



BRIEFING PAPER

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Railways Pension Scheme

By Djuna Thurley

Contents:

1. Arrangements at privatisation
2. Current structure of the RPS
3. Funding
4. The Railway Pension Commission - 2008



Contents

Summary	3
1. Arrangements at privatisation	4
1.1 Legislative framework	4
2. Current structure of the RPS	8
1994 section	8
3. Funding	10
3.1 How is the RPS (sca) funded?	10
3.2 Surplus at privatisation	11
3.3 Where did the surplus go?	12
3.4 2019 franchise bids	13
3.5 Impact of scheme funding requirements	16
4. The Railway Pension Commission - 2008	18
4.1 Setting up of the Commission	18
4.2 First Report	20
4.3 Final report	23
4.4 Response	25

Summary

The Railways Pension Scheme (RPS) is the final salary Defined Benefit (DB) scheme that replaced the old British Rail Pension Scheme (BRPS) following privatisation of British Rail. It is an industry-wide umbrella scheme with a number of different sections. Pensioners and preserved pensioner members of the BRPS on 30 September 2004 were transferred into a separate section of the RPS – the 1994 Pensioners Section. Active members of the scheme were transferred into a shared cost arrangement (sca).

Employees and members of the BRPS at midnight on 4 November 1993 were “protected persons”. They had a legal right to pension provision for their future employment which would be “no less favourable than the relevant pension rights which he had under [the BRPS].” This protection is retained unless and until they voluntarily leave their employer, withdraw from the RPS or agree to waive their protected status. An individual who moves voluntarily from one railway industry employer to another loses protected status for future accrual, but not the “indefeasible right” to participate in the RPS.

A valuation of the RPS (sca) in 2004 showed it to have a deficit of £0.4 billion, compared to a surplus of £1.8 billion at the time of the last valuation of the BRPS in 1993 prior to privatization. Concern about rising costs led rail unions and employers to establish an independent Railway Pensions Commission. Its first report, published in 2007, concluded that DB pension provision across major parts of the railway industry was sustainable over the long term if it was made more affordable. Its final report, published in 2008, made recommendations for change.

In April 2019, [Stagecoach](#) said it had been disqualified from three rail franchise competitions for submitting bids that were non-compliant, principally in respect of pension risk. It was concerned that it would otherwise be required to make significant financial contributions to repair the deficit in the scheme. In response, the Government said that from the time the RPS was established, train operating companies (TOCs) had been responsible for paying employer pension contributions during a franchise term. In the vast majority of franchises, they had been on full risk for changes to those contributions during their franchise term. The new East Midlands franchise included a risk sharing mechanism with the government, which reduced the risk the TOC was exposed to, so that they would only have to pay any increase in contributions relating to pension rights arising from future service (rather than deficit reduction contributions) ([PQ 244026, 24 April 2019](#)).

Stagecoach and other TOCs launched a [legal challenge](#) against their respective disqualifications from three railway franchise competitions between 2017 and 2019. However, in a [judgement delivered on 17 June 2020](#), the High Court held that the Secretary of State’s decisions had been lawful. Responding, the [Rail Delivery Group](#) said the industry accepted the judgement and wanted to work with the “the Pensions Regulator, DfT and the unions with a view to agreeing a sustainable pensions framework for the train operator sections of the Railway Pensions Scheme.”

More recently, concern has been expressed about the impact of changes to the regulation of scheme funding that may result from provisions in the [Pension Schemes Bill 2019/21](#) and a [TPR consultation](#).

1. Arrangements at privatisation

The main pension scheme in the old British Rail (BR) was the British Rail Pension Scheme (BRPS). As a consequence of the *Railways Act 1993* and the break-up of BR's constituent parts, a new scheme, the Railways Pension Scheme (RPS) was set up to replace it.¹

In May 1993, the then Secretary of State for Transport, John MacGregor said the Government was introducing measures to protect the pension rights of BPRS members:

My objective remains to preserve the security of rights enjoyed by pensioners and members while adopting arrangements to suit the new structure of the privatised industry. The proposals I am announcing today meet this objective.

I have decided that there should be set up, under the powers granted in the Railways Bill, a joint industry pension scheme for the railways [...]

Existing employees' rights will be protected by statutory orders made under the Railways Bill. The benefits offered to employees must be no less favourable than those in the existing scheme. There will be no penalties for involuntary breaks in employment. The present schemes under which the employer matches additional voluntary contributions made by employees (BRASS schemes) will continue subject to the existing right of the employer to withdraw matching for new or increased contributions.

Employees should be reassured by the statutory protection of these benefits. But I now propose to go further and give those staff serving at Royal Assent an individual right to remain in the joint industry scheme for as long as they are still employed in the railway industry.²

The detailed provisions were debated in the Lords on 26 May 1994.³

A joint industry scheme – the RPS – was set up with effect from 31 May 1994 to take over the assets and liabilities of the British Rail Pension Scheme. It envisaged a shared cost arrangement (sca) comprising different sections for the various participating employers together with a special section, whose solvency was guaranteed by Government, to accommodate those who had retired from or left the industry prior to privatisation.⁴

1.1 Legislative framework

The Railway Pensions Commission's first report summarised the legislative framework of the RPS as follows:

The primary legislation giving rise to the current structure of the RPS is the *Railways Act 1993*. Schedule 11 to the Act defines the "joint industry scheme" and a category of "protected persons". Secondary legislation gave effect to the relevant provisions of the Act: the *Railways Pension Scheme Order 1994*, the *Railway*

¹ For more on the background, see 1157, [Rail Privatisation 1987-1996](#) (March 2010)

² HC Deb 20 May 1993 c235-6 and [HL Deb 20 May 1993 c96WA](#)

³ [HL Deb 26 May 1994 c555](#)

⁴ Railway Pensions Commission – First Report, 2007, section 2.2

Pensions (Protection and Designation of Schemes) Order 1994 and the *Railway Pensions (Transfers and Miscellaneous Provisions) Order 1994*. Importantly and unusually, the benefits structure of the RPS is set out in legislation, as is the cost sharing nature of the RPS, which provides that each participating employer shall contribute 1.5 times the amount contributed by those of its employees who are members.

Two different forms of protection were set out in the Railways Act: the definition of “protected persons” and the concept of the “indefeasible right”. Individuals who are protected persons retain that protection unless or until: they voluntarily leave their employer; they withdraw from the RPS; or they agree to waive their protected status. Schedule 7 to the Railways Act allows the Secretary of State to confer, upon people who fulfil certain conditions, the right to continue to participate in the RPS for as long as they are employed in the railway industry. This “indefeasible right” means that an employer who comes into the railway industry and employs anyone with the right, must become part of the RPS.

The RPS is also subject to all the pensions legislation enacted since it was set up. With the advent of the *Pensions Act 2004*, it seems likely that the sections of the RPS (sca) will move more towards being separate schemes with a centralised administration function and a common investment fund. The implications of this for the RPS could be considerable.⁵

Protection for scheme members

An important consequence of the benefit structure being in legislation is that “the provisions of the RPS cannot be worsened, whether for past or future service, for those in the industry at the time of privatisation without secondary legislation to give effect to such a change.”⁶ As the Railway Pensions Commission explained in its 2007 report, there were two forms of protection – the definition of “protected persons” and the “indefeasible right”:

Individuals who are protected persons retain that protection unless or until: they voluntarily leave their employer; they withdraw from the RPS; or they agree to waive their protected status. Schedule 7 to the Railways Act allows the Secretary of State to confer, upon people who fulfil certain conditions, the right to continue to participate in the RPS for as long as they are employed in the railway industry. This “indefeasible right” means that an employer who comes into the railway industry and employs anyone with the right, must become part of the RPS.⁷

A leaflet for scheme members explained:

“Protected Persons”

You are a “Protected Person” if at midnight on 4 November 1993:

- you were in the BR Pension Scheme and you were employed by the British Railways Board or one of its subsidiaries (“the Board”); or

⁵ Railway Pensions Commission, First Report, page 22

⁶ Ibid, p22

⁷ Railway Pensions Commission, First Report, 2007, page 2

- you were not at the time working for the Board but have since exercised a statutory or contractual right to return to employment with the Board or one of its successors. In this case, you must have been a member of the BR Pension Scheme when you were last employed by the Board and you must not have taken a transfer payment from the BR Pension Scheme in respect of that previous period of employment (i.e. your pension rights should have remained deferred (“frozen”) in the BR Pension Scheme and not transferred to an alternative scheme or arrangement).

(The statutory or contractual right extends principally to those absent on maternity leave or seconded to another employer.) You may also be a protected member if you acquired pension rights in consequence of the death

What is the “Protection”?

For so long as you remain a Protected Employee:

- the Order requires that your pension rights in respect of future employment must be at least as favourable as the rights which the BR Pension Scheme provided on 31 May 1994; and
- your employer has a legal obligation to provide an adequately funded occupational pension scheme which meets these requirements.

If in the future the pension rights you have built up under the Scheme (including rights transferred from the BR Pension Scheme) are transferred to another scheme in circumstances where the Protection continues, you must be credited with past service pension rights at least as favourable as those in the Scheme at the time you transferred.

You will continue to be a Protected Employee if....

the ownership of your employer changes, for example on the sale of its shares, or if your contract of employment is transferred compulsorily, for example on the sale of all or part of a business or a change of franchisee, or in other circumstances where you remain in continuous employment under the Employment Protection legislation.

You will cease to be a Protected Employee if....

generally, you choose to leave the employment of your current employer or if you choose not to remain a member of the Scheme. However, you will remain a Protected Person in respect of your accrued pension rights under the Scheme unless and until you opt to transfer those rights to another scheme or arrangement.

(In certain circumstances you will remain a Protected Employee where there is a break in your contract of employment for the purposes of the Employment Protection legislation or you voluntarily withdraw from the Scheme, but these circumstances are exceptional and will apply to very few people, e.g. if you have moved voluntarily between employers in the railway industry before 1 October 1994.)

The “Indefeasible Right”

You have the “Indefeasible Right” if at midnight on 4 November 1993:

you were in the BR Pension Scheme and were employed by the Board; or

you were not at the time employed by the Board but have since exercised a statutory or contractual right to return to employment in the railway industry. You must in addition have been a member of the BR Pension Scheme when you were last employed by the Board and must not have taken a transfer payment in respect of that previous period of employment.

What is the “Indefeasible Right”?

This is the statutory right to continue to be a member of the Scheme until the Right comes to an end.

The Right continues....

if, having left employment with the Indefeasible Right, you resume employment within six months with a railway industry employer. However, you must not have been employed outside the railway industry within the “gap” period. If you transfer voluntarily or involuntarily without a gap in your employment between railway industry employers you will, of course, satisfy these conditions. The right may also continue in certain other circumstances but these circumstances are exceptional and will therefore apply to very few people.

The Right ends....

if, other than in the circumstances outlined above, you choose not to remain a member of the Scheme or if you cease to be in the employment of an employer engaged in the railway industry, (unless special circumstances apply).⁸

⁸ RPS, *Your protected rights*, 9 March 2009; See also, RPS, [Your protected rights](#), April 2016

2. Current structure of the RPS

The Railway Pensions Scheme (RPS) is an industry-wide scheme, created in 1994 after the privatisation of the railway industry and reorganisation of the British Rail Pension Scheme (BRPS). It provides pensions for 149 employers and is made up of six parts - the two largest being the:

- 1994 section (to which pensioner and preserved pensioner members were transferred on privatisation). This had 93,407 members in 2019. It is covered by a government guarantee; and
- The shared cost arrangement (sca), which in 2019 had 237,994 members, 104 sections and 105 designated employers.⁹

1994 section

Pensioner and deferred members of the BRPS at the time of privatisation were transferred to the "1994 Pensioners" section of the RPS. This is a closed scheme with no contributions being made into it. Its solvency is covered by an absolute guarantee from the Government.¹⁰

The 1994 Pensioners Section

Pensioners and preserved pensioners in the BR Pension Scheme on 30 September 1994 were transferred into a separate section of the RPS – the 1994 Pensioners Section. Later, on 30 December 2000, pensioners and preserved pensioners of the BR Section were also transferred to the 1994 Pensioners Section. The assets and liabilities of another six closed railway pension schemes were also transferred to the 1994 Pensioners Section in 2007, after agreement between the Trustee and the DfT. The Secretary of State guarantees all past service liabilities and pensions in payment of the 1994 Pensioners Section at 1 August 2007, plus any future annual pension increases awarded to Section members.¹¹

Shared cost section

Active members of the BRPS were transferred to the RPS on 1 October 1994. Their pension entitlements were transferred into a special section of their new employer's pension scheme which is designed to provide essentially the same terms as the BRPS or the British Rail section of the RPS to which they formerly belonged (the 'no less favourable section'). Assets from the "BR shared cost" section were allocated to new sections of the RPS on the basis of the *Railway Pensions (Transfer and Miscellaneous) Provisions Order 1994*.¹² The cost-sharing nature of the RPS also derived from the Order, which provided that each participating employer shall contribute at a rate equal to 1.5 times the amount contributed by members.¹³ The 2017 Annual Report explains:

⁹ [RPS Annual Report 2019](#), p4

¹⁰ The *Railway Pensions (Transfer of Pension Schemes) Order 2007* (SI 2007/2205) made provision for members of pension rights under six very old pension schemes to be transferred to the "1994 Pensioners Section", and for those schemes to be wound up – see [Explanatory Memorandum](#)

¹¹ [Railways Pension Scheme Annual Report 2017](#), p7

¹² [SI 1994/2005](#)

¹³ Railway Pensions Commission, First Report, 2007, page 2

The Shared Cost Arrangement

All active members of the BR Pension Scheme were transferred into the Shared Cost Arrangement on 1 October 1994. Transferred members with protected rights under *the Railways Act 1993* have a statutory right to remain in the RPS while they continue to be employed in the railway industry. A separate section within the Shared Cost Arrangement may be created for each designated employer. Originally, as each BR business was franchised or sold, a proportionate share of RPS assets was transferred to a new section of the Scheme. Subsequent sales and transfers of parts of businesses can now result in the creation or mergers of sections. As at 31 December 2017, 93 of the 107 shared cost sections had active members and 49 of these shared cost sections remain open to new members. For open sections, employees of the participating employer who are employed in the railway industry may join the Scheme. New members are not protected under the Railways Act 1993, however, so their pension rights may differ from those who have protected rights. A full list of sections and participating employers is given in Note 11 to the Financial Statements.¹⁴

Initially, the active members of the BRPS at all belonged to the “British Rail shared cost” section of the RPS, but as the parts of British Rail were sold off or franchised, a separate shared cost section of the RPS was created for each new company. The Railway Pensions Commission pointed out that the history and structure of the privatised industry had strongly influenced the nature of the RPS (sca), which was now “highly fragmented”:

The interplay of scheme rules with train operating franchise boundary changes has tended toward the creation of new RPS (sca) sections. Sections have, to an extent, responded to their own surpluses and deficits on an individual basis, with varied contribution rates and benefits and rules. New funding standards (which will require the trustee and scheme actuary to consult and reach agreement on the specific funding approach of an individual section) may accelerate the move away from a more consistent approach to contributions and benefits.¹⁵

The industry-wide arrangement offered important advantages to both employers and employees. For employers, it offered a level playing field in competing for staff and allowed them to meet their obligations to employees with the protected status and/or indefeasible right with minimum administrative overhead.¹⁶ However, there were also weaknesses, which the Railways Pensions Commission made recommendations to address in its reports in 2007-08 (see [below](#)).

¹⁴ [Railways Pension Scheme Annual Report 2017](#), p7

¹⁵ Railway Pensions Commission, First Report, 2007, p39 and 50

¹⁶ Ibid p43

3. Funding

3.1 How is the RPS (sca) funded?

The RPS (sca) is a private sector defined benefit (DB) pension scheme. It operates on a funded basis, which means that contributions are made to a fund, which is invested and used to pay pensions at retirement.

It is made up of different sections provided by different employers, including Train Operating Companies (TOCs), who are responsible for paying employer contributions during a franchise term. This has been the case since franchising arrangements were first introduced.¹⁷

Employers and employees contribute on a shared cost basis:

Contributions in to the Railways Pension Scheme are split according to a shared cost arrangement, whereby employers (the Train Operating Companies) pay 60% and employees pay the remaining 40%. Since franchising arrangements were first introduced Train Operating Companies have been, and continue to be, responsible for paying employer pension contributions during a franchise term.¹⁸

Valuations

Like other private sector defined benefit pension schemes, the RPS is subject to pension scheme funding requirements introduced under the *Pensions Act 2004*. This requires trustees to:

- Draw up a statement of funding principles (i.e; a written statement of the policy for meeting the statutory funding objective, which is that the scheme has 'sufficient and appropriate assets' to meet its liabilities);
- Obtain a full actuarial valuation of their scheme at least every three years; and
- Where the scheme is in deficit, prepare a recovery plan setting out the steps that will be taken to meet the funding objective over what timeframe.¹⁹

Each section of the RPS (sca) is effectively an individual scheme for valuation purposes. This means the method and assumptions adopted for determining the scheme's liabilities are consulted on by the Scheme Actuary and ultimately agreed between the Trustee and relevant employers. While 'standard' methods and assumptions are adopted as far as possible, some sections use different assumptions (set out in their Statement of Funding Principles).²⁰ As a result, the financial and demographic experience of each section has varied.²¹

If at valuation, a section is found to be in deficit, the schedule of contributions made by the employer will include deficit recovery

¹⁷ [PQ245609, 25 April 2019](#)

¹⁸ Ibid

¹⁹ For more detail, see Library Briefing Paper SN 4877 [Pension scheme funding](#) (October 2017)

²⁰ [Railway Pension Schemes – Annual Report 2017](#), p 48

²¹ Railway Pensions Commission, First report, March 2007, section 1.4

contributions aimed at funding the deficit within a recovery period agreed by with the Trustees.²²

TOCs are required to meet the contributions payable during the term of their franchise, including any increase in contributions found to be required following a valuation. At the end of the franchise term, this obligation passes to the TOC taking over the franchise and the outgoing franchisee is not responsible for any past service deficit that “built up” during the franchise period, provided it had paid the contributions that it was required to pay by the Trustee (nor would it benefit from any surplus that had built up).²³

The most recent published valuation of the scheme showed the position as at the end of December 2016. The next valuation will show the position of the schemes as at 31 December 2019.²⁴

3.2 Surplus at privatisation

There was some controversy at the time of rail privatisation about potential surpluses in the BRPS and the impact this might have on potential bids for franchise operations. The regulations setting out the rules of the shared cost sections of the RPS provided that in the event of an apparent surplus:

...the Designated Employer, and the Trustee and the Pensions Committee may agree to use some or all of the surplus assets in some way consistent with Revenue Approval, unless the Actuary determines that the surplus is trivial or that it would be prudent to retain that surplus within the Section.²⁵

In September 1996, *The Guardian* and other papers carried reports that details of the surpluses in BR franchises had been made available to franchise bidders by the Government Actuary. The reports included a letter from the chairman of the British Rail Pension Fund, dated 5 August 1996, which protested to the franchising director:

...in the strongest possible terms against the contents and circulation of the memorandum [prepared by the Government Actuary's Department] in its suggestions relating to a possible level of surplus and to the possibility of a future contribution holiday for the employer.²⁶

The article suggested that surpluses within franchises could be used to allow successful bidders to take contributions holidays and thereby reduce the cost of operating the business. According to the Government at the time, the media reports were ill-informed. Notes were prepared based on advice from the Government Actuary's Department as part of the bidding process, but they did not provide confidential information on the position of the RPS. Rather, they provided general information and reasons why the pension fund might

²² [RPS Annual Report and Accounts 2017](#), 057; Railway Pensions Commission, [Final Report, 2008](#)

²³ [Letter to chairs of the Work and Pensions and Transport Select Committees, from Transport Secretary, Chris Grayling, 7 May 2019](#), para 4

²⁴ [RPS Annual Report 2019](#), p41

²⁵ Appendix 2, Part 1, rule 20, [SI 1994/1433](#)

²⁶ “Rail pensioners shunted into sidings”, *Guardian*, 3 September 1996

be in surplus and that there might be a possibility of reduced contributions. Contributions holidays were not offered to franchise bidders and it was made clear that the rules of the scheme would determine whether reduced contributions could be made.

Although there has been controversy about the way in which companies were informed of possible surpluses, indications of surpluses were in the public domain. Railtrack's prospectus of May 1996 provided a valuation which suggested a surplus in its section of the pension scheme, and the last valuation of the BRPS had indicated that reduced contributions were sustainable until 2003.

An EDM at the time of the controversy drew attention to the Government Actuary's memorandum and related this to assurances given by the Government during the passage of the *Railways Bill*:

That this House condemns the Secretary of State for Transport for instructing the Government Actuary, without consulting the Railway Pension Trustee, to provide a briefing note about the size of the British Rail pension fund surplus to private companies bidding for railway passenger franchises; believes that action which in any way compromises the independence of the Railway Pension Trustee or could be taken to imply agreement to a future distribution of surplus is wrong; and calls on the Secretary of State for Transport to withdraw the briefing note to franchise applicants, to honour the Government's assurances given in the proceedings of the House on the Railway Bill that the pension funds would be used to provide pensions and for no other purpose, and to respect the independence of the Railway Pension Trustee.²⁷

3.3 Where did the surplus go?

A valuation of the Railway Pension Scheme (sca) in 2004 showed it to have a deficit of £0.4 billion, compared to a surplus of £1.8 billion at the time of the last valuation of the BRPS in 1993 prior to privatization. In its first Report, the Railway Pensions Commission said:

So, it is entirely reasonable to ask where the money has gone. The answer is in three parts.

- First, the figures for the 2004 valuation quoted above, unlike those for 1993, do not include the liabilities for those ex-employees of the railway industry who retired or left prior to privatisation and are now members of the 1994 Pensioners Section;
- Second, the original surplus, and further surpluses that were revealed at subsequent valuations, have been used over the last 13 years to reduce the contributions payable by employers and members and to cover the cost of BRASS matching;
- Third, the RPS (sca) is not alone among pension schemes in facing such a substantial change in its financial position, due to the changing environment described above.²⁸

²⁷ [EDM 1253 of 1995/96](#)

²⁸ The Railway Pensions Commission, First Report, March 2007, Executive Summary

The surplus – which had been used to cover the increased costs in the RPS (sca) – was now no longer available:

The use of past service surpluses in the RPS (sca) to reduce contributions and to meet the cost of BRASS matching was a conscious decision carried forward from the BRPS. As mentioned above, the 1993 valuation of the latter revealed a past service surplus of £1.8 billion, but almost all of this was allocated at that time to reserves specifically to cover the future cost of reducing the joint contribution rate and BRASS matching (£1.4 billion) and pay restructuring (£0.4 billion). These reserves have now been exhausted, which means that they are no longer available to reduce the contributions of both employers and members needed to meet the full cost of accruing benefits.²⁹

The costs of the scheme were expected to rise in the future:

The impact of deficits on the contributions that had to be paid following the 2004 valuation was compounded by an increase in the cost of providing current benefits. It cannot be assumed that ongoing pension costs will return to what in the past was regarded as a normal level, once the deficits have been cleared. Improving life expectancy, investment conditions, the introduction of scheme-specific funding and the lack of a cushion in a section's finances, which in the past was provided by a surplus, mean there are likely to be further increases in the cost of the present pension arrangements. It is to be expected, therefore, that difficulties similar to those that arose following the 2004 valuation will arise again in a final salary scheme operated on a shared cost basis.³⁰

3.4 2019 franchise bids

On 10 April 2019, Stagecoach said it had been informed by the Department for Transport (DfT) that it had been disqualified from three rail franchise competitions. It had been told verbally this the reason was that its bids were “non-compliant bids principally in respect of pensions risk.” It argued that the DfT was asking the industry to accept risks it could not control or manage:

We bid consistent with industry guidance issued by the Rail Delivery Group and shared with the DfT. Without ongoing Government support for the long-term funding of railway pensions, the Pensions Regulator has indicated that an additional £5 billion to £6 billion would be needed to plug the gap in train company pensions.

In contrast, the rail industry proposed solution would have delivered an additional £500 million to £600 million into the scheme. This would have provided better stability and security for members and much better value for taxpayers. We are shocked that the Government has rejected this for a higher risk approach. We would urge that a full independent value for money review is undertaken into this issue without delay.

Along with many other train companies, we believe strongly that the private sector should not be expected to accept material risks it cannot control and manage. In fact, this was a key finding of

²⁹ The Railway Pensions Commission, First Report, March 2007, p12; The glossary explains that BRASS is the British Railways Additional Superannuation Scheme – the railway industry AVC arrangement. “BRASS matching” is an agreement whereby employers match BRASS contributions by employees

³⁰ Ibid

the Brown review into rail franchising more than six years ago. We are therefore extremely surprised that the Government still expects private operators to take risks they are not best placed to manage, despite the recent difficulties experienced by a number of operators of outsourced public sector contracts.³¹

An article in Rail Magazine quoted the Chief Executive of the Rail Delivery Group as saying that “the eye-watering contribution increases needed to fill the black hole could ‘break the scheme.’”³²

In response to an urgent question on 11 April 2019, the then Transport Minister, Andrew Jones, argued that these were private sector schemes and it was not a question of the Government trying to pass costs on to the industry:

With regard to passing the costs on to the private sector, that is also nonsense, because these are private sector pension schemes. The rail operating companies have a section of the rail pension scheme. Their trustees will meet the Pensions Regulator to discuss that. Is this a question of the Government seeking to remove responsibility? No, this is a private matter and the trustees will be dealing with that in their own way. [...] Stagecoach is an experienced bidder and fully aware of the franchise competition rules, so it is regrettable that it submitted a non-compliant bid that breached the established rules. In doing so, Stagecoach is responsible for its own disqualification. Bidders were invited to bid on the basis of a pension deficit recovery mechanism. They knew that at the very start of the process. Stagecoach did not accept it and made some amendments as it submitted the bid.³³

In response to a PQ on 24 April 2019, Mr Jones said the new franchise included a mechanism to reduce the risk TOCs were exposed to:

Contributions into the Railways Pension Scheme are split according to a shared cost arrangement, whereby employers (the Train Operating Companies) pay 60% and employees pay the remaining 40%. Train Operating Companies are and continue to be responsible for paying employer pension contributions during a franchise term, and in the vast majority of franchises, have been on full risk for changes to those contributions during their franchise term since the Railways Pension Scheme was established.

In the new East Midlands franchise, the operator is exposed to no additional risks or demands when compared to current franchisees. Indeed, the new franchise includes a risk sharing mechanism with the government, which reduces the risk that the operator will be exposed to. In this, the operator retains the risks that it is able to manage, which are the contributions which cover employee’s pension rights arising from future service.³⁴

The issues were explained in more detail in a response to chairs of the Work and Pensions and Transport Select Committees in May 2019.³⁵

³¹ [Department for Transport rail franchising programme, Stagecoach press release, 10 April 2019](#)

³² ‘Pensions: a very murky tale’, Rail Magazine, 24 April 2019, p3

³³ [HC Deb 11 April 2019 c459 ff](#)

³⁴ [PQ 244026, 24 April 2019](#)

³⁵ [Letter from Chris Grayling to Lilian Greenwood and Frank Field](#)

Legal challenge

A number of Train Operating Companies unsuccessfully challenged decisions by the Secretary of State to disqualify them from three rail franchise procurement competitions. Monckton Chambers, which represented Stagecoach and others, explained:

The case involves claims by Stagecoach and the West Coast Trains Partnership (which includes Stagecoach, Virgin and SNCF) against the Department for Transport arising out of procurement competitions for the South Eastern, East Midlands and West Coast Partnership railway franchises between 2017 and 2019. The claimants challenged their respective disqualifications from the competitions, seeking damages and other relief, and contested the legality of the awards of the East Midlands and West Coast franchises to Abellio and First Trenitalia respectively.

A fourth claim was brought by Arriva, but was settled on the eve of trial.

The hearing related to pensions issues – namely whether the Secretary of State’s approach to future pensions liabilities was lawful. At the time of the competitions, intervention by the Pensions Regulator had caused significant uncertainty about the way in which pensions deficits and future pensions contributions should be accounted for as part of the Rail Pensions Scheme. That privatised scheme, which remains open to new employees, had around 344,000 members at the end of 2018. The Department for Transport had issued contract terms, as part of a re-bid process, which offered defined but limited protection against some (but not all) of the pensions risks under a so-called Pensions Risk Sharing Mechanism. Stagecoach, Arriva and West Coast rejected the Secretary of State’s risk allocation and offered to contract on different terms.³⁶

In a judgement delivered on 17 June 2020, the High Court held that the Secretary of State’s decisions were lawful and had not breached EU law on proportionality, transparency and equal treatment.³⁷

Monckton Chambers explained:

In today’s judgment, Mr Justice Stuart-Smith ruled in favour of the Department for Transport on all grounds. He held that the pensions terms of the tender met the requirements of transparency and fairness; that the process followed was compliant with the relevant regulatory framework and principles of proportionality and equal treatment; and that the Department acted lawfully in disqualifying the claimants and awarding the franchises to the winning bidders.³⁸

The Rail Delivery Group (which represents TOCs) said the industry accepted the judgement and wanted to work with the “the Pensions Regulator, DfT and the unions with a view to agreeing a sustainable pensions framework for the train operator sections of the Railway Pensions Scheme.”³⁹

³⁶ [Rail litigation 2019 -Stagecoach and West Coast Challenges dismissed](#), Monckton Chambers, 17 June 2020

³⁷ [2019 rail franchising litigation, \[2020\] EWHC 1568 \(TCC\)](#)

³⁸ [Rail litigation 2019 -Stagecoach and West Coast Challenges dismissed](#), Monckton Chambers, 17 June 2020

³⁹ [Rail delivery group statement, 20 June 2020](#)

3.5 Impact of scheme funding requirements

The [Pension Schemes Bill 2019-21](#) includes provision in clause 123 and Schedule 10, that would require the chair of the pension scheme's trustees to report to TPR on the scheme's investment strategy.⁴⁰ This is to be accompanied with new guidance on scheme funding requirements, on which TPR consulted between March and September 2020.⁴¹ The overall intention is to:

improve trustee and sponsoring employer behaviours and decision-making, and support the Regulator with their enforcement action where there is concern that the scheme's long term funding and investment strategy is not suitable or cannot be achieved.⁴²

On 11 September 2020, the *Financial Times* reported concerns about the impact of TPR's proposed approach to scheme funding on the RPS:

[...]actuarial modelling prepared for the RPS, which provides DB pensions for more than 150 companies operating within the UK railway industry, suggested the overhaul could lead to a £15bn deficit in the currently fully-funded scheme as it switches to lower-risk but lower-returning assets. Any subsequent funding shortfall would have to be picked up by rail employers, including Abellio and First Group, all of which are already under financial pressure from the collapse in passenger numbers. However, the railways are currently effectively nationalised after the government stepped in as passenger numbers collapsed during the pandemic.⁴³

An Opposition amendment to the Bill made at Report Stage in the House of Lords would require a different approach to the regulation of open and closed DB schemes (now [clause 123 \(2\)](#)). Speaking to the amendment, Liberal Democrat Peer, Baroness Bowles explained the rationale:

Examples of open pension schemes include local authority pension funds, the Nuclear Decommissioning Authority and the Railways Pension Scheme. The different classes of open and closed schemes require different investment, risk and liquidity strategies. A low-risk liquid investment strategy is more appropriate for closed schemes where the loss in asset values would impair a model that relies on asset consumption as it moves to its end date. They cannot risk running out of assets too soon and recovery from losses on dwindling assets is difficult.

The same strategy does not need to be applied to open schemes. With a pipeline of new and younger members, assets do not need to be liquid, are not inherently dwindling, and a far longer investment horizon is possible. An investment risk profile of the type generally classed as balanced rather than risk-averse can safely be followed, including real assets such as infrastructure. As an example, the Railways Pension Scheme invested in the Carraig Gheal wind farm in West Argyll and the Sleaford biomass plant,

For more detail, see [Defined benefit pension scheme funding](#), Commons Library Briefing Paper, CBP 4877

⁴⁰ For more detail, see Pension Schemes Bill 2019/21, Commons Library briefing paper CBP 8693, (forthcoming)

⁴¹ TPR, [Defined Benefit funding Code of Practice consultation](#), March to September 2020

⁴² DWP, [Pension Schemes Bill – delegated powers memorandum](#), January 2020, para 1.430; [Bill 165-EN](#), paras 607-12

⁴³ [Rail sector pension fund warns of £15bn finance hole under new rules](#), *Financial Times*, 11 September 2020

providing both environmental and local community benefits. This type of investment brings higher returns and the contributions from the members and the employers remain affordable. If open schemes are needlessly pressed to have the liquidity and risk profiles defined for closed schemes, it is inevitable that they too will close due to unaffordability: start the run-down, jeopardise employer companies and employees will lose out, pay more, or both.⁴⁴

She was supported by Baroness Drake, former chair of the Railway Pensions Commission, who said:

It is clear that there is genuine concern among those running DB schemes which are materially open to new members with strong employers, such as the sections of the Railways Pension Scheme and the Universities Superannuation Scheme. They fear that they will be forced to de-risk unnecessarily, with all the implications that that carries and all the potential detriment for both employers and employees in the scheme.⁴⁵

Responding for the Government, Earl Howe said that one of the greatest strengths of the scheme-funding regime was its flexibility:

One of the greatest strengths of our scheme-funding regime is that it operates on a scheme-by-scheme basis because every scheme is different, and it would be unhelpful and inflexible to treat them all the same. The measures in the Bill build on that approach, as will the secondary legislation.

In the protecting defined benefits White Paper we were clear that there are a number of examples for suitable long-term objectives and that running on with employer support would be a reasonable course of action for an open scheme. Whether or not the strategy for ensuring that benefits can be provided in the long term is suitable will depend on the specific context of a particular scheme. Additionally, we entirely accept that schemes with different liquidity profiles and maturity will be able to take different trajectories. This is, and will remain, fundamental to the scheme-specific approach. The big danger with an amendment of this kind is that it creates inflexibility.⁴⁶

Peers voted by 263 votes to 227 to accept the [Opposition amendment](#).

The Bill had its First Reading in the Commons on 16 July 2020. A date for Second Reading has not yet been announced.⁴⁷

⁴⁴ [HL Deb 30 June 2020 c679](#)

⁴⁵ [Ibid c682](#)

⁴⁶ [Ibid c686-7](#)

⁴⁷ [Pension Schemes Bill 2019/21 – UK Parliament website](#)

4. The Railway Pension Commission - 2008

Concern about the rising costs of Railway Pensions led Network Rail to announce on 1 April 2004 that it was closing its section of the RPS final salary pension scheme to new entrants and introduce a new money purchase (defined contribution or 'DC') scheme instead. John Armitt the then Chief Executive of Network Rail explained that the RPS was becoming increasingly expensive for both employees and employers:

Well as far as pensions are concerned, the railway pension scheme which has been in existence - was the old BR pension scheme - that's a very expensive scheme and in recent years with all the difficulties in many pension schemes it's become more and more expensive, both for employees and for employers.

... We put in place, last December, a new defined contribution scheme for people starting with the company from the 1st of April this year. It's a very good scheme and it's at the top end of the defined contribution schemes and will provide a good pension for people in the future who join the company in the future.⁴⁸

On 21 June 2004 the RMT union announced that its members at Network Rail had voted by 2,947, (58 percent) to 2,246 (42 percent) for industrial action on a 68 percent turnout.⁴⁹ The first national railway strike in the UK since privatisation was set for 29-30 June 2004.

On 23 June 2004, Network Rail applied to the High Court for an injunction to prevent the strike, citing irregularities in the RMT's balloting procedure. The following day the RMT suspended its proposed industrial action, claiming that Network Rail had made an offer to "re-open the final-salary pension scheme to new member.". The then RMT General Secretary, the late Bob Crow, said:

Network Rail has offered to re-open the final salary pension scheme to new employees upon completion of five years' service ... That service would include any agency or sub-contractor service in the rail industry prior to transferring into Network Rail ... Employees with less than five years' service would meanwhile join a money-purchase scheme, but would be able to transfer into the final-salary scheme upon completion of five years' service.⁵⁰

4.1 Setting up of the Commission

Following the 2004 valuation, there was deep concern among the rail unions regarding the impact of the high pension contributions. As a result, those unions (RMT, TSSA, ASLEF and the CSEU) formed a joint campaign, the objectives of which were to: cap employee contributions at 10.56%; keep benefits at least at their current level; streamline the scheme to have three active sections (Train Operating Section,

⁴⁸ BBC [Breakfast with Frost, 23 May 2004](#) [transcript]

⁴⁹ RMT pension circular, "RMT members at Network Rail to strike over pensions," 21 June 2004

⁵⁰ RMT pension circular, "RMT suspends action following Network Rail proposal," 24 June 2004

Engineering & Infrastructure Section and an Omnibus Section) and; keep the scheme open to all employees.⁵¹

An EDM 1681 in the name of John McDonnell called on the Government to protect the pensions of rail workers:

That this House is deeply alarmed at the attempts by railways employers substantially to increase employee pension contributions; notes this will not only be detrimental to rail workers' earnings but will threaten the future viability of the Railways Pension Scheme by forcing existing members to opt out, and deterring new members from joining; is concerned that rail employers are considering closing scheme sections, raising retirement ages and reducing benefits; believes the threat to rail workers' pensions is a direct result of the fragmentation of the Railways Pension Scheme and of employers taking pension holidays; strongly supports the rail unions' campaign to cap employees' contributions, maintain existing benefit rates, simplify the Railways Pension Scheme's structure and open the Scheme to all staff; and therefore urges the Government to do all within its power to protect the pensions of rail workers.⁵²

In April 2006, the rail unions said they would ballot for industrial action.⁵³

In September 2006, Network Rail, the Association of Train Operating Companies (ATOC) and the Trades Union Congress (TUC) announced that an Independent Railway Pensions Commission had been set up to review the Railway Pension Scheme.⁵⁴ It was set up to identify the strengths and weaknesses of the Scheme and consider what, if any, alternative means of long term pension provision might be available that would be fair and affordable for both employees and employers:

Against a background of rising costs of pension provision, the perceived constraints of the current Railways Pension Scheme and the rail unions' pension campaign objectives, the Commission as a first step will seek to identify the strengths and weaknesses of the Scheme. It will then, in the context of the current legal framework (and taking into consideration any pending legislation) and the commercial structure of the industry, consider what, if any, alternative means of long term pension provision might be available for consideration by industry stakeholders, including consideration of structural reform, which is fair and affordable to both employees and employers.⁵⁵

The members of the Railway Pensions Commission were:

Jeannie Drake (Chair) is a senior trade union official, a member-nominated trustee and was President of the TUC from 2004-5. She has considerable knowledge of both private pensions and public pension policy. She was a member of the Pensions Commission.

⁵¹ The Railway Pensions Commission, First Report, March 2007; Aslef, CSEU, RMT and TSSA campaign leaflet, '[Rail unions unite to defend your pension scheme](#)'; [Joint Rail Union Briefing Paper, The Railways Pension Scheme](#)

⁵² [EDM 1681](#) Rail Workers Pensions, 16 February 2006, 62 signatures; See also EDM 1596, Railway Pensions

⁵³ Mark Milner, Industry-wide rail shutdown threatened over pensions row, the *Guardian*, 20 April 2006

⁵⁴ Network Rail, ATOC and TUC press release - 21 Sept 2006

⁵⁵ The Railway Pensions Commission, First Report, March 2007, p7

Bryn Davies is an actuary. He is the Director of Union Pension Services Ltd, providing advice on pensions and collective bargaining for trade unions. He was previously pensions officer at the TUC and a partner in a leading firm of consulting actuaries.

Peter Thompson is an actuary. After working for Mercer Human Resource Consulting for nearly 25 years, in 2005 he joined the independent trustee company BESTrustees plc where he is a Director. He was Chairman of the National Association of Pension Funds from 2001 to 2003.⁵⁶

4.2 First Report

The first report of the Railways Pensions Commission published in March 2007, analysed the strengths and weaknesses of the scheme as follows:

Strengths

- Fulfils commitments made at time of railway privatisation
- Provides good benefits to members
- An industry-wide arrangement
- High quality management
- Shared cost makes it a shared project
- Better funded than many other defined benefit schemes
- Government ensures a sponsoring employer for some sections

Weaknesses

- General difficulties affecting all defined benefit schemes
- Volatility of members' contributions in a shared cost arrangement
- Impact of closing sections on active members' contributions
- Impact of changes to the mix of members within a section
- Inherent inequities in final salary schemes
- Inequitable rate of accrual in the RPS(sca)
- Other inequities specific to the RPS(sca)
- Fragmentation of the RPS(sca)
- Complexity in defining pensionable pay
- Constraints of the indefeasible right and protected status
- Inflexibility of the governance structure of the scheme⁵⁷

The Commission said there was no easy solution. The costs of the scheme would either need to be met through increased contributions or the adjustment of pension benefits:

There are no "magic bullets" that will provide an easy solution to the difficulties being experienced in funding the RPS(sca). When all the factors identified above are taken together, the problems of funding the cost of the final salary pension promise that have

⁵⁶ Ibid

⁵⁷ Ibid

to be addressed, either through increased contributions or the adjustment of pension benefits, become clear.⁵⁸

It went on to consider the criteria that should be used to assess a sustainable railway industry pension over the long term. It said that while Parliament intended to provide those in the industry prior to privatization with protection regarding their pensions, it was questionable that it had intended to remove the discretion of trustees to make fair and sensible adjustments in the face of rising pension costs that are shared by employers and active members. Scheme benefits needed to be made more affordable in the future and more equitable in the distribution of costs and benefits between the higher and the moderate earner:

Affordable for both employees and employers

The provision of sustainable defined benefit pension arrangements across the major part of the railway industry over the long term requires the stakeholders to address the issue of affordability in a manner which is fair to both employees and employers. Not to address it will result in changes being made in a manner which will create gaps and inequalities in pension provision in the industry. It was the intention of Parliament to provide those in the industry prior to privatisation with the assurance that they would continue to enjoy protected defined benefit pension provision. However, in providing this protection, it is questionable whether it was intended to remove the discretion of the Trustee to make fair and sensible adjustments, when it would have been possible to make such adjustments in the BRPS, in the face of rising pension costs that are shared by employers and active members.

The Commission is in no doubt that protection should be continued in the future, except that the application and/or the effect of the Protection Order has in some instances been too rigid and prescriptive. The factors applied to early retirement, and the operation of BRASS, have made a contribution to costs which has been too great and too regressive in its redistributory effect in a shared cost scheme.

Scheme benefits should be made more affordable to the employee and the employer in the future, and should be more equitable in the distribution of costs and benefits between the higher and the moderate earner. Any alternative provisions should be introduced in a manner that will allow existing employees the opportunity to participate in them.

Sustainable and appropriately structured for the railway industry

Creating sustainable, more affordable defined benefit pension arrangements over the long term within a large part of the railway industry will depend in part on the willingness of the DfT, the Scottish Executive and the ORR, to recognise this within their arrangements for awarding franchises and regulating the industry.

The transition to alternative, more affordable arrangements in the railway industry should allow for the shared cost nature of the current RPS(sca) and protect against unsustainable increases in the contribution rates faced by active members. The TOCs provide services under franchise from the DfT, which becomes the default

⁵⁸ Ibid

employer in the absence of a franchise holder. The DfT is unlikely to want to engage in discussions on RPS(sca) reform where the underlying rise in the cost of pension provision has not been addressed.

Realignment of risk sharing by the creation of three sections in the RPS (sca), in the manner proposed by the unions, will not provide the route for long-term sustainable defined benefit pension provision and does not address the underlying rise in costs. RPS (sca) structural reform should not be precluded, however, where this would:

- make a contribution to reducing section complexity in a given train operating franchise;
- more effectively accommodate industrial fluidity; and
- facilitate the transition to alternative means of affordable long-term pension provision.

Equitable and fair for existing scheme members (actives, deferreds and pensioners) and new employees

The transition to more affordable pension arrangements has to provide for continued funding for pensioner and deferred member liabilities and to make realistic provision for assurances given by Parliament to those in the industry at the point of privatisation. It could also provide the opportunity for existing members of the RPS (sca) to have the choice of access to an alternative less costly arrangement. In making the transition, a limit needs to be placed over time on the share of funding provided by a declining number of active members in the existing RPS (sca). Stakeholders will also need to address those interpretations of the Protection Order which have prevented the Trustee from making sensible adjustments in the face of rising costs.

Given the nature of the franchises awarded to TOCs, the transition to a more affordable system of pension provision, whilst maintaining the contribution rate of active members at a sustainable level, should include structural reform, with the creation of a single RPS section for deferred and pensioner scheme members of the TOC sections. This could be done in a way that avoids one TOC subsidising another and where the funding can be related to the franchising arrangements.

Network Rail is a large employer providing a strong covenant and should be able to manage the transition issues. The introduction of alternative arrangements that are more affordable could also provide the opportunity for the company to revisit the length of the qualifying period for new recruits for entry into any defined benefit arrangements.

The freight companies, facing as they do a competitive market place, will be concerned to minimise volatility in their pension costs whilst managing the transition to more affordable arrangements.

Defined benefit pension provision across major parts of the railway industry is sustainable over the long term if it is made more affordable. The characteristics of more affordable defined benefit pension provision, and how to address the inequities detailed in Chapter 4, will be the subject of the Commission's final report. For many companies participating in the industry under contract, where pension provision is available to employees, other than to those with the indefeasible right, it is largely on a

defined contribution (DC) basis. It is desirable to identify a good practice DC pension standard for this section of the industry, which Network Rail, the ORR and other parties would take into account when awarding contracts.⁵⁹

It noted that some changes already made by employers – such as those by Network Rail – had secured a significant reduction in the ongoing pension costs for Network Rail but had a heavy impact on new employees, many of whom were moderate or lower earners:

Network Rail has already secured a significant reduction in its ongoing pension costs by introducing, in April 2004, a five-year waiting period for new recruits before entering the RPS(sca). The scheme available in those first five years is a DC scheme, not provided through the RPS, although administered by Pensions Management, with employer contributions on a scale of 3 per cent to 7 per cent and employee contributions on a scale of 0 per cent to 4 per cent. A significant number of new employees, many of whom are moderate or lower earners, participate in the scheme on the default contribution rate of 0 per cent employee and 3 per cent employer. Those employees who leave before the end of the five-year qualifying period will have had no opportunity to acquire any defined benefit pension. Figure 5.3 shows the distribution of employees by length of service, for the railway industry. The impact of adjustment to rising pension costs on Network Rail has therefore fallen heavily on new employees. It is an example of the way in which adjustments to pension costs will be made unless issues of affordability are directly addressed.⁶⁰

4.3 Final report

The Railway Pensions Commission published its [final report](#) in January 2008. This said the main difficulties in funding the Railways Pension Scheme (sca) were:

- improvements to the level of benefits as a result of legislation, collective bargaining and regulatory intervention;
- significant and continuing improvement in the life expectancy of members of the scheme; and
- a reduction in the anticipated income from pension fund investments.

Any of these three factors – benefit improvements, longer life expectancy and lower investment income – on its own would have been a problem. Together they constituted a ‘perfect storm’ in terms of funding the pension promise that has to be addressed either through increased contributions or the adjustment of pension benefits or both.⁶¹

It argued that the response to the rising cost of pension provision should be planned and managed:

If the response to the rising cost of pension provision in the railway industry is not planned and managed, the alternative is an ad hoc situation resulting in inequitable solutions as employers seek to contain their pension costs. Many changes to the way in

⁵⁹ Ibid

⁶⁰ The Railway Pensions Commission, First Report, March 2007, p63

⁶¹ Railway Pensions Commission, [Final Report](#), 2008, p2

which the RPS (sca) operates have already been made. These include:

- closure of some sections of the RPS (sca) to new entrants with no transition arrangements in place to protect existing active members;
- the introduction of lengthy waiting periods before new members can join the RPS (sca);
- adjustments to the pay upon which pension is calculated; and
- changes to early retirement factors.

The Commission set out proposals for new affordable pension arrangements for new recruits, new entrants and existing employees who wished to opt in, relying on the three criteria identified in the first report: affordability, sustainability and equity. These were:

For those members of the RPS (sca) employed in the railway industry immediately prior to privatisation and who have the indefeasible right:

- cessation of British Railways Additional Superannuation Scheme (BRASS);
- contribution rate to be based on retention of current RPS (sca) benefits.

For those members of the RPS (sca) who joined after privatisation and who do not have the indefeasible right:

- cessation of British Railways Additional Superannuation Scheme (BRASS);
- retirement age to increase to 65 for benefits earned in the future;
- on retirement before 65, benefits earned in the future to be reduced on a cost neutral basis;
- contribution rate to be based on the cost of provision of the amended benefit structure; and
- members with the indefeasible right to be able to elect to transfer to these arrangements.

For new employees and others who wish to opt into it:

- a new scheme which is referred to in the report as Railways Pension Scheme (average career revalued earnings) (RPS(acre));
- the key characteristics of the new scheme are:
 - a pension on retirement at 65 of one-fiftieth of the member's revalued average earnings for each year of pensionable service;
 - member's annual earnings are revalued in line with the Retail Prices Index (RPI);
 - benefits will be adjusted to allow for improvements in mortality;
 - retirement before 65 on a cost-neutral basis;
 - the ability to convert part of the pension to a lump sum, up to the limits set by the Government;

- benefits on death and ill-health retirement.⁶²

4.4 Response

Network Rail welcomed the Commission's "thorough and thoughtful" report and said it would review the detail of the report and discuss the implications with other members of the rail industry. Chief Executive Iain Coucher said:

Change will be needed but it is good to see that the Commission believes that there is a way in which the rail industry can continue to benefit from defined benefit pensions which are sustainable over the long term. Over the coming weeks, Network Rail will be reviewing the detail of the report and will be discussing its implications with other members of the rail industry.⁶³

The Association of Train Operating Companies (ATOC) also welcomed the report:

It is clear from the report that doing nothing is not an option. It is encouraging, however, that the Commission believes that there is a way in which the rail industry can continue to benefit from defined benefit pensions which are sustainable over the long term.⁶⁴

RMT General Secretary, the late Bob Crow, agreed the issues raised in the Railway Pensions Commission report needed to be addressed:

Members will appreciate that the Report proposes fundamental changes to railway industry pensions. Moving away from a final salary scheme, increasing the retirement age to 65 and stopping BRASS will not be welcomed by most sections of the workforce. However, there is no doubt that the cost of RPS benefits is continuing to rise and doing nothing could result in employers taking unilateral action or worse, members dropping out because contributions are too high. In my opinion the only way to deal with the issues raised in the Commissioners' Report is through an industry-wide forum.⁶⁵

On 14 February 2008, Network Rail announced that it was to launch a new career average pension scheme:

A third pension scheme, widening choice for its 34,000 employees, was unveiled today by Network Rail.

The pension scheme will be a defined benefit arrangement, based on the average of an employee's earnings, known as Career Average Revalued Earnings (CARE). This new pension gives Network Rail employees a wide choice of pension options – the best in the industry. Employees will be able to choose from:

- A defined contribution scheme – a type of private pension plan with employee contributions being flexible (from 0 to 45%)

⁶² Ibid, page 4

⁶³ Network Rail Press Release, 29 January 2008, Network Rail Welcomes Publication of Railway Pensions Commission Report

⁶⁴ ATOC Press Release, 29 January 2008, 'Train Operators welcome publication of Railway Pensions Commission Report'

⁶⁵ [RMT Circular No. NP007/08](#), 30 January 2008

- The new defined benefit scheme based on average earnings with employee contributions of around 6%
- The existing defined benefit scheme (Railway Pensions Scheme – RPS) based on final salary with employee contributions presently around 11% of pensionable pay.⁶⁶

Bob Crow described this as an attempt to impose an inferior pension scheme without discussion or agreement:

We are not prepared to tolerate a worsening of pensions, not least after all the money that's been extracted from the industry since privatisation. We have called for further industry-wide discussion, but what we have been given is an attempt to impose an inferior pension scheme without any discussion or agreement. This isn't about widening choice, it's about undermining the existing final-salary scheme and a cynical attempt to undermine the Railway Pensions Commission before anyone has had a chance to discuss its findings. I am in no doubt that if the company persists in imposing a worse pension scheme there will be a national rail strike.⁶⁷

⁶⁶ Network Rail Press Release, 14 February 2008, 'Network Rail to launch new pension scheme'

⁶⁷ RMT Press Release, 14 February 2008, RMT warns of strike action over rail pensions

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