

Appendix F

Public Accounts Committee recommendations

Maintaining England's motorways and trunk roads

NAO Report, 5 March 2003 (HC 431)

PAC Hearing, 19 March 2003

PAC 32nd Report, 11 July 2003 (HC 556 2002-03)

Treasury Minute, 24 September 2003 (Cm 5962)

The Committee's key recommendations

The Highways Agency:

- should set regional road condition targets and review its funding allocations to reduce variations in road conditions across the country;
- should assess the risks associated with its new maintenance contracting arrangements as a whole, and set out a strategy for managing these risks;
- will need to demonstrate that new maintenance contracting arrangements are as effective as lane rentals in reducing the time taken to carry out maintenance work and in minimising disruption to the motorist;
- needs to put in place more robust winter maintenance and emergency response procedures and strengthen its gritting and emergency response capabilities; and
- should maintain its data on road and roadside asset condition and maintenance history, as recommended by the Committee in 1991.

The Highways Agency's response

In accepting the key recommendations, the Agency made the following points.

- Funding allocations are already set to reduce variations in road conditions across the country. Regional road condition targets will be set for 2004-05.
- New arrangements for the management and delivery of the maintenance programme, which are in line with best practice in government procurement, should deliver better value for money. The Agency's consultation document *Paving the Way* considered the risks associated with the new arrangements.

- While lane rental contracts are still used, the Agency believes that 'partnering' and 'target cost contracts' can deliver better value. Concerns have been expressed about the pressures faced by the workforce on lane rental contracts. Target cost contracts achieve an incentive for prompt completion with less risk to the workforce. Should a contractor exceed the target costs, it will have to pay a percentage of the extra costs. Traffic management is a significant cost and therefore there is an incentive to finish the work in a timely manner.
- The Agency's new maintenance contracting arrangements include performance indicators for defects, safety, cost predictability, time predictability, product satisfaction and service satisfaction. Under the indicator for time predictability, one measure reviews 'lane occupancy'. This records the percentage of the area network taken up by planned road works. A target maximum is set for this, which is used as a measure for showing continuous improvement. If the actual percentage is above the maximum, the contractor will be required to explain the reasons and identify what it will do to bring it back to acceptable levels. The performance indicators will be benchmarked to enable the Agency to compare performance both between the different maintenance areas and over time to ensure continuous improvement.
- A thorough review of the events of 30-31 January 2003 has been undertaken. The problems that arose and the lessons learned will be fed back to all the Agency's service providers before next winter.
- A framework of National, Regional and Area Contingency Plans has been established. These plans are now in place for all 14 of the Agency's areas. Exercises to test these plans will be based on extreme winter weather and be held in each one of these areas by the end of September 2003. The local police forces will be invited to attend each exercise. The Agency will use the results of these exercises to revise the contingency plans by the end of November 2003.
- The Agency has sent new instructions to its agents, requiring them to complete inventories of asset condition and maintenance history. Compliance with these instructions will be regularly audited. The Agency has developed a new database and performance indicator for electrical equipment. The Agency will introduce a database of lighting condition by April 2005. A rolling programme of closed-circuit television surveys of drainage systems will take place from April 2004 to enable a database of highway drainage systems to be completed.

Dealing with pollution from ships

NAO Report, 12 June 2002 (HC 879)

PAC Hearing, 17 June 2002

PAC Second Report, 9 January 2003 (HC 119 2002-03)

Treasury Minute, 5 March 2003 (Cm 5770)

The Committee's key recommendations

- The Maritime and Coastguard Agency will need to check periodically that ports and harbours comply with the key requirements of their oil spill contingency plans, while knowing the limits of their ability to handle a major incident, and to encourage the development of contingency plans for hazardous and noxious substances such as chemicals.
- The Agency will need to decide whether to promote legislation requiring coastal local authorities to have up-to-date oil spill contingency plans in line with the National Contingency Plan.
- The Department and the Agency should put in place appropriate prevention and response plans to deal with terrorist threats involving vessels carrying potential pollutants.
- The Department and the Agency should take early action to limit polluters' avoidance of liabilities through 'pay to be paid' insurance policies.
- The Agency should exploit new technology to detect pollution offences, and to identify and trace offenders. Developments include satellite surveillance, better oil-spill sampling and analysis and tracking of ship movements. While implementation is partly dependent on international action, the Agency should seek practical and cost-effective improvements to its capacity to identify and pursue polluters.
- The Department should bring forward legislation to enable pollution offences to be prosecuted on the same terms, irrespective of where those offences occur within the UK Pollution Control Zone.

The Maritime and Coastguard Agency's and Department's response

In accepting the key recommendations, the Maritime and Coastguard Agency (MCA) and/or the Department, as appropriate, made the following points.

- The MCA has established an audit regime for Category A and B1 ports and harbours, as required under legislation, to have an Oil Pollution Preparedness, Response and Co-operation (OPRC) Oil Spill Contingency Plan. Regional Agency staff will carry out 40 targeted audits per year.

- Existing OPRC plans do not cover hazardous and noxious substances (HNS). This will be required in the future due to the impending OPRC-HNS protocol adopted by International Maritime Organization (IMO). Two workshops will be held in the next financial year to identify future port and harbour requirements. The MCA will compile guidelines to help ports and harbours by June 2004. New HNS legislation may have cost implications for industry, but a regulatory impact assessment will be carried out as part of the normal procedure for introducing new legislation.
- The Department proposes to look at the question of a statutory duty for coastal authorities to plan for shoreline marine pollution in the context of new legislation that the Government is developing to take into account the outcome of the Emergency Planning Review. The Government's intention is to produce a draft bill this year, with a view to introducing it in the 2003-04 session.
- The Department and the MCA are working together to implement the maritime security amendments to the Safety of Life at Sea Convention that were adopted by an IMO Diplomatic Conference in December 2002. The main thrust of that work is to ensure that the requirements of the International Ship and Port Security Code are met in full by July 2004. Implementation of the Code by the UK and its international trading partners will serve to prevent and deter terrorists from targeting shipping.
- In terms of responding to incidents within the UK's Pollution Control Zone involving vessels carrying potential pollutants, the Department and the MCA will act in accordance with the National Contingency Plan for Marine Pollution from Shipping and Offshore Installations.
- Under Section 154 of the Merchant Shipping Act 1995, only the registered owner of a ship is liable for any damage caused in the UK and for the cost of measures reasonably taken to prevent or minimise pollution by oil. This can severely limit the scope for recovering costs where the owner claims to have no assets other than the ship or where the owner cannot be identified in any meaningful sense.

- One way to remedy this is to impose strict liability on the 'shipowner' as defined in Article 1(2) of the Convention on Limitation of Liability for Maritime Claims 1976 (incorporated into UK law by Schedule 7 to the 1995 Act). The Convention defines the 'shipowner' as the owner, charterer, manager and operator of the ship. This will create an identity between the liable parties and the parties that are able to invoke the limit of liability provided for in Article 6 of the Convention (see Section 168 of the 1995 Act). While it will not increase the amount of compensation available to claimants, it will increase their chances of obtaining compensation. It will do so by making it more likely that a liable party has assets in the UK and by enhancing a claimant's prospects of arresting a sister ship under Section 21(4) of the Supreme Court Act 1981 to obtain security. The Department is seeking to achieve this through a Regulatory Reform Order.
- On behalf of the UK, the Department is actively working within the EU to promote a common strategy for maritime liability to seek agreement from all EU Member States on early implementation of, among other liability regimes, the HNS and Bunkers conventions. Within this strategy, the UK is working to advance the deadline of June 2006 for implementation of these conventions in EU Member States, as set by the European Council Conclusions authorising ratification. The MCA also published a Marine Guidance Note in March 2000 containing the *IMO Guidelines on Shipowners Responsibilities in Respect of Maritime Claims*. The guidelines that the UK developed and promoted in the IMO seek to ensure that shipowners have effective insurance cover, of the type provided by the International Group of Protection and Indemnity (P&I) Clubs, for their liabilities to third parties. They also aim to ensure that shipowners make themselves available to local courts following an incident involving one of their ships.
- Several trials have been completed in the UK using satellite technology. Conclusions have been that use of satellites should be taken forward on an operational basis. This is expected to cost the MCA in the region of £100,000. The MCA would need to ask the Department for additional funding for this purpose as part of the mid-year review process in financial year 2003-04.

- The MCA has profiled programme costs for operational satellite surveillance capability for the next financial year. In addition, the MCA is working closely with the Commission at the Marine Committee for Marine Pollution (MCMP), and also the Bonn Agreement contracting nations, with a view to establishing a European joint funded monitoring system. The UK is also working closely with IMO and the Commission for the mandatory provision of automatic identification systems (AIS) on ships. Such technology will help identify polluters. Oil spill sampling and analysis developments include improved methodology with streamlined procedures to ensure a rapid turnaround of results. Oil samples are fingerprinted in an attempt to cross-reference the pollution source.
- In the light of the concerns raised both in the National Audit Office's report *Dealing with Pollution from Ships* and in the Public Accounts Committee's report, the Department takes the view that it is necessary to align the defences under the Merchant Shipping Act 1995 and the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996 and is considering how best to do so. It appears likely that this will involve amendment of the Merchant Shipping Act 1995 because the defences in the 1996 Regulations derive from an international convention to which the United Kingdom is a party, ie MARPOL 73/78. The Department is seeking to achieve this by summer 2004.

Public private partnership for National Air Traffic Services Ltd

NAO Report, 24 July 2002 (HC 1096)

PAC Hearing, 18 November 2002

PAC 48th Report, 9 December 2003 (HC 80 2002-03)

Treasury Minute, 10 February 2004 (Cm 6110)

The Committee's key conclusions

- The Department too readily dismissed the option of establishing National Air Traffic Services Limited (NATS) as a not-for-profit company, such as that used for the privatised national air traffic control business in Canada.
- The regulatory arrangements, copied from the regulated utilities, have been shown to take insufficient account of the very different business risks which NATS faces.
- The Department failed adequately to test the robustness of the Airline Group's proposed financial structure for NATS. The set of scenarios examined was more optimistic than historical experience warranted and imprudently assumed that the Regulator would always be both willing and able to intervene quickly to protect NATS from any sudden business downturn.

- The Department and the Treasury took £758 million out of NATS in sale proceeds, leaving the company burdened with more than twice as much debt as it carried before the PPP.
- The chosen regulatory structure, combined with the high withdrawal of cash from the business, barred NATS from access to external finance for over a year, just when it was embarking on a 10 year £1 billion investment plan.

The Department's response

In responding, the Department's key points were as follows.

- Much had changed since the National Audit Office conducted its investigation into the NATS public private partnership (PPP) and the Committee began its deliberations. Despite its early troubles, the PPP is a success. The company, which suffered like the rest of the aviation industry after the September 11 attacks, is performing better than ever. It is handling record numbers of flights, with delays at a record low, has a consistently high safety record, is reducing unit costs and has a financially stable future.
- When taking its original decision on the PPP, the Government considered very carefully both its objectives for NATS and the options available to it for meeting those objectives. The Government regards the PPP as the optimum model for achieving the objectives.
- The main strategic partner in the PPP is a consortium of airlines – NATS' customers. The other private-sector investor is BAA, which is also a customer, and the employees are represented in the company through a share trust. The Airline Group bought into the PPP on a 'not for commercial return' basis. Although the Government preferred a part-private sector solution to a wholly-public sector one, the make-up of the PPP is not dissimilar from that of NavCanada.
- In constructing the PPP, the Government took care to tailor its model to the needs of the business and its customers. Although NATS is not the same as a utility, it is a monopoly supplier and needs to be subject to incentives for efficiency if its customers are not to pay unnecessarily high prices for its services. Other European air navigation services providers, who are not-for-profit publicly owned bodies, have responded to the downturn in traffic by increasing their prices – on average by some 12 per cent. The underlying trend in NATS' charges is down.
- One of the Regulator's duties is to ensure that licensed air navigation services providers do not find it unduly difficult to finance their licensed activities.

- The Government, its advisers, the lending banks and the Airline Group all tested the robustness of the proposed financial structure of NATS against a wide range of adverse scenarios. The Government acknowledges that it did not test against the possibility of an unprecedented severe and sustained downturn in the market. With benefit of hindsight, it would have done well to do so. At the time, however, and in the light of events over the previous 20 years – which included record growth in air transport, Lockerbie in 1989, the Gulf War in 1991 and a gradual decrease in the importance of oil to world economies – there was no reason to believe that a severe and sustained downturn in the market was a realistic risk.
- In response to NATS' financial difficulties in the aftermath of the September 11 attacks, the Government, NATS, its other shareholders, its lending Banks and the aviation industry, through the CAA as regulator, embarked on a wide-ranging restructuring (which has become known as the Composite Solution) of NATS' balance sheet. This introduced an additional layer of finance in the form of shareholder debt, which allowed NATS to repay £130 million of its existing debt. The process of consolidating NATS' debts was completed on 11 August 2003 with the highly successful replacement of £600 million of bank debt with bond finance.
- The National Audit Office has examined the Composite Solution and, in its report *Refinancing the Public Private Partnership for National Air Traffic Services*, published on 6 January 2004, confirms that the re-financing has put the company on a much more robust financial footing. This should enable it to make further vital investment to expand the capacity of air traffic control to meet future growth and limit delays.
- The Government accepts that, because of September 11th, the initial financial structure of NATS proved insufficiently robust. Each bid was carefully evaluated against a strict set of criteria, including the quality of the strategic investment plan, safety management strategy, financial credibility, management capability and net sale proceeds.
- The robustness of the new financial structure has been tested against a wide range of scenarios, including more demanding combinations of possible traffic shocks with adverse trends on costs, as agreed between all the parties. NATS has a much larger buffer of cash reserves with which to cope with possible future crises.