ATOC's submission to the ORR consultation on transparency

1. Summary

The Association of Train Operating Companies (ATOC) welcomes the opportunity to respond to the Office of Rail Regulation's (ORR's) important consultation on the approach to transparency.

We support the principle of transparency over the provision of public services as a means of enabling accountability, reforming public services, empowering citizens and generating economic activity. ATOC agrees with the ORR that greater openness in the railway, fostered correctly, will help to engender industry reform, deliver better value for money and improve services.

Transparency matters to the railway because taxpayers contribute around £4bn, or almost 40%, towards the industry's running costs. A key priority for the government and rail is to make the industry more affordable, ensuring its long term financial sustainability while encouraging innovation and continuing improvements in services.

A significant amount of information and data about the railway is already publicly available, and ATOC welcomes the ORR recognising this in its transparency consultation[1]. In a number of areas, rail sets the standard in the provision of data among all GB transport operators and goes further than railways in other countries.

Transparency has helped to produce positive outcomes for passengers, with near record levels of performance, customer satisfaction and the lowest ever number of complaints, and a huge switch to online retailing and the use of apps to access the latest travel information.

ATOC and train companies are putting more information into the public domain over the next 12 months, including improvements to increase passengers' confidence that they are buying the best ticket for them.

Alongside these initiatives, ATOC believes transparency within the sector can be improved. Most passengers do not understand the role the government plays in setting and overseeing regulated fares; we believe the Department for Transport (DfT) would boost the confidence of passengers if it took greater steps to explain what it does. ATOC also believes that, before the ORR extends the agenda on transparency further, there needs to be clarity about its role in relation to the DfT to prevent confusion about accountability that could drive up costs and distract the regulator from its central task.

In implementing transparency, we agree with the National Audit Office (NAO)[2] that it is important that there is a thorough assessment of any outcomes, particularly in the context of value for money for passengers and taxpayers. Priority should be given to passengers continuing to have access to accurate, high quality information in appropriate forms that meet their needs as customers. We also have a number of inter-related concerns with regard to the possible publication of safety related information.

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[1] ORR's approach to transparency – a consultation, July 2012, p8
[2] Cross government review – implementing transparency NAO April 2012

Bringing all of this together, we would urge the ORR to recognise that:

- improved arrangements for transparency will only deliver the full benefits if accountabilities within the industry are made clear and well understood by all
- an incremental approach will enable stakeholders to check new initiatives deliver demonstrable improvements in value for money and the functioning of the industry
- compared to railways overseas and other sectors in the UK, the railways already provide significant amounts of information and data to the public

We, therefore, recommend that the ORR adopts a sixth strategic objective[3] in this area '*to work closely with industry to identify what more can be done and where most value can be added to the existing arrangements'*.

Our response is broken down into six sections as follows:

- Section 2 provides a detailed description of the significant levels of information on passenger rail that is currently in the public domain
- Section 3 places this issue in further context by setting out how this availability of information has helped to deliver positive outcomes
- Section 4 provides a summary of the initiatives that ATOC and train companies have developed in particular around the central issue of improving the quality of fares information available to retailers and customers
- Section 5 sets out our views on how transparency within the sector can and should be improved, looking at what more the government could do, the role of the ORR and the principles that we think the ORR should consider in extending transparency
- Section 6 sets out our conclusions
- An appendix containing responses to specific ORR questions on safety issues

2. Significant information about passenger rail in the public domain

Alongside data generated by Passenger Focus, ORR, Network Rail and the DfT, ATOC and train companies generate and make public significant amounts of information and data. National Rail Enquiries (NRE) and Rail Settlement Plan (RSP), both part of ATOC, collaborate with developers in providing data services, and train companies and third party retailers provide retailing information to help passenger exercise choice.

NRE and RSP: collaborating with developers in providing data services

We are surprised by the ORR's call for "*an industry which welcomes applications from third party developers who see an opportunity to exploit industry data for commercial gain*"[4] when this is already very much the case. During the past two years, train companies have embraced and superseded this ambition set out by the ORR, with the result that Britain probably has the most open data-access regime for rail in Europe and quite possibly the developed world.

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[3] ORR's approach to transparency, p 7
[4] Ibid, p17

While the ORR is right to point out that "*passengers are already enjoying the benefits of new information products and services via their mobile phones and web browsers that would not have happened without third parties using their expertise and know how to develop data that the industry holds*"[5], this statement underplays NRE's role. The enquiry service has:

- developed its own software application, Darwin, which pulls in data from a wide range of sources, combines and interprets that data, and gives real time results to queries from passengers
- collaborated with entrepreneurs and developers to help them exploit this application to respond to the increasing demand from the public to be able to access the latest travel news
- launched its own hugely popular app for iPhone and Android operating systems to provide passengers with the latest real time information about train journeys

NRE initiated and operates a licensing scheme which seeks, among other things, to attract entrepreneurs and stimulate the market in real time information. The licensing is covered by the NRE real time systems code of practice agreed with the ORR and developed after the launch of the service. NRE licenses developers to ensure that they adopt the same level of responsibility as NRE in providing information of the highest quality. The aim is to seek partners who wish to collaborate in the development of the market for real time information.

There is a cost involved in providing real time services. NRE believes that where there is a material cost of, or other impact from, making real time train information available, this should be recovered on a reasonable basis from licensees rather than by relying on continued or increased support from taxpayers. This applies to all licensees, although it is important to note that train companies have already invested at risk in NRE and bear the cost of running its services. In most cases, NRE makes a charge to cover the services it provides although in some cases it will accept non-monetary compensation, such as advertising and links to NRE's main site. Particularly keen to encourage micro developers, NRE has structured the charging so that developers are charged nothing until they sell their first smartphone app and start making money.

NRE has issued more than 150 third party licences, including 49 for mobile apps on 10 different platforms. Agant, a small developer, struck up a deal with NRE three years ago to create a smartphone app which in its first year became one of the top five grossing Apple apps. Apps using NRE data services have won awards from the UK IT industry, the RNIB and Abilitynet.

More than one million people had installed NRE's free smartphone app three months after its launch in May. The app has become one of the most popular travel apps in the UK, demonstrating that NRE provides customers with information they need in the way they want it. The ad-display on the free version and the £4.99 charge for the in-app upgrade to the ad-free version, contribute towards the costs NRE incurs in collecting and processing the real time running data and the costs of developing and maintaining the Darwin real time system.

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[5] Ibid, p21

RSP licenses the use of timetable, fares and related data on a commercial basis to companies who sign a data licence and pay an annual licence fee (between £1,000 and £5,000 depending on the frequency with which it is provided). There are currently 15 companies which are licensed by ATOC to use such data sets and they include ticket machine suppliers, third party retailers and information providers.

At www.atoc.org/about-atoc/rail-settlement-plan/data-feeds, ATOC openly advertises the conditions, licence costs and its sourcing costs associated with these data sets. ATOC also makes test fares and routeing data available free of charge and without the need to sign up to a licence, in order to allow companies to conduct 'proof of concept' work.

In addition to these licensing arrangements, ATOC launched a 'Data on Demand' website ([www.atoc.org/industry-data),](www.atoc.org/industry-data) providing static timetable data, last December. It allows access to all national rail passenger train services, associated shipping and bus links, as well as reference data to support timetable enquiry systems. Access to this data is provided free of charge subject to signing a 'creative commons' licence. This website now has 350 registered users.

Train companies and third party retailers: generating data to give passengers choice

Rail passengers have a wider choice of ways to buy their rail ticket than in any other European country. While most continental railways offer some or all of the channels available to passengers in this country, we believe that none has the same degree of choice, particularly with regards to internet and telephone booking. Train companies have led the way in developing and promoting online booking services, providing passengers with the opportunity to compare providers and exercise choice.

NRE is the main source of rail information in Britain, providing passengers with everything they need to know about travelling by train and handling around 300 million enquiries per annum from 16 million customers. NRE was set up by train companies after privatisation to meet their statutory requirement to provide a call centre service. Expanding beyond these obligations, NRE launched its website in 2002 and added its cheapest fare finder in 2009 which shows the cheapest through fares for all train operators on all train routes. The enquiry service also supplies stations information, incident and engineering work information, and a journey planning service to third parties. The last decade has seen the total number of enquiries it handles increase fourfold (see fig. 1).
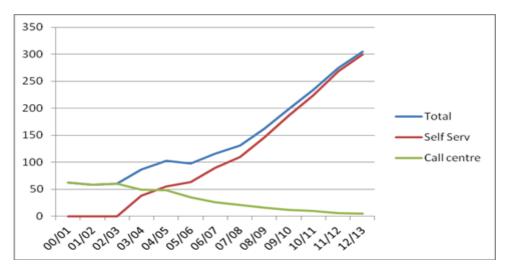
Figure 1: number of enquiries handled by NRE, in millions: source NRE

Virtually all train companies now offer an online booking facility through their websites, via a dedicated service or a third party provider, allowing passengers the opportunity to compare operators and book their tickets from a wide variety of different websites. The emergence of new technology providers in recent years has led to increased levels of innovation and competition. Third party retailers, such as thetrainline.com and redspottedhanky.com, provide passengers with a further avenue for comparing providers and exercising choice.

3. Availability of information delivering positive outcomes

The growth in the availability of information and expansion in data services corresponds with improving services that are attracting more passengers. Train punctuality and passenger satisfaction hover around record highs, while more journeys are now made by rail than at any time since the 1920s and increasing numbers of passengers buy tickets on line.

Punctuality and reliability have seen significant improvements over the past decade, rising from around 75% in 2001/02 to more than 90% for the past four years (see fig. 2). While there are many factors for these improvements, throughout this period the ORR has published public performance measures (PPM) for the industry as a whole and for individual train companies. Passenger rail recognises that punctuality and reliability have a direct impact on attracting and retaining passengers, and these measures have helped to focus minds across the railways on performance.
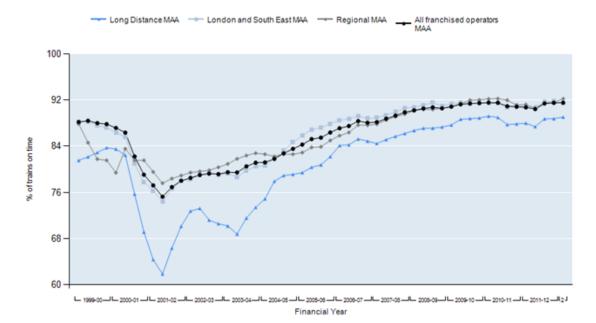
Figure 2 Public performance measures (network) 1999 -2012: source ORR

Customer satisfaction, as measured by Passenger Focus's national survey, was at a near record high of 83 per cent of passengers satisfied with their journey in spring 2012. Train companies are as keenly alert to how they score in this survey as they are at monitoring their company's public performance measures.

The number of third party retailer websites has increased significantly since train companies decided in 2007 to seek to develop internet sales by recruiting new retailers. ATOC now licenses six of these retailers, which between them sell millions of pounds of tickets a year. The growth of third party retailers has accompanied the trebling in the number of tickets sold through the internet in the last five years.

We believe that the wide choice of ticket purchase methods available to passengers is a positive feature of the rail industry and has contributed to the huge growth in passenger numbers.
After a 70 year decline in demand, there has been an 82% increase in passenger journeys over the past 15 years.

This strongly suggests that increasing numbers of passengers have been able to find a good value fare for their journey and does not indicate a fundamental lack of trust in the fares system. It is also worth noting that the average fare paid per journey has remained constant in real terms over the last 10 years, reflecting a better informed travelling public, choosing from a wider range of fares and aided by the much better information on rail fares now available through the internet.
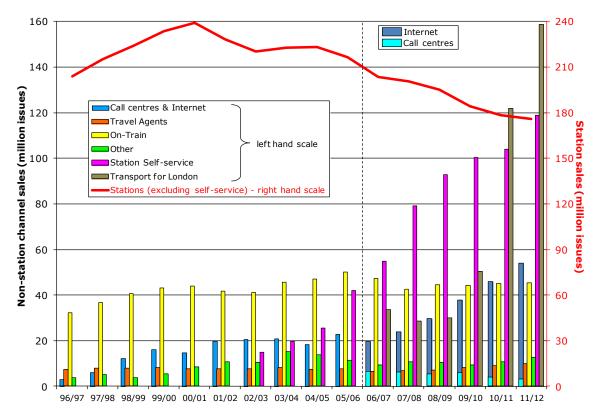
Figure 3 ticket issues by point of sale, excluding ticket reservations (millions), 1996/7 to 2011/12; source ATOC

4. Train companies making more information available

As private sector operators, our mission is to encourage more people to travel by train. So we want tickets to be easier to buy and information about services easier to access because it's good for business. Reflecting the changes in the way people live, work and buy all sorts of different services, train companies are modernising the way they sell tickets, and investing and innovating to provide more information to increase passengers' confidence in rail travel.

Fares and ticketing

ATOC and train companies have developed a programme of initiatives, which we will roll out over the next couple of years, focused around improving the quality of fares information available to retailers and customers.

This involves overhauling of the source data for fares information and presenting it to passengers in a much more consistent and consumer friendly way. Initiatives include:

- where tickets are available to London Terminals showing clearly which stations this covers
- showing which routes are valid where more than one is applicable by means of online maps
- consistent and clearer explanation of ticket types and ticket validities

This programme of initiatives is well advanced and will be rolled out from mid-2013 onwards. Ticket vending machines (TVM) will be a particular priority and the initiatives will dramatically improve the quality of information displayed by these machines and make them easier to use.

Train companies are planning the replacement of our fares database and fares setting service, requiring major investment (estimated to be roundly £10m) by train companies but potentially could deliver benefits as early as 2014.

Retailing data

Whilst we believe that there is already good access to rail fares and timetable data, we plan to go further to improve public and passenger confidence and trust. Over the next 12 months, we plan to publish the 'Manual', which is the detailed guide to rail tickets and products currently only available to rail staff on the NRE website.

After putting the timetable data set in the public domain last year, ATOC is also to make fares data similarly available. Users will be able to download the data free of charge under a creative commons licence.

Latest travel news

The industry has explicitly recognised that it must become better at providing information to passengers during disruption. Recent improvements have included:

- the introduction of an approved code of practice and the development of local plans by each train company
- the greater use of social media to interact with customers, including Tweets integrated into the NRE disruption page
- the extension of Darwin to power customer information systems at Virgin and Chiltern stations
- changes to timetables made available to passengers earlier (the evening before) and the agreement to accept tickets nationally during disruption

More work is still required to ensure the industry remains joined up to cover people, processes and systems. Train companies and Network Rail are actively working to deliver the industry's customer information strategy which will provide a backbone of core systems designed to enable innovation to ensure information is generated more accurately and consistently across all channels.

Financial performance

It is right that taxpayers know where their money is spent on the railways. Financial transparency is key to ensuring that the government, train companies and other railway organisations are held to account over the use of public funding. Having first produced an analysis of where public funding on rail was going in 2006, ATOC has recently provided the ORR with information on costs and revenues of individual train companies to help produce a more accurate and up to date disaggregated analysis of total industry costs and revenues and is continuing to work with the regulator to help it put this information in the public domain.

Benchmarking data on comparative costs and quality of services can have a role in driving up the quality of outputs and outcomes where there is no competition between providers and the provider

has a monopoly. However, ATOC questions the value of this work as a way of driving improvements in train companies' efficiency given the stimuli already provided by keenly-contended competitions to win franchises. Train companies do indeed seek to learn from best practice: their approach is to do so through, for example, targeted studies of particular processes (similar to the approach adopted by the light rail sector through the work coordinated by Imperial College), rather than through high level benchmarking which may say more about the structural differences of different franchises than the relative efficiency of individual operators.

5. Improving transparency in the railway

We believe transparency in the railway would be improved if the government took steps to explain more effectively its role in regulating fares and there was greater clarity over the role of the ORR vis-a-vis the DfT. Key principles should also apply ensuring that initiatives are value for money and provide passengers with the kind of information they want in a form they can trust.

The government

Whilst trust and confidence in the fares system are partly about ticket choice at an industry level, they are also about ensuring that the fares system itself, in particular the role of regulation and government supervision, is seen to be transparent and fair. Greater transparency by the government about its regulatory policy, including greater openness about how it puts that policy into effect, would build greater trust and confidence. We believe the government should provide:

- **More information on its compliance activities**: Train company changes to regulated fares are subject to comprehensive and rigorous compliance checking by the DfT, yet despite this commentators sometimes imply (and occasionally allege) that regulatory obligations have not been complied with (for instance that train companies have not balanced increases to regulated fares above the RPI+X average with increases below the average). We would like to see the DfT publish an annual compliance report on its website confirming, at a train company level, that compliance checking has been satisfactorily completed.
- **A clearer explanation of the regulatory framework**: We believe that the regulatory framework is poorly understood by the public (and indeed many commentators) and would like to see a clear explanation on the DfT website. Fares setting is an area of particular interest here and the role that the government plays in setting regulated fares (around half of all fares) needs to be better understood. ATOC already provides information about fares regulation on its own website.
- **A better understanding of the costs of regulation**: Regulation prevents market abuse and, in some cases, reflects wider social policy. Clearly it is the prerogative of government to decide how social policy should be reflected in the regulatory framework but the costs associated with such regulation should also be made explicit through publication on the DfT website.

The ORR

ATOC is strongly of the view that a measured and proportionate approach from the ORR on transparency is vital. This is to ensure that roles do not become blurred between industry

stakeholders and that any new requirements carefully balance the benefits of greater transparency against the potential cost of introducing unnecessary and low value regulatory burdens.

Within that context, ATOC considers that before the ORR develops its agenda further in this area, it will be imperative that the roles and responsibilities of the DfT and ORR are clarified and well understood by all stakeholders. As we noted in our response to the joint DfT/ORR consultation on the role of the regulator, issues of accountability must be clear and understood by everyone otherwise the benefits from introducing greater transparency will be lost.

Moreover, confused accountability is likely to put upward pressure on cost and divert the ORR away from its central task of regulating Network Rail which has a natural monopoly over the railway infrastructure and is not subject to competitive forces through the franchising system in the way that train operators are. As Network Rail has no equity shareholders to demand performance improvements, we consider that the focus of the ORR's efforts in improving transparency should be on Network Rail. Of course we accept that other stakeholders have a role to play but as a general rule we would suggest that market forces have a tendency to reveal information in a way that monopolies do not.

Therefore, any developments in this area must be carefully worked through and should fully reflect the ORR's statutory duties and objectives, avoiding any temptation to stray into areas for which the ORR has no locus.

It is also unclear how the ORR would use its statutory powers to enhance transparency and we would appreciate more clarity in this area[6]. There is a danger that the use of statutory powers could start to erode privately developed intellectual property rights which would not only be open to challenge but would also have a negative impact on innovation.

We consider that lessons may also be learned from other regulated infrastructure industries in the UK and would encourage the ORR to explore the extent to which the concept of transparency and the provision of information have been handled in the airport, water and energy sectors.

We note in particular David Gray's 2011 finding on the burden of regulation in his 'Review of Ofwat and consumer representation in the water sector'[7]: "*The absolute scale of the various reporting requirements would not necessarily be a problem if it was proportionate to the scale and complexity of the industry. However, as outlined above, there is clear evidence that the burden imposed by Ofwat's approach to regulation is very large and has grown substantially since privatisation – particularly in the last ten years.*"

The context for the Gray review was different from the current discussion in the rail industry but we consider that the pitfalls from increasing the burden of regulation are likely to be similar.

We also welcome the ORR's commitment to being transparent including publishing information about its plans and the minutes etc of its formal meetings. We would encourage the ORR to develop this further and to lead the way among its peer group of public sector transport and regulatory authorities. We think, however, that a balance needs to be struck between providing information

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[6] Ibid, p34
[7] Defra and Welsh Office

that is relevant and valuable and minimising the risk that the ambition to be transparent does not in some way impede good decision making.

Principles around value for money

We share the position of the NAO which stated earlier this year: "*The strategic case for greater transparency is strong. If it is to do more than satisfy public rights to public information, however, and contribute fully to objectives set for it including accountability, service improvement, and growth, then the government needs a firmer grip on measuring the success of the initiative...Evidence on benefits should be considered alongside information on costs and risks to secure best value from the large stock of public data, match the range and presentation of data purposefully to fulfil specific objectives, ensure that risks are identified and mitigated, and secure value for money*"[8]. With these criteria in mind, we would like to understand how the ORR will measure the costs and benefits of transparency initiatives it proposes.

If after a proper assessment has been carried out and measures to extend transparency are found to add to overall costs, a decision has to be made about who pays. Current government rail policy is driven by two imperatives among others: the need to improve the overall cost efficiency of the industry (the [McNulty report](#) suggests a 30% improvement in efficiency should be achieved by 2018/19); and that taxpayers should pay a smaller share of the total funding for rail. ATOC believes, for example, that where there is a cost from data provision, this cost should be recovered on a reasonable basis from licensees rather than relying on continued or increased support from taxpayers.

Train companies compete with other transport modes, such as road and air transport, and in recent years they have had some success in attracting customers from more polluting forms of travel: for example, rail's market share on the 10 most popular domestic air routes grew [from 29% to 44%](#) in the four years to 2010. As recipients of public funding, train companies are subject to greater transparency than airlines which do not receive government funds. Where both modes are competing head-to-head, however the risk needs to be avoided that the greater transparency expected of train companies puts them at a commercial disadvantage and so undermines the government's objective of generating increasing levels of revenue from the railways. Ensuring a level playing field is also important with regard to road transport which receives large amounts of public funding but for which we believe there is little if any publicly-available information about performance and passenger feedback similar to the railway's PPM or the National Passenger Survey.

Accurate information which passengers want

The NAO report also states: "*Many data releases have no accompanying statement as to their quality or reliability – running the risk of misleading potential users*"[9].

Ensuring passengers are confident that information about services is accurate and unbiased is fundamental to retaining customers and growing revenue on the railway. Inaccurate information results in passengers missing services because they turn up at the wrong time and failing to make their connection, or travelling with a ticket that is not valid for their journey. Biased information

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[8] Implementing Transparency NAO, p10
[9] NAO, p10

means passengers paying more or taking longer to travel than they would on an alternative service that would be cheaper or faster. While the provider of inaccurate or biased information about a service may ultimately be punished by consumers, there is a reputational risk for the service provider and the railways as a whole that would act as a deterrent to passengers. In promoting transparency, a priority must be to sustain passenger confidence in the quality of information they use about rail services, by ensuring that information is displayed accurately and reliably, surges in demand for data do not overload systems and dishonest users cannot exploit data for fraudulent ends.

Information should also be presented in forms that passengers find useful based on market testing. Research by the ORR and Passenger Focus is clear, for example, about the detail and format of rail performance data: "*Passengers' primary needs were that information is available which is directly relevant to their own individual rail use. Effectively this meant that they could access information which reflected any individual passenger's journey (s); this would give it tangible meaning and value.*

"*Across the sample, among passengers and interested parties, the demand was for information that was disaggregated and detailed, especially for data on punctuality, reliability and station facilities....Most passengers and interested parties saw little value in direct comparison data between (train companies), since no two routes were the same and there were too many variables between them for information to be valid*".

6. Conclusion

ATOC was explicit in its support for greater transparency over the provision of rail services in its submission to the Cabinet Office consultation on open data in October, 2011, and welcomes the opportunity to expand on these views in this submission and to inform the ORR's debate on transparency and open data.

As noted, we think the prospects for success with this initiative are highly dependent upon establishing clarity around accountabilities to ensure that these are made clear and well understood by all. ORR will also need to give consideration to the pace of change to enable stakeholders to assess the benefits of greater transparency against the potential cost of increasing regulatory burdens. With that in mind, we think that the holders of relevant information will be best placed to advise upon how data can be interpreted and presented to maximise value. Therefore, close ongoing consultation will be another key contributor to a successful outcome.

The ORR devoted a footnote in its transparency consultation document[10] to ATOC's publication of data, which we consider to be an unfortunate misrepresentation of our position. As our submission has demonstrated, in an industry which in many respects is already leading the way in this country and abroad, ATOC working with its members companies is at the forefront of putting rail information and data into the public domain.

ATOC and train companies have embraced the provision of information to passengers because they know doing so is good for business, helping customers to find the right services for them at the right price and the latest travel news. While other factors have contributed, this availability of information

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[10] Ibid, p48

has helped to turn round a declining industry into a booming sector, more popular today than at any time over the last 80 years.

Fostered on the sound principles that we have set out above, extending transparency will help to continue this growth while delivering better value for money and improving services.

APPENDIX: ATOC's response to specific questions around operational and safety issues

Safety
Q3: We would be interested to hear consultees' views on our proposals around the publication of the results from our safety inspections and reports on the comparative performance of duty holders from our audit and inspection activities. (page 28)

ATOC response:

We have a number of inter-related concerns with regard to possible publication of safety related information including questions around: *what would be published, who is the customer and what would be the value?* We explore each of these further below.

What exactly would be published?

- Section 4.3 in the consultation document acknowledges that '*Although user benefits tend to rise as more information is provided, there is a cost to provision and this will be lost if the data released has no user value*'. Taking this as a starting point, we are keen to understand in greater detail, ORR's views on:
  - Who is the customer?
  - What information would be shared and for what purpose?
  It is not clear to us that there would be 'user value' in the publication of such data.

Consistency

- We acknowledge that the RM^3 model used by the ORR as the basis for safety inspections has many benefits but its adoption is still comparatively recent and adjustments and refinements continue to be made. We are, therefore, sceptical that a sufficient level of maturity in its application has yet been achieved to guarantee consistency of results, whether on the part of individual inspectors or through time.

Understanding and interpretation of results

- RM^3 is specifically about maturity – a newly appointed franchise holder is therefore likely to be marked lower than a long established one – how would this be factored into any comparisons?
- More generally, re-franchising has the potential to impact on safety as the length of the remaining franchise will have a bearing on safety related decision making.
- Different train companies face different risks (or at least levels of risk) – so effectively there are different starting points. For example, train companies vary significantly in their geography, the characteristics of the routes over which they operate (complexity, signalling systems, congestion), the types of services operated and the sorts of passengers carried. At the very least this implies a need for normalisation, which is itself a complex and challenging area. As an example, SPAD rate should arguably be normalised based on the number of signals at danger actually approached, yet this information is not currently available.
- Under the current ORR inspection regime, different train companies are subject to different areas being inspected in any given year. The validity of making comparisons based on data

not just from different operators but also different years is likely to be questionable.

- Taken collectively, the above concerns imply that some sort of explanation/ commentary would be needed to accompany any publication of results – this would need to be prepared by an independent body such as the ORR and subsequently reviewed and agreed with the industry.

Data quality

- If audit results are to be published then they will need to be of the highest quality and train companies will wish to challenge the ORR robustly to ensure that this is the case.

RSSB's data in public domain

- The Annual Safety Performance Report, published by the RSSB, is already in the public domain and presents figures which are balanced, robust and in a form that is meaningful to those outside the rail industry but with an interest in it.
- We believe that the RSSB report fully meets the reasonable requirements for transparency of rail industry safety related statistics such that there would be no added benefit from publishing the results of ORR safety inspection and reports.

Safety

Q4: We would also be interested to hear views on the benefits and otherwise of duty holders reporting on best practice by the publication of specific KPIs. (page 28)

ATOC response:

- Many of the points made in relation to Q3 above in terms of consistency and like for like comparison are also relevant here. In addition, there is an assumption in Section 3.40 that KPIs are an indicator of good practice – this is not necessarily the case. The experience from our own ATOC Safety Forum is that comparison of KPIs is not straight forward – even when issues of different definitions/methods of measuring have been resolved it is still very difficult to identify 'good practice' (and often the operator concerned is unable to explain why changes in performance, whether positive or negative, have occurred).
- Some train companies already choose to make certain of their KPIs available publicly and our view is that the publication of individual KPIs should be left to the discretion of the individual operator.

The sector – our and industry initiatives

Q7: We are interested in hearing views on the scope of our and industry activities; whether the sector is moving in the right direction; whether the pace is right; and whether there are other areas that consultees believe would benefit from greater transparency and why (page 31)

ATOC response:

In general terms, we believe the sector is moving in the right direction and at a reasonable speed, however there are some areas where greater transparency on the part of the ORR itself would be helpful:

- The primary example of this is how the ORR balances safety and economic regulation. The ORR 'Core Values' (as published on the ORR website) quote government priorities as:
  - a rail industry that maintains a high level of safety;
  - controls its costs and delivers both value for money for the taxpayer; and
  - a good service to its customers.

- We believe that the RSSB's '*Taking safe decisions'* document provides a robust methodology for reconciling safety and economic considerations yet from a train company perspective the safety and economic parts of the ORR currently appear to be independent of each other.
- In part associated with the above, there is considerable confusion within the industry concerning what is meant by the ORR's use of the term '*excellence'*. This is reflected in the '*Core Values'* themselves. Here, one reference states '*an excellent organisation is one that delivers compliance with the law efficiently and consistently*' - this appears to link '*excellence'* closely with legal compliance. But other references clearly imply going a considerable way beyond this. 'Excellence' is an emotive term and how it fits with the key principles set out in 'Taking safe decisions' – including ALARP - remains unclear.
- In addition to its primary role of ensuring legal compliance, the 'Core Values' also refer to 'challenging the rail industry to improve its health and safety performance' and 'motivating businesses to have excellent health and safety'. We see it as clearly the role of Government to determine the overall scope of the ORR's activities. Equally clearly, there must be a balance between an approach which is too 'hands off' and one which is over intrusive and hence counter-productive. There is a perception within the train company community that there has been a shift in behaviour on the part of the ORR over recent months towards the latter. Here greater transparency would be beneficial – has this change been triggered by evidence of a lowering of train company standards or is there a different purpose? And if the latter, could the objective not be achieved through open dialogue with the industry?
- More generally, with RM^3 now central to the ORR's approach to inspection, we believe that it would be reasonable to expect RM^3 assessment results to influence the relationship between the ORR and individual train companies, with those towards the higher end recognised as requiring a generally 'softer touch'.
- In addition to the above generic points, we also have more specific concerns regarding in occupational health where we see the ORR as setting requirements and placing expectations on train companies in areas in which they have no regulatory authority and insufficient competence.
- Such expectations are based on industry data which is of low quality and there seems to be a continuing view within the ORR that train companies are doing little in the occupational health arena. When given data which conflicts with this perception, it often seems that there is initial acceptance before it is subsequently apparently ignored.
- The high level management expectations communicated to train companies appear to be part of a 'pincer movement' with local inspectors requiring detailed data which train companies find difficult to provide – specifically they are asked for work related health absence when in truth it is difficult to be precise about why anyone is absent.
- The train companies are participating in and supporting the ORR inspired RSSB project on health and wellbeing and they think it is appropriate to wait until that concludes before they finalise their OH strategies – yet the ORR has been writing to train company managing

directors specifically asking for this high level information.
- The train companies recognise there is more to be done on occupational health and are working through that – but do not see there being any immediate safety concerns that need immediate action.