

Enforcing Network Rail delivery of operational performance

1. This statement updates our policy on enforcing Network Rail delivery of operational performance issued in March 2006.

2. ORR's approach to enforcement is set out in our Enforcement Policy and Penalties Statement¹. In general, our policy is to monitor rigorously delivery of performance requirements and take effective enforcement action where this is in the public interest. ORR's focus is on using our regulatory powers to resolve serious or systemic issues that are not dealt with in contractual relationships. ORR's monitoring will generally focus on such issues.

3. We will monitor and hold Network Rail to account against its network licence. Under condition 1 of the licence, Network Rail is required to achieve the purpose of the condition to the greatest extent reasonably practicable having regard to all relevant circumstances (including the ability of Network Rail to finance its licensed activities).

4. The purpose of condition 1 is to secure the:

- (a) operation and maintenance of the network;
- (b) renewal and replacement of the network; and
- (c) improvement, enhancement and development of the network,

in each case in accordance with best practice and in a timely, efficient and economical manner so as to satisfy the reasonable requirements of persons providing services relating to railways and funders, including potential providers or potential funders in respect of:

- (i) the quality and capability of the network; and
- (ii) the facilitation of railway service performance in respect of services for the carriage of passengers and goods by railway operating on the network.

CP4 requirements

5. In our 2008 periodic review determination (the PR08 determination), we set performance requirements for each of the five years 2009-14. These include minimum PPM and maximum CaSL² requirements by sector for passenger services, maximum

¹ <http://www.rail-reg.gov.uk/upload/pdf/395.pdf>

² PPM - public performance measure and CaSL - cancellations and significant lateness measure

passenger delay minute requirements for England & Wales and for Scotland and a maximum delay minute requirement for freight services. In the PR08 determination we said that if Network Rail is failing, or is likely to fail, to meet one or more of its obligations derived from the determination, we will consider whether to take enforcement action.

6. We required Network Rail to disaggregate these targets into individual commitments for each train operator in its CP4 delivery plan. We consider the national, sectoral and disaggregated targets to be the reasonable requirements which Network Rail is funded to deliver and against which we will hold it to account under condition 1. However, in the PR08 determination, we also said that where the disaggregated commitments in the delivery plan sum exactly to the sector obligation we will permit a degree of tolerance around the disaggregated numbers before considering regulatory intervention. In particular, we will take into account any allowance made in the process of disaggregation for the greater degree of uncertainty associated with local output projections.

Performance plans

7. The disaggregated commitments in the CP4 delivery plan have been reflected in the long-term performance plans (LTPPs) that Network Rail has developed with each TOC. LTPPs set out at a strategic level the initiatives needed over the control period to deliver those targets. There is a change control process should either party need to change the TOC PPM or the Network Rail delay minute trajectories. This includes consultation with relevant TOCs, endorsement by NTF and advising ORR.

8. The network code provides for parties to agree either a joint performance improvement plan (a JPIP) or a local output commitment (LOC)³ each year. JPIPs develop the strategic plans set out in the LTPPs for a particular year and should include trajectories showing planned performance by period that achieve the annual commitments given in Network Rail's CP4 delivery plan. Where the parties agree firm commitments to trajectories that differ from the disaggregated targets in the delivery plan, we expect Network Rail to update the delivery plan accordingly. The objective of the JPIP process is to encourage industry parties to work together to develop challenging targets to improve performance. So the parties might also include more challenging aspirational or stretch targets.

Intervention

9. We do not expect that failure by Network Rail leading to it missing a target would generally, on its own, constitute a licence breach but we do expect Network Rail to participate fully in the JPIP process and generally to address poor performance. We expect parties to try to resolve any problems themselves in the first instance through the JPIP process. This has its own triggers for the parties to establish remedial plans and for notifying ORR if performance falls below the agreed levels and there is a process for notifying us if the parties cannot agree a JPIP. The National Task Force (NTF)⁴ has also

³ LOCs have their own mechanism within the network code for referring disputes to an ADRR Panel and ultimately to ORR. We therefore do not include enforcement of LOCs in this policy.

⁴ Comprising ATOC, Network Rail, ORR, DfT, RSSB, train operators

agreed standard JPIP threshold levels for both reviews between Network Rail and the relevant TOC and for more formal reviews that may lead to referral to ORR.

10. If a referral, a complaint or our own monitoring raises concerns that Network Rail is not engaging in the process fully or that its performance is (or is likely to be) materially worse than a performance commitment⁵ and that this reflected a material failure to take steps which Network Rail could reasonably take to address poor performance, we would regard this as possible evidence of a breach of the network licence. Similarly, if we receive a notice that the parties cannot agree a JPIP we will intervene.

11. In deciding what action to take, we will look at all the circumstances of the case including past, current and likely future performance, whether Network Rail is offering suitably challenging targets (taking account of the disaggregation process), what action it has taken to try to resolve the problem, whether the initiatives in the JPIP to improve performance are adequate and appropriate and any mitigating or aggravating factors, as well as looking at whether the TOC has acted reasonably. We will ask the respective parties for their views and normally hold a meeting with all the relevant parties before establishing whether any further action is appropriate.

Franchise projections

12. Network Rail may provide projections of performance to inform bidders for franchises. These should be based on current levels of performance, on requirements set in a periodic review or included as firm commitments in Network Rail's delivery plan and on the projected levels that could be expected of an efficient network manager operating within the funding available to it. If Network Rail failed to provide projections prepared on this basis, ORR may be required to investigate whether this constituted a licence breach. We will treat any failure to meet an accepted franchise projection in the same way as a failure to meet a JPIP target.

⁵ other than a target explicitly expressed as an aspirational or stretch target