National Express' response to The Shaw Report
23 December 2015

Thank you for the opportunity to provide our views on 'The future shape and financing of Network Rail'. This response is on behalf of National Express Group and its subsidiary companies, in particular the franchise operator c2c. National Express is an experienced rail operator that has been involved in the rail industry since privatisation and continues to play an active role in industry matters.

The performance of both Railtrack and Network Rail has significantly impacted our rail businesses in the past with many occasions when poor delivery of maintenance and projects has damaged customer satisfaction and our reputation. However, our experience with c2c has shown what can be achieved.

Our response contains a number of observations and then further information regarding your specific questions. We start with a commentary on c2c then Network Rail in general.

c2c

National Express operates c2c which has been the UK best performing rail operator for the last four years with PPM MAA of 97.3%. Twenty years ago the railway was known as the 'misery line' so it is worth reflecting on why the railway has been successful.

The route is self-contained and at around 40 miles long may be considered to have a geography that is easily manageable. But this is a demanding 2 track railway with short headway services over flat junctions with frequent stops, limited infrastructure and efficient resourcing. The London terminus, Fenchurch Street has 4 platforms only and the rolling stock peak availability is industry leading at 71 trains from a fleet of 74.

The reason that it works so well is a relentless attention to detail motivated to deliver the most punctual and reliable railway. The TOC management lead this focus but through their energetic approach, they cause their partners particularly Network Rail to apply a similar attention to problem solving and preventative measures. This has been the model on c2c for the last 15 years with continuous improvement in PPM and customer satisfaction. Network Rail has, in general, been a willing partner in the success of c2c. It has been motivated to understand what is needed and to do it despite little, if any, focus from the centre over this period.

c2c shows that a motivated and energetic TOC, close to its customer, can lead a willing Network Rail to deliver high performance.

Network Rail General Observations

Governance and Accountability

There appears to be a lack of effective governance with obvious accountability for the results that matter to customers.

Notwithstanding cases such as c2c where local relations and a particularly determined approach can deliver improved outcomes, the structure of the TOC-Network Rail relationship is not designed to focus on the delivery of customer benefits. The governance activities seem detached from the realities of operations on the railway.

The board, until recently generally appointed by Network Rail, has a number of confusing accountabilities as described in your section 3.28 when a primary focus should be successful and safe delivery to customers. The monopoly nature of the supplier means that this focus should be core to its function, ethos and approach. It has not been and is not now.

Successful boards are responsible to their shareholders but know customers are the prime focus for business success and growth.

The governance and control of Network Rail is disconnected from local stakeholders with local authorities and LEPs for example finding it impossible to determine local planning priorities for rail. This disconnection often means that local and regional economic needs are not taken into account when planning the control period investments or performance improvement needs. Devolved administrations have more power to influence and agree objectives but in England lobbying to government is the only route.

Governance is national but the delivery of services is local (e.g. c2c) regional (e.g. East Anglia) or strategic route (e.g. West Coast). Governance is too broad and at a scale that doesn't properly match the delivery of the services.

Network Rail is not close to its customers

The customer experience for rail is substantially determined by how Network Rail performs on any given day. Network Rail is responsible for 68% of delay minutes nationally (IPPR P02 2015/16) yet its relationship with end customers is very remote. The principal relationship, quite correctly, is with TOC and FOC but there is no exposure to the reaction and response of customers when things go wrong. The schedule 8 compensation regime can provide some short-term financial compensation but the long-term and reputational damage from poor performance is in general shouldered by the operator. This would be fine if there was some lever to ensure a sustained response from Network Rail but there isn't.

Operators can escalate within Network Rail beyond route MD but there is no guarantee that action will be forthcoming with the sense of urgency that customers expect. The final resort to the ORR will often cause little reaction and any fines are simply recycled to government.

The plans for devolution may help if the governance exposes the route MDs to the impact of poor performance on customers and stakeholders and, more importantly, provides the resources and freedom to act.

However, Network Rail needs a restructuring to make it more manageable and financially sustainable. Smaller devolved companies with local, route or regional structure will allow flexible responses to problems. The companies should be directly aligned with TOCs where possible. If the company fails to deliver the customer service level required, then there should be a ready process available to TOCs to default the infrastructure company and replace with another provider.

The incentive regime for NR doesn't function effectively

The industry spends a great deal of time working each Periodic Review to improve the incentive regimes for industry participants. The result is always a huge change process particularly for franchise TOCs and the DfT. The results of all this theoretical work have been substantially wasted as the incentive regimes fail to motivate responses to demand growth or delivery of good customer services outside the periodic review settlements. This is because the gain from the incentives has no value as it cannot be realised. There are no shareholders to pay a dividend, there are no commercial reasons to take a risk and there is little or no personal gain for management or staff. Network Rail is therefore reduced in role to an organisation that is charged with completing a list of work over the 5 year CP period rather than developing the rail system.

This structure produces little innovation or new ideas as the risk associated with development and implementation is not worth the effort. There is no incentive for Network Rail to share commercial risk with TOCs to develop the railway.

The focus on good performance has been diluted as NR has become a projects business

Railtrack and Network Rail in CP1 to 3 were largely focused on delivery of the day to day railway with few large projects to manage until CP4. Exceptions to this were WCML upgrade and power supply enhancements on Southern TOCs.

Although there were many aspects of the first three periods of operation that were unsatisfactory, the core activity was running and maintaining the railway. CP4 and 5 have seen a major shift to project delivery across much of the network many of which have gone well but many have badly impacted on performance and damaged customer confidence. To develop the expertise required, projects management structure has been separated from day to day delivery, but the critical importance of the continuity of performance and delivery often seem to take second place.

Our view is that separate project entities with private sector expertise and funding would improve delivery and expand the capital available for growth.

Early approaches to develop project alliances looked promising but the pace of development has slowed since the start of CP5 as the problems of project funding have become evident.

NR needs an injection of private ownership

Network Rail has no shareholders and all the restrictions on the way it functions being part of the public sector. Private sector involvement in a new structure will provide the dynamism required to develop the commercial strategy and grow the railway.

A concession model can both provide the structure with incentives to develop the railway and receive reward for excellent performance. Private capital and expertise can transform the project aspect of the business by bringing modern practices and economies of scale.

The importance of impartial regulation and a charging structure that is transparent

We comment that regulation has not been effective in improving performance but this is substantially due to the difficulty in securing a regulatory response and the mechanism for fines. That said, impartial regulation should not be lost in any new structure as this brings a degree of trust and transparency to the industry that is critical.

Response to questions on Network Rail's structure

1. What are your views on the scope of Network Rail's functions?
The performance role is understated. We would not support an expansion of NR role.

2. Have we failed to mention any specific and important factors?
NR's role should include: improving performance-service by service-route by route; grow capacity efficiently; develop solutions for local/regional economic growth.

3. What are your views on these accountability arrangements and their effectiveness?
As stated above, not very effective.

4. Have we correctly identified and defined Network Rail's customers?
Yes, although as stated above, the end customer is very remote.

5. How effectively are customer needs and expectations met by Network Rail at present?
For c2c, NR performs generally well. For the industry performance is on a downward trend.

6. Should direct customer pressure on Network Rail be strengthened? If so, how might this be achieved? **Yes, as stated above, local performance boards may provide a solution.**

7. Are there more positive incentives for delivery which would be useful? Are any of these incentives more effective than others? **As stated above, effective incentives are essential. However, it is difficult to see how these can work in the public sector ownership.**

8. Is there a case for changing the route structure and what are the advantages and disadvantages of different approaches to disaggregating the network, for example on the basis of:

- physical, political or economic geographies?
- service type, e.g. commuter services, inter-city services and regional services?

As stated above, there is a case for smaller devolved privately owned organisations.

9. Does the current balance of responsibilities between the routes and the centre seem at the right level? Are there any further responsibilities that should be devolved or centralised?
As stated above, there is a need for devolution to independent devolved companies. Initial trading with central services can be defined in a similar way to rail privatisation. Long term the companies can decide for themselves.

10. Can you point to any specific economies of scale that should be protected at national rather than route level? **The future condition of infrastructure is a risk which can be best managed on a portfolio basis. A fund can be held centrally prior to the development of an insurance market.**

11. What processes and capabilities need to be in place (at both the centre and route level) to support Network Rail's current devolved structure? **The capability to act with urgency to solve problems.**

12. Drawing on your previous experiences where relevant, what would be the potential impact on your organisation of further structural change within Network Rail? **It is essential that change does not result in a loss of pace to improve performance and outcomes. Careful management of change is required to ensure continuity and moreover improvement in leadership and deployment.**

13. What are the strengths and weaknesses of Network Rail's current approach to planning enhancements? **As stated above, enhancements are planned often disconnected from the economic needs of regions. There is a clear weakness in managing costs whether that is due to lack of definition of scope or lack of value engineering.**

14. What are the strengths and weaknesses of Network Rail's current approach to delivering enhancements? **As stated above, many projects have caused disruption to the railway.**

15. How well do the current delivery and planning processes work for projects of different sizes? **Our experience has shown that large and small projects need careful planning and full resourcing to avoid poor outcomes.**

16. Are there any useful models or precedents from other sectors or countries for long term infrastructure planning and delivery processes that we should consider, including in relation to management of and engagement with suppliers during the planning process? **We have no detailed experience to share.**

17. What would be the most important structural features of any future infrastructure provider?
As stated above: smaller; devolved and independent; private sector companies.

18. Are there any other processes which we have not highlighted, either within Network Rail or the wider industry, which could be improved? **It would be beneficial to have a closer alignment between franchise objectives and CP deliverables.**

19. Do you have any views on how the relationship between the periodic review process and other processes with which you are involved could be improved? **It is essential that changing NR is not in isolation, the DfT/ORR roles have to be redefined, without creating additional bureaucracy. In particular we must have clarity on the Franchise parameters and the role of Open Access operation.**

20. What criteria should be used to assess structural options under consideration? How, if at all, should these criteria be prioritised? **As stated above, the primary test should be what is best for the customer.**

Response to questions on financing and funding of the company

21. Do you have any views on whether the RAB remains a relevant concept in the Railway, and, if not, what should replace it?

22. How should financial risk be managed in Britain's rail infrastructure in the future?

23. Do you have any views on how Britain's railway infrastructure should be funded in the future, regardless of corporate structure?

24. What positive case studies are there (e.g. international examples in the railway sector, other sectors internationally/in the UK), where more affordable and sustainable funding and financing structures have been implemented, with or without private sector capital input? And how do you think the lessons learnt could be applicable to Britain's railway infrastructure?

25. What are your views on the enabling factors facilitating a sustainable and affordable capital structure for Britain's railway infrastructure? What factors would be required specifically for private sector capital introduction?

26. What are the types of investors that may be interested in investing in Network Rail, any of its functions, or in select parts of it? And for these types of investors, can you indicate:

- key attractions;
- risk appetite;
- required enabling factors.

27. What characteristics do you think enhancement projects would need to have to attract private sector investment and to what extent and in what form would public sector support would be needed? What types of financing structure could be brought to bear?

28. What incentive mechanics or control structures on Network Rail would facilitate third party involvement in the financing of enhancement projects?

Answer: 21 -28

Where established leasing products do not exist, there should be a way of financing infrastructure which requires funding over the long term. The independent companies can be set up with a RAB to finance that is regulated to provide medium scale investments. The larger strategic investments are best funded by government or private funding vehicles set up specifically for the purpose.

We don't have strong views regarding the funding source except that operators are capable of small and franchise specific enhancements.

Answer to question on Risks and Implementation

29. Do these feel like the right concerns? Has anything been missed that it is vital to consider at this stage? **It is essential not to blight the industry with uncertainty regarding structure and funding.**