

20 June 2011

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Dear Abigail,

AMENDING LICENCES TO INCLUDE PASSENGER INFORMATION OBLIGATIONS

Introduction

Thank you for the opportunity to comment upon the proposals to revise the licence conditions in relation to passenger information. This letter draws together the response of all FirstGroup's rail operations, including ScotRail, First TransPennine Express, First Capital Connect, First Great Western and Hull Trains.

Your proposals address an important issue and FirstGroup welcomes a debate on how best to improve how the Rail Industry provides timely and reliable information to passengers, particularly in times of disruption to services.

We fully accept that our performance in supplying customers with information during disruption, on occasion, falls well short of customers' quite reasonable expectations. Meeting the expectations of passengers and of our frontline staff, who are the public face of the company when our customers down are let down, in relation to information provision is one of the biggest and most pressing challenges we face. We already commit significant effort and resources to improving the provision of information during disruption, but more can and needs to be done in this area.

The challenge should not be underestimated – meeting customers' expectations consistently will not be achieved easily and operators cannot successfully resolve all the issues if they act in isolation, either from one another or from Network Rail. As your proposals make clear, it will require Network Rail (NR) and Train Operating Companies (TOC's) to work in partnership to deliver information that accurately informs customers of how long disruption will last and the best options to complete their journey.

Contrastingly, we do not believe there to be any significant problems in disseminating information about the base timetable or about planned service changes. Improved use of information technology has made timetable information far more accessible and reliable and the current T-12 provisions have greatly improved matters in ensuring that the service information should be finalised and available on a timely basis.

We do not believe the licence condition proposals should extend to fares, which are separately addressed including through the combination of consumer laws, franchise agreement fares regulation and obligations in connection with the Ticketing and Settlement Agreement.

Accordingly, most of our comments relate to passenger information during disruption and the extent to which these proposals would assist operators and Network Rail in significantly improving our delivery in this area. We attach our detailed responses to the consultation questions in an appendix and our general comments are as follows:

Is a “purposive” licence condition appropriate?

The consultation proposes introducing licence conditions to help the rail industry “to provide good quality information about train services to all passengers across all timescales and ... media”. This objective sets a high level target which we are not sure is best enforced via licence conditions.

The purpose of a licence condition to date has been to ensure that certain critical minimum standards are met by operators. These have to be the really key issues that we are expected to deliver and the standards expected must be clear. Failure to comply with a licence obligation is dealt with by very intense and expensive review and the punishments can be severe. The problem with applying this approach to passenger information during disruption is not that potentially a few companies might fail to meet an enforceable minimum standard; it is that currently all rail companies on occasion fall below the more subjective high standards expected by consumers today. All responsible effort may be applied to close the gap between the objective and actual delivery, but it is highly likely that there will always be occasions where there are gaps.

We appreciate that Network Rail, unlike train operators, has operated for some time within a framework of “purposive” licence conditions covering a range of issues. However, we believe that this is appropriate given that they operate within a regulatory rather than contractual (franchise) environment; Network Rail does not have a contract with DfT, Scottish Ministers or ORR setting out in detail what it has to deliver, so the regulations have to set out the high level outcomes expected of it. In contrast franchised operators operate under highly detailed agreements with DfT or the Scottish Ministers, with the regulated licences broadly providing an underpinning framework to ensure customers and other users of the network are protected by compliance to well defined standards.

The consultation recognises the double jeopardy issue, but we would be concerned about an increase in regulatory risk for operators, in addition to their contractual and consumer obligations and Railways Act obligations in relation to compliance with their franchise agreements. In particular the proposal would measure performance against high level desired outcomes rather than clear benchmark targets, which could lead to subjective decisions or be open to retrospective interpretation against changing expectations, affecting both what quality is required to be delivered and what level of investment is required to be funded.

We believe that in the context of purposive licence obligations applied to Network Rail, the ORR is assisted in its application of those licence obligations by its understanding of the resources available to Network Rail derived from its regulatory charging review activities. In seeking to apply similar obligations to TOCs, we are concerned that individual franchise specifications and funding arrangements may be very different and not so well understood.

While supporting the objectives of improving information, it is important that this is done in a way which meets the goals of the Section 4 duties promoting efficiency and economy and helping operators to plan the future of their businesses with a reasonable degree of certainty. There must be confidence and certainty over what is required, how it will be funded, how it will be measured, how it will be enforced and

how changes over time will be made in a way which takes account of these concerns.

What is the licence measuring?

The consultation is light on detail on how the ORR plans to assess compliance with the licence condition. We would want to have clarity about:

- how performance in providing information during disruption is to be measured? Is it going to be based on measurable KPIs or on customer perceptions or on exception reporting?
- how will the nature and severity of the disruption impacting on the ability to provide information be taken into account?
- what standards will performance be measured against, and who sets those standards?
- how will the quality of information be assessed, for example comparing information that there is disruption with increasingly detailed and particularised information and predictions on the effects of disruption, offset by the scale and complexity of the disruption being addressed?
- the targets to meet and any proposed thresholds for enforcement. In particular how will these be benchmarked for different types of operation?
- what weighting is to be provided as between information provision and other aspects of train operation, both for example at times of disruption or in the context of larger investment choices?

How will the licence be enforced?

We would want to understand how the ORR would approach enforcing the licence conditions. The proposed enforcement rights need to be set out together with guidance on how ORR envisages applying them. As mentioned above, we are not sure that an objective to improve passenger information to meet an aspiration of accurate and timely information to all passengers during disruption is best delivered via a licence breach mechanism.

We would also want to understand the guidance around enforcement when delivering reliable information during disruption is often dependent on many factors outside the operator's control. The operator can depend upon receiving accurate information from Network Rail systems, from personnel at the site of any incident and on NR / other operators' control teams agreeing and implementing a revised service plan in order to have complete information to provide to the customer. There is a risk that formal reviews of any failures to provide quality information to customers could degenerate into a blame game between the parties involved, fueled by anxieties over the consequences of a licence breach.

We would expect there to be clear guidance on enforcement which serves to promote the place of reviews of situations and attempts to address improvement, recognising the importance of funding arrangements, free from enforcement risk where the parties are behaving responsibly.

We note that at a more micro-management level the proposed licence conditions set out an obligation for the parties to cooperate with NR to plan the revised service plan, which should help address this risk in individual cases of disruption. However, an inappropriate approach to enforcement would risk turning what should be a collaborative industry response to disruption into a risk averse one, where parties become rule bound or set clear boundaries as to what they are responsible for, damaging the gains which could be made by attempting more cooperation. It is also a concern that rules on what information should be provided may even come in time

to constrain the taking of urgent mitigating action which might be difficult to communicate but ultimately reduce the actual disruption.

Financial implications of new licence conditions.

The introduction of the explicit licence condition on information for passengers, including when there is disruption, places an uncosted and largely unfunded obligation upon TOCs. Whilst we fully accept that this is an area which needs improvement and that there are commercial benefits in improving customer satisfaction on this issue, there needs to be clarity over the extent of the financial implications. The proposed "General Duty" obliges operators to achieve the purpose "to the greatest extent reasonably practicable" which suggests a reasonableness test may be envisaged, but if the licence condition involves significant increases in expenditure above the franchise obligations we would want to understand how that would be funded. In any event it must be clearly understood how the availability of funding will be taken into account in assessing the obligation on the TOC concerned, noting that different TOCs might as a result possibly even face different levels of output commitment under the licence.

In particular, we would welcome clarity on the scope of the obligations, particularly around investments to improve industry information systems which may be found inadequate against the new licence conditions. Does the NR lead accountability for provision of information to operators mean that they are funded for this type of investment? Similarly, providing accurate and timely information during disruption depends on well-informed and appropriate decisions which could be interpreted as requiring investment in new Control systems – we would see that as an industry not TOC cost.

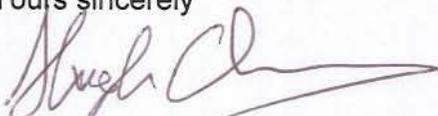
Conclusion

Overall FirstGroup doesn't believe that a licence condition change is necessarily the right method to deliver a step change in providing passenger information during disruption. Delivering these improvements is a very complex issue requiring substantial industry inter-working and additional investment. Whilst the licence condition approach is helpful in clarifying the accountabilities of NR and the operators and to articulate the overall objective, it is a blunt and unwieldy instrument to deliver change on an issue where matters are rarely pass / fail.

However, we understand the need to give passenger information a higher priority and to improve the industry's performance in this area. Accordingly, if, following the consultation and provided that there is satisfactory clarification of the points raised, it was decided to pursue the approach of changing the licence conditions FirstGroup would expect to accept the proposed approach.

Please do not hesitate to contact me if you would wish to discuss in more detail any of the points raised in this response.

Yours sincerely



Hugh Clancy
Commercial Director, Rail

Appendix - Consultation question responses

1. Do you agree that there is a lack of clear accountability in the current framework for providing information to customers?

No – as the party holding the direct relationship with the passenger we have always believed that the train operator is ultimately accountable for providing the passenger with accurate information on planned or disrupted train services. This is already supported by specific obligations on providing timetable information in the template franchise agreements. The obligations around providing passenger information during disruption may not be as clearly articulated but operators have led improvements in this area either individually or collectively through National Rail Enquiries (NRE).

Similarly, the Network Code and the access contracts give Network Rail the primary responsibility for both producing the timetable and managing the operation of the network to deliver the trainplan.

Where the proposed licence condition changes are helpful is in clarifying these accountabilities in respect of provision of passenger information during disruption. In particular, we welcome the introduction of a specific obligation on NR “to enable train operators to meet their information obligations to passengers and prospective passengers, including when there is disruption.”

One area where First Group believes further clarity could help improve the accuracy of passenger information is around NR’s network management role during disruption. The plan to recover the train service after an incident (and the communication of that plan to customers) is dependent upon the information provided by the mobile operations manager at the site of the incident. This forms the start of the information chain and we would encourage increased accountability on NR regarding incident recovery estimates as well as the overall management of the disruption in line with the revised plan.

2. Do you agree that licences are the best place to set out aligned accountabilities for providing information?

We agree that the licences can usefully clarify the respective responsibilities of NR and the operators and also ensure that those accountabilities are in alignment. As the consultation points out the licence condition approach can be applied consistently to all parties, including non franchised operators.

However, whilst it might serve to set out and align these accountabilities, we do not necessarily feel that the introduction of purposive licence conditions for operators is the best route to delivering the step change in passenger information during disruption. Other approaches such as introducing similar obligations upon NR and the operators through the station and track access contracts would give the parties more flexibility, with contractual rights enforceable by the parties within a well defined disputes mechanism rather than having to appeal to the ORR for a formal review of potential breaches of the licence condition.

We are also nervous about moving away from the contractual Franchise Agreement framework for TOC’s towards the regulatory licence approach applied to NR in just this one specific area. This is based upon both the risk of unintended consequences and the double jeopardy of contracted inputs alongside regulated but unfunded

outputs.

One potential alternative not listed in the consultation which would seem to offer an alternative way of achieving the same outputs could be to introduce a licence requirement for all operators to become members of an ATOC Scheme to deliver the output of improved passenger information during disruption. This would be similar to the National Rail Enquiries scheme which has successfully delivered significant improvements in meeting the enquiry obligations of the operators.

3. Do you agree the split of responsibilities described is sensible?

The split of responsibilities is broadly correct.

We would welcome more emphasis regarding NR's role in managing disruption and the provision of accurate, prioritised train service plans that forms the basis of information during disruption. Also whilst NR is made accountable for the industry information systems, it could be made clearer what their responsibility is for the accuracy and timely provision of data from these databases.

4. Are there any other changes in the way the industry handles information for passengers that would complement the new licence obligations and help the industry deliver the needed improvements?

The other area that we believe requires consideration is control room technology. As stated earlier it is much easier to communicate when the decisions taken at times of disruption are the right ones; as it reduces the number of changed and confusing messages which are generated. This essentially requires investment in systems which give the Controller more information and assist in decision making. This is an area where developments are in their infancy but the capacity they may have to improve passenger information cannot be overestimated.

Changes to the planned timetable should be live in downstream systems and not wait for overnight system updates

Some of our TOCs also believe that passenger information at NR Major Stations should be provided by the lead TOC at the station. TOC's are closer to their customers and understand requirements better than NR.

Introduction of publicly available industry information measurements, which should be statistical rather than perception based (as is the case with NPS). They should cover provision of the prioritized plan, accuracy of estimate, communication statistics regarding service alterations and CSL2 compliance.

5. Do you have any suggestions to improve the proposed licence drafting?

It should be clearer as to how ORR will measure and assess compliance with the licence condition re passenger information during disruption, as highlighted in our general comments.

It should include an enforcement policy, outlining how breaches will be managed.

We also do not believe that clause 4.11 of the proposed operator licence condition should include any reference to the "fares and any restrictions applicable". This extends the information provision obligation into a completely different area, one which is already governed by the regulated Ticketing & Settlement Agreement (TSA).

If the ORR wants to clarify the obligations around provision of fares information more generally we would suggest it is done as part of a specific review of Ticketing and Retailing overall.

6. Who do you think should be covered by these proposals?

All TOCs (both individually and perhaps collectively via NRE) and Network Rail.

7. What impact do you think these proposals would have?

The consultation document does not outline the ORR's approach to assessing compliance or its proposed review and enforcement mechanisms. It also does not address the source of funding of these potentially increased information obligations. Without that information it is not possible to respond at this time.

8. What extra information about how these conditions would work in practice would be useful?

See the general comments made at the start of this response.