

Alan Price
Director, Railway planning & performance

Mr Phil Hufton
Managing Director, network operations
Network Rail Infrastructure Limited
1 Eversholt Street
London
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2 July 2015

Dear Phil,

Possible breaches of condition 1 of Network Rail's network licence with regard to its operational performance

I wrote to you on 23 April 2015 to advise Network Rail Infrastructure Limited (NR) that Office of Rail Regulation (ORR) was investigating its performance in 2014-15. We would like to take this opportunity to thank you for NR's co-operation and the information it has provided to ORR.

Any decision with regard to whether NR has breached its network licence is for ORR's Board. The purpose of this letter is to summarise our preliminary findings following our investigation, and to give NR the opportunity to put forward any further substantive representations.

Our investigation has focused on whether NR did, or is doing, everything reasonably practicable to meet its licence obligations in relation to:

- a. why NR has not met its regulated performance target in Scotland for the first year of CP5 and whether this is an on-going issue for subsequent years;
- b. why NR has not met its performance strategy targets for Southern and GTR for the first year of CP5 and whether this is an on-going issue for subsequent years; and
- c. whether it is ensuring that the end of CP5 regulatory targets are met, including an assessment of whether there are any systemic weaknesses relating to NR's operational planning, management and delivery of performance, such as timetabling.

We have considered information provided by NR and relevant Train Operating Companies (TOCs) and engaged with TOCs and Passenger Representative

Groups as part of our investigation. We have met with NR and also taken account of all of the information provided by its quarterly and end of year reports in relation to delivery of its CP5 Performance Plan.

We have considered whether there are any factors which could have affected performance which may have been, in part or completely, outside NR's control in 2014-15. This includes assessing any applicable extreme weather impact, 'External – fatalities and trespass events', 'TOC on Self' and 'TOC on TOC' delays, and specific to Scotland – the impact of the Commonwealth Games held in July and August 2014.

Having carried out this work, our preliminary view is that NR may not have done, and / or be doing, everything reasonably practicable to comply with condition 1 of its network licence¹. In reaching a final decision ORR will, of course, take account of any further substantive representations from NR. The various aspects of this are as follows:

a) PPM targets in Scotland for the first year of CP5 (regulated performance target)

At the end of 2014-15 the Public Performance Measure (PPM) Moving Annual Average (MAA) in Scotland was 1.5 percentage points (pp) below its regulatory performance target of 92%. We have considered a number of factors which were beyond NR's control, and will be recommending to our Board that we take into account the performance impact of the Commonwealth Games, which we estimate to be 0.6pp on the PPM (MAA).

We also consider that NR was not wholly responsible for the delay minutes and subsequent PPM loss caused by fatalities and trespass events, and that it has worked constructively to reduce the number of these incidents and mitigate their impact. Taking these adjustments into account, we consider that the PPM target was missed by less than 1.0pp².

We consider that the impact of passenger growth (beyond the level NR was funded to deal with) on performance is not proved and, whilst it is acknowledged as a potential issue, should not be adjusted for. Despite the volume of delay minutes and PPM and CaSL failures attributed to "Severe Weather, Autumn and Structures" in 2014-15, our analysis has not identified any extreme weather days in Scotland. We therefore do not consider we should adjust for weather.

¹ This condition sets out Network Rail's core obligations to secure the operation, maintenance, renewal and enhancement etc. of the network in order to satisfy the reasonable requirements of persons providing services to railways and funders. This is in respect of the quality and capability of the network and the facilitation of railway service performance.

² figures may not sum due to rounding.' Refers to 0.6pp and 1.0pp

Notwithstanding this, we consider that there is evidence to suggest that NR may not have done, and/or is not doing, everything reasonably practicable to deliver performance in Scotland, because:

- whilst NR has recognised a number of areas for improvement, our analysis of the May and December 2014 timetable changes has highlighted several operational planning errors that could have been avoided
- In particular, our analysis found a number of excessively tight timings and we therefore consider that a comprehensive review is needed of the Timetable Planning Rules (TPRs). In particular Rutherglen and Hyndland East Junctions require review. NR has confirmed to us that a full review of the TPRs is being progressed and will be completed by March 2016;
- the evidence shows that there were a number of issues with the modelling work undertaken prior to the introduction of electric services in the Whifflet area which reduced the reliability of the timetable. Our analysis has shown that the point to point timings between Whifflet and Rutherglen East Junction were significantly reduced from 18½ to 15 (subsequently, 15½) minutes on the westbound line and 21½ to 17½ minutes on the eastbound line. These reductions appear to be greater than might be expected. The eastbound changes included the removal of station dwell time and two minutes' recovery time which will have reduced the resilience of the timetable; and
- we previously investigated timetabling issues in Scotland in 2013-14, in particular the timetable change in December 2012 that reduced timetable resilience. This resulted in a reduction in performance. We investigated performance for 2013-14 and determined that there was no licence breach because NR had done everything reasonably practicable to identify the problems quickly and take the necessary action to resolve the problems. Performance in Scotland consequently improved. These latest timetable problems and subsequent impacts on performance demonstrate that NR is not learning effectively from its previous timetabling problems.

In these circumstances, we are concerned that the problems may manifest themselves in the future, unless NR can demonstrate to our satisfaction that it has identified these issues and addressed them.

b) Performance delivery to i) Southern and ii) GTR for the first year of CP5 (Performance Strategy targets)

Southern exited 2014-15 with a PPM MAA of 83.1%, 4.7pp below (worse than) its Performance Strategy target, and a CaSL MAA of 4.8%, 1.9pp above (worse than) its Performance Strategy target.

GTR exited 2014-15 with a PPM MAA of 85.2%, 2.8pp below (worse than) its Performance Strategy target, and a CaSL MAA of 4.3%, 1.3pp above (worse than) its Performance Strategy target. We have considered a number of factors which were beyond NR's control which are set out below.

Southern and GTR have both seen a significant increase in delays from traincrew issues. These impacts, we consider, should be taken into account when assessing NR's overall delivery of performance.

We also consider that NR was not wholly responsible for the delay minutes and subsequent PPM loss caused by fatalities and trespass events, and that it has worked constructively to reduce the number of these incidents and mitigate their impact.

We consider that the impact of passenger growth (beyond the level NR was funded to deal with) on performance is not proved and whilst it is acknowledged as a potential issue, should not be adjusted for.

There is no evidence to suggest that there was extreme weather in 2014-15, beyond the level that NR was funded to deal with. Therefore we do not consider weather is a factor which warrants adjustment.

Taking account of the factors impacting GTR performance (externals and traincrew), we will be recommending to our Board that NR's delivery of its PPM Performance Strategy target would have been within the threshold specified in ORR's CP5 final determination.

Notwithstanding this, we consider there is evidence to suggest that NR may not have done, and/or is not doing, everything reasonably practicable to deliver its Performance Strategy regulated targets (PPM and CaSL) to Southern and (CaSL) to GTR because:

- its performance modelling for the impact of the Thameslink Programme was flawed. It was over-optimistic and operators were not engaged early enough in the process;
- NR's performance modelling indicated a 1.06pp impact on Southern's PPM and a 0.92pp impact on GTR in 2014-15 from the Thameslink programme. However, both operators believe the impact on PPM was underestimated and we have found evidence that problems that did arise exacerbated by lack of resilience in the timetable and significant reactionary delays;
- the performance modelling problems have directly affected services to and from London Bridge, predominantly impacting on Southern services (GTR run only a limited service to and from London Bridge at present). However, the nature of service patterns across the Sussex

Area, where services to and from multiple London terminals are closely interwoven, means that delays to one service group quickly spread to others. Therefore, while Southern services to and from London Bridge have been directly impacted by the modelling, other Southern and GTR services have been impacted through reactionary delay;

- issues with the data used in the timetable modelling have been identified by NR and the modelling was completed only two months before implementation. This severely restricted the opportunity to make changes. NR has also stated that a number of the assumptions made in the timetable modelling were incorrect;
- there were significant weaknesses in the process in terms of data quality and operator engagement. Risks to performance were underestimated in Performance Strategies. The significant and frequent changes to services from London Bridge suggest significant over-estimation of service reliability and incorrect timetable modelling outputs; and
- a high incidence of newly installed assets failing or their performance being sub-optimal. Both Southern and GTR raised concerns about instances of 'early asset life' failures installed as part of the Thameslink programme and NR has acknowledged that there have been 184 failures of these assets since December 2014. We acknowledge a recent improvement means that NR considers the reliability of new assets 'is now at least comparable to the rest of the network'.

In these circumstances, we are concerned that the problems may manifest themselves in the future, unless NR can demonstrate to our satisfaction that it has identified these issues and have addressed them.

c) Ensuring that end of CP5 regulatory targets are met – including assessing whether there any systemic weaknesses relating to NR's operational planning, management and delivery of performance, such as timetabling

Our investigation has noted that the delivery of Performance Plan milestones has been broadly acceptable in 2014-15. However, our investigation has highlighted some inherent weaknesses in NR's performance planning process both in England and Wales as a whole and in Southern and GTR specifically. These weaknesses have contributed to performance shortfalls for Southern and GTR in 2014-15. It is also an issue raised by a number of train operating companies in their responses to us as part of this investigation.

We recognise the work that NR has undertaken through activities such as its Anglia Route Internal Review and its South East Performance Review. We also recognise that NR has identified these issues and that plans are in place to take forward improvements to performance planning processes.

NR has worked collaboratively with us during the course of its Internal Review into Train Performance Delivery and shared the findings with us. We observe that, whilst the review was limited in scope to Anglia Route, its findings reflect the concerns of several operators around the Performance Planning Reform Programme (PPRP). The results of this review have corroborated our findings. We note that the report's findings were shared internally at NR with a view to recommendations being implemented on other Routes as applicable.

At this time, there is not a case to answer in relation to performance planning. Before making a recommendation to that effect to our Board, we are seeking further assurances from NR as to its latest activities in taking forward the recommendations from its recent review activities to address the inherent weaknesses in its PPRP.

Next steps

In light of the above, we invite NR to make any substantive representations by **9 July 2015** in relation to the points set out in this letter. These may include any further information on how NR considers it has worked or is working to address these issues, mitigations or offers of reparation for consideration in line with our published economic enforcement policy. Following receipt of these representations we will consider what recommendations to make to our Board about whether or not NR is in breach, or has breached, its network licence and if so what follow-up actions we may recommend.

I am copying this letter to Patrick McLoughlin, Claire Perry and officials at the DfT, Derek McKay and officials at Transport Scotland, Mark Carne and Paul Plummer at Network Rail.

Yours sincerely

A handwritten signature in blue ink that reads 'A. Price'.

Alan Price