They are up in Derby. There is one in south Wales. We were going to get one in Scotland. Why can't we just talk to them and get the best deal we can? Surely, that is the railway we want. We just keep putting lawyers, accountants and offshore tax havens in the way of reviving manufacturing and reviving our railway. This Bill will do nothing about that at all. It is inadequate in that sense.

Mick Whelan: Also, Chair, there is nothing within the Bill that talks about social impacts. We are still one of the few countries that does not look at our supply chains. If you go to Germany, you see German trains. If you go to Italy, you see Italian trains. It is not because they are being xenophobic. It is because, before they award a Government contract, they look at their supply chains, future apprenticeships and all the things associated with those contracts and the damage it does. I see nothing within this Bill that drives us, particularly in rail procurement either for infrastructure or for trains, to take that into consideration.

Q192 **Gavin Newlands:** I will just pick up the last point that Mr Whelan mentioned on social impact. Clearly, we also see that situation in the bus manufacturing sector, which may or may not come up on Thursday at Transport Questions.

While we are on ROSCOs—and we will be discussing ROSCOs in more detail in the next panel—I think your evidence thus far has been fairly clear in terms of what you think about ROSCOs. Could you elaborate and tell me what your view is? Clearly to your point earlier, Mr Lynch, we have plans for the future of rail, certainly south of the border, but both still make room for ROSCOs. What are your thoughts on that? I will start with you, Mr Whelan.

Mick Whelan: The real problem here is that you can only procure from the specialist operators that are out there. I would hope, sometime in the future, that if we procure trains and pay for them, they will stay in the public purse. We could possibly use Merseyrail as a model, where they have bought their own trains. It is the longevity of future trains that give you back the value to the public purse. You buy the trains and, as I understand from some of the figures, after seven years you have paid back what you have invested, and for the next 50 they are yours and you get the returns on them. Surely, that should be more weighted to the people who are paying for those trains initially and using them. It has to be a better way of doing it. What we should be enshrining here is that we will use what is there.

Mick Lynch: I think there is no space for ROSCOs. I do not think they need to exist. They are undesirable, and I think they are an obstacle to the development of the railway. They are only there because of the ideology of privatisation and franchising.

If you take Eurostar, which is a private business technically, they went direct to Siemens and bought their trains. They got a good deal, and they are a major asset to that company. Without giving away too much of their business, during the trough of covid, when they had no passengers and were not allowed passengers, the fact that they owned their trains saved that business.

That did not affect any of the train operating companies. It did not affect the ROSCOs. They got paid every single penny that they were due as dividend and as profit, whereas a company like Eurostar had to survive on its own merits. I just do not understand why ROSCOs are even contemplated as a part of our railway.

Q193 **Grahame Morris:** As a percentage of operating costs this year compared to last year, how much are leasing charges?

Mick Lynch: I think they have gone up by 40%—there has been a 40% increase—but we can get you an answer.

Mick Whelan: The charges may not have gone up by 40%. We do not want to mislead you. The profits have gone up by 40%, but I do not believe that the charges have gone down.

Chair: Gavin wants to come in. We will come back to you, Grahame.

Q194 **Gavin Newlands:** You can redirect the witness after this question, Grahame. Labour's plan for rail is certainly a lot closer to the Scottish Government's and the SNP's plans for rail, but do you have any idea why Labour have continued with ROSCOs in their plan?

Mick Whelan: Yes, unfortunately. The model being proposed under the other GBR is taking the railway back at zero cost. Unfortunately, the one part of it that you could not take back at zero cost were the ROSCOs because of, first, the litigation and, secondly, the high cost.

Mick Lynch: And a barrage of lawyers. You would have to pay them out at full cost. That is the great design of the privatised railway. You can't even get out of it if it is undesirable. That is what we have been burdened with.

Q195 **Gavin Newlands:** We know how big a fan you are of lawyers, Mr Lynch. You also have issues in terms of the Luxembourg protocol and how that might apply. With the current arrangements, with ROSCOs in place, if we look ahead and ROSCOs were not part of the picture, the Luxembourg protocol was signed and we were to use your ideas and procure cheaper rolling stock for the public purse, would that not be welcome?

Mick Whelan: Of course it would be welcome. The biggest problem of the last two decades has been that we have targeted most of our investment where the highest footfall is—in and around the south-east. Then we targeted most of the new trains in and around the south-east. We have actually created a cast-off situation. Every time a new train is sent to the south-east, we cascade trains to elsewhere. Generally, we have other parts of the country that are grateful for things that are already 20 years old. I think we need a more arching, global strategy for one traction and possibly, in some future, an electrified railway where everybody has the same standard of train, and you vary the train for the needs of the commuters by length rather than by design.

I understand the need for competition, but there is no reason why you cannot have two, or even a public operator, producing the same train. The fact that we have this multitude of different trains has probably been very good for my members because they have to keep learning new traction, new bits and pieces and are being paid for it, but at the end of the day it is not the best way to run a railway.

Mick Lynch: With respect, we would not mind an integrated industrial policy and an economic policy where you say, "What's the best advice for the people?" We used to make all of our trains. British Rail Engineering made every single train and every wagon and coach on the railway. That meant places like Glasgow, Doncaster and Crewe had a lifetime of work.

We deliberately closed it down, and now we have to ask foreign overseas manufacturers to do us a favour and come here and bring some jobs. It has all gone completely pear-shaped.

We could start with removing ROSCOs. Even if you favour private manufacturers—and to be fair, they have to compete and make a decent product—why don't we just ask them to do it? Then we could, maybe, sort some of these problems out.

Q196 **Gavin Newlands:** I look forward to the evidence of the next panel on the back of this.

Very quickly, on minimum service levels, do you think there is a danger that they might be applied, presumably by GBR, rather than, as they would be or might be in the current situation, by individual operators once a new body comes in? Obviously, ScotRail and others have said that they would not do so.

Mick Whelan: We have views, and we have made representations to all the safety bodies jointly and separately about minimum service levels. Nobody has been able to tell us how they could be operated safely. That is one of the major factors within it.

With the way the legislation is currently written, one operator came to me and said that it would take 90% of staff to run a 40% service and then there would be no service the next day. Forced labour of any kind is a stain on the character of this democracy and this country. It is wrong. That is a personal opinion. No one has to agree with me.

Q197 **Chair:** I do not want to get into a debate on minimum service levels.

Mick Whelan: Look, if the integrated operator felt they could do it safely, we would have to comply with the legislation.

Q198 **Gavin Newlands:** There is a danger that the IRB could apply that across the network rather than allow it for operators. Is that your understanding of the situation?

Mick Whelan: What you are then saying is that you would have a national strike across the network all the time rather than a localised strike on occasion with a private operator. That is an interesting concept for us.

Mick Lynch: It is possible, but we have not had a dispute with Network Rail yet. Both unions have had disputes with train operating companies and there has been no hint that they are going to do it. Some of the operators told this body that it would not work, but we will have to see with Network Rail. Theoretically, it could be imposed on us, but we would see how we would refuse to comply.

Q199 **Gavin Newlands:** I have taken us down a siding, Chair—other puns are available—but this is my last question on the new role and function of the ORR following the implementation of GBR. In fact, I am struck by the

RMT submission, which says, “This is likely to see the ORR pulled between granting open access in the name of a ‘chimerical’ competition and operating to defend the interests of the handful of monopolistic companies functioning as rentier capitalists on Britain’s passenger services.” That is possibly one of the best sentences I have seen in evidence sent to this Committee. Mr Lynch, why might the ORR find it difficult to exercise its competition duty?

Mick Lynch: I just think it is a confused body now, and it will be even more confused if there is a national railway and the ORR is still promoting licences for independent private sector operation. The thrust of nearly everyone of all persuasions is that we need an integrated and, to a certain extent, planned railway that is working for everyone. Then, you just throw in another body, the ORR, and say, “Well, I’m going to give a licence to this niche operator”—I do not want to use the word “parasite”—"who will operate on the back of what everyone else is doing to integrate, drive down costs, get efficiency and keep people happier.” We are then just going to open up this other, separate railway. If you did that on the tube, every fifth train is going to be a private sector operator. You would say, “What we wanted was a train every two minutes.” I do not know why you would want to throw that into the national railway. What you want is a railway that works for people, where we understand the pricing and we understand who is accountable for delivery.

They have this other role. They are meant to be the safety inspector, but they award the contracts to the employers and they promote competition. I think they should get on with being an inspectorate for safety, looking at regulation where it is appropriate and pressing the entity, which will be GBR, as an inspectorate but also as an ombudsman or with whatever powers they are given. I do not know; it is not at the top of our minds.

I just know that you cannot bleed powers off to another body and expect the first body to be accountable. The worst thing in this Bill is that the Secretary of State is also interfering. The Secretary of State can go over to the ORR and say, “I want you to push the new railway body that way. I can do it myself and poke them in the ribs this way.” They are thinking, “We were told that we have to get on with running the railway. Now I have got all these other interventions.” I just do not understand it. If they are an inspectorate, they are an inspectorate and they should be given the powers to do that job.

Q200 **Gavin Newlands:** I will ask the same question of Mr Whelan. How would they exercise that competition, giving due regard to the caution to look after the taxpayer, which seems to create a slight conflict?

Mick Whelan: The ORR has always been the one that looks at Network Rail in relation to how they spend their money, what budget they get and whatever else. We do not disagree with that oversight. We sometimes disagree with some of the conclusions, but there has to be oversight. That is not a problem for us.

The independent regulator cannot give preferential treatment to other bodies to fulfil a role within this Bill, and say, "To the detriment of existing contractors, I'm now going to give this to somebody else because I have to fulfil a requirement within the statute." That is not a level playing field. That is inherently unfair. As the safety body, does that also import some sort of unconsidered risk? I think it is wrong.

Gavin Newlands: Thank you.

Q201 **Jack Brereton:** I wanted to ask a little more about private involvement. As a Committee, in other countries we have seen much greater private investment going into not just running services but the infrastructure. In Japan, for example, often a third of the investment in infrastructure is from the private sector. There is less of a dependency on taxpayer money going in to pay for those costs. Obviously, the rail sector has to compete with schools, hospitals, the police and everything else.

With the changes proposed, with Great British Railways and everything else, how do you see that we could attract more investment from the private sector into rail in this country? Mr Whelan, perhaps you could start.

Mick Whelan: Our experience is that the three tenets that John Major put forward never happened. Privatisation was going to drive competition. We know that did not happen. Privatisation was going to drive investment. We know that did not happen. Privatisation was going to drive innovation. There is nothing in this Bill that encourages anybody to build one inch of track. There is nothing in this Bill, because of the short-termism of the way open access works where you get a 10 or 15-year contract, that would encourage you to build a train. You would lease, buy or get them from some other party. There is nothing I see within this Bill that encourages private investment.

For years the whole model has been that, other than Chiltern in the early days—I do not want to mislead anybody—we have had no private investment in our railways for the last 23 years. It has all come centrally. Again, this will only encourage privateers to come into an already set-up infrastructure to see if they can run trains within it. There is nothing in here that will drive the investment that you would like to see.

Q202 **Jack Brereton:** How has that been possible in other countries? Not just in Japan, but in parts of Europe we are seeing an increasing involvement of the private sector. How has it happened in those countries but it has not happened here?

Mick Whelan: Because the only line that we have had built is HS1, which the last time I looked is owned by a Canadian teachers' pension fund. Once that was done and dusted, we did everything we could, including taking out a link from HS2 into HS1, to deter anyone from building any further railways for that connectivity.

We do not have the geographical space they have in other countries, where we have the room to build railways at a reasonable cost. It is not attractive to come in and build a new line anywhere or to put another line in place. We do not have the skillsets in the UK or the supply chains to do it either. Elsewhere, it is done because it can be done on a relatively economic basis, getting a return that pays for the initial investment. In the UK we cannot do that.

Mick Lynch: In Japan, I am told that much of the capital comes because of property development associated with track enhancement. The developers get a real bang for their buck out of that. If they want to make a shopping centre or a housing development, they build a railway to go with it or refurbish the railway. I do not know if that is completely true. You may have more facts.

We have had private sector involvement. It was under a Labour Government, ironically. HS1 was meant to be built by a private operator—London and Continental Railways. It went bankrupt and had to be rescued. We built it for £7 billion of public sector money because the private sector failed. Mr Cameron sold it, because he is such an astute businessman, for £900 million, so he lost £6.1 billion on that. We had to rescue Tube Lines and Metronet, who came on to the tube. That was another Labour Government initiative. Ken Livingstone had to take all that back in-house.

Where we have had private sector operation, they have proved to be completely inept. They do not want to invest. They want to milk the railway and milk the taxpayer. That is exactly what ROSCOs do and what all of the train operating companies have done, whenever they have been asked to repay some of their franchise money. It is what FirstGroup did on Great Western. They threw the keys back and said, "We'll never pay a penny back to the taxpayer." We were told that this would happen through privatisation, but the lesson has been that, as soon as it has to come out of their pocket and they have to put capital up front, they refuse to do it. I do not think they have ever invested any capital. They have never built a train. They have never built a station. They do not even pay for the uniforms on the backs of the staff. They get that from the franchise arrangements. That is the failure that you are describing with private sector involvement.

Q203 **Jack Brereton:** A minute ago you described open access as parasitic, which, to be honest, I think is pretty distasteful—

Mick Lynch: Why? Why is it distasteful?

Jack Brereton: If you let me ask the question, what we have seen is that, actually, open access operators have seen both passenger numbers and revenues return quicker than the rest of the system since the pandemic. How would you reflect on that—

Mick Lynch: But they are not paying the true cost of their operations. They are not paying the true cost of operating the infrastructure. They are not paying the true cost of operating the stations. They are not paying for the signallers. It is ideological.

Q204 **Jack Brereton:** People are voting with their feet. Passenger numbers and revenue numbers have returned quicker since the pandemic, so surely passengers—

Mick Lynch: They are new starts. I am not saying that they do not have a good business model, but in effect it is a cross-subsidised business model. If they had had to pay the full costs of their start-ups compared to everyone else, that business model would not operate. Why don't they just go out and build railways then and operate them from the start? They don't do it, do they?

Q205 **Jack Brereton:** I agree with you that there should be a level playing field; but the reality is that we are seeing people increasingly use those services. How does that—

Mick Lynch: Maybe that is because of the model that the rest of the railway has been hobbled with, because of the privatisation model. If we had a properly integrated railway, we would not need open access operators because we would have an efficient fares system that delivered for all of the communities.

Q206 **Jack Brereton:** Do you not think there should be choice, not just in terms of—

Mick Lynch: People have always had choice. You can get the express train or the slower train. That is pretty much what the model is with open access operators. They get certain preferential arrangements and paths. They bid for those paths, which are often preferential to the one that the traditional operator is running.

Mick Whelan: I think I said in my earlier contribution that most open access is a bit niche. They have a captive audience from a certain location and the main line railways tend not to run any more trains there because they have the operators. There is less choice now. You either go by Grand Central, by Hull Trains or another, or you wait two hours for a train. Part of the reason it came back was because of a lack of opportunity and a lack of the choice that you describe.

Chair: Sara has a very quick supplementary.

Q207 **Sara Britcliffe:** I want to dig a bit more into Jack's point, very briefly. He was asking what, if anything, could be put on the face of this Bill to attract private investment. Is there anything you can think of that could be incorporated into the Bill that would attract it?

Mick Whelan: There is one area that we really have not explored, and that is freight. The current Government's aim is to double freight by 2050, but we are fighting off redundancies across the freight sector; it is collapsing. The only thing that will regenerate the freight sector is massive infrastructure work. If we were to invest in our infrastructure, whether it be railways, housing, hospitals or whatever, which would kick-start the construction side of freight and leave us with an asset, that would be one place where you could get people going.

The only other model is the Hong Kong model where, as Mick has described, you sell the railways to property speculators and they own the air above the stations. It works quite well in Hong Kong, but I am not quite sure that it would work in Skipton.

Mick Lynch: I agree that freight is a Cinderella part of the railway. They are always looking for investment. I am not certain that private sector freight operators, who can run via road rather than rail, will do anything without being incentivised. One of the things that could go in the Bill is that the Secretary of State must meet targets for the transfer of road freight on to rail freight. That would mean that the independent body—GBR or whatever it is called—would have to create an environment where investment comes in to make that target happen.

I do not see that that is happening either. There is no particular requirement for anything to be achieved in terms of passenger numbers, extension of routes, lowering fares or increasing freight on rail.

Chair: Thank you. I am afraid that time is against us. I am sure we could continue this debate for some time. I thank you both again for your time this afternoon.