

Minimum Service Levels – Rail

Introduction

The Trades Union Congress (TUC) exists to make the working world a better place for everyone. We bring together more than 5.5 million working people who make up our 48 member unions. We support unions to grow and thrive, and we stand up for everyone who works for a living.

The Minimum Service Bill would place severe and unacceptable restrictions on the fundamental right of a worker to take industrial action to defend their pay and conditions.

The TUC strongly believes that this Bill is unfair, undemocratic, and likely in breach of our international legal commitments. The introduction of minimum levels of service in the rail industry would:

- place severe and unacceptable restrictions on the fundamental right of a worker to take industrial action to defend their pay and conditions.
- be anti-democratic: it gives secretaries of state enormous power to define and introduce minimum service requirements without the input of workers or employers and with parliament having little say.
- be draconian: it could lead to individual workers being sacked for taking part in industrial action that was supported in a democratic process. Trade unions could face large damages.
- be counter-productive: the government's own analysis has warned that it could lead to more strikes.

Minimum service levels in the rail industry will do nothing to help resolve current or future industrial disputes, or to improve the quality of delivery. In fact, the government's own assessment demonstrated they industrial disputes are likely to become more protracted and prolonged. Nor will they reverse the decade of government-imposed pay cuts and underfunding that are undermining the service and our public sector more widely.

We have answered consultation questions, framed by our principled and practical opposition to the Bill and our strong opposition to the introduction of minimum levels of service in the rail industry

Misguided

We believe that the measures included in the bill are not only disproportionate but actively misguided, proposing an artificial and non-existent division between the interests of rail industry workers and rail passengers / wider society.

Good industrial relations between employers and their workforce are in everyone's interests, including passengers. London Travel Watch have expressed concern that the Bill will result in an even worse service for passengers with disabilities.¹ Passengers who require greater assistance may find it harder to access services, and it may be particularly unsafe for them to do so, if minimum service levels lead to dangerous overcrowding at popular stations. Whereas rail industry workers and their representatives – unions - have a detailed knowledge of the needs and interests of the passengers who rely on their services.

If workers voices' and that of their representatives are weakened, they will be less able to intervene to prevent unsafe and unwise processes being put in place. This point was acknowledged by the independent passenger watchdog Transport Focus in oral evidence to the Transport Select Committee:

*"We are clearly going into quite unknown territory, the long-term consequences of which we will only know if and when the minimum service levels are ever implemented. The desire must be to have negotiated settlements, where people are happy to come to work, they want to come to work and they want to give their best, as virtually everybody in the rail industry wants to do. A volunteer is worth 10 pressed men, as is often said, and I think it is true. We would only see the consequences if this type of minimum service level was actually put into place. It seems like quite unknown territory."*²

We note that this move has not been welcomed by industry groups. The Rail Freight Group expressed concerns when providing oral evidence to the same committee:

"Our members feel it's their responsibility to sort out their industrial relations with their own staff. We think that's the responsible things to do. We think we might end up somewhere we don't want to go if we see the state is taking a role in determining industrial relations in private companies".³

Industry figures have argued implementing MSLs will be ineffective. At Conservative Party Conference in October 2022, Mark Phillips Chief Executive Officer of the Rail Safety Standards Board told a fringe meeting:

"It [Minimum Services and other planned anti-trade union legislation] can be progressed but it won't make the slightest bit of difference... If you introduce minimum service levels, there's the huge issue of how is that level set and particularly if you set that minimum level and you've rostered staff to work then I would suggest then you'd probably have a

¹ London Travel Watch 'Passenger watchdog responds to minimum service level on public transport', [<https://newsroom.londontravelwatch.org.uk/news/passenger-watchdog-responds-to-minimum-service-level-on-public-transport/>], January 2023

² Passenger Focus evidence to Transport Select Committee, [<https://committees.parliament.uk/oralevidence/12894/pdf/>], 22 March 2023

³ Rail Freight Group evidence to Transport Select Committee, [<https://committees.parliament.uk/oralevidence/12893/pdf/>], 22 March 2023,

*much higher level of sickness arise because of that because people won't want to be seen to be breaking the strikes that their colleagues are involved in."*⁴

Equalities impacts

We note that there are no questions about the equalities impacts of MSLs in the rail industry. We believe this is another area where the impact of MSLs will be highly detrimental.

The rail industry has a high level of black and ethnic minority (BME) workers, across drivers, cleaning and maintenance and infrastructure. This is particularly the case in Transport for London.

Attempts to impose levels of minimum service in rail would therefore have a disproportionate and negative impact on the rights of BME workers to participate in lawful, industrial action. Individual BME workers could find themselves subject to dismissal if they exert their democratic and fundamental right to strike. And all workers in the service are liable to lose out economically due to the undermining of their ability to bargain for better terms and conditions. The government's own impact assessment made this clear.

Race equality organisations have raised their concern about this disproportionate impact. The Equality Trust, the Joint Council for the Welfare of Immigrants (JCWI) and Runnymede Trust, joined TUC, to warn the Strikes Bill will be a huge step backwards for tackling racism at work in Britain and that "attacking the right to strike will hit BME workers' wages by undermining their ability to win a better deal at work."⁵

The UK's own equalities watchdog has criticised the justification for the differential outcomes arising from implementing MSLs in rail and elsewhere: "We would welcome further analysis of how such differential treatment can be objectively justified for workers across the broad range of services covered by this Bill."⁶

Since the government does not have a sound rationale for the differential treatment and subsequent impact on workers with protected characteristics, if there were to be subsequent disproportionate, negative impact on workers with protected characteristics that are within scope, these are highly likely to fall foul of equality law.

We note that the loss of guards on trains and staff at platforms is likely to make them less safe for other potentially vulnerable passengers, for instance women travelling at night.

Our approach

In the remainder of this response we will respond to those questions covering areas not already addressed above. However, we believe that many of the questions below are

⁴ Great British Railways: what's next for rail? Fringe at Conservative Party conference, [https://www.youtube.com/watch?v=P93VEb_ZqYk], October 2022

⁵ [Strikes Bill "huge step backwards" for tackling racism at work – TUC, Runnymede, Equality Trust and JCWI | TUC](#)

⁶ EHRC (2023) [strike minimum service levels bill statement feb 23 002.docx \(live.com\)](#)

based on a false premise. We will not discuss which of the government's proposed options are preferable because we do not believe there are any acceptable options for introducing these measures.

Question 1 - 5

We disagree with the premise that MSLs are necessary for the reasons set out above. We therefore believe that any principles which might underpin MSLs are invalid.

Question 6 – 13

In line with the comments in our introduction, we note that all rail users, rail industry workers and the wider economy have a shared interest in the safe, effective running of the railways. And that any disputes are resolved through good-faith, serious negotiation on all sides. We do not believe that this is possible in a climate with MSLs.

Question 14

As we note above, the impact of MSLs on all rail users, workers and society will be negative. But it should be noted that the impact on rail workers and trade unions will be particularly detrimental. Workers will have their democratic right to withdraw their labour fundamentally undermined.

Trade unions will find themselves at risk of crippling fines if they fail to abide by the vague prescriptions in the legislation and subject to the very wide discretion granted to the secretary of state.

Individual workers could find themselves subject to dismissal if they use their democratic right to participate in a legitimate strike action. And all workers are liable to lose out economically due to the undermining of their ability to bargain for better terms and conditions. The government's own impact assessment made this clear. But in addition the undermining of trade unions will leave workers at greater risk of mistreatment and discrimination, that unions exist to protect them from.

Question 15

We note that in January 2023 the rail minister Huw Merriman admitted that the economic costs of the current industrial dispute had outweighed the cost of resolving the dispute months earlier.

We also note that the impact assessment for the Strikes Bill, warned that MSLs could lead to a "prolongation" of a dispute.⁷

Whatever the upfront economic impact of imposing MSLs, the ongoing impact on the economy of creating protracted disputes is likely to outweigh any savings.

⁷ Department for Business, Energy and Industrial Strategy (21 February 2023). *Strikes (Minimum Service Levels) Bill Impact Assessment* p. 40

<https://bills.parliament.uk/publications/49906/documents/2979>

Rail workers cover a whole range of roles and pay across the industry varies considerably despite what has been claimed about the pay of striking workers. However, if workers are unable to strike to defend their pay and conditions we can expect it will suffer and demand and productivity in the UK will likewise suffer.

Questions 16-24

In line with our comments above we would stress the ongoing costs of dragging out disputes and undermining pay.

Questions 25-30

In line with our comments above we disagree with the premise that MSLs are necessary.

Question 31-32

In line with our comments above, we do not believe that MSLs are a necessary or legitimate response to industrial disputes. Therefore we do not believe there are any good options for introducing them.

Question 33

We do not believe Minimum Service Levels should be put in place at all. But we would stress that Wales and Scotland have their own legislatures and it is not appropriate for the UK parliament to encroach upon their purview in the context of employment law. We note that the Scottish First Minister Humza Yousaf has confirmed that he will not use the legislation stating:

*"Be in no doubt, the Scottish Government will never issue or enforce a single work notice. We will continue to do everything we can to oppose this disgraceful, abhorrent legislation."*⁸

Questions 34-38

In line with our comments above we do not agree with the premise that MSL's are necessary.

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⁸ STUC Annual Conference, First Ministers Speech, [<https://www.gov.scot/publications/stuc-annual-conference-first-ministers-speech-17-april-2023/>], 17 April 2023