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1 November 2011

Sir David Higgins  
Chief Executive  
Network Rail Infrastructure Limited  
Kings Place  
90 York Way  
London  
N1 9AG

Dear David,

**POSSIBLE BREACH OF CONDITION 1 OF NETWORK RAIL'S NETWORK LICENCE WITH REGARD TO NETWORK RAIL'S OPERATIONAL PERFORMANCE**

Bill Emery wrote to you on 13 June about last year's train service performance, emphasising our concern at the underlying trend in Network Rail delay minutes, and the risks to delivery of the 2011-12 performance requirements. He also raised concerns about the freight delay target which you had been failing to meet for some time.

Passenger service performance

Bill's letter required you to provide a plan showing how you intended to reverse the trend in passenger service delay minutes to meet the target for this year which you accepted as part of our 2008 Periodic Review Determination<sup>1</sup> (PR08). We have since received this plan and had extensive discussions with your people to help us to understand it.

Since June performance across the network has continued to deteriorate.

The rolling 13-period PPM for franchised passenger services has fallen from 90.9% to 90.5%. Many passengers are still enjoying good levels of performance (seven passenger franchises have PPM of 92% or better) but for others the experience is very different. This is particularly so for those using long distance services on the East Coast (PPM 83.5%), West Coast (PPM 85.0%) and Great Western (long distance PPM 87.3%). PPM for all long distance services is now 88.7%, well short of the 90.9% required for 2011-12. Performance is also poor for passengers using ScotRail where PPM is 88.7% (the PR08 requirement is 91.7%).

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<sup>1</sup> <http://www.rail-reg.gov.uk/upload/pdf/383.pdf>





Through your recent mid-year review with the franchised operators you agreed to revise many JPIP targets, committing to improvement in the rest of the year but offering no significant recovery of the under-performance from the first 6 periods. I have attached a graph showing the PPM achieved in the first two years of CP4, your latest projections for this year, and the PR08 regulatory requirements. Your revised projections would mean that you will fail to meet many of the PR08 requirements for the year as a whole, and the reasonable requirements of your TOC customers as expressed in the original JPIPs.

We appreciate that there has been a significant increase in the delay and disruption caused by cable thefts and other external factors, but these alone do not explain the extent of the under-performance. We are also aware that delay per incident (DPI) has risen, showing that the network has become less resilient to perturbations. You have investigated this but have not yet established the underlying causes, which is important given the significance of this factor in determining overall performance.

Moreover our discussions on your original 2011-12 plan, our more detailed investigations of particular JPIPs including that for East Coast, and what we have seen of the mid-year review process, have left us concerned about whether your performance projections can be relied on. I know that several train operators share our concern and that their patience has been worn down by successive improvement plans which have not delivered the promised benefits. Joint planning with operators under the JPIP process generally demonstrates good collaboration and identifies worthwhile improvement initiatives, but in many cases the basis for projecting performance does not appear robust. We therefore cannot be confident that performance in the remainder of the year will follow your revised trajectory, even if weather conditions are in line with your assumptions.

#### Freight performance

In June we noted that you were discussing possible changes to their requirements with freight operators but that, unless you made a formal proposal to change which we could accept, we would expect you to meet the PR08 requirement. On 28 September you wrote to advise that you would be making no proposals for change until at least 2012. We must therefore continue to hold you to account against the existing target.

The level of Network Rail delay to freight services has also deteriorated further in recent months. It is currently running at 4.33 minutes per hundred train kilometres, against a PR08 requirement of 3.18 minutes for 2011-12. We believe that you are now unlikely to be able to deliver this year's requirement.

#### Whole-industry issues

We fully appreciate that some aspects of current performance problems go wider than Network Rail alone, and that train operators will need to play a part in resolving them if, between now and 2014, rail users are to enjoy the further improvements called for by the 2007 HLOS and PR08.

These include understanding and tackling the increase in delay per incident, the rising trends in delays from trespass and suicide, and resolving the need to accommodate growth and reduce disruption to rail users while providing sufficient access to the network to carry out the necessary engineering work.

We will continue to talk on these matters with the Department for Transport and Transport Scotland, to whom the franchised operators are answerable, and with the whole industry through the National Task Force. This does not detract, however, from the need for a step change in performance from Network Rail.

#### Compliance with the network licence

In the light of the above, our Board must therefore consider whether the likely failure to meet 2011-12 targets is a contravention of your licence obligations. Based on the information we have at this point we consider that you may be likely to fail to meet condition 1 which requires you to secure:

- (a) *the operation and maintenance of the network;*
- (b) *the renewal and replacement of the network; and*
- (c) *the 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.*



You must do this to the greatest extent reasonably practicable having regard to all relevant circumstances including your ability to finance your licensed activities.

In considering these issues the Board is clear that it needs to take into account the performance targets that Network Rail agreed to as part of its CP4 settlement and was funded to deliver through PR08. At this point the requirements which are of greatest concern to us are PPM for the long distance sector and Scotland and the levels of delay to freight services.

If you would like to make any representations on these points before we make a recommendation to our Board, could you do so by Tuesday 22 November. If you wish to make these in person please contact me to arrange this. In line with our normal processes ORR will consider your representations and will recommend to our Board whether or not it should find a current or likely future breach and what, if any, further action is required. During that process we may also seek further information. We will keep you informed of progress.

I am copying this letter to Norman Baker and officials at the DfT, Keith Brown and officials at Transport Scotland, Robin Gisby and Paul Plummer at Network Rail and to the other parties on the attached list. A copy will also be placed on our website.

Yours sincerely

A handwritten signature in blue ink that reads 'Richard Price'. The signature is written in a cursive, slightly slanted style.

**Richard Price**



cc:

Train Operating Company MDs

Freight Operating Company MDs

Owner Group MDs

Welsh Assembly

Transport for London

ATOC

Rail Freight Group

Passenger Focus

London TravelWatch

## Annex

Actual PPM by sector for the last three years, latest projections for 2011-12 and PR08 regulatory requirements for CP4.

