



Office of Rail Regulation - Periodic Review 2013: Draft determination of Network Rail's outputs and funding for 2014 - 19 Transport Salaried Staffs' Association - Response

TSSA welcomes the opportunity to respond to the Office of Rail Regulation's (ORR) consultation on the draft determination.

TSSA is an independent trade union with approximately 22,100 members working throughout the United Kingdom and the Republic of Ireland. Most TSSA members work in the railway industry - many thousands being employed by Network Rail undertaking a broad range duties mainly in what are traditionally referred to as 'white collar' jobs. TSSA is recognised by Network Rail for collective bargaining purposes in supervisory, administrative, technical and managerial roles.

Summary

In summary TSSA is extremely concerned about the ORR's proposed further reduction in funds available to Network Rail for CP5, and we outline our key concerns below, primarily those which we feel will directly impact our members. Fundamentally Network Rail's submission of its Strategic Business Plan (SBP) already committed to significant cuts which we believe are not conducive to the safe and efficient running of the railway, and the Draft Determination compounds these risks. We believe that the concession of additional time to implement efficiencies will not significantly ameliorate these risks, considering the scale of the proposed efficiency rate of 20%. We ask the ORR to reconsider, particularly in the areas we outline below.

Background and context of the Draft Determination

TSSA rejects the key basis of the Draft Determination, that Network Rail must raise efficiency to "reduce its dependence on public subsidy [p.9]."

We are fundamentally opposed to the complex structure of the industry that adds significantly to costs that ultimately passengers and taxpayers are responsible for.

A major report from June 2012 undertaken by Transport for Quality of Life (*Rebuilding Rail*) confirmed that since privatisation the cost to the public of running the railways has risen by a factor of between two and three times. According to *Rebuilding Rail* much of the increase in cost may be attributed to the fundamental problems with the complex privatised railway structure created by the Conservative Government in 1994. It says the key reasons for the increase in cost include:

- higher interest payments in order to keep Network Rail's debts off the government balance sheet;
- debt write-offs;
- costs arising as a result of fragmentation of the rail system into many organisations;
- profit margins of complex tiers of contractors and sub-contractors, and
- dividends to private investors.

According to *Rebuilding Rail* taken together, these represent a cumulative cost since privatisation of more than £11 billion of public funds, or around £1.2 billion per year. This should be considered a minimum figure, as it included only those costs that may be most readily quantified. We believe that a radical restructure of the rail industry would remove the pressure to "reduce public subsidy" and enable a fresh look to be taken at the true costs of running a railway infrastructure which is safe and performs for the travelling public.

As referenced in the Draft Determination, Network Rail has changed its internal structure, and devolved much decision making to routes. Whether this will result in efficiency savings, or in fact to increased costs due to duplication of functions and an effective increase in fragmentation, is still unquantified, as acknowledged in the Draft Determination [p.115]. It is disappointing that the ORR does not consider this in any detail when setting out the draft funding position. ORR requires a "more commercial" approach [p.58] from Network Rail, but does not clearly explain how this can reduce costs. TSSA does not believe this is a sound argument and we are against the increased introduction of the profit motive into the management of the infrastructure through further alliancing, potential infrastructure concessions [p.36] and proposed changes to incentives, which we discuss further below.

TSSA consider also that a more flexible approach to re-openers (mechanisms that can be used to reopen the determination) should be taken considering some of the uncertainties that we outline below which could result in increased costs. This is particularly in areas where there are no contingency plans for proposed

efficiencies (eg technological solutions such as the implementation of the National Operating Strategy) or there is a risk of outside influences (climate, specific political demands) requiring increased investment in certain areas. We believe without this Network Rail may be forced to make too hasty cuts to achieve the efficiencies the ORR are seeking. We consider this a particular need since the Draft Determination assesses that Network Rail is only 45-50% likely to achieve the performance outputs (PPM and CaSL) set down by the Government in the High-level output specification (HLOS). It seems that Network Rail may be set up to fail in CP5 and we would urge the ORR to consider this further.

Maintenance, operations and renewals costs

The Draft Determination is guilty of giving very mixed signals to Network Rail as to how to manage the maintenance of the infrastructure.

In its Strategic Business Plan Network Rail proposes maintenance efficiencies which they make clear would result in staffing cuts of 1,262. Within the chapter on health and safety in the Draft Determination the ORR states there is currently “insufficient resource within maintenance depots to carry out all the planned maintenance work in track and off-track assets” [p.361] since the significant job cuts which resulted from CP4’s Phase 2bc re-organisation. Despite the conclusion that as a result of CP4 job losses asset condition will deteriorate and that implicitly this will mean the railway is less safe, ORR do not require Network Rail to review the necessary staffing levels and do not commit to the funding necessary to maintain such levels. Instead it is proposed that funding for maintenance is restricted even further, which we can only conclude will result in even more vital jobs lost and a resulting deterioration in assets and therefore in safety.

By effectively approving an end of CP4 baseline staffing level (including a significant vacancy gap) [p.184] which they acknowledge is unsafe, the ORR are complicit in running down Network Rail’s ability to run the railway in the safe and efficient manner they profess to want. ORR has also not acknowledged the problem of increasingly long and unsafe hours worked in key roles, particularly section managers, which are being implicitly accepted by the approval of this baseline. This is not a sustainable situation.

Network Rail have identified a number of central initiatives which they believe will enable efficiency savings, including:

- Multiskilling

TSSA are unconvinced that Network Rail have a clear idea of what “multiskilling” will entail and have certainly not scoped potential efficiency savings to any robust degree. We are also sceptical that this is possible whilst retaining a professional and specialist workforce.

- Risk-based maintenance

TSSA are concerned about this initiative and await further engagement on the impact of the programme. However, elsewhere in the Draft Determination the ORR acknowledge the impact on asset condition the reduction of some regular maintenance tasks has had, so would urge a cautious approach to potential efficiency savings due the impact on safety and performance that may result.

- Technological and mechanisation solutions

This includes initiatives such as plain line pattern recognition, which is already significantly behind schedule. We remain unconvinced that there is any significant scope for major efficiency savings to be achieved through the CP5 period and are concerned that the ORR seem to have not critically evaluated the likelihood of these initiatives delivering and what the impact on costs might be.

- A simplified rules structure

The TSSA are yet to be fully engaged on this programme at the time of writing, but understand it to aim to radically reduce the number of standards that are required to be met by those working on the infrastructure. We remain sceptical about safe efficiencies possible through a programme such as this. However, we would point out that reducing the number of rules which need to be complied with will obviously improve compliance, as stated on p.363. Whether this is a safety benefit remains to be seen given that the rules themselves have evolved over more than a century in response to previous accidents and a better understanding of risk.

ORR acknowledge that there are no contingency plans if these initiatives do not deliver.

Of particular interest to TSSA is the acknowledgement that effective planning of maintenance, access and possessions, is a key enabler to delivering on outputs. It was disappointing to see in the SBP that Network Rail considered that significant cuts could be made in the indirect roles of section planner and administrator considering their key role in the delivery of maintenance planning and support, as well as unspecified support roles elsewhere in Network Operations. TSSA reject the contention that Network Rail can simultaneously improve the delivery of planning and further reduce the staff who carry out and support this process. We cannot

understand why the ORR has failed to challenge this inconsistency. We would ask the ORR to consider again whether such cuts would truly increase efficiency and also comment on the impact of these cuts might have on safe planning of track work. We would also ask the ORR to consider that, as they increase the requirement to report on asset condition, this will require additional work in central and delivery unit support teams, such as the good practice highlighted on p.234 in data management and this is inconsistent with the areas NR are seeking to reduce in its SBP submission.

We welcome the support for a plan to address the underinvestment in the network's structures and can appreciate the need to have a fully scoped plan from Network Rail before settling on the final provision. TSSA is also supportive of the focus on increasing the resilience of the infrastructure to extreme weather as a result of climate change. We understand that it will take significant additional investment to effectively achieve flood resilience, which is not addressed in the SBP or the Draft Determination. Until this is addressed we suspect associated reactive maintenance will remain significant. We would ask the ORR to comment on this issue in detail.

We note that in its assessment of renewals expenditure ORR does not make any specific conclusions or recommendations on the structure of renewals delivery. It is increasingly acknowledged that the high levels of sub-contracted labour on the infrastructure are neither safe nor efficient. TSSA urge the ORR to make a positive statement about how renewals should be managed and to investigate the transition to this work being carried out by a Network Rail direct workforce.

TSSA want to see a skilled, professional and permanent workforce working to maintain and renew the infrastructure and we would ask the ORR to consider if the cost reductions they are seeking to agree in the Draft Determination will achieve this, or whether they will drive a more short-term approach to cutting staff costs.

We are fully engaged in the process of developing and implementing the National Operating Strategy (NOS) which seeks to move the operations of the railways to route based Rail Operating Centres. We will continue to raise any concerns through this process. In terms of the Draft Determination for CP5 our biggest concern is that the efficiencies Network Rail expect to arise from this process may not materialise as predicted. The Draft Determination highlights some potential issues such as the implementation of the necessary signalling renewals. We fear that if Network Rail find the NOS behind schedule to deliver reductions in costs this will either impact the safe implementation of the programme or result in Network Rail

making reactive cuts elsewhere in the organisation. We would ask the ORR to comment on this likelihood and potential outcomes.

Support costs

The Draft Determination expects 20% efficiency savings in support costs from Network Rail, mainly in areas such as finance, human resources and information management. Network Rail have previously outlined the benchmarking and function plans which underpin their Strategic Business Plan which also offers significant efficiency savings in these areas. We are concerned that the resources required to deliver the level of change that the Draft Determination requires elsewhere has not been considered. Any significant level of organisational change, whether reductions or the staffing increases which will be required in certain technical functions, will require considerable specialist support if it is not to result in damaging disruption to the work of Network Rail in running the infrastructure. Yet Network Rail will be asked to deliver this with considerably less support resources than they have at the moment. The Draft Determination acknowledges that major change programmes in CP4 have not been managed well [p.102] and we would suggest at least some of this is due to poor resourcing of support for the changes. Similarly, technological solutions, such a large part of Network Rail's proposed plan to implement efficiencies, will require Information Management support to implement, and improvements in occupational health (discussed below) we believe will require additional up front resource in order to unlock the major productivity benefits which a healthier workforce will deliver.

We believe the figures in the Draft Determination for support efficiencies are short sighted. It is the TSSA's position that these support functions are, in many cases, already running with less than the required resource. The pressure to cut what are mostly labour intensive functions will be a false economy as Network Rail are unable to implement change programmes, both those affecting the organisational structure or the culture in key areas such as safety. We would ask the ORR to consider holistically if what Network Rail is offering, and the further efficiencies the ORR are asking for, are possible.

Incentives and compensation

The Draft Determination reports at great length on incentives, performance and compensation. We wish to make the general point that the complex network of

commercial contractual relationships, including compensation and track access payments, underpinning these are not only intrinsically wasteful, but also demonstrate the culture of greed that motivates those at the top - they know the price of everything and the value of nothing. Improving the performance of the industry, for example, so that more trains run on time should not rely on financial incentives it should be done because it is the right thing to do in the public interest - delivering a wide range of economic, social and environmental benefits.

Fining Network Rail for various transgressions is also in most instances largely nonsensical. The penalties are financed by fare payers and taxpayers and Network Rail is left with less funds to do its job. Whilst it is good that the examination has found that Network Rail has been over-compensating train operators for bus replacement services, and revising them accordingly, TSSA remains opposed to the NR/TOC compensation regime in principle, and certainly to an increase in these payment rates [p.27]. Ultimately it is the passenger (or freight customer) who is inconvenienced and it is they, not train operators, who should be compensated. This is yet another area where passengers and industry operators might as well be on different planets. We remain extremely concerned at how little compensation paid to train operators ends up back in passengers' pockets. It is unacceptable that train operators are compensated by the minute and passengers for the half- or full-hour. We would like to see much more done to level the playing field and crystal clear reporting requirements introduced to establish where the money (compensation) ends up. It is disappointing that the ORR does not do anything in this Draft Determination to consider how the system might be radically overhauled, instead of tinkering.

Propagandists for the privatised industry attribute rail's success since privatisation to privatisation itself - a staggeringly complacent self-fulfilling belief that largely goes unchallenged by many including the industry's regulator. The success of the rail industry since privatisation has in fact happened in spite of privatisation not because of it. It is obvious why those who benefit financially - personally and corporately - from the rich pickings the industry provides promote this doctrine. However, it is disappointing and frustrating, particularly at a time of economic austerity that government and ORR largely go along with this and apparently choose to ignore evidence that challenges the industry's complacent, out-dated late 20th century thinking and orthodoxy and continue to seek additional ways of introducing additional market mechanisms into the operation of the infrastructure, as outlined in the following paragraph.

We oppose the proposed introduction of revised "incentive" schemes which will allow Train Operating Companies to profit from Network Rail spending less than the

Final Determination allows as a result of entering into commercial arrangements. This Route-level efficiency benefit sharing (REBS) would effectively mean additional taxpayer money ending up with private companies, and potentially introduces a profit motive into the day to day running of the infrastructure - an influence which was specifically designed out by the creation of Network Rail after the structure of Railtrack and private Infrastructure Maintenance Companies proved to be unsafe and wasteful. We note that the potential gains are higher than the potential losses for TOCs [p.593] and also that the ORR explicitly sees this as a stepping stone to more “commercially negotiated risk and reward sharing agreements” and wishes to see “more effective use of market mechanisms” [p.48]. We see no justification or explanation which shows this to be beneficial to either safety or costs and note that it is running against the will of the public in how they wish to see the railway operated.

Health and safety

Health and safety is of primary concern to TSSA, both that of railway workers and that of the travelling and wider public. It is unclear to us how the ORR can be assured that the funding outlined in the Draft Determination will improve health and safety as referenced as part of the body’s duties on p.47. As outlined above we believe that reduced funding for maintenance activities will result in increased safety risk and do not believe the ORR is able to truly balance its duties in the safety and funding arenas. Our key concerns, in addition to reduced maintenance funding, are outlined below.

TSSA welcome the ring-fenced funding for risk-reduction at level crossings, but question whether the fund of £67m is sufficient. We are concerned that as the public and politicians (including an upcoming Commons Select Committee) continue to be rightly concerned about deaths at level crossings, the ring-fenced fund may not be adequate to deliver the pace of level crossing upgrade that this demands. It may be that pressure is put upon Network Rail resulting in funds being diverted from less high profile safety risks. We would ask the ORR to consider again the level of funding for level crossings and also consider leaving open the potential for additional funds if circumstances change.

We welcome the focus within the Draft Determination on occupational health and wellness which has been of concern to TSSA for a number of years, particularly in the area of mental health. We support the finding that there is a lack of data and systematic support and management [p.371] which is to the detriment of staff wellbeing and also to Network Rail’s productivity and are working with Network

Rail on the development of their strategy on this. However, as referenced above we are concerned that the upfront costs of implementing a more effective and professional occupational health infrastructure are not being considered in light of significant proposed support cost efficiencies. We would ask the ORR to consider whether they are effectively restricting Network Rail's ability to implement a truly modern approach to occupational health.

One set of statistics, buried in the Draft Determination, causes TSSA great concern. RSSB's precursor indicator model (PIM) plots the underlying risk of a train accident, and therefore the risk of harm to the public. These statistics now show the PIM to be at the same level as the benchmark point of September 2006 and that this is as a result of an increase in infrastructure failures [p.360]. As outlined above we believe the commitment of the ORR to fund maintenance staffing up to a level able to maintain the railway safely is a necessity if we are to see this risk reduce again. TSSA fear that a failure to do this will only result in increased danger of passenger harm.

Employment Costs

We do not support the implication within the Draft Determination that there are savings to be made through employment costs. The information the ORR has based its conclusions on is sketchy. IDS makes clear "*...there seem to be major problems in the capacity of Network Rail data systems to generate employment and reward information in ways that are well suited to practical analysis...*" and "*.....Benchmarking was further complicated by shortcomings in the availability of job descriptions and uncertainties over the allocation of Hay points to a variety of roles...*" and IDS urges that these figures be taken with caution and in fact seems to recommend a harmonisation process for maintenance grades rather than cuts to pay rates.

Additionally, it is not known to what extent, if any, ORR has taken the potential impact of equal pay claims into account. TSSA has identified this as a major problem with many female employees being paid significantly less than their male counterparts. However, this is not an exclusively "female" issue - while we targeted women members to try to determine the extent of the problem, during the exercise we also identified a number of male employees paid less than their female counterparts. Compensation arising from these cases (and the equal pay problem general) could be substantial and will have to be paid out of funds available during CP5.



TSSA considers that NR's equal pay 'time bomb' needs to be defused as a matter of urgency. This was and is a totally avoidable problem that has arisen because of the lack of an objective pay and grading system in NR which the TSSA has highlighted for a number of years. It is no surprise to us that, amongst other things, IDS found regardless of equal pay issues, there is an obvious need for an objective job evaluation that could, coincidentally, also deal with equal pay. TSSA is concerned that potential additional costs resulting from addressing equal pay issues needs to be protected so that it cannot be recouped through further job cuts. Furthermore, high governance standards expected of an organisation of NR's stature require it to move quickly to resolve the equal pay issue. We would urge ORR to take this into account and make its views known in the final determination.

Conclusion

It is the TSSA's considered position that the problems outlined in this response can only be fully addressed by a radical rethink of the structure of the railway industry and urge the ORR to begin to consider how to contribute to this. As to the urgent question of the upcoming funding decisions for CP5, we have outlined significant concerns about impact on the safe and effective running of the railway which will result from such significant cuts to Network Rail's funding. We ask the ORR to reconsider its Draft Determination in the key areas above. Whatever the outcome of this process the TSSA will continue to call for a railway which is safe for workers and passengers and delivers an effective service for the public.

TSSA Contact Details	
Manuel Cortes General Secretary TSSA Walkden House 10 Melton Street London NW1 2EJ Tel 020 7529 8030 Email cortesm@tssa.org.uk	John Page Assistant General Secretary TSSA Walkden House 10 Melton Street London NW1 2EJ Tel 020 7529 8008 Email pagej@tssa.org.uk
Elly Baker Senior Regional Organiser TSSA Walkden House 10 Melton Street London NW1 2EJ	Neil Davies Policy Adviser TSSA Walkden House 10 Melton Street London NW1 2EJ



Tel 020 7529 8028

Email bakere@tssa.org.uk

Tel 020 7529 8010

Email daviesn@tssa.org.uk