Responses to consultation on ORR's Holding Network Rail to account policy - Published 27 March 2019

ORR's 'Holding Network Rail to Account' policy for CP6

A consultation on a new policy for holding Network Rail to Account: pro forma

This pro forma is available to those that wish to use it to respond to our ORR's 'Holding Network Rail to Account' policy for CP6' consultation. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Please send your response to pr18@orr.gsi.gov.uk by **25 January 2019**.

Full name*	
Job title*	
Organisation	Arriva UK Trains
Email*	

*This information will not be published on our website.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 1: Introduction)

Q1. Do you agree with our proposal to create a new, standalone policy for holding Network Rail to account, replacing the existing monitoring and economic enforcement policy for Network Rail?

It is encouraging to see ORR focus on the key activity of holding Network Rail to account. This is a central requirement that Network Rail's funders, dependent customers and rail end users look to ORR to discharge.

Having an explicit policy in place in this area will help to clearly articulate ORR's objectives, as well as the activities that they intend to undertake, to improve visibility and understanding for stakeholders.

At a workshop linked to this consultation ORR suggested that the recently established "Route Boards" would play a role in enabling stakeholders to "hold Network Rail to account". Arriva's experience is that such a role is not aligned with the structure or purpose set out in the Route Boards' remits. Primarily, the Route Boards are structured to create a focus on how Network Rail and its dependent customers can work collaboratively to deliver shared objectives – often outside the strict terms of their individual contractual relationships. To this end, each Route Board has its own points of focus.

While ORR are now not required to regulate the delivery of enhancements, ORR will be regulating the recently established National System Operator (NSO). One of the roles of the NSO is to manage changes in the outputs the Network delivers. Therefore, NSO processes should be tracking enhancement delivery risk and ORR should be monitoring this. An ORR focus on the satisfactory delivery of this activity should ensure the timely identification of

precursor failures that are likely to lead to more significant issues – the failure of this part of the process underpinned the problems encountered in the delivery of the timetable change in May 2018, as identified in the recent Glaister Inquiry.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 2: Our aim and approach)

Q2. Do you agree with the policy aims and approach, and is there anything else we should set out in the policy to help meet these objectives?

The ORR policy aims align with Arriva's expectations in this area. However, Arriva would like to see more detail as to how these aims will be addressed with regard to each of the elements of Network Rail's devolved structure, including the central functions. It would be expected that the approach deployed would need to be different for each element of Network Rail.

Arriva recognises the particular challenges of creating effective incentives given Network Rail's public sector status.

At a recent workshop linked to this consultation, ORR indicated that they wanted to focus on Network Rail's stakeholder engagement and operational performance delivery. While these are two elements of the Routes' Strategic Business Plans, it is also important that ORR focuses on Network Rail's delivery of its asset management function.

Regardless, Arriva would suggest that ORR begin their work by examining the extent to which they consider the Delivery Plans being developed by the Routes and the NSO to be fit for purpose. If the intention is to avoid failure, examining the delivery approach in advance of deployment would seem to be prudent.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 3: Routine monitoring and assessment)

Q3. What are your views on our proposals for routine monitoring and assessment, specifically:

- **Monitoring and assessing Network Rail's performance;**
- **Monitoring and assessing the strength of route and System Operator-level accountability;**
- **our approach to risk-based and targeted monitoring; and**
- **the aims of our public reporting?**

It would appear the aim of the new policy is to seek to avoid failures to deliver by ensuring timely interventions. However, the policy itself seems to focus extensively on post failure intervention through a variety of mechanisms including hearings and improvement plans.

It appears to be ORR's intention to primarily focus on the results associated with the scorecards metrics. As almost all of the scorecard metrics are outcome measures with few, if any, activity or input measures in place, it is unlikely that this approach will provide the required "early warning" mechanism needed to meet the aim of failure avoidance. We would suggest there is a need for a supplementary focus on ensuring that:

- each scorecard metric is supported by a suitable and sufficient delivery plan
- each delivery plan is resourced as required
- there are activity and process metrics in place to measure the deployment of the delivery plan

If ORR's proactive precursor monitoring highlighted a risk of a key output not being delivered, then ORR should then intervene using the hearing and improvement plan tools.

It may be of value to understand how Her Majesty's Railway Inspectorate (HMRI) use their regulatory powers to ensure that we avoid accidents, for example by looking at the culture and processes embedded through the RM3 process.

In consideration of the above, Arriva suggest that ORR need to make use of a range of metrics when it monitors and assesses Network Rail's performance. These metrics should be linked directly to Network Rail's core licence obligations set out in paragraph 2.1. They should also link to the outcomes set out in the Control Period Settlement and the targets included in the scorecards. Arriva strongly recommends that ORR should not only focus on outcome metrics but should also consider input and activity based metrics to provide leading indicators on likely future outcome delivery.

It is appropriate that ORR's monitoring and assessment activity is risk based to focus on areas where under-delivery is likely. However, this approach needs to be balanced with a targeted approach, ensuring that sufficient attention is given to areas where under-delivery will have the greatest negative impact on funders, customers and end-users.

Arriva does not agree with the proposal that would see ORR reducing the scope of its reporting where Network Rail's own reporting is strong. The ORR's reporting should remain comprehensive and definitive in order to reinforce ORR's overarching role in this area. This is particularly important given the reliance that will need to be placed on reputational incentives.

It is a concern to find that Network Rail has not yet established "clear definitions for the measures used on scorecards". It is therefore unclear how the current targets have been set. Arriva therefore suggests that an assessment is completed to confirm that definitions have been consistent when setting scorecard targets, therefore ensuring meaningful measurement of future performance.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 4: Investigation and early resolution)

Q4. What are your views on our proposed approach, specifically:

- **the factors we will consider when assessing concerns;**

- **the actions we may take (such as using ORR hearings and requiring improvement plans); and**

- **communicating our investigations publicly?**

Arriva supports an ORR approach that includes early intervention. This approach has the benefit of driving action before results have moved irrecoverably off target. The proposed use of hearings and improvement plans also supports a situation where there will be high level of dependence on reputational incentives.

The factors that ORR intend to consider when assessing concerns seem appropriate – particularly the focus on harm to passengers, freight users, funders and other stakeholders. The recognition that customers and stakeholders are often not able to address issues or to hold Network Rail to account themselves is also welcome, therefore reinforcing the need to look to the ORR to take responsibility for this on behalf of the industry.

In cases where there will be a high level of dependence on reputational incentives, communicating the ORR's monitoring activities, investigations and interventions publically will be important if the policy is to be effective.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 5: Enforcement)

Q5. What are your views on our proposed approach to enforcement, specifically:

- **the use of enforcement orders;**

- **the use of financial penalties; and**

- **the introduction of regulatory enforcement penalties?**

Arriva supports the use of enforcement orders, and believes that this is key to ensuring any policy aimed at holding Network Rail to account is effective.

Arriva recognises that, given Network Rail's public sector status, corporate financial penalties are highly unlikely to be an effective incentive mechanism. Indeed, ORR is correct in highlighting the negative effect that corporate financial penalties could have on Network Rail's ability to deliver for customers and end users. However, Arriva does not support addressing this situation by effectively moving the imposition of financial penalties directly onto Network Rail's management teams. Staff reward and remuneration should remain a matter for an employer and not something that a Regulator should intervene in. As ORR concluded in the recent investigation as to the causes of the disruption associated with the May 2018 timetable change, many delivery failures occur despite the good intentions of all involved.

Arriva believes that the reputational impact of the other elements of ORR's proposed approach to holding Network Rail to account will have a significant impact at a management level – perhaps even more so than at the corporate level. As ORR also found in its investigation in response to the May 2018 timetable change, the failures were a shock to all concerned. This shock has driven rapid and significant improvements to industry processes that have already had a beneficial impact while more sustainable mechanisms are developed.

Arriva would also be concerned that a financial penalty regime essentially targeted on Network Rail's management teams could compromise Network Rail's ability to attract and retain suitably talented leaders.

Specifically, Arriva would be concerned by a mechanism that artificially distorted the FPM scorecard results as this would tend to mask underlying performance. This is likely to distort the messages that the FPM results trajectory should be giving to Network Rail's management teams.

ORR's new policy – 'Holding Network Rail to Account' (Penalties statement - Annex B)

Q6. What are your views on the penalties statement, in particular, the factors we should consider in deciding whether to impose a (financial) penalty, and the decision on the size of any (financial) penalty?

In addition to the observations made in our response to question 5, any financial penalty mechanism must not impact the funding available to Network Rail for operation, maintenance and renewal of the network.

ORR's new policy – 'Holding Network Rail to Account'

Q7. Do you have any other comments or views on ORR's new policy?

Arriva believes that Andrew Haines' 100 day review of Network Rail, and its imminent conclusion, provides a timely opportunity to introduce the new policy arrangements and the associated measures required to ensure the process is both effective and long-standing.

Thank you for taking the time to respond.

Department for Transport

Conrad Bailey
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28 January 2019

ORR's 'Holding Network Rail to Account' policy for CP6

Thank you for the opportunity to comment on the ORR's proposed approach for holding Network Rail (NR) to account in Control Period 6 (CP6 – 2019-24). This is a critically important issue for ensuring the success of CP6; NR's regulatory framework must be properly able to ensure the company delivers the improvements and efficiencies it has committed to. The regulatory framework must act to support the process of devolution within NR, with routes and central functions both empowered and accountable to deliver their functions. This is essential for helping to bring track and train together, promoting closer co-operation between NR's routes and their operators for the benefit of end-users. The regulatory framework for CP6 will also need to be dynamic and sufficiently flexible to allow ORR and NR to accommodate and adapt to changing circumstances (including, in due course, the outcome of the Rail Review).

Principles

DfT strongly supports the objectives of ORR's approach to monitoring, escalation and enforcement as set out in paragraph 2.4 of the consultation document. We regard the proposed approach as highly appropriate for protecting the interests of both users of the railway and taxpayers, while creating a culture of continuous improvement within NR.

We particularly note the importance of effective engagement by NR with its stakeholders. DfT is responding separately to ORR's consultation on its approach to assessing the quality of NR's stakeholder engagement in CP6.

Monitoring

We note that ORR's proposed approach to monitoring and enforcement (part 3) is reliant on an effective scorecard system. The scorecards will therefore be an important part of the toolkit for holding NR to account. The scorecard system is complex and seeks to report on a range of measures including NR internal management information, passenger outcomes, and customer and funder targets. For the scorecards to work – they need to drive the right behaviours and be accessible and understandable. Whilst DfT acknowledges and supports the inclusion of regulatory minimum floors in certain important areas, for the scorecards system to be effective it will be important for the ORR to be able to identify emerging issues across all areas and challenge NR at an appropriate stage. This will be particularly important where the aggregate results of the scorecard do not necessarily reflect instances where stakeholder expectations or

significant outcomes are not being delivered. It should not be possible for overall scorecards to be green when significant funder or customer facing outcomes have not been delivered. The results should be transparent and used to hold executives to account, including by flowing through to executive performance-related pay (PRP).

DfT notes the emphasis ORR places on the importance of stakeholder engagement and customers' agreement of scorecard targets with NR's routes and SO. It will also be important to identify whether the scorecards are being effective in driving positive behaviours in the interest of passengers and freight end-users. We would welcome further engagement on this issue and to understand how devolved transport bodies' interests will be reflected.

DfT agrees that more use of qualitative information will be important to achieve a rounded assessment of NR's performance. We would welcome further discussion with the ORR to understand more about its plans for qualitative oversight. DfT considers that a lot of qualitative information already exists, although it is not always clear how it helps to achieve better outcomes, so more adept use of such information would be valuable. DfT considers that it would be helpful if ORR could set out how qualitative information would be shared with stakeholders. DfT would also like to understand how the ORR intends to assess the quality and effectiveness of SO advice.

Part 4 of the consultation document sets out the ORR's proposals in respect of investigation and early resolution. DfT considers that the CP6 monitoring regime must be proactive in identifying and intercepting problems and requiring remedial action, wherever possible before there is any adverse impact on rail users. An effective monitoring and early resolution regime ought to be capable of addressing problems such as those that have led to the steady decline in performance that passengers have experienced during CP5. It may also be beneficial to limit the time that would be spent on the investigation phase to avoid undue delay should it become apparent that formal enforcement action is needed.

Enforcement

On enforcement (part 5), DfT would welcome engagement with ORR on its proposed response (on a case-by-case basis) to any enforcement action that would set a precedent and/or where there would be funding implications for HMG.
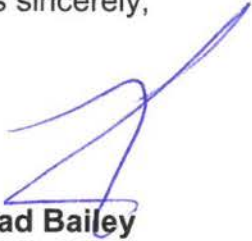
DfT acknowledges the complex issues that arise when considering imposition of a financial penalty on a public sector company that is funded by taxpayers and railway users. DfT supports ORR's suggestion (paragraph 5.18) that it may choose to scale any financial penalty so that it is capable of being funded by management PRP. However, we consider that for this option to be of value, the mechanism should be there for it to actually influence the level of PRP. As NR's shareholder and funder DfT would welcome close alignment between the regulatory enforcement regime and DfT's shareholder function in this regard. We would welcome further discussion with ORR about how we can best align these functions in the public interest. In the same vein, DfT supports ORR's proposal (paragraphs 5.22-5.25) that it may decide to issue a financial sanction (as opposed to a financial penalty) against a route or the SO, which would be recorded as a deduction to the financial performance measure (FPM), which in turn is used by NR as a component in calculating performance related pay. We think this has the potential to act as an effective means of incentivising performance, without resulting in funds being lost to the railway.

Conclusion

Thank you for the opportunity to respond to this consultation. As indicated in this letter, we would welcome further engagement with ORR on an on-going basis.

Yours sincerely,

Conrad Bailey

ORR's 'Holding Network Rail to Account' policy for CP6

A consultation on a new policy for holding Network Rail to Account: pro forma

This pro forma is available to those that wish to use it to respond to our ORR's 'Holding Network Rail to Account' policy for CP6' consultation. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Please send your response to pr18@orr.gsi.gov.uk by **25 January 2019**.

Full name*	
Job title*	
Organisation	Govia Thameslink Railway Ltd
Email*	

*This information will not be published on our website.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 1: Introduction)

Q1. Do you agree with our proposal to create a new, standalone policy for holding Network Rail to account, replacing the existing monitoring and economic enforcement policy for Network Rail?

The rationale for the change given the reclassification of Network Rail as a public sector body and devolution does provide the right rationale to change the policy which provides interventions and mitigations so as to incentivise Network Rail.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 2: Our aim and approach)

Q2. Do you agree with the policy aims and approach, and is there anything else we should set out in the policy to help meet these objectives?

We agree with the approach of a balanced set of incentives for Network rail that reflects its business structure and providing benefits for good performance and effective sanctions for underperformance. Comparisons against routes is a good incentive and can play a significant role in the sharing of best practice across routes.

Ultimately the last resort should be financial penalty, therefore earlier intervention by the ORR

to seek to address areas of poor performance is intergral. We agree to an approach that based on a risk based approach targeting areas where the risks are the greatest. .

ORR's new policy – 'Holding Network Rail to Account' (Chapter 3: Routine monitoring and assessment)

Q3. What are your views on our proposals for routine monitoring and assessment, specifically:

- **Monitoring and assessing Network Rail's performance;**
- **Monitoring and assessing the strength of route and System Operator-level accountability;**
- **our approach to risk-based and targeted monitoring; and**
- **the aims of our public reporting?**

We agree with the scope of routine monitoring and assessment of Network Rail's performance. Areas of particular interest would be that of annual targets agreed with customers through scorecards and how Network Rail is delivering against these. Comparisons between routes is particularly helpful in understanding now other routes are performing as this gives further information that is not always available for non lead routes. This also applies to the SO as the impact of their work has huge consequences for train operators. We agree that once Network Rail is near to the regulatory minimum floor that agreed actions and remedies should be implemented prior to triggering the minimum floor. We agree that there should be ongoing monitoring and assessment of the quality of routes, SO's stakeholders engagement through the structures that are already set up as well as the annual assessment. It is unclear how ORR would monitor central functions that are not meeting the needs of routes/SO and how this is to the attention of ORR. We agree with the factors that are described in the document in targeting montoring. In general we support the aim of public reporting though will need to be a balanced, evidenced and measured approach as this could lead to less collaboration in the industry should this be viewed as negative.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 4: Investigation and early resolution)

Q4. What are your views on our proposed approach, specifically:

- **the factors we will consider when assessing concerns;**

- **the actions we may take (such as using ORR hearings and requiring improvement**

plans); and

- **communicating our investigations publicly?**

To target ORR action we agree with the 3 areas that will be considered when assessing concerns as per figure 4.2 in the consultation. In particular the area where customers and stakeholders are not well placed to hold Network Rail to account to resolve the issue. We support the use of hearings, however there is a risk where stakeholders such as train operators are asked to present their views this could be detrimental to relationships.

Q5. What are your views on our proposed approach to enforcement, specifically:

- **the use of enforcement orders;**

- **the use of financial penalties; and**

  the introduction of regulatory enforcement penalties?

Where there are serious consequences to a problem and intervention has not resulted in an outcome that is accepatabe enforcement orders should be utiflised . We agree to the attachment of financial penalties, however this should only be used where the circumtances dictate that the breach is serious enough to warrant such action. We agree that financial penalties that relate to management pay would be the most effective as the consequences of financial penalties need to resonate at a human level as opposed to an overall company level.

Q6. What are your views on the penalties statement, in particular, the factors we should consider in deciding whether to impose a (financial) penalty, and the decision on the size of any (financial) penalty?

Q7. Do you have any other comments or views on ORR's new policy?

Thank you for taking the time to respond.

ORR's 'Holding Network Rail to Account' policy for CP6

A consultation on a new policy for holding Network Rail to Account: pro forma

This pro forma is available to those that wish to use it to respond to our ORR's 'Holding Network Rail to Account' policy for CP6' consultation. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Please send your response to pr18@orr.gsi.gov.uk by **25 January 2019**.

Full name*	
Job title*	
Organisation	Heritage Railway Association
Email*	

*This information will not be published on our website.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 1: Introduction)
Q1. Do you agree with our proposal to create a new, standalone policy for holding Network Rail to account, replacing the existing monitoring and economic enforcement policy for Network Rail?
We do agree with the policy

ORR's new policy – 'Holding Network Rail to Account' (Chapter 2: Our aim and approach)
Q2. Do you agree with the policy aims and approach, and is there anything else we should set out in the policy to help meet these objectives?

We start from the premise that railway infrastructure provision is different to that of any other "natural" network monopoly. In that the decisions of the infrastructure operator affects its direct customers and the ultimate customer far more day to day in train regulation, in the day to day capability of the network and then periodically for maintenance, renewals and enhancements. So, the regulatory response should be to assist Network Rail in coming to the correct balance in regulation of trains, providing access for repairs to the network, and providing access to the network for renewals and enhancements. A balance that provides the best economic output for all concerned, Network Rail, train operators, passengers and freight customers.

What we would like to see is rather than the ORR continuing to regulate Network Rail as a private sector PLC. Is the ORR helping Network Rail, and therefore its customers and their customers be provided with the most efficient service. The ORR should be more involved with the day to day management of the industry. So rather than economic regulation in a style that was suited to ensure that Railtrack spent enough money maintaining and renewing the network, instead of paying dividends to shareholders. We would like to see the ORR using its economic skills to help Network Rail look at the various trade offs between accessing the network and spending money on the assets against continuing to operate trains in a way that doesn't meet the timetable. Plus, there are competing pressures between Network Rail and the train operators. Train operators may want money spending on specific items in a short-term manner, to suit their franchise expiry date that doesn't suit Network Rail looking at a longer-term picture. Also, if you work for Network Rail unless you have a role that is specifically requires interface with the ORR the chances you will meet anyone from the ORR is low to non-existent. So, a more collaborative approach might improve the profile of the ORR within Network Rail.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 3: Routine monitoring and assessment)

Q3. What are your views on our proposals for routine monitoring and assessment, specifically:

- **Monitoring and assessing Network Rail's performance;**
- **Monitoring and assessing the strength of route and System Operator-level accountability;**
- **our approach to risk-based and targeted monitoring; and**
- **the aims of our public reporting?**

We are somewhat wary of the proposals. Scorecards may be fine in theory we have plenty of concerns on how they will be agreed industry wide. They seem to be another version of Local Output Commitments or operator improvement plans or performance targets. We can see many reasons for the low take up rate. It is hard to see what Network Rail's incentive is to sign up to anything that puts the Route MD job on the line. Equally it is difficult to see why train operators should not hold out for just a little more on this measure or another measure and

ultimately, they remain unagreed for years. So, if scorecards are an important tool, then they the ORR should require that they are agreed, perhaps by with a change in the Network Code?

We also wonder how much time agreeing scorecards with each route will take for operators running over multiple routes? Would not one scorecard per operator be more customer focused?

We have concerns for our members agreeing scorecards they are another distraction for the railway general manager and their staff from running their railway. For a relatively small amount of their activity yet without them Network Rail (if subject to regulatory enforcement) may be less interested in our members operation.

We wonder what is the point of monitoring? Is it so Network Rail obtains value for money? Is it to improve train performance? Addressing poor performance is a difficult and complex issue. There is rarely a quick fix, what we think the ORR should do is play the honest broker between the parties, to quickly agree an action plan. But really should the monitoring be used for working out why a section of route is successful and others less so? In the case of poor performance should the ORR be using its economic regulation to direct Network Rail on where to target renewals and possibly with the DfT enhancements?

ORR's new policy – 'Holding Network Rail to Account' (Chapter 4: Investigation and early resolution)

Q4. What are your views on our proposed approach, specifically:

- **the factors we will consider when assessing concerns;**

- **the actions we may take (such as using ORR hearings and requiring improvement plans); and**

- **communicating our investigations publicly?**

We are very concerned that this misses the point of the change of Network Rail's status to a public body. If the regulatory settlement is sufficient to maintain and renew the network, then there should not be an issue. If there is an issue with a route suffering poor performance Network Rail are very likely to know the issues and the fixes. For example, the relatively poor performance of the OLE on the East Coast is likely to be caused by a combination of maintenance and design. The Network Rail engineers are likely to have the technical solutions. All an ORR hearing is likely to find is that the problem is not fixed due to the money being spent elsewhere. If the hearing was less formal and aimed at reviewing Network Rail's spending priorities that might help.

We are concerned that Network Rail becomes focused on avoiding hearings, especially if they are time consuming. This could mean the ORR in effect becomes Network Rail's most important customer, as they spend their time pleasing the ORR (to avoid hearings) rather than their actual customers. We don't particularly like the idea of hearings we think they are

confrontational and therefore more likely to not reach the truth but apportion blame. We would prefer an approach more akin to the RAIB approach of an investigation with recommendations.

We are also concerned that although it is right there is senior level focus one of the reasons for the route devolution is that they can run the local business more effectively than a centralised Network Rail. We think that the devolution should continue down in to the organisation and senior management should be held to account. If the ORR want to hold hearings, hold investigations or assist routes they should expect that the appropriate management be involved to leave the route MD free to run the route day to day.

In the case of the recent timetable changes for Thameslink and North West electrification. Perhaps the ORR should take a lead in assisting the cross-industry nature of the timetable changes. By asking all the players involved not only will the infrastructure be ready in time. But will the train operators be ready with enough trains and train crews. One method of doing so would by requiring an adjustment the access rights before the timetable change. With the application form for the rights requiring detailed statements of the operators and Network Rail readiness for the change.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 5: Enforcement)

Q5. What are your views on our proposed approach to enforcement, specifically:

- **the use of enforcement orders;**

- **the use of financial penalties; and**

- **the introduction of regulatory enforcement penalties?**

This to us is simply the ORR viewing Network Rail as a private sector company and not an arm's length public body. Most people come to work to do the best they can. So, we view that reducing or increasing the Network Rail bonus pot for management would not be very effective in altering the Network Rail focus. Many managers are involved in a long-term role that might affect outcomes in the future and have little impact on current day to day performance. Changing the bonus for them would have very little effect. We would as we have said earlier like to see the ORR use its regulatory powers to direct Network Rail in spending its money wisely from an outside the company view rather than the range of measures suggested above.

ORR's new policy – 'Holding Network Rail to Account' (Penalties statement - Annex B)

Q6. What are your views on the penalties statement, in particular, the factors we should consider in deciding whether to impose a (financial) penalty, and the decision on the size of any (financial) penalty?

See response to Q5

ORR's new policy – 'Holding Network Rail to Account'
Q7. Do you have any other comments or views on ORR's new policy?
No

Thank you for taking the time to respond.

Graham Richards
Director, Railway Planning and Performance
Office of Rail and Road
One Kemble Street
London
WC2B 4AN

25 January 2019

Dear Graham Richards

IOSH comment on *Office of Rail and Road consultation: ORR's 'Holding Network Rail to Account' policy for CP6*

The Institution of Occupational Safety and Health (IOSH) is the Chartered body for health and safety professionals, with more than 47,000 members worldwide.

The IOSH Railway Group has over 1,500 members and its Committee, chaired by David Porter, would like to offer views on *ORR's 'Holding Network Rail to Account' policy for CP6*. Some of these points have been made before, as part of IOSH's earlier input to the Periodic Review (PR18) process. Their response is presented in the text below.

The IOSH Railway Group Committee, as part of its continuing commitment to support the government's vision of a world-class railway for the UK, offers the following comments on this important policy consultation.

Throughout the PR18 process, we have argued that there is an interconnected railway network in the UK where the infrastructure controller, system operator, train operating companies, contractors and suppliers work collaboratively to deliver train performance which is efficient, safe and healthy. An optimal solution for effective management satisfying all stakeholders needs to balance the objectives of performance, economy and health and safety.

We believe the Glaister inquiry report confirms that the railway is a complex system that has a range of risks which need to be managed as a whole. So far, the mechanisms for effective management of risk are not yet in place. Our view is that those risks include performance, economic and health and safety risks. As there is one inter-connected system, health and safety cannot be seen in isolation.

Nick Chater in 'Performance Incentives for Network Rail: A Perspective from Behavioural Economics' provides advice to you on performance incentives to align the agent's incentives, (Network Rail) with the principal's, (your own) incentives. He outlines factors to take account of when designing a framework of rules and incentives that will lead to a cost-effective and coordinated response from the many elements of Network Rail.

In his advice, Chater cautions about the issues of risk and in particular the need to account for 'hazard risks', i.e. low probability, high consequence events which the industry seeks to minimise as far as possible: e.g. serious accidents, systemic technological failures, or financial collapse (See section 1 of the report pages – 3-5). He explains, with examples, how there is a tendency for people to underweight the probability of rare negative events. In the context of principal-agent interactions, there is the danger that incentives are set up which do not sufficiently deter behaviours that may lead to bad outcomes.

Against this background, it is our view that the holding Network Rail to account policy does not appropriately address incentives for CP 6 in a holistic way. For example it does not:

- acknowledge the interconnected nature of performance and total business risk management, including occupational health and safety risks;
- take account of the systemic risks of Network Rail, and that the nature of those risks is not yet fully understood and that the methods of control are still immature;
- acknowledge the tendency to underweight the likelihood of rare catastrophic events;
- acknowledge the potential for adverse impact on health and safety, (e.g. by the emphasis on performance monitoring itself to divert management attention from health and safety – perhaps compounded by penalties for underperformance), and how that could be managed by coordination with the ORR health and safety regulators.

In our view, it would be advantageous to improving performance in CP6 if the ORR economic and health and safety regulators worked in a more aligned way to create a holistic framework of incentives for holding Network Rail to account across the totality of its activities.

We trust you find the above comments useful and would welcome opportunities to discuss these matters with you further if that would help.

Yours sincerely

Richard Jones
Head of Policy and Public Affairs

Consultation on ORR's approach to assessing the quality of Network Rail's stakeholder engagement in CP6

Response from MAG (Manchester Airports Group)

January 2019

Introduction

1. Manchester Airports Group (MAG) owns and operates three airports in the UK (Manchester, London Stansted and East Midlands), handling over 60 million passengers per annum. Our airports are nationally significant infrastructure assets – as recognised in the Government's latest aviation strategy consultation – providing essential connectivity for the UK, contributing over £7.75 billion per annum in GVA to the UK economy and supporting more than 100,000 jobs.

2. Millions of air passengers every year depend on the railway for their journeys to and from our airports. The quality and speed of an airport's rail services are central to the choices that airlines and air passengers make about which airports they use. As such, the quality of Network Rail's services, and the assessment of their stakeholder engagement by ORR, is of great importance to our business – both at a day-to-day operational level and strategically in terms of the Network Rail's ability to deliver infrastructure improvements to support the development of our airports and global connectivity for the UK.

3. Both London Stansted and Manchester Airports have existing capacity to nearly double their current level of throughput, supported by MAG's multimillion pound investments in new infrastructure and facilities. As such, both airports are central to the Government's strategy, as set out in "Aviation 2050", of making best use of existing capacity. Rail improvements, to both Stansted and Manchester, have a vital role to play in this. Ever since MAG acquired London Stansted in 2013, we have been seeking commitment from Government and Network Rail to investment on the West Anglia Main Line (WAML), with a particular focus on reducing journey times for air passengers and commuters, in line with recommendations from the Airports Commission and West Anglia Task Force.

4. However these recommendations have yet to be acted on, despite the number of passengers using the Stansted Express growing by 143% since 2013. This represents an additional 5.2million passengers using the service, giving a total of 8.9million passengers in 2017/18, making Stansted Airport the UK's second largest airport rail station (behind only Gatwick Airport).[1] Since the shift of the London suburban services out of the Anglia franchise, this means the majority of passenger growth for the franchise has been from the Stansted Express,[2] whereas investment in the area has been focused elsewhere, such as the Norwich in 90 initiative (which does have connectivity benefits for passengers coming into the airport from the north).

5. For Manchester, the long-term focus has been on high-speed rail – both HS2 and Northern Powerhouse Rail – which together have the potential to significantly increase the catchment of the North of England's international gateway airport. Whilst high-speed rail is outside the scope of this review, 4.6million passengers use Manchester Airport rail station, making it the busiest station in the Transport for Greater Manchester area behind only the Central

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[1] ORR data for entries and exits.
[2] ORR data shows that between 2015/16 and 2017/18, entries & exits from Stansted Airport increased by 49% compared to 6% across Greater Anglia stations as a whole.

Manchester stations of Piccadilly, Victoria and Oxford Road.[3] The failed introduction of the new timetable in May 2018 created severe disruption for the airport from which it has still not fully recovered. The airport suffered extensive delays and cancellations on both Northern and Transpennine Express (TPE) services, which has been severely compounded by continuing strike action on Northern services.

6. During Period 4 of 2018–19, cancellations & significant lateness (CaSL) on TPE services reached 18.5%, three times the England & Wales average.[4] And the airport was particularly affected as TPE services were regularly being cancelled at central Manchester stations en route to the airport to allow service recovery. (By way of comparison, CaSL for Heathrow Express during the same period was 1.2%.) Performance issues on this scale have caused significant disruption to both passengers and staff, and undermined the status of rail as a viable access mode to the airport.

7. One of the root cause of these failures has been identified as the failure by Network Rail to complete its programme of electrification in the North or to deliver new through platforms (15 & 16) at Manchester Piccadilly and to reconfigure and expand the capacity of Manchester Oxford Road. Without these underpinning investments, successful implementation of the proposed timetable was effectively rendered impossible to deliver.

8. From our perspective, the broad approach set out in ORR's Holding Network Rail to Account policy for CP6 is a good starting point for improving the oversight and accountability of Network Rail. We support the Government in its aspiration of delivering a world-class railway, as we see this as a critical foundation for a world-class aviation sector, the aim of its Aviation 2050 strategy. Our response answers the two questions raised by the consultation, but we have answered these in reverse order, since we feel our response to Question 2 sets important context to our response to Question 1.

Question 2: Do you have any comments on our proposed approach to assessing the quality of Network Rail's stakeholder engagement in CP6?

9. It is notable that the main and supporting documentation from ORR on this topic does not specifically define who constitutes Network Rail's stakeholders. The January 2018 document, "Conclusions on the overall framework for regulating Network Rail", does provide some guidance, stating (p.3) that "Network Rail's customers ([are] principally passenger and freight train operators) and other key stakeholders ([are] notably passenger representatives, funders and local transport decision-makers)".

10. As an airport operator, rail services are a critical part of our surface access infrastructure, not only for passengers but also staff, and increasingly the wider economic development happening on and around our airports. For example, Manchester Airport City is Greater Manchester's designated Enterprise Zone and the office element of this is being deliberately

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[3] ORR data for entries and exits in 2017/18.
[4] ORR data.

developed around Manchester Airport station for its surface connectivity. East Midlands Airport is the UK's largest pure freight airport, and as a result logistics and other operations have developed in a wider development area in-between the Airport, East Midlands Parkway station and the Ratcliffe-on-Soar power station site.

11. Network Rail is a long-term key supplier to MAG, having worked together (in its various guises) for over 25 years. However, unlike the relationships airports have with other key suppliers, they are generally unable to contract directly with Network Rail to procure a particular level of service. And despite this long relationship, Network Rail do not seem to appreciate the scale and scope of MAG's operations and the importance of the rail stations at our airports. This is leading to underinvestment in rail infrastructure, despite the strong growth in usage, resulting in poor performance, which Network Rail does not appear to understand the ramifications of for the airports. The problems experienced by Manchester Airport from summer 2018 are not fully resolved and are still being felt by the airport, leaving passengers and staff with poorer rail services. Passengers, far more than commuters, require reliability if they are to travel by rail, given the risk and cost involved in missing flights.

12. In a competitive market, airports with fast, regular and reliable rail services will have a distinct advantage over airports with no or slow, irregular and unreliable rail services. It follows that if passengers and airlines are dissatisfied with rail access to particular airport, they will tend to express this by switching their custom to an alternative airport; they are unlikely to engage in a lengthy process to lobby Network Rail or Government for rail improvements.

13. As such, MAG are and want to be recognised by Network Rail and ORR as a key stakeholder, reflecting the importance placed upon MAG's airports by the Government as playing a "national" in its Aviation strategy. We want direct engagement and not just indirect engagement via our partner transport authorities. Therefore we would like ORR's assessment of the quality of stakeholders' views to include MAG to allow us to report whether this engagement with Network Rail has been developed and is working effectively. We are willing to commit time to this process and will partake in whatever format is proposed as long as this is able to fully account for our perspective.

Question 1: Do you agree with our proposal to focus our assessment in the first year of CP6 on the routes'/SO's engagement on annual business planning and on developing and agreeing scorecards? Are there other areas on which you think we should assess the quality of the routes'/SO's engagement? If so, what should we exclude from the scope of our assessment to accommodate this?

14. As detailed above, the issue for MAG is that we do not feel we are adequately engaged as a key stakeholder, with engagement instead being indirect. Until engagement is direct, the assessment can only be that engagement with our airports is ineffective. There are a range of key issues around the relationship with Network Rail that we believe need to be addressed.

Once these are addressed, they then need to be included in future years' assessments. Our overview of issues is provided below, but we would welcome the opportunity to discuss these further with ORR:

a. Timetable changes should be subject to broader consultation and integration with other transport operators and providers, such as airports, alongside wider awareness of users and those impacted.

b. The planning system used by Network Rail is extremely manual and is long overdue an overhaul. The summer timetable problems illustrate not only the shortcomings of the planning process, but also the inability to quickly and efficiently rectify problems that do occur.

c. When dealing with Network Rail there is a real lack of engagement and communication. Even after roundtable meetings with Network Rail and the TOCs, agreed actions are not being carried out. A large turnover of staff on key projects further makes continuity and communications very difficult.

d. There appears to be no clear structure for handling service disruption, with control staff and individual signallers operating on their own in such instances. Communication worsens during any form of disruption, at the time when it is needed the most.

e. Network Rail is very risk averse, which is understandable for safety critical activities, but also applies to other elements of the organisation. There appears to be a tendency to over complicate and 'gold plate' with slow and ponderous procedures, which can impede progress and makes engagement hard, whilst adding time and cost to delivery.

15. MAG has the following recommendations for more effective working with Network Rail:

a) A recognition by Network Rail (and TOCs) that airport services are unique in nature, generating significant revenues and operating with different peaks to the rest of the network, with the majority of passengers making an unfamiliar but time critical journey just a few times each year and often with baggage and/or in groups.

b) A recognition that Manchester and Stansted are airports of national significance as detailed within the Government's Aviation strategy, and that engagement needs to reflect this role and importance.

c) A commitment to fully consult airports on any future timetable changes.

d) Early warning of future delays or a reduction in service provision.

e) Long-term strategic planning discussions around investment in airport services and infrastructure, including exploration of new funding models where this could result in larger scale or faster investment that delivers shared benefits.

ORR's 'Holding Network Rail to Account' policy for CP6

A consultation on a new policy for holding Network Rail to Account: pro forma

This pro forma is available to those that wish to use it to respond to our ORR's 'Holding Network Rail to Account' policy for CP6' consultation. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Please send your response to pr18@orr.gsi.gov.uk by **25 January 2019**.

Full name*	
Job title*	
Organisation	Midlands Connect
Email*	

*This information will not be published on our website.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 1: Introduction)
Q1. Do you agree with our proposal to create a new, standalone policy for holding Network Rail to account, replacing the existing monitoring and economic enforcement policy for Network Rail?
SUPPORT: ORR have specific legislative duties and powers, including to investigate and enforce action. As the NR Licence is to be renewed having a new standalone policy would help communicate changes and begin to restore transparency and trust to get this right.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 2: Our aim and approach)
Q2. Do you agree with the policy aims and approach, and is there anything else we should set out in the policy to help meet these objectives?

- **SUPPORT**: particularly building on the 2018 Timetabling inquiry, we welcome ORR's call for strong incentives and clear accountability in each NR unit. Behavioural approaches are included, including reputational comparisons between routes – it is important this is done constructively as stakeholders like Midlands Connect and our partners can offer a valuable perspective in sharing lessons across routes. The Government's Behavioural Insights Unit's EAST model[1] would be particularly useful to adopt, including setting out 'default' options that encourage objectives to be both adopted and surpassed.

- In particular MC and our partners have a view to how enhancements are planned and delivered across the country. Now that enhancements planning has been separated into DfT's Rail Network Enhancement Pipeline, there needs to be early alignment and visibility of options for implementing enhancements, and the services thereafter, to ensure NR Route teams can effectively plan beyond an annual business cycle. **We would expect as a 'default' the minimum of local input to each Route Supervisory Board and firm commitment to wider stakeholder engagement, with bodies like Midlands Connect, to help NR understand the future pipeline of enhancements and ensure improvements are delivered effectively and efficiently.**

- We also reflect that ORR support improved outcomes for passengers and freight users and whilst the ORR remit is more to protect those interests, bodies like Midlands Connect can offer valuable input and perspective on 'end-to-end' journeys beyond the railways, like aligning with HS2 and wider road investment. Ensuring the right incentives and safeguards are in place for NR to take responsibility but also invite input and challenge from external bodies is vital to improving delivery, which ORR already regard as protecting the user interest. We hope our offers are constructive and simple means to build in these incentives more effectively with NR.

- **HOWEVER**: one of NR's three obligations is stakeholder engagement and further work was recognised through the Draft Determination on how 'stakeholder' is defined in the NR Licence, updated in ORR's response to the Licence consultation. ORR prefer a broad definition of 'stakeholder' and include general principles for stakeholder engagement (see Annex A of the consultation paper). If not included in the NR Licence MC and our partners would need clear expectations, with **ORR publishing paragraph 5.8 of its consultation response document[2] as guidance to act as a 'default' list of 'stakeholders' it expects to be included but not restricted to, including "sub-national and statutory transport bodies".** Without such safeguard, ORR will be drawn into constantly reviewing and judging how different routes have assessed their interaction, which is explicitly wants to avoid. It could also lead to Routes accepting the best practice of the lowest common denominator and therefore not embrace the proposed incentive to reach out.

- MC will continue to support incentives to share best practice across routes, for instance the 'one team' approach being developed between West Midlands Rail Executive and LNW, and we also

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[1] https://www.behaviouralinsights.co.uk/publications/east-four-simple-ways-to-apply-behavioural-insights/

[2] http://orr.gov.uk/__data/assets/pdf_file/0003/39306/pr18-final-determination-draft-network-licence-consultation-response.pdf

want to avoid one-size-fits-all solutions, but there are not sufficient assurances or opportunities at present to redress the gaps where inconsistencies do persist. MC will continue to reflect and offer advice on how our partners are engaged by respective routes, particularly across LNW and LNE&EM but call on ORR to amend its aims now.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 3: Routine monitoring and assessment)

Q3. What are your views on our proposals for routine monitoring and assessment, specifically:

- **Monitoring and assessing Network Rail's performance;**
- **Monitoring and assessing the strength of route and System Operator-level accountability;**
- **our approach to risk-based and targeted monitoring; and**
- **the aims of our public reporting?**

○ **SUPPORT**: We welcome ORR's recognition of our calls for more transparency in RSBs and their performance. We fully support ORR's priority to ensure route teams are effectively agreeing business plans and scorecards with their 'customers'.

○ **HOWEVER**: Alongside the Rail Review, **MC call for a clear commitment for local input to all Route Supervisory Boards to help shape scorecards and ensure they take account of integrating with local economic and wider transport activity**. RSBs will benefit from the 'one team' approach for instance with WMRE and should explore how local intelligence can be utilised in the East Midlands also. **Whilst STBs needn't be on all RSBs, there should be a requirement to consult STBs during the annual business planning and by ORR in collating 'Comparisons between routes' metrics.**

○ For instance, we retain a concern that whilst Network Rail have a route specifically for Wales, the Welsh trains franchise is responsible for services between Shrewsbury and Wolverhampton. There is no local representation from the English side of the border, and under ORR's current proposals, no 'default' assurances of local input to the Route team or franchising arrangements.

○ **ALSO**: ORR recognise the value of 'minimum floors' in scorecards including on 'train performance' – however there remains no ambition to recognise or incentivise action to improve 'conditional outputs', for instance number or journey times of services. This would need to be an additional long term metric but would ensure all parties are focused on user benefits not just delivering their requirements. MC will consider how external bodies, like STBs, can promote better services through RSBs to drive aspirations for delivering improved user outcomes. However there is little assurances for passengers and businesses that Network Rail or its stakeholders are consistently

incentivised to improve services for their customers – there are merely assessed on maintaining 'performance'.

o **QUERY**: RSBs are expected to report on the progress of committed enhancements delivery (under 'investment') but it remains unclear how this information will be combined with decision gateways for the new Rail Network Enhancement Pipeline to align considerations between committed and future improvements, for instance to enable efficiencies in means of delivery and timing. **How will RSBs as asset owners, DfT as decision-makers and relevant scheme sponsors be expected to share information and a common understanding of emerging enhancement requirements before schemes have been fully committed to through the RNEP?** The draft Business Plans for LNW and LNE&EM in February 2018 included a number of 'tbc' which reflect a gap that seems to need addressing.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 4: Investigation and early resolution)

Q4. What are your views on our proposed approach, specifically:

- **the factors we will consider when assessing concerns;**

- **the actions we may take (such as using ORR hearings and requiring improvement plans); and**

- **communicating our investigations publicly?**

o **SUPPORT**: this is the area MC is particularly interested in, in relation to enhancements. Our partnership develops and recommends evidence-led transport interventions across modes which could add value to exploring alternative and innovative solutions to emerging and existing enhancements programmes. In the spirit of improving NR competitiveness it must be clear to stakeholders that alternative options should be welcomed and that there is a mechanism either through RSBs or DfT to consider these in good time. We agree investigative matters should be a last resort but this can only be achieved if NR recognise they are not the monopoly of solutions and are incentivised to explore stakeholder ideas early. **There remains too much emphasis on NR being expected to solve their own problems which stifles opportunities for innovation.**

o **HOWEVER**: Figure 4.2 should include a question like: 'Is there a stakeholder who is capable/currently offering an alternative solution?' That should be a consideration for the RSB, which if there is local representation is required, NR would be open to a broader horizon of solutions to consider. In fact, we would also welcome NR inviting ideas from stakeholders, like STBs, through its annual business planning processes not just being open to comment, in this way NR could use its annual business plans as a 'two-way conversation'.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 5: Enforcement)

Q5. What are your views on our proposed approach to enforcement, specifically:

- **the use of enforcement orders;**

- **the use of financial penalties; and**

- **the introduction of regulatory enforcement penalties?**

No comment

ORR's new policy – 'Holding Network Rail to Account' (Penalties statement - Annex B)

Q6. What are your views on the penalties statement, in particular, the factors we should consider in deciding whether to impose a (financial) penalty, and the decision on the size of any (financial) penalty?

No comment

ORR's new policy – 'Holding Network Rail to Account'

Q7. Do you have any other comments or views on ORR's new policy?

We have sought to cross-reference our responses to the ORR's three live consultations, but please also refer to Midlands Connect submissions on:

- o ORR's approach to assessing the quality of Network Rail's stakeholder engagement in CP6 (deadline 25th January)
- o Amended Licence for Network Rail (deadline 31st January)

Thank you for taking the time to respond.

NATURAL
ENGLAND

By email only: pr18@orr.gov.uk

Dear Sir or Madam

Consultation on Holding Network Rail to Account

Natural England welcomes the opportunity to comment on the above consultation.
As the Government's adviser on the natural environment, our purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Natural England is the statutory adviser to Government on the natural environment and a consultation body on a wide range of permissions and plans.
Natural England advises on the environmental elements of sustainable development and is a statutory consultee for development plans, Environmental Impact Assessments, Strategic Environmental Assessment and where proposals are likely to impact upon our particular interests (e.g. S.28(I) of the Wildlife & Countryside Act where development will impact upon a Site of Special Scientific Interest (SSSI)). We also play an important role as a competent authority in the issuing of consents where there will be impacts on protected species and sites.

We engage with Network Rail at a national level and through its routes with our Area Teams. We were a key stakeholder recently with Network Rail's Vegetation Management Review (Valuing nature – a railway for people and wildlife).

We enclose with this email and letter your pro forma for responses

If you have further questions regarding our response to this consultation, please contact Deborah Hall, Principal Advisor, Infrastructure on 0791 962 5708 or at Deborah.Hall@naturalengland.org.uk

Yours faithfully

Jonathan Burney
Director, Government Advice

ORR's 'Holding Network Rail to Account' policy for CP6

A consultation on a new policy for holding Network Rail to Account: pro forma

This pro forma is available to those that wish to use it to respond to our ORR's 'Holding Network Rail to Account' policy for CP6' consultation. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Please send your response to pr18@orr.gsi.gov.uk by **25 January 2019**.

Full name*	
Job title*	
Organisation	Natural England
Email*	

*This information will not be published on our website.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 1: Introduction)

Q1. Do you agree with our proposal to create a new, standalone policy for holding Network Rail to account, replacing the existing monitoring and economic enforcement policy for Network Rail?

Yes and we welcome the licence changes proposed to ensure that the different businesses within Network Rail are accountable for ensuring that compliance is achieved.

We understand that obligations around Environment require the SO and the routes to be responsible for compliance (as well as Network Rail at a company level) and that these are grouped together.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 2: Our aim and approach)

Q2. Do you agree with the policy aims and approach, and is there anything else we should set out in the policy to help meet these objectives?

The condition around Environment in the licence requires Network Rail to have and maintain an environmental policy and operational objectives and management arrangements to give effect to it. ORR are not proposing any substantive changes to this condition from our understanding. It is proposed that routes and the SO will, in the performance of their functions, be required to have regard to Network Rail's environmental policy and operational objectives, and use reasonable endeavours to operate the management arrangements effectively.

It is not clear how this duty to have regard will enable Network Rail and its routes to fulfil its obligations as a public sector body and without any specific metrics. As far as we are aware the national scorecard set out in the Planning, Reporting and Regulatory Framework of SBP does not include any environmental metrics. The route plans do not currently have them either. Most do not refer to biodiversity at all (with the exception of Western and London North Eastern & East Midlands) even though they make considerable reference to vegetation clearance and tree removal.

Network Rail has been reclassified as a public sector body since 2014. It would be expected that any review and measurement of their performance 'holding Network Rail to account' should also seek to see how they are demonstrating their duty to have regard to conserving biodiversity as part of policy or decision making. [Section 40 of the Natural Environment and Rural Communities Act 2006](#), places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. A key purpose of this duty is to embed consideration of biodiversity as an integral part of policy and decision making throughout the public sector, which should be seeking to make a significant contribution to the achievement of the commitments made by government in its Biodiversity 2020 strategy. Further information is available [here](#). Government has acknowledged in its [response to the House of Lords Select Committee NERC enquiry](#) that public bodies can do more to embed this duty.

Network Rail also has duties in relation to protected landscapes. Section 85 of the Countryside and Rights of Way Act 2000 requires that relevant authorities should 'have regard' to the purpose of Areas of Outstanding Natural Duty (AONBs) 'in exercising or performing any function in relation to, or so as to affect land' in these areas. https://www.legislation.gov.uk/ukpga/2000/37/section/85. The same duty has applied to National Parks since 1949 as set out at section 11A of the National Parks and Access to the Countryside Act https://www.legislation.gov.uk/ukpga/Geo6/12-13-14/97

The Infrastructure Projects (IP) section of the Strategic Business Plan (SBP) does contain commitments which we welcome:

o Biodiversity net positive for major IP over £20m

o Renewal activities over 5k or 150m require a biodiversity risk assessment and evidence of opportunities to maximise biodiversity gains.

However, in the light of Government's 25 Year Environment Plan which commits government to leaving the environment in a better state than they found it. We recommend that Network Rail's SBP demonstrates how its 40,000ha estate can contribute to this. This could include a

commitment to biodiversity net gain and contribution to the proposed Nature Recovery Network.

We recognise that Network Rail are currently responding to the findings of the [Network Rail Vegetation Management Review](#) undertaken by John Varley and published in November 2018. Recommended targets from the review for the management of lineside vegetation to achieve 'no net loss' in biodiversity by 2024 and a net gain by 2040 might be a suitable metric. We note that Network Rail are currently setting out a plan with specific actions on how it will address the recommendations and that DfT are working closely with Network Rail, ORR and Defra to develop a policy that will support delivery of the 25 Year Environment Plan.

We believe Network Rail do collect information on the condition of Sites of Special Scientific Interest (SSSIs) owned or managed by Network Rail, or adjacent to Network Rail land holdings but it is not clear if these are reported to ORR as part of their annual reporting.

Natural England would welcome the opportunity to discuss the metrics relating to SSSIs as we have a number of statutory duties and general responsibilities in relation to SSSIs including ensuring their protection and safeguarding their existence into the future, by providing advice to SSSI owners and managers. We understand that the focus on improving asset condition and the use of scorecards are both a key focus for ORR.

Network Rail currently has a commitment to biodiversity net positive for infrastructure projects and is focussed on its electrification programme (as set out in the IP Strategic Plan), which we strongly support. However, there is currently no clear reporting mechanism for delivery of Network Rail's net gain commitments. It would be desirable to establish clear environmental performance targets and monitoring through key strategic plans and policies such as the Higher Level Output Specification, Network Rail's Strategic Business Plan and supporting environmental policies.

We know that vegetation management issues are the single biggest cause of complaint to network rail, and establishing a mechanism to help address this and the historic lack of vegetation management could provide a real opportunity for Network Rail. Adopting a net gain approach across all Network Rail's 40,000ha estate (similar to Highways England) could significantly enhance biodiversity and improve relationships with neighbours whilst reducing operational and resilience risks from tree and leaf fall. This would help reduce the £100m a year Network Rail spend on vegetation related incidents.

We would like to see Network Rail and the regulators set more aspirational business performance indicators for biodiversity, landscape and green infrastructure in the next control period, and establish a funding mechanism (akin to the Highways England Environment Designated Funds) for engaging with stakeholder groups to improve the environmental performance of the rail network and enhance these important inter-city green corridors.

We would also like to see Network Rail transition from their current 3-5 year funding for the creation and management of biodiversity offsets to the wider housing/infrastructure industry 'norm' of financing over an average of 25-30 years. We would also like to see the approach extended to non-lineside activities e.g. station upgrades etc. Given that rail and road industry share the same regulator, we consider that the environmental performance targets set by the regulator (the Office of Road and Rail – ORR) are stronger and clearer for road than for rail, and we would like to see this addressed.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 3: Routine monitoring and assessment)

Q3. What are your views on our proposals for routine monitoring and assessment, specifically:

- **Monitoring and assessing Network Rail's performance;**
- **Monitoring and assessing the strength of route and System Operator-level accountability;**
- **our approach to risk-based and targeted monitoring; and**
- **the aims of our public reporting?**

We agree with the proposals for routine monitoring and assessment performance against scorecards and other key metrics, but do suggest that there is greater monitoring of Network Rail's and routes commitments relating to the Environment as explained in Q2. It will be particularly useful to understand how performance against the recommendations of the Vegetation Management Review will be accounted for when the action plan is available.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 4: Investigation and early resolution)

Q4. What are your views on our proposed approach, specifically:

- **the factors we will consider when assessing concerns;**
- **the actions we may take (such as using ORR hearings and requiring improvement plans); and**
- **communicating our investigations publicly?**

N/A

ORR's new policy – 'Holding Network Rail to Account' (Chapter 5: Enforcement)
Q5. What are your views on our proposed approach to enforcement, specifically: • **the use of enforcement orders;**   • **the use of financial penalties; and**   • **the introduction of regulatory enforcement penalties?**
N/A

ORR's new policy – 'Holding Network Rail to Account' (Penalties statement - Annex B)
Q6. What are your views on the penalties statement, in particular, the factors we should consider in deciding whether to impose a (financial) penalty, and the decision on the size of any (financial) penalty?
N/A

ORR's new policy – 'Holding Network Rail to Account'
Q7. Do you have any other comments or views on ORR's new policy?

Thank you for taking the time to respond.

Response to ORR's holding to account policy for Network Rail

Network Rail welcomes the opportunity to respond to ORR's Holding Network Rail to Account consultation. No aspect of this response is confidential, and we are content for it to be published in full.

Key points in Network Rail's response:

- We agree with ORR's proposal to have a 'bespoke' standalone Holding to Account Policy for Network Rail considering the value of reputational, procedural and financial incentives in driving desired behaviours or outcomes.
- We support ORR's aims and proposed approach which align with Network Rail's devolved structure and seek to support our commitment to continuing to develop closer relationships with stakeholders.
- In carrying out routine monitoring and assessments, we think there is considerable value in ORR using dedicated route teams enabling teams to develop detailed knowledge of a route.
- We believe that ORR publications are an important reputational incentive and should be used by ORR to highlight areas of both positive and negative performance as appropriate, as a perceived lack of balance can be demotivating.
- We agree that ORR reporting should wrap around our public reporting where it is transparent, of substantial quality and timely, and believe that any gaps in reporting should be addressed by Network Rail in the first instance.
- We consider the threshold for a formal hearing should be high given the significant management time likely to involved.
- We support ORR targeting investigations at the relevant business unit within Network Rail.
- We support the introduction of targeted route/SO financial sanctions and believe it is important that their size is set on the same basis as financial penalties.
- We support ORR's recognition of Network Rail's public sector status and the consideration of scaling the size of a financial penalty so that it does not divert funding from the industry.

1. A standalone policy for Network Rail

Do you agree with our proposals to have a new standalone monitoring and economic enforcement policy specifically for Network Rail?

We believe that it is important to reflect Network Rail's 2014 reclassification to public sector status when considering the value of reputational, procedural and financial incentives in driving desired behaviours or outcomes. We therefore agree with ORR's proposal to have a 'bespoke' standalone Holding to Account Policy for Network Rail.

It is also important for ORR's approach for holding Network Rail to account to be consistent with the overall regulatory framework for CP6, specifically with proposed changes to Network Rail's Network Licence reflecting deeper devolution. Having a standalone Holding to Account Policy for Network Rail which clearly sets out ORR's approach to monitoring delivery of accountabilities identified throughout the proposed Network Licence allows ORR to appropriately reflect the framework for CP6.

2. Policy objectives

Do you agree with our policy aims and approach, and is there anything else we should set out in the policy to help meet these objectives?

We support the aims and approach within ORR's draft policy as they align with Network Rail's devolved structure and reflect our internal reporting and monitoring framework. We are pleased that ORR's objectives seek to support Network Rail's closer relationships with stakeholders, consistent with our own commitment to positive stakeholder engagement.

ORR's consultation states that it aims to provide clear benefits for good performance and effective sanctions for underperformance. We support this aim. We note that in the past, ORR has not always emphasised positive performance through tools such as its Network Rail Monitor publication, which can demotivate employees where it is perceived that there is a lack of balance. We believe that highlighting successes creates a strong and positive reputational incentive through use of the competitive dynamic between routes and aligns with Network Rail's own mechanisms to recognise and share best practice.

We believe that the primary purpose of regulatory monitoring and holding to account should be to drive positive behaviours or outcomes. We therefore also support ORR's aim to incentivise Network Rail to take prompt and effective action to address any poor performance and minimise the impact on passengers and freight customers. It is important that ORR recognises and understands actions Network Rail is already undertaking to engage with stakeholders and bring about improvements, and that it takes a proportionate and risk-based approach to taking regulatory action to resolve concerns "at the earliest stage possible". Each route and the SO is developing stakeholder engagement plans that provide opportunities for stakeholders to influence priorities (for example through route scorecards) and to challenge performance. We believe that allowing adequate space for Network Rail to work with stakeholders to resolve issues is consistent with ORR's aim to promote good stakeholder engagement and agree with ORR's proposal to consider the quality of stakeholder engagement in making decisions on monitoring and interventions.

We support ORR's aim to engage promptly to understand and consider the most appropriate resolution to an issue without the need for formal regulatory enforcement but recognise that ultimately ORR is able to rely on statutory enforcement powers as a last resort. We do not believe that regulatory intervention, including enforcement action, should be considered a natural progression unless it is likely to result in real benefit.

3. Routine monitoring and assessment

What are your views on our proposals for routine monitoring and assessment, specifically:

To monitor and assess Network Rail's performance

In carrying out routine monitoring and assessments, we think there is considerable value in ORR using dedicated route teams enabling teams to develop detailed knowledge of a route.

We agree with ORR that route and SO scorecards should be the primary means by which ORR assesses Network Rail's performance, using a wider information base to provide supporting information where proportionate and relevant. This is entirely consistent with the way in which Network Rail's Executive Leadership Team and Board use scorecards as a key tool to drive performance and monitor progress. We have monitored comparative route

performance through our national scorecard and our route comparison scorecard since 2017/18 and will continue to make use of route comparisons in Control Period 6 (CP6).

We agree that monitoring Network Rail's performance will initially have regard to CP6 baselines but that over time and given that a focus of the CP6 regulatory framework is managing change, baselines may be varied as necessary and an increasing weight should be placed on annual targets to reflect all relevant circumstances. Routes and the SO will continue to develop challenging yet achievable scorecard target ranges in consultation with their stakeholders. We agree with ORR's proposal that it will place more weight on targets agreed with customers and will consider the quality of stakeholder engagement in developing plans. It should also be taken into consideration that where agreement cannot be reached with operators, Network Rail will continue to ensure that each route has stretching but realistic targets in each year of CP6.

We agree that the regulatory minimum floors within ORR's Final Determination represents a point beyond which performance would be considered unacceptable for passengers and freight users and therefore signals a point at which ORR would be highly likely to carry out formal investigation. However, we do not believe that performing worse than the regulatory floor should be an automatic trigger of formal investigation. It is highly likely that ORR would undertake informal investigation if performance levels are forecast to decline close to the regulatory floor. During this process, ORR may decide that Network Rail is doing everything reasonably practicable to meet stakeholders' reasonable requirements and that a formal investigation may not serve to bring about additional improvements, particularly where the quality of stakeholder engagement is good.

We agree that ORR's assessment of our performance should include an agreed wider information base including leading indicators. We also agree that certain aspects of Network Rail's performance will be best represented through qualitative assessment. We are currently working with ORR to agree a data protocol which will set out the most appropriate information requirements to inform ORR's monitoring. We believe that ORR's information requirements should be formed around Network Rail's own reporting framework as far as possible so that ORR can understand and assess Network Rail using the same information we use to inform key business decisions.

To monitor and assess the strength of route and System Operator-level accountability

We agree that it is important that we are accountable to our stakeholders. Creating appropriate opportunities for input and challenge by stakeholders is an important part of planning and delivering performance. We agree that to enable stakeholders to input and challenge effectively, Network Rail must provide high quality information in a timely manner. We believe that ORR's approach to assessing the quality of stakeholder engagement (based on its ongoing monitoring combined with an annual assessment) is sensible and complements our approach.

We recognise that where targets are agreed with stakeholders, this provides an indication of route and SO accountability and stakeholders will be incentivised to hold us to account. However, we believe that stakeholders will hold us to account regardless of whether they have formally agreed to trajectories within scorecards, as it is in stakeholders' interest for Network Rail's routes and the SO to be successful in key areas of performance.

ORR's consultation sets out its expectations in relation to the clear accountabilities of routes and the SO. As part of our transformation plan, we have implemented changes to our

internal governance arrangements to enable us to achieve our overarching corporate strategies and objectives and hold ourselves to account within a devolved business operating model. We understand that the extent to which ORR is comfortable with our governance structure will influence how it monitors. Defining clear accountabilities for routes, the SO and other functions is in line with our deeper devolution agenda, and we will be transparent with ORR about any changes to accountabilities to enable its monitoring framework to remain effective throughout the Control Period. ORR's consultation references the example of routes and SO having appropriate autonomy around procurement decisions so that they can be meaningfully held to account. It is important that route and SO procurement choices support efficiency and value for money and therefore our existing processes clearly identify accountabilities to demonstrate where national procurement is more advantageous than local procurement.

ORR's approach to risk-based and targeted monitoring

We support ORR's approach to risk-based and targeted monitoring, including the factors that ORR will consider in order to target its monitoring. We believe it is important that each business unit's performance is considered in the round when considering whether routes are delivering their obligations.

To support ORR in making decisions about whether targeted monitoring is appropriate, we are in the process of agreeing a data protocol setting out the regular information requirements. The requirements in the data protocol should have a clear line of sight to the decisions that ORR is seeking to inform. For this reason, we are working with ORR to understand and clearly record the purpose of each information requirement. Both the protocol and the engagement guidelines should include mechanisms to update (for instance where we have notified of a change through ORR's Managing Change Policy) so that ORR can flex its approach to monitoring in response to changes in circumstances. We believe that agreed information requirements should be flexible enough to allow ORR to target its monitoring accordingly to focus on the highest risk areas. Reporting requirements should be proportionate to the scale of the risk and ORR should not create further reporting burden when the risk is being managed effectively

The aims of ORR's public reporting

We agree with the aims that ORR has stated for its public reporting and welcome the view that ORR's reporting scope could reduce where Network Rail's reporting is robust and transparent. Network Rail already publishes lots of information on all areas of business performance, including where it is below target. We do not believe it is necessary for ORR to duplicate this, but we think it is important that ORR's reporting wraps around our own reporting to provide the regulator's perspective on business performance. If there are any concerns about the coverage of Network Rail's reporting, we would welcome early engagement to discuss how we can improve this.

We believe that ORR publications are an important reputational incentive and should be used by ORR to highlight areas of both positive and negative performance as appropriate as set out in more detail in our response to question 1.

Question 4

What are your views on our proposed approach, specifically:

The factors we will consider when assessing concerns;

Putting passengers and freight end users at the centre of what we do and working closely with our customers, funders and wider stakeholders is critical to the successful operation of our business. We therefore agree that one of the most important considerations to determine the appropriate level of regulatory intervention is the severity or urgency of an issue and whether there is actual or potential harm to passengers and freight customers. Before considering any intervention, we would expect ORR to review whether we are effectively dealing with an issue. Equally fundamental will be our accountability to our stakeholders. We strongly believe that we should engage with stakeholders to resolve issues in the first instance but where there is evidence that engagement is not identifying or addressing concerns then we agree that ORR should review the ability of stakeholders to hold us to account.

We agree that our response to an issue will be pertinent when assessing a concern. We operate our business as a matrix organisation with different business units (headed by management teams) having clear accountabilities and responsibilities. Proposals for reform of the Network Licence seek to reflect these accountabilities such that ORR can clearly identify the business unit accountable for discharging the licence obligations of Network Rail Infrastructure Limited. We agree that where accountability is not clear, or where there is a lack of senior management commitment or a satisfactory approach/plan to proportionately address concerns, then this will determine the appropriate level of regulatory intervention.

The actions we may take (including using ORR hearings and requiring improvement plans) and communicating our investigations publicly?

In the context of deeper devolution and the CP6 route based regulatory approach, we support targeting investigations at the relevant route or function within Network Rail. We believe that this signals that ORR will be closely holding to account relevant business units as a reputational incentive without creating disproportionate management distraction.

We support the requirement to establish improvement plans where this is necessary and appropriate to resolve concerns. However, we consider that any formal requirement to establish one should not be exercised where it would inhibit the ongoing resolution of an issue (with stakeholders) through alternative means, which might include an already existing improvement plan.

ORR-led hearings have the potential to be an effective means of gathering evidence for the early resolution of issues although we believe that this must be assessed on a case by case basis and that the threshold for holding a hearing must be high, given the amount of management time that this will require. ORR will also be able to take into consideration the information it receives from Railway Boards and the holding to account by the Public Accounts Committee and Transport Select Committee so should assess whether the use of a hearing would be a duplication.

We believe that ORR should be very clear with all parties on the guidelines for these hearings so that there is sufficient certainty about the purpose and the potential outcomes (based on findings). We consider that any guidelines should also be clear about the role of

stakeholders at hearings and that ORR should be particularly careful that the use of hearings does not undermine positive industry relationships.

In considering the use of hearings, we believe ORR should reflect on the best way to ensure transparency, particularly as there will be circumstances, in the interests of commercial confidentiality, where Network Rail is not able to make full disclosure of information.

Question 5

What are your views on our proposed approach to enforcement, including:

The use of enforcement orders;

We agree with the use of enforcement orders where there is objective evidence that we are not complying with our Network Licence obligations to the greatest extent reasonably practicable or where we are likely to contravene our Network Licence obligations and therefore where an enforcement order would be the most effective tool to remedy the non-compliance.

We support the exceptions to the legal requirement to make an enforcement order, particularly where it is agreed that we are taking all reasonable steps to secure compliance with our Network Licence obligations. For example, in Control Period 5 (CP5), ORR determined us to be in breach of our Network Licence for failing to adequately plan and deliver our enhancements programme. However, ORR agreed not to impose an enforcement order because it was satisfied that there was sufficient evidence in our Enhancements Improvement Plan that we were taking all steps appropriate to secure compliance with our Network Licence.

The introduction of route/SO financial sanctions

We support the introduction of an enforcement mechanism that does not divert funds from the industry. We believe that route/SO financial sanctions will be an effective enforcement tool and assume that, like financial penalties, these will be considered as a last resort where the conclusion of an appropriate regulatory investigation is that it is the most appropriate enforcement tool to remedy the non-compliance with our Network Licence obligations.

We would be grateful for further engagement with ORR to understand the mechanics of a route/SO financial sanction. We expect that the imposition of a 'virtual' financial sanction would replicate the imposition of an actual financial penalty so the scaling of it would follow the same process and therefore be of an equivalent value. ORR's policy states that its ability to issue a financial sanction to be by virtue of regulatory accounting arrangements. Any sanction would be included in the reporting of financial performance in regulatory financial statements which we would use to adjust the Financial Performance Measure (and therefore overall scorecard performance) consistent with a financial penalty, noting that broader adjustment to performance related pay is already at the discretion of the Remuneration Committee.

The use of financial penalties – ORR's Penalties Statement

ORR has statutory powers to be able to impose financial penalties and we note that they remain a tool available to ORR in circumstances where it believes it to be the most appropriate regulatory outcome following a finding of breach of our Network Licence obligations. We agree that ORR should consider how effective a financial penalty would be on driving future behaviour and the impact that the reduction of resources would have on

delivering for customers and end users. We support ORR's proposal that financial penalties should be treated as a last resort in recognition of Network Rail's public sector status. We consider that financial penalties have a limited ability to incentivise behaviour and that they diminish our ability to subsequently deliver for customers and end users.

Consistent with our comments above, we expect the imposition of a financial penalty to be on the same basis as the issue of a financial sanction, such that it would also be treated as an adjustment to the Financial Performance Measure (and therefore overall scorecard performance).

However, ORR has proposed removing its role in the Network Licence to give regulatory direction in respect of performance-related pay, recognising the role of government, as shareholder, to oversee remuneration policy. Therefore, we consider that decisions as to the resourcing of a financial penalty should be at the discretion of the Remuneration Committee who may consider a broader adjustment to performance related pay.

PR18 team
ORR
One Kemble Street,
London,
WC2B 4AN

Date: 25th January 2019

....……………...................

Dear PR18 team,

Consultation on ORR's 'Holding Network Rail to Account' policy for CP6.

Thank you for the opportunity to respond to the above consultation. Nexus leads on behalf of the North East Joint Transport Committee on Heavy Rail and Tyne and Wear Metro matters. We therefore have interests as a train operator, an adjacent infrastructure provider and a local authority stakeholder. Thus Nexus has a number of interests and relationships with Network Rail and thus welcome the overall approach set out by ORR to hold Network Rail to account.

Turning to the specific questions in the consultation, please find our responses below which represent the views of all areas of the Nexus business.

Q1 A standalone policy for Network Rail

Do you agree with our proposal to create a new, standalone policy for holding Network Rail to account, replacing the existing monitoring and economic enforcement policy for Network Rail?

RESPONSE: Nexus agree with this approach which will better reflect the change in status of Network Rail to a public sector company.

Q2 Policy objectives

Do you agree with the policy aims and approach, and is there anything else we should set out in the policy to help meet these objectives?

RESPONSE: Nexus support the ORR proposed policy approach, which aims to provide strong incentives and clear accountability for Network Rail, including individual routes and system operator to deliver on it commitments and obligations. Nexus support the structured and tiered approach including

monitoring, escalation and enforcement. We are particularly pleased that there is an emphasis on good stakeholder engagement, with stakeholders playing an increased role in Route and SO business planning and early problem resolution. Stakeholders are also encouraged to influence priorities and challenge performance.

Q3 Routine monitoring and assessment

What are your views on our proposals for routine monitoring and assessment, specifically:

a) Monitoring and assessing Network Rail's performance;
b) Monitoring and assessing the strength of route and System Operator-level accountability;
c) our approach to risk-based and targeted monitoring; and
d) the aims of our public reporting?

RESPONSE:

a) Monitoring and assessing Network Rail's performance;

Nexus consider that the breath of scope for monitoring performance outlined in the report seem appropriate; using Scorecards and other key metrics, measuring financial performance and cost efficiency and measuring performance against Route and SO plans.

b) Monitoring and assessing the strength of route and System Operator-level accountability;

Nexus welcome the emphasis under this section on the assessment of the ability of customers and stakeholders to challenge and hold routes and the SO to account. Nexus as an Infrastructure Manager and as a Train Operating Company participate in the fledgling SO Standing Advisory Groups. It is hoped over time these will develop into useful forums for influencing and challenging the SO priorities. Nexus also as a local authority stakeholder have through Transport for the North, set up a North East Rail Management Unit (NERMU) to oversee performance and influence priorities both of the local Train operators and the NR route and SO performance. Nexus wish to build on this and would be keen to assist with ORR in monitoring on this aspect of accountability.

c) our approach to risk-based and targeted monitoring; and

Nexus support the approach to risk based and targeted monitoring as the most appropriate use of the ORR resources. As mentioned above Nexus would be keen to assist ORR with monitoring in the North East.

d) the aims of our public reporting?

Nexus support the ORR approach to public reporting, the availability of publically accessible data is most helpful when monitoring local trends. As a local stakeholder we would also expect a level of reporting directly from Network Rail through its own governance arrangements. The availability of this data will form part of the local stakeholder engagement response under subsection b)

Q4 Investigation and early resolution

What are your views on our proposed approach, specifically:
a) the factors we will consider when assessing concerns;
b) the actions we may take (such as using ORR hearings and requiring improvement plans); and
c) communicating our investigations publicly?

RESPONSE:

a) the factors we will consider when assessing concerns;
Nexus agree with the factors that ORR will consider namely: the nature, severity and urgency of the issue; the ability of customers and stakeholders to hold to account and resolve and; Network Rail's response to the issue. We would seek through Network Rail governance a key role for Nexus in holding the LNE route and the System Operator to account both as a customer and a stakeholder, through a Metro scorecard measurement and through regular dialogue via NERMU.

b) the actions we may take (such as using ORR hearings and requiring improvement plans); and
Nexus support the actions proposed by the ORR from gathering in depth information, the use of independent reporters, through to ORR hearings and the use of formal improvement plans.

c) communicating our investigations publicly?
Nexus support the proposed approach to notify stakeholders at the start of any investigation and to keep them informed of the progress and outcomes.

Q5 Enforcement

What are your views on our proposed approach to enforcement, specifically:

a) the use of enforcement orders;

b) the use of financial penalties; and

c) the introduction of regulatory enforcement penalties?

RESPONSE:

a) the use of enforcement orders;

The retention of the ability to issue an enforcement order is seen as necessary to enable the ORR to act quickly and decisively in times of licence breach. Thus Nexus support this approach.

b) the use of financial penalties; and

With the change in the status of Network Rail to a public sector company less emphasis should be placed on significant financial penalties as this may detract from much needed investment in the network. The suggestion to, when appropriate, restrict the penalties to being capable of being funded from the management bonuses seems a proportionate and targeted approach.

c) the introduction of regulatory enforcement penalties?

As above the ability to hold to account those responsible for any breach or serious shortcoming through a mechanism that directly affect performance related pay would bring a sharp focus to those in a positon of responsibility. Thus Nexus support the proposal to introduce regulatory enforcement penalties.
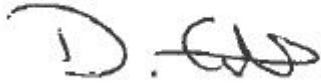

Q6 Penalties statement

What are your views on the penalties statement, in particular, the factors we should consider in deciding whether to impose a (financial) penalty, and the decision on the size of any (financial) penalty?

RESPONSE: Nexus support the use of penalties but do not have sufficient information or knowledge of the details to provide views on the factors to be considered on whether to impose a financial penalty or the size of such penalty.

Thank you for your consideration of these comments and hope you find them useful.

Should you require any further information, please do not hesitate to contact me.

Yours Sincerely

Derek Gittins – Head of Heavy Rail

Rail Delivery Group

Response to

ORR consultations on:
- ## Holding Network Rail to account
- ## ORR's approach to assessing the quality of Network Rail's stakeholder engagement in CP6

Date: 25 January 2019

Rail Delivery Group response to ORR consultations on:
- ## Holding Network Rail to account; and
- ## ORR's approach to assessing the quality of Network Rail's stakeholder engagement in CP6

Organisation: Rail Delivery Group

Address: 200 Aldersgate Street, London EC1A 4HD

Business representative organisation

Introduction: The Rail Delivery Group (RDG) brings together passenger train operators, freight train operators, as well as Network Rail; and together with the rail supply industry, the rail industry – a partnership of the public and private sectors - is working with a plan *In Partnership for Britain's Prosperity*[1] to change, improve and secure prosperity in Britain now and in the future. The RDG provides services to enable its members to succeed in transforming and delivering a successful railway to the benefit of customers, the taxpayer and the UK's economy. In addition, the RDG provides support and gives a voice to passenger and freight operators, as well as delivering important national ticketing, information and reservation services for passengers and staff. taxpayers and the economy. We aim to meet the needs of:

- Our Members, by enabling them to deliver better outcomes for customers and the country;
- Government and regulators, by developing strategy, informing policy and confronting difficult decisions on choices, and
- Rail and non-rail users, by improving customer experience and building public trust

For enquiries regarding this consultation response, please contact:

Ian Marlee

Rail Delivery Group

2nd Floor, 200 Aldersgate Street

London EC1A 4HD

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[1] *In Partnership for Britain's Prosperity,* RDG (October 2017):
http://www.britainrunsonrail.co.uk/files/docs/one-plan.pdf

Introduction

1. This document outlines the key points from our members in response to ORR's consultations on holding Network Rail to account and ORR's approach to assessing the quality of Network Rail's stakeholder engagement in CP6. The Rail Delivery Group (RDG) welcomes the opportunity to contribute to these consultations. We are content for this response to be published on the ORR website.

2. Network Rail plays a key role in the rail industry. Train operators are its main customers and are dependent upon Network Rail as the monopoly supplier of railway infrastructure for a key element of their ability to deliver a safe and reliable service to the ultimate customers of rail services - passengers and freight users. The relationship between Network Rail and train operators is therefore crucial - both in terms of collaboration, but also in terms of operators having sufficient tools to be able to put effective pressure on Network Rail to deliver.

3. However, none of this diminishes the vital role ORR has as the ultimate body that holds Network Rail to account. As conditions have developed over time, including the nature of Network Rail and its change of status, it is increasingly important that ORR is proactive in how it monitors and assesses Network Rail and in using its investigative and enforcement powers to greatest effect.

4. As train operators are Network Rail's primary customers, Network Rail's engagement and agreement of the outputs for CP6 with them is an essential part of delivering a high performing railway to passengers and freight users. ORR has a key role in relation to assessing the quality of this engagement both in terms of supporting operators and holding Network Rail to account. It also has an important role in determining the information and assessments that get published as this can play an important role in facilitating reputational incentives where appropriate.

5. Whilst there may be an initial focus on stakeholder engagement around agreeing the outputs for CP6, the industry should continue to build on the enhanced stakeholder engagement in the PR18 process in other areas. ORR has a role to play in assessing the extent to which this approach is successfully embedded in all aspects of the day-to-day planning and operation of the railway in the years to come.

Holding Network Rail to account

Policy aims and approach

6. We are supportive of the elements of the proposed policy approach set out in the consultation document, including the importance of sharing best practice and stakeholder engagement. However, we are concerned that, as currently stated, the approach does not sufficiently emphasise the use of leading indicators and other information so that ORR can monitor and take action to avoid poor performance. We recognise that leading indicators are discussed in the consultation document, but we consider that this forward looking, proactive approach should be a more explicit part of the stated policy aims.

7. We welcome the fact that the proposed policy approach is informed by principles of regulatory best practice. We think ORR should target its resources on areas with greatest impact on customers and funders and that this should be clear in the stated approach.

Routine monitoring and enforcement

8. We agree that ORR should monitor individual routes and SO and focus on scorecards where measures have been agreed, particularly with an emphasis on sharing best practice and collaboration. We consider that it must also be proactive in the development of more leading indicators across the full range of issues. As far as possible, this would be across all aspects of performance including efficiency, where the approach currently set out in the document does not appear to have a leading element. ORR should then be proactive in monitoring these indicators with an emphasis on early intervention to avoid major problems occurring. A part of this proactive approach for ORR may include examining, and possibly verifying to the extent practicable, the delivery plans Network Rail develops which are necessary to deliver the required outputs detailed in the scorecards.

9. It is vital that ORR's monitoring is both balanced and comprehensive. It should be balanced in terms of acknowledging where things are going well and if leading indicators and other information start to raise issues of concern there should be an early focus on how things can be improved. This would be most successful in a culture of getting problems solved and lesson learning rather than blame apportionment and reaching for enforcement tools in all but the most serious of cases. It should be suitably comprehensive given the importance of reputational incentives and the key role ORR's monitoring can play in respect of these. We consider ORR should utilise information already used in the industry wherever possible, which should also reduce the resource implications on ORR.

Investigation and early resolution

10. We support the targeting of any investigations at relevant business units within Network Rail. Given the potential reduced effectiveness of financial incentives and the aim to avoid major failures from occurring, we consider the use of reputational incentives and improvement notices are key intervention tools for ORR.

11. We support the use of improvement plans and hearings where leading indicators and other information suggest that the situation is going seriously off course and these can

be used early enough that they can have a significant positive impact on the issue concerned. However, we think ORR should always consider the balance between letting the parties get on with resolving problems without undue distraction and the need for intervention if there is evidence that not enough is being done or there is insufficient senior management focus on taking appropriate action to resolve a problem.

Enforcement

12. Where an issue doesn't get resolved and leads to serious, detrimental outcomes, we support ORR's recognition in the proposed enforcement approach of the limitations of financial penalties and the risks of money being diverted away from future investment in the railway.

13. However, we have some concerns that if enforcement is too focused on attempting to target management incentives, this may make hearings more difficult for all the parties concerned, damage longer term collaboration and make it more difficult to recruit the most appropriate people in the future. We therefore consider that this should only be considered in the most extreme cases where other tools, including reputational incentives, are not judged as sufficient.

ORR's approach to assessing the quality of Network Rail's stakeholder engagement in CP6

Scope and focus of ORR's assessment

14. We recognise the need for ORR to focus its resources on activities which will add the most value to customers and funders. We agree that in the first year this is likely to revolve around business planning and the agreement of scorecards. However, we consider that this is subject to three things.

15. Firstly, ORR's assessment should be undertaken in the context of clear governance arrangements between routes, SO and operators on industry engagement, backed up by broad, transparent stakeholder engagement plans from each route and the SO. These should include how there would be meaningful and consistent engagement on performance, delivery issues and long term planning, how problems can be escalated, and how there would be engagement with subnational/regional transport authorities where appropriate.

16. Secondly, ORR should not rule out looking into other areas on a case by case basis if specific issues are brought to its attention. In such cases ORR should make it clear that the responsibility in the first instance should be on Network Rail and operators to have sufficient engagement to try to resolve any issues arising.

17. Thirdly, ORR's document focuses mainly on stakeholder engagement by routes and SO - we continue to believe that the importance of Network Rail's Technical Authority (particularly in terms of the ability to challenge standards where appropriate) and Infrastructure Projects divisions (particularly in terms of enhancing the customer focus) in delivering a successful railway must not be overlooked.

ORR's assessment approach

18. We agree that the purpose of the assessment should be on supporting both the

reputational incentives for routes and SO to maintain and improve the quality of their engagement, and the adoption of best practice across the routes and SO. We further agree that it should be informed by stakeholder views and Network Rail's self-assessments, and that once there is reassurance around the quality of these self-assessments and their ability to drive improvements to future engagement there may be a less intensive need for independent assessments. However, we consider that ORR's assessment will continue to play an important role in supporting reputational incentives and would therefore not support any implication that it might not be needed at some point in the future.

19. We consider it vital that any assessment by ORR is evidence based. It is also important that all parties recognise that whilst in many cases Network Rail would be expected to lead on engagement issues, good quality engagement is a two way process that relies on sufficient commitment from all parties, whether Network Rail, train operators or other parties. We think that this would need to be a consideration in any assessment by ORR.

ORR's 'Holding Network Rail to Account' policy for CP6

A consultation on a new policy for holding Network Rail to Account: pro forma

This pro forma is available to those that wish to use it to respond to our ORR's 'Holding Network Rail to Account' policy for CP6' consultation. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Please send your response to pr18@orr.gsi.gov.uk by **25 January 2019**.

Full name*	
Job title*	
Organisation	Rail Operations (UK) Limited
Email*	

*This information will not be published on our website.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 1: Introduction)

Q1. Do you agree with our proposal to create a new, standalone policy for holding Network Rail to account, replacing the existing monitoring and economic enforcement policy for Network Rail?

Yes

ORR's new policy – 'Holding Network Rail to Account' (Chapter 2: Our aim and approach)

Q2. Do you agree with the policy aims and approach, and is there anything else we should set out in the policy to help meet these objectives?

Yes, however:

2.4 2nd sub-bullet … *'Identify and share best practice and foster innovation'*. This needs to be across the whole of the rail industry. Furthermore, rail users, in particularly Duty Holders, need to be a part of and have input into, the creation of the 'incentives' referred to. It will be a meaningless process without this.

2.4 2nd bullet … *'Promote good stakeholder engagement by Network Rail and encourage collaborative working with the wider industry'*. This exists now. This needs to be expanded upon and be more meaningful in terms of the what the process sets out to deliver, e.g. targets and objectives.

2.8 … Fully support this. However, the ORR must engage with stakeholders directly, in particularly, duty holders in order to shape the process. There are many great schemes and projects emerging that simply will not materialise unless Network Rail are 'encouraged' to fully engage with, support and commit to.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 3: Routine monitoring and assessment)

Q3. What are your views on our proposals for routine monitoring and assessment, specifically:

- **Monitoring and assessing Network Rail's performance;**
- **Monitoring and assessing the strength of route and System Operator-level accountability;**
- **our approach to risk-based and targeted monitoring; and**
- **the aims of our public reporting?**

Network Rail's performance should not just be measured by performance against set targets. Targets do nothing other than to set the minimum standard. This does not encourage continual improvement as the focus is simply on achieving the target. Proposed 'expectations' aimed at encouraging Network Rail to go above and beyond just achieving targets need to be meaningful and measurable. The ORR need to undertake far more work to establish what these are and Duty Holders need to be a part of this process. It has to be continually borne in mind that Network Rail are suppliers to the Duty Holders and the latter can reasonably expect an improving level of service from their principal supplier.

3.2 2nd bullet … *'to enable Network Rail's customers and other stakeholders to effectively challenge performance and influence priorities*. How will the ORR undertake this and why are the Duty Holders not identified as part of the process?

3.4 … Totally unacceptable. There should never be any 'certain circumstances. Furthermore, in respect of not challenging *'asset condition is sustained for the benefit of future rail users'*, this is absolutely unacceptable. Asset condition is a critical part of improving the UK economy through ensuring it is protected for future rail schemes which will facilitate increased rail usage, e.g. passenger, freight and, more importantly, urban logistics.

3.7 2nd bullet … the words 'where appropriate' need deleting. It is always appropriate.

3.10 3rd bullet … the words 'and network enhancement' need adding.

3.16 1st bullet … stakeholder input must form a part of this process, e.g. Duty Holders are far more well informed than Network Rail as to how the network should be used.

3.17 '*we will monitor and assess the ability of customers*' … how does the ORR intend to do this?

3.18 … clarity / definition needs to be provided around what the words 'meaningfully' and 'constructively' actually mean. They are meaningless, fluffy words without this.

3.19 … '*needs to be tailored*'. How do the ORR believe this will be done. Will this be enforced by the ORR … it certainly should be. Furthermore, how will the ORR '*support innovation*'? The ORR must not detach themselves from how Network Rail engage with stakeholders.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 4: Investigation and early resolution)

Q4. What are your views on our proposed approach, specifically:

- **the factors we will consider when assessing concerns;**

- **the actions we may take (such as using ORR hearings and requiring improvement plans); and**

- **communicating our investigations publicly?**

Fully support.

4.3 … clarity is required on what is meant by the term '*risk-based*'.

Figure 4.2, 1st column, 1st bullet … '*What is the actual or potential harm to passengers, freight customers, funders or other stakeholders?*' Harm to the economy must also be included in this.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 5: Enforcement)

Q5. What are your views on our proposed approach to enforcement, specifically:

- **the use of enforcement orders;**

- **the use of financial penalties; and**

- **the introduction of regulatory enforcement penalties?**

Fully support this approach

ORR's new policy – 'Holding Network Rail to Account' (Penalties statement - Annex B)

Q6. What are your views on the penalties statement, in particular, the factors we should consider in deciding whether to impose a (financial) penalty, and the decision on the size of any (financial) penalty?

Fully support this approach

ORR's new policy – 'Holding Network Rail to Account'

Q7. Do you have any other comments or views on ORR's new policy?

The new policy is very encouraging and will undoubtedly bring benefit to the rail industry and the economy as a whole. However, the ORR must get this right first time. In order to do this, I would propose another level of consultation with Duty Holders as Network Rail's principal customers, possibly on a 1-2-1 basis. There must be more detailed input from stakeholders as a whole.

Thank you for taking the time to respond.

Railway Industry Association

The voice of the UK rail supply community

**RESPONSE TO ORR CONSULTATION
ON HOLDING NETWORK RAIL TO ACCOUNT**

1. INTRODUCTION

1.1 This letter constitutes the response from the Railway Industry Association (RIA) to the above consultation issued in November 2018.

2. BACKGROUND TO RIA

2.1 RIA is the long-established trade association for UK-based suppliers to the UK and world-wide railways. It has 240 companies in membership covering all aspects of rolling stock and infrastructure supply and a diverse range of products and services. As well as the vast majority of the larger, multi-national companies, 60% of RIA's membership base is comprised of SMEs.

2.2 The Oxford Economics 2018 report shows that the UK rail sector contributes annually over £36 billion Gross Value Added (GVA) to the UK economy, employs 600,000 people and generates £11 billion in tax revenues. It is also a growing industry with the numbers of rail journeys expected to double in the next 25 years along with significant growth in rail freight traffic. The full report can be accessed via the following link: https://www.riagb.org.uk/RIA/RIA_new/Press/Oxford_Economics.aspx

2.3 RIA provides its members with extensive services, including:
   • Representation of the supply industry's interests to Government, Network Rail (NR), TfL, HS2, ORR and other key stakeholders
   • Providing opportunities for dialogue and networking between members, including a number of Technical and Special Interest Groups
   • Supply chain improvement initiatives
   • Provision of technical, commercial and political information every week
   • Export promotional activity, through briefings, visits overseas, hosting inwards visits
   • Organising UK presence at exhibitions overseas.

Executive Summary

• **RIA believes the approach proposed by the ORR to create a new, standalone policy for holding Network Rail (NR) to account is sensible, given the devolution to routes within NR and devolution to the System Operator (SO), as this will enable the ORR to monitor performance at the most appropriate level.**
• **Reputational incentives will be an important ingredient in driving good performance.**
• **Engagement by NR with rail suppliers is essential to enable successful delivery by NR Routes of their strategic business plans.**
• **RIA fully endorses the use of Route and SO scorecards agreed with customers to assess and benchmark performance. The scorecards need to speak to metrics that are meaningful to the supply chain.**
• **RIA believes it is right that the ORR's approach to monitoring, escalation and enforcement should be risk-based, targeted, proportionate and transparent.**
• **It will be important for the ORR to recognise that where a Route and/or the SO outperforms against an agreed target in its scorecard, this is reflected in the ORR's reporting.**

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3.   RESPONSES TO CONSULTATION QUESTIONS

Q1   DO YOU AGREE WITH OUR PROPOSAL TO CREATE A NEW, STANDALONE POLICY FOR HOLDING NETWORK RAIL TO ACCOUNT, REPLACING THE EXISTING MONITORING AND ECONOMIC ENFORCEMENT POLICY FOR NETWORK RAIL?

3.1   RIA believes the approach proposed by the ORR to create a new, standalone policy for holding Network Rail (NR) to account is sensible, given the devolution to routes within NR (including freight), and devolution to the System Operator (SO) and other business units. This will enable the ORR to monitor performance both at the most appropriate and more granular level, as well as identify the actions needed to improve performance at the most relevant scale, e.g. individual routes or the SO. The proposed ORR policy also reflects NR's reclassified status as an arm's length public sector company. Moreover, it would help to reinforce the importance of the relationship between NR and its customers, including rail suppliers.
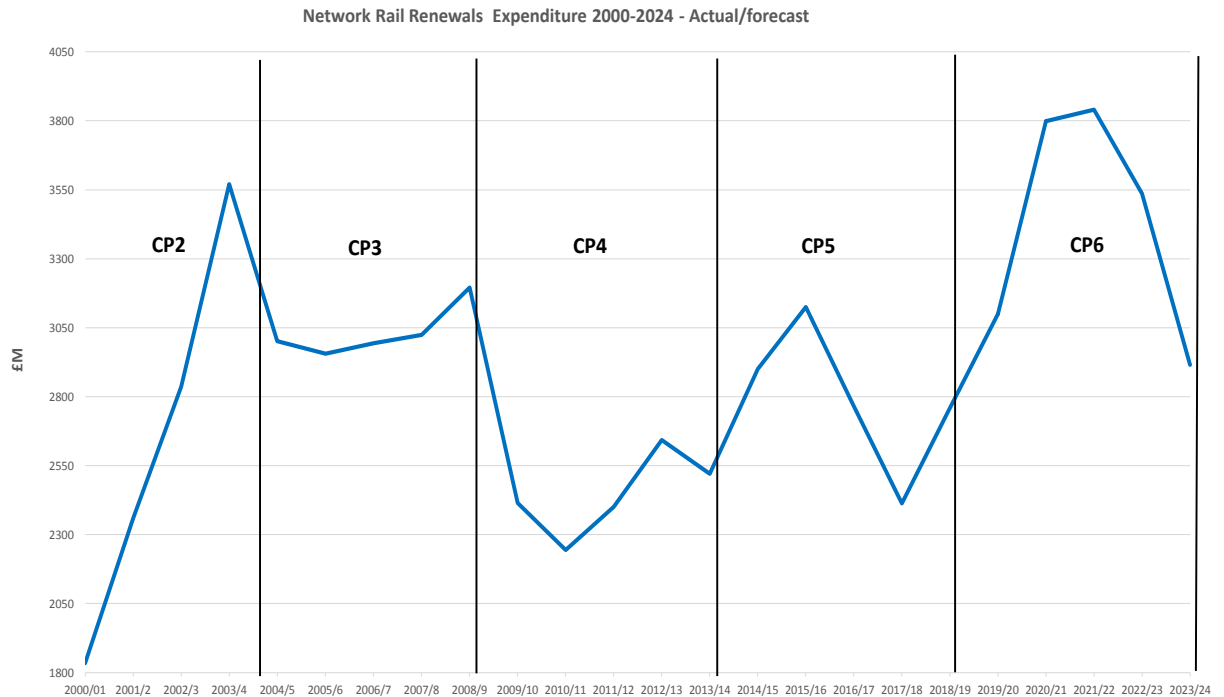
Q2   DO YOU AGREE WITH OUR POLICY AIMS AND APPROACH, AND IS THERE ANYTHING ELSE WE SHOULD SET OUT IN THE POLICY TO HELP MEET THESE OBJECTIVES?

3.2   RIA believes the core obligations within the NR licence, as set out in paragraph 2.1 of the consultation document, are fit for purpose.

3.3   RIA agrees that in creating a balanced set of incentives that reflects NR's business structure and public sector status, these should provide both manifest benefits for good performance and effective sanctions for poor performance. Reputational incentives will be an important ingredient. We agree with the ORR that in respect of poor performance, the use of statutory powers should be as a last resort, deployed only once voluntary actions have either not been taken or have not secured the required improvements.

3.4   Given NR's now devolved structure with each route business responsible for engaging with its customers, the need for good stakeholder engagement by NR with rail suppliers is essential to enable successful delivery by NR Routes of their strategic business plans. This will require early supplier involvement and a stable and visible workload pipeline for the rail supply chain. Therefore high quality engagement by NR with rail suppliers, in particular, would encourage and support collaborative working on the rail network and enable opportunities for NR to improve efficiency and performance during CP6 to be realised. Such engagement would also reinforce accountability and transparency.

3.5   The supply chain would be better able to deliver significant efficiencies if suppliers were able to enter into long term collaborative relationships with NR Routes. The performance of these relationships should be carefully measured with good performance allowing for them to be extended from one Control Period into the next. This would help deliver a smooth pipeline of work rather than the 'boom and bust' rail supply businesses have experienced under the current Control Period funding structure; whereby there has been a drop in work towards the end of one Control Period followed by a ramping up of work at the start of the next – see the chart below for illustration.

Network Rail Renewals Expenditure 2000-2024 - Actual/forecast

CP2   CP3   CP4   CP5   CP6

y-axis (£M): 1800, 2050, 2300, 2550, 2800, 3050, 3300, 3550, 3800, 4050

x-axis: 2000/01 2001/2 2002/3 2003/4 2004/5 2005/6 2006/7 2007/8 2008/9 2009/10 2010/11 2011/12 2012/13 2013/14 2014/15 2015/16 2016/17 2017/18 2018/19 2019/20 2020/21 2021/22 2022/23 2023/24

This is an inefficient way of working and can add roughly between 10-30% to costs.

3.6 The ORR's expectation that NR's stakeholders will be able to engage with the Routes and the SO to influence priorities and challenge performance could be assessed by the degree to which supplier engagement has influenced planning and delivery, i.e. in terms of what actions NR has taken on board. This is premised on there being appropriate structures, such as the NR Standards Challenge, and opportunities for all tiers of suppliers to communicate their views, e.g. NR's Commercial Directors Forum and other mechanisms for Tier 2/3 and SME suppliers to do likewise.

3.7 RIA fully endorses the use of Route and SO scorecards agreed with customers to assess and benchmark performance. The scorecards need to speak to metrics that are meaningful to respective stakeholders. For example, for the supply chain:
- The degree of smoothing of work bank pipelines to avoid peaks and troughs, which reduce efficiencies; this may include confidence levels around achievability/deliverability of the pipeline against the proposed timescale and number/percentage of schemes delivered on time (in effect, the degree to which NR has smoothed the work bank pipeline)
- With an eye on monitoring deferral of work, metrics might include in-year percentage of planned renewals delivered and year-on-year (cumulative) percentage or planned renewals delivered
- Supply chain visibility of work/pipeline (i.e. x months/ years forward) – the longer the time period, the more likely this will support supply chain investment in skills and innovation
- Outturn of expenditure on renewals, to provide a more accurate picture than forecast spend
- Overspending against budgets, which could put at risk planned renewals programmes, particularly if NR is unable to vire monies between operations, maintenance and renewals
- Levels of track access for suppliers to carry out renewals and the level of booked possessions over e.g. the coming year
- An 'on-track' scale of expected efficiencies being delivered
- The proportion of planned work that has been designed, tendered, awarded
- The extent to which NR is engaging with suppliers (both Tier 1 contractors and Tier 2/ SME suppliers) before schemes/ projects reach GRIP3
- How stakeholder/ supplier engagement has influenced planning and delivery, i.e. in terms of what actions NR has taken on board.

- Other behaviours which encourage transparency and information sharing and which ensure greater consistency, supply chain visibility and efficiency.

3.8   RIA believes it is right that the ORR's approach to monitoring, escalation and enforcement should be informed by principles of regulatory best practice, namely that it is: risk-based; targeted; proportionate; and transparent. Similarly, this means that NR will need to provide the ORR with high quality data, clear, readily available and timely information in order for the regulator to assess and challenge performance.

Q3   WHAT ARE YOUR VIEWS ON OUR PROPOSALS FOR ROUTINE MONITORING AND ASSESSMENT, SPECIFICALLY:
- **MONITORING AND ASSESSING NETWORK RAIL'S PERFORMANCE;**
- **MONITORING AND ASSESSING THE STRENGTH OF ROUTE AND SYSTEM OPERATOR-LEVEL ACCOUNTABILITY;**
- **OUR APPROACH TO RISK-BASED AND TARGETED MONITORING; AND**
- **THE AIMS OF OUR PUBLIC REPORTING?**

3.9   RIA's view is that where there is strong Route and SO accountability evidenced through scorecards, this should inform how the ORR focuses/targets its scrutiny on those Routes and areas where there is an identified room for improvement. We therefore agree with the ORR's proposed approach to routine monitoring, centred on both NR's performance against its own scorecards and the strength of NR institutional and governance arrangements that enable suppliers to effectively challenge Route and SO performance and influence their priorities. This should also take account of the specific requirements placed on NR to ensure Routes and the SO have appropriate autonomy to carry out their responsibilities so that they can be held to account. Therefore, should central functions not be sufficiently responsive to the needs of the Routes and/or SO, the ORR should increase its monitoring of those functions performance.

3.10   RIA believes that the ORR's proposed scope of routine monitoring and assessment of NR's performance, as set out in figures 3.2 and 3.3 of the consultation document, appears about right. It may also be useful in other information to consider lagging, as well as, leading indicators. RIA is happy to offer itself as a conduit for providing the ORR with feedback from suppliers on their experiences with NR Routes 'on the ground', so as to provide a richer, and arguably more independent, picture of NR's performance and engagement with a key customer.

3.11   We agree that it will be important for the ORR to recognise where a Route and/or the SO out-performs against an agreed target in its scorecard and reflect this in its reporting. Similarly, in instances where a Route and/or the SO underperforms against a scorecard target, the ORR should, as proposed, consider the reasons for this, what evidenced based plans are in place to address under performance, and whether there is a need for additional steps to improve performance.

3.12   RIA supports the aims of the ORR's public reporting, as set out in paragraph 3.33 of the consultation document. In particular, we welcome the aim of this reporting to support suppliers in holding NR to account, especially on factors affecting the strength of Route/SO accountability, and to leverage reputational incentives for NR.

Q4   WHAT ARE YOUR VIEWS ON OUR PROPOSED APPROACH, SPECIFICALLY:
- **THE FACTORS WE WILL CONSIDER WHEN ASSESSING CONCERNS;**
- **THE ACTIONS WE MAY TAKE (INCLUDING USING ORR HEARINGS AND REQUIRING IMPROVEMENT PLANS); AND**
- **COMMUNICATING OUR INVESTIGATIONS PUBLICLY?**

3.13   The factors the ORR will consider when assessing concerns, as set out in figure 4.2, appear right.

3.14   RIA agrees with the ORR that there may be circumstances where it could be valuable to urge NR to take improvement actions at an earlier stage to avoid the use of formal powers, and for the ORR to have an option to hold hearings between the Route/SO and affected parties. This would enable the ORR to gather evidence, explore further the issues and support swift resolution. In this regard, it seems sensible to allow the ORR, during or following an investigation, to write to NR to explicitly require it to establish a formal improvement plan.

3.15   We support the ORR's standard policy on how it communicates its investigations publicly, as set put in paragraph 4.20 of the consultation document.

Q5   WHAT ARE YOUR VIEWS ON OUR PROPOSED APPROACH TO ENFORCEMENT, INCLUDING:
   • **THE USE OF ENFORCEMENT ORDERS;**
   • **THE USE OF FINANCIAL PENALTIES; AND**
   • **THE INTRODUCTION OF ROUTE/SO FINANCIAL SANCTIONS?**

3.16   RIA supports the potential regulatory action that the ORR can consider if the ORR Board is satisfied there is a past, current or likely future licence breach. This includes the proposed new approach to financial penalties, including imposing a financial sanction that will reduce the financial performance measure (FPM) that NR uses in its performance-related pay schemes, such that sanctions may negatively affect bonuses. This should serve as a strong reputational incentive.

Q6   WHAT ARE YOUR VIEWS ON THE PENALTIES STATEMENT, IN PARTICULAR, THE FACTORS WE SHOULD CONSIDER IN DECIDING WHETHER TO IMPOSE A (FINANCIAL) PENALTY, AND THE DECISION ON THE SIZE OF ANY (FINANCIAL) PENALTY?

3.17   RIA supports the principle of the ORR imposing, as a last resort, a financial penalty where it is satisfied this is necessary either or both to change NR's future behaviour and to deter future non-compliance. The scale of any penalty should be based on the actual and potential harm caused to third parties and the extent to which NR is culpable.

3.18   We think it is right that the ORR should publish a final notice confirming any decision to impose a financial penalty on NR and the amount of the penalty.

4.   CONCLUSION

4.1   RIA welcomes the opportunity to comment on the ORR's consultation on holding NR to account.

4.2   The strong CP6 SoFA settlement provides an excellent opportunity for the industry collectively to make a step-change to our railway and its growing number of customers. We must also prove to our funders that the supply sector can deliver these substantial volumes of work, if we are to continue to secure such funding settlements.

4.3   The railway supply chain stands ready to plays its part in a collaborative push to achieve this delivery. But in order to do so, we need in turn successful adoption of the points referenced in the Executive Summary.

4.4   We hope this response is helpful and we stand ready to discuss any part of it with the ORR at any time.

ORR's 'Holding Network Rail to Account' policy for CP6

A consultation on a new policy for holding Network Rail to Account: pro forma

This pro forma is available to those that wish to use it to respond to our ORR's 'Holding Network Rail to Account' policy for CP6' consultation. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Please send your response to pr18@orr.gsi.gov.uk by **25 January 2019**.

Full name*	
Job title*	
Organisation	Stagecoach Rail / Virgin Trains / East Midlands Trains
Email*	

*This information will not be published on our website.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 1: Introduction)
Q1. Do you agree with our proposal to create a new, standalone policy for holding Network Rail to account, replacing the existing monitoring and economic enforcement policy for Network Rail?
We are supportive of the new policy for holding Network Rail to account in a standalone way. It is important to distinguish in this new policy between ways of holding the System Operator (SO) and the Routes to account respectively, recognising that the falling PPM may be driven by decisions from SO as oppose to the Route.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 2: Our aim and approach)

Q2. Do you agree with the policy aims and approach, and is there anything else we should set out in the policy to help meet these objectives?

We agree with the ORR's proposed objectives set out in the consultation document, including sharing best practice and promoting good stakeholder engagement. However, in respect of taking prompt action to address any poor performance, we are concerned that the ORR has insufficient information to monitor and hence to avoid poor performance in a proactive manner.

Whilst the ORR recognise the importance of effective stakeholder engagement and expect stakeholders to be able to influence priorities and challenge performance through stakeholder engagement, the fundamental problem remains when there is a lack of visibility and understanding of Network Rail's current status of assets, for example Network Rail's inability to meet the renewal delivery target in CP5; it is difficult for train operators to challenge this particular area if the data is not available and we cannot understand the reasons for the decline.

In Chapter 3, there are mentions that good information is needed to enable stakeholders to challenge performance. We agree with the statements, and believe that the proposed approaches should emphasise on what sort of data and the level of information the ORR would require to enable effective monitoring to be undertaken.

Reputational incentives - with the current climate, in particular the issues of declining efficiency and recent operational disruption to the railway since May 2018, we are not sure how this would work. Comparison of routes has limited benefit as they are all so different. Unless and until senior management in Network Rail are genuinely held accountable for what they do (in SO as well as Routes), nothing will change and incentives need to be greater than pure reputational. Instead of looking at Network Rail's reputation for poor delivery of agreed objectives, there needs to be a regime that rewards and penalises depending on how cost-effective Network Rail routes are at delivering enhancements and maintenance and meeting direct customer (TOC and FOC) and end customer needs.

Q3. What are your views on our proposals for routine monitoring and assessment, specifically:

- **Monitoring and assessing Network Rail's performance;**

- **Monitoring and assessing the strength of route and System Operator-level accountability;**

- **our approach to risk-based and targeted monitoring; and**

- **the aims of our public reporting?**

We agree that the ORR should monitor individual routes and the SO.

Scorecards

The use of scorecards is a useful management tool for providing data and information. In our views, they are genuinely used and reviewed by Network Rail. However, they are just a working document for discussion between Access Beneficiaries, stakeholders and Network Rail and nothing more. They are also used as an incentive to Network Rail management and therefore in reality mean nothing to Network Rail's direct customers and absolutely nothing to the end customer and we have to avoid scorecards being seen as the solution to all problems. Until incentives and outcomes are aligned, scorecards will be no more than this. We would like to see Network Rail's customers i.e. TOCs to have a greater influence on what is included, and for the content to become more diverse and to include measures which reflect the commercial and customer performance of Network Rail's customers, recognising that incentives need to be aligned.

We acknowledge that not every aspect of Network Rail's performance can be captured through quantitative metrics, such as the quality and effectiveness of SO on how the network should be used or developed. Also, certain aspects of the SO's performance are not on its scorecards and the Routes are recipients of SO decisions and outputs as much as TOCs and FOCs are. We would welcome further detail on how the ORR would monitor and assess the engagement between individual Access Beneficiaries and Network Rail concerning the SO function, as this is not clear in the consultation document. The ORR needs to be more specific on the definitions and leading indicators in the new policy to avoid any ambiguity and poor performance, as there are many different and sometimes opposing views about the activities of the SO.

Stakeholder Engagement

We are supportive of *effective* stakeholder engagement. However, there are many stakeholders and there needs to be some differentiation between direct customers i.e. train operators who have contractual relationship and the others whom are not i.e. those groups and

organisations that are impacted by Network Rail but whom have no contractual relationship. We would expect train operators to have significantly more involvement in the engagement process given their ability to affect the outcomes delivered, and the efficiency with which they are delivered.

We believe that the ORR can only effectively monitor and assess the quality of routes' engagement with train operators is based on documented plans with clear process governance. Stagecoach (including East Midlands Trains) (SG) & Virgin Trains (VT) have written to Network Rail and copied in the ORR during the PR18 process regarding 'Stakeholder Engagement and how stakeholders might add value through their engagement with the process of preparing the SBPs'. Our experience with regard to the engagement process was that they were more of a presentation of Network Rail's proposed plans and outputs from a 'show and tell' perspective, with an over-arching message that there are extreme funding limitations and, therefore, little opportunity to do anything more. There was no clear procedure (no guidance nor timeline) to follow as part of the SBP process in terms of our views being heard by Network Rail. We consider that the ORR should emphasise on a clear process and documentation procedure as part of the policy approach so that ORR can monitor and assess the routes' performance on Network Rail's strength with its engagement process and comparing the outcomes between routes.

Collaborative Working

The principle is good and should be a given and it is important to passenger operators (existing and future franchises) to the extent that they can help support the delivery of commitments in future franchises. That said, franchised requirements need to be aligned to infrastructure plans and the financial determination. Otherwise, collaboration can become a forced activity which actually creates perverse behaviours. In our opinions, collaboration is always on Network Rail's terms and the draw on resources within what are much smaller organisations is more keenly felt. For example, possession planning can already be in place long before customers have formed a view on whether this is a good scheme or not. Derby Resignalling is a classic example of where consultation had no impact on the plan and collaboration was only achieved through two years of struggle. So, we need to see collaboration to be more effective and more streamlined and not when Network Rail wants to do it.

Financial Performance & Cost Efficiency

There needs to be much better alignment of the objectives of Network Rail and its customers. With the SO, for example, there is no incentive to improve the utilisation of capacity, use capacity more optimally or grow the commercial worth of the railway. All the incentives are to maintain the status quo or make access more difficult. A more commercial approach is needed. NR has lost its ability to rationally look at the overall benefits of the railway for its customers and ends up in a position of poor value for money.

With regard to monitoring and assessing the strength of route and SO level accountability to enable NR's customers and other stakeholders to effectively challenge performance and influence priority, the annual business planning cycle of Network Rail is usually too late for any strategic decisions. The annual business plan is usually cast in stone before it is ready for consultation with stakeholders. Any comments of substance are likely to be rejected because it

will be too late in the planning cycle to make changes.

SC & VT expressed its views in the CP6 consultation process that the performance trajectories did not go far enough in setting an appropriate level of Performance which Network Rail should deliver. Network Rail continued to state risk that various signalling schemes and HS2 plans were the reasons behind their cautious forecast for performance during CP6 but was unable to (and have not yet) provide any detailed information to support this forecast decline, or indeed suggested any mitigations. We consider that the ORR should develop more leading indicators across the full range of issues and proactively monitor these indicators with an emphasis on early intervention to avoid major problems occurring.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 4: Investigation and early resolution)

Q4. What are your views on our proposed approach, specifically:

- **the factors we will consider when assessing concerns;**
- **the actions we may take (such as using ORR hearings and requiring improvement plans); and**
- **communicating our investigations publicly?**

We support the ORR being proactive in taking early action to understand and resolve potential concerns. We consider the use of improvement notices is a key intervention tool for the ORR.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 5: Enforcement)

Q5. What are your views on our proposed approach to enforcement, specifically:

- **the use of enforcement orders;**
- **the use of financial penalties; and**
- **the introduction of regulatory enforcement penalties?**

ORR enforcement orders for CP6 – says this is existing and unchanged, but really we would like to see them be used more. Where an issue does not get resolved and leads to serious detrimental outcomes, we support the ORR's action to issue enforcement orders which require action by Network Rail.

Our main concern remains with the fact that the changes to Network Rail's business structure

and its reclassification as a public sector body mean that financial penalties on the company are no longer effective. On the basis of this, using fines has little impact on Network Rail as this is a 'money-go-round' with the DfT and Treasury. These fines have actually had little impact as we saw when the ORR breached Network Rail for non-delivery of its CP4 targets and we are not sure what happened with the fine amount (supposed to fund the Project Quicksilver scheme). At best, fines are actions after the event. We would like the ORR to take pro-active actions to rectify non-delivery; we would like to see proactive steps taken by Network Rail to rectify the problems caused by the breach.

ORR's new policy – 'Holding Network Rail to Account' (Penalties statement - Annex B)

Q6. What are your views on the penalties statement, in particular, the factors we should consider in deciding whether to impose a (financial) penalty, and the decision on the size of any (financial) penalty?

Financial penalties should be reintroduced, but not to be paid to ORR or TOCs but paid in the form of customer benefit (that may be administered by Network Rail or TOCs), for example customer shelters, additional car parks, additional CIS etc. It would be more effective to demand Network Rail to spend the fine amount on specific customer improvement concepts, e.g. on what once would have been called Network Rail Discretionary Fund (NRDF), which was a mechanism for funding minor schemes that were either linked to major renewals or other schemes which would have a positive whole- industry business case.

ORR's new policy – 'Holding Network Rail to Account'

Q7. Do you have any other comments or views on ORR's new policy?

Instead of looking at Network Rail's reputation for poor delivery of agreed objectives, it would be probably more effective to have a reward mechanism for timeliness and efficiency for delivery, i.e. moving money around within Network Rail to reward the best performing routes, SO and vice versa.

In light of the recent chaos associated with the timetable change in May 2018, it is vital to have the link strengthened between the SO, Routes and TOCs/FOCs on performance planning and management to the extent that there are better common goals and accountabilities. Whilst we believe Network Rail is best placed to manage risks in connection with timetable change and the operational performance of the railway, there was an oversight on Network Rail's SO's inefficiency and internal discipline of the timetabling process. Although they were not direct causes of the disruption, data handling compounded the inability of SO have led significant

slippages in planning timescales and very limited opportunity for recovery. Therefore, it is increasingly important that ORR is proactive in how it monitors and assesses Network Rail routes and SO and in using its investigative and enforcement powers to greatest effect in order to avoid any significant disruption happening. The ORR needs to be clear on the cause and effect of decisions made in SO that have impacts on Routes and TOCs/FOCs and ORR needs to be clear on accountability for performance sits. We think the ORR could target on problematic areas with greatest impact on train operators and that this could be made clear in the policy.

Thank you for taking the time to respond.

ORR consultation: Holding Network Rail to account

Question 1:
Do you agree with our proposal to create a new, standalone policy for holding Network Rail to account, replacing the existing monitoring and economic enforcement policy for Network Rail?

Yes. A new standalone policy enables the process for holding Network Rail to account against the network licence to be developed and updated, and for lessons to be learnt from the recent operational disruption. It is important that robust policies exist to enable Network Rail to be held account for their actions and service delivery.

Question 2:
Do you agree with our policy aims and approach, and is there anything else we should set out in the policy to help meet these objectives?

We broadly welcome the main aims and approach of the policy, particularly in terms of promoting good stakeholder engagement and collaborative working. This should include working with local authorities, as well as local rail user groups, or equivalent.
Ensuring prompt, direct and transparent action is taken to resolve concerns and secure improvements is welcomed.

Question 3:
What are your views on our proposals for routine monitoring and assessment, specifically:
- **monitoring and assessing Network Rail's performance;**
- **monitoring and assessing the strength of route and System Operator-level accountability;**
- **our approach to risk-based and targeted monitoring; and**
- **the aims of our public reporting?**

The approach to monitoring and assessment set out in the consultation appear to be robust and extensive, which is welcomed.

Question 4:
What are your views on our proposed approach, specifically:
- **the factors we will consider when assessing concerns;**
- **the actions we may take (including using ORR hearings and requiring improvement plans); and**
- **communicating our investigations publicly?**

We support the principle of taking early action to resolve potential concerns, to avoid any breach of the licence. This would reduce the need for formal action to be taken and can be key to resolving issues quickly and efficiently.

In terms of gathering evidence, emphasis should be placed on gathering the views of affected stakeholders, particularly customers. Services need to work for users and it is important that their views are taken into account at all stages.

Requiring an improvement plan as an initial step will focus actions to resolve issues and provide a commitment from Network Rail to come up with a solution. Hearings are useful in providing a more formal process of investigation. However, there are likely to be significant costs and

resources involved in carrying out hearings such as these, and there is a need to ensure an appropriate balance is struck between spending money on physical and direct improvements, rather than on process in the background. As such, we welcome the prioritisation of action based on the severity / potential risk of the issue.

Question 5:
What are your views on our proposed approach to enforcement, including:
- **the use of enforcement orders;**
- **the use of financial penalties; and**
- **the introduction of route/SO financial sanctions?**

Question 6:
What are your views on the penalties statement, in particular, the factors we should consider in deciding whether to impose a (financial) penalty, and the decision on the size of any (financial) penalty?

We welcome the proposal to encourage financial penalties to be funded from the management bonuses of the responsible business unit. This would incentivise early solutions and commitment to resolving issues at an early stage. However, the consultation does state (para 5.18) that it would be for Network Rail to decide how to fund any penalty, so it appears as though there would be no way for ORR to ensure this happened?

ORR consultation: ORR's approach to assessing the quality of Network Rail's stakeholder engagement in CP6

Question 1:
Do you agree with our proposal to focus our assessment in the first year of CP6 on the routes'/SO's engagement on annual business planning and on developing and agreeing scorecards? Are there other areas on which you think we should assess the quality of the routes'/SO's engagement? If so, what should we exclude from the scope of our assessment to accommodate this?

We welcome the emphasis placed on improved stakeholder engagement and flexibility in terms of how best to achieve this.

However, the consultation doesn't state who is being referred to in terms of 'stakeholders'. It would be helpful to set out a minimum standard in terms of who Network Rail should be engaging to ensure some consistency in approach.

Question 2:
Do you have any comments on our proposed approach to assessing the quality of Network Rail's stakeholder engagement in CP6?

We support the proposed approach to assessing the quality of Network Rail's stakeholder engagement.

Consultation on ORR's Holding Network Rail to account policy

Response to the Office for Rail and Road by the Chartered Institute for Logistics and Transport

January 2019

The Chartered Institute of Logistics and Transport is a professional institution embracing all transport modes whose members are engaged in the provision of transport services for both passengers and freight, the management of logistics and the supply chain, transport planning, government and administration. Our principal concern is that transport policies and procedures should be effective and efficient, based on objective analysis of the issues and practical experience, and that good practice should be widely disseminated and adopted. The Institute has a number of specialist forums, a nationwide structure of locally based groups and a Public Policies Committee which considers the broad canvass of transport policy. This submission draws on contributions from all these sources.

CILT(UK) generally supports the approach proposed by the ORR but feels it could be strengthened in a number of areas.

Introduction

We support having a high-performing, safe infrastructure manager, and that management incentives are part of delivering that. This should be focused on rewarding success as "naming and shaming", whilst a populist approach, does not necessarily drive the right behaviours. In addition, it could impact on recruitment, retention and motivation of future leaders in an industry not noted for attracting the best. It would also reinforce the risk adverse culture we have seen since at least Clapham Junction and Ladbroke Grove.

Section 3 Monitoring

A key element is the monitoring of Routes' performance. While this is straightforward against Scorecards we would be wary of using simplistic Route – Route comparisons. Previous attempts in both British Rail, Railtrack and TOC owning groups resulted in much management time being expended in explaining why differences were justified. We would counsel care in preparing such measures.

Great store continues to be placed on monitoring against agreed targets/outcomes. Experience over many years has shown that NR will always seek only to agree easily achievable targets. We believe that any failure to agree between operator/stakeholder and NR should default to monitoring against the customer's target. NR could be protected by having recourse to an appeal to the ORR. This would be preferable to the present situation where NR has the final say (there is no evidence of them ever approaching the ORR to rule as that mechanism is not laid down anywhere.

Para 3.11 refers to licence breaches being measured against ORR minimum levels. We believe NR should be customer focused and the ORR is not a customer. Therefore the breach level should be set at the customer's (agreed) targets (or possibly lower, but calibrated against them).

Para 3.14 refers to monitoring Network Rail's cost efficiency. We believe ORR should be more robust in their regulation of NR in respect of engineering costs across the range of maintenance, renewal and upgrade activities: this should include comparison with international best practice as well as inter-route contrasts. Similarly, Project Management Costs should be the subject of robust scrutiny as substantial sums are being spent in this area with little to show for it.

Para 3.16 refers to SO performance in relation to "quality and effectiveness" of advice. It is just as important to stakeholders and customers that such advice is also provided in a timely manner, particularly project scheme estimates at early GRIP stages. At these stages projects are not 'committed' and are therefore at risk of being de-prioritised to 'committed' projects.

Para 3.22 refers to assessment against agreed targets. Where targets have not been agreed the assessment should also take into account the extent of the differences.

Section 5 Enforcement

CILT(UK) supports the use of financial consequences that impact upon Directors' and Managers' bonuses as it is important that they are fully incentivised to deliver – but see the comment in the introductory paragraph. Any financial penalties that go to HM Treasury just means less money for the railway and that NR would defer necessary work to recover their financial position. It follows therefore that NR should be <u>obliged</u> by the ORR to have an appropriate bonus mechanism.

Para 5.18 – NR should <u>not</u> have the ability to determine how to fund ORR penalties as this would be likely to result in work reduction rather than bonus losses.

Para 5.23 – it follows that the FPM must remain a significant part of the bonus mechanism and the ORR should ensure this is the case

Appendix B Penalties Statement

The amount of penalty should also be influenced by the need to deter future non-compliance.

Submitted by:
The Chartered Institute of Logistics and Transport

January 2019

Graham Richards
Director, Railway Planning & Performance
Office of Rail and Road
One Kemble Street
LONDON
WC2B 4AN

24 January 2019

Dear Graham

Holding Network Rail to account

Transport Focus, the independent consumer watchdog representing the interests of Britain's rail passengers, is pleased to respond to ORR's consultation on its approach to holding Network Rail to account in Control Period 6.

Question 2:
Do you agree with our policy aims and approach, and is there anything else we should set out in the policy to help meet these objectives?

Transport Focus agrees with the aims and approach outlined in the consultation and makes the following observations:
- The day-in, day-out delivery of a reliable train service is core to passenger satisfaction, and so the production of a high-performing timetable, with accurate sectional running times and station dwell times is a vital prerequisite.
- Especially on routes operating at or near capacity, but applicable everywhere, a railway suffering fewer infrastructure faults will self-evidently offer passengers a better service. The focus on maintaining the existing railway, and renewing life-expired assets before unreliability impacts on passengers, is therefore correct.
- There should be strong focus in Control Period 6 on restoration of Informed Traveller T-12 and its maintenance thereafter, together with improvements in aspects of passenger information during disruption that relate to Network Rail.

Question 3:
What are your views on our proposals for routine monitoring and assessment, specifically:
- *monitoring and assessing Network Rail's performance;*
- *monitoring and assessing the strength of route and System Operator-level accountability;*
- *our approach to risk-based and targeted monitoring; and*
- *the aims of our public reporting?*

Transport Focus is broadly content with the approach outlined in the consultation and makes the following observations:

- ORR should avoid looking only at Route (capital 'R') data – the passenger experience on individual routes (lower case 'r') could be markedly different from the average
- ORR should carefully monitor whether there is evidence that the 'regulatory minimum floor' in fact becomes the *de facto* target.

Question 4:
What are your views on our proposed approach, specifically:
- *the factors we will consider when assessing concerns;*
- *the actions we may take (including using ORR hearings and requiring improvement plans); and*
- *communicating our investigations publicly?*

Transport Focus is content with the proposed approach, although we recommend that ORR is explicit that any Hearing would be held in public unless there were strong arguments otherwise in an individual instance. In terms of the factors to be considered, it is important that ORR ensures passengers' views are heard in any investigation alongside other interests. We would be pleased to discuss how Transport Focus could help ORR in this respect.

Question 5:
What are your views on our proposed approach to enforcement, including:
- *the use of enforcement orders;*
- *the use of financial penalties; and*
- *the introduction of route/SO financial sanctions?*

Question 6:
What are your views on the penalties statement, in particular, the factors we should consider in deciding whether to impose a (financial) penalty, and the decision on the size of any (financial) penalty?

Transport Focus broadly supports the proposals in Chapter 5 and Annex A.

Passengers' overriding concern will be that Network Rail does all that it reasonably can to comply with its obligations and that enforcement action is not actually required. We therefore support the principle of ORR working with the company to ensure early action before there is impact on passengers. In circumstances where Network Rail is not delivering what is required, some passengers will feel that 'something needs to be done'. However, many will be aware that fines imposed on a publicly-owned, passenger- and taxpayer-funded company may be detrimental to their interests because less money is then available for investment, maintenance etc.

While it is impossible to know for sure, Transport Focus believes it is a reasonable assumption that Network Rail will have as much desire to avoid negative stories about having been fined as to avoid the financial impact of the fines themselves, particularly because any fine is paid to the ultimate owner of the business. That said, it is also reasonable to assume that creating an implicit link between the level of any fine and the 'pot' from which Network Rail would pay management bonuses will spur individuals to provide even greater focus on delivery. While not

ruling it out, the arrangements proposed would make it difficult in practice for Network Rail to cut back passenger-facing or passenger-beneficial activities in order to pay a fine.

Transport Focus believes ORR should accept offers of reparation if it deems it appropriate, subject to four things:

- that the reparations offered are genuinely additional to what Network Rail is already required to deliver
- that the reparations are, as far as is reasonably practicable, designed to benefit the particular passengers who have lost out because of the failure in question.
- that there is effective passenger input, including consultation with Transport Focus, about the package of remedies to be offered.
- that there are mechanisms to spot emerging perverse behaviours (that is, a culture of "failure isn't a big problem, because we'll get the fine money to spend on something else").

Informing Control Period 7

Finally, Transport Focus wishes to reiterate previous advice to ORR that it should set out early in Control Period 6 what it expects in terms of passenger and stakeholder engagement when each Route/the System Operator's formulates its Strategic Business Plan for Control Period 7. Arrangements this time were much better than for Control Period 5, however broadly speaking they were nearer to briefing passengers and stakeholders on a largely settled plan – rather than building that plan having first engaged effectively with passengers and stakeholders. Transport Focus wishes to see the latter approach adopted explicitly for the Periodic Review in 2023.

Yours sincerely

Guy Dangerfield
Head of Strategy

ORR's 'Holding Network Rail to Account' policy for CP6

A consultation on a new policy for holding Network Rail to Account: pro forma

This pro forma is available to those that wish to use it to respond to our ORR's 'Holding Network Rail to Account' policy for CP6' consultation. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Please send your response to pr18@orr.gsi.gov.uk by **25 January 2019**.

Full name*	
Job title*	
Organisation	Transport for Greater Manchester
Email*	

*This information will not be published on our website.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 1: Introduction)

Q1. Do you agree with our proposal to create a new, standalone policy for holding Network Rail to account, replacing the existing monitoring and economic enforcement policy for Network Rail?

TfGM welcome the review into how ORR holds Network Rail to account in CP6. We specifically acknowledge the recognition that changes to Network Rail's business in recent years, most notably its reclassification as a public body, has changed the effectiveness of its incentive mechanisms. We absolutely agree that lessons should be learnt from CP5 and also with the need for Network Rail to 'own' and deliver its plans. The start of the Control Period should be regarded as an opportunity to assess where Network Rail need to improve and the policy document must effectively hold Network Rail against its deliverables across CP6.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 2: Our aim and approach)

Q2. Do you agree with the policy aims and approach, and is there anything else we should set out in the policy to help meet these objectives?

In general, we agree with the policy aims and approach set out in the policy. We would, in fact, strongly encourage you to broaden the approach to one which seeks to tackle the lack of trust in the rail industry to deliver for its passengers and funders. TfGM's experience of working with Network Rail across CP5 has been one where underlying cultural issues, such as a lack of urgency, flexibility, customer focus and transparency of internal process has prevented effective collaborative working. Overall, ORR would succeed if it can effectively incentivise Network Rail to focus on the end user (rather than processes) and rebuild trust in the industry. Indeed this was one of the key recommendations of the Glaister Review.

Stakeholder

The principle of competitiveness amongst routes is welcomed, as is the use of reputational gain as a significant lever for improvements. We would suggest that Network Rail or ORR do an annual stakeholder survey similar to that which train operators (Northern and TPE are good examples) are required to do and that the results of these are published overall and by route.

Information and communication

Network Rail holds a key function in providing information and communication to customers and the wider rail industry. This was found to be inadequate following the May 18 timetable change, and recent experiences during disruption in Greater Manchester indicate that little progress has been made. Can ORR provide a more robust monitoring mechanism to incentivise improvements in this area?

Behavioural change

As mentioned earlier, ORR should seek to tackle some of Network Rail's more obstructive organisational behaviours. There are pockets of best practice, and a great example of the opposite, using competition between the routes should help drive a culture of customer service and actions which strive for a positive reputational outcome. This might require an approach which does not rely on embedded processes, and the existing monitor and punish methods, instead a more continuous dialogue to raise concerns should be adopted.

Q3. What are your views on our proposals for routine monitoring and assessment, specifically:

- **Monitoring and assessing Network Rail's performance;**
- **Monitoring and assessing the strength of route and System Operator-level accountability;**
- **our approach to risk-based and targeted monitoring; and**
- **the aims of our public reporting?**

Monitoring and assessing Network Rail's performance

Performance remains the main concern of rail passengers. This needs to be reflected in how Network Rail are held to account and we welcome the introduction of customer agreed targets, the importance given to performance in scorecards and the move to right time railway in CP6. We also welcome the clarity that a minimum threshold to performance will add to help define what performance levels ORR consider unacceptable and the consequences if these are breached. These measures should help make Network Rail's accountability clearer and bring it closer to its passengers.

We believe further moves to a customer measure could be developed. This could look something like delay minutes per passenger, or similar. We recognise this would require considerable industry buy-in, but we understand certain TOCs are already exploring this and would be keen. We would really like to see the ORR assist in this important change in industry mindset to help ensure focus on Network Rail's performance is placed where it will benefit passengers the most.

Asset condition (3.4)

The document states that stakeholders 'may not be well placed or focused on challenging Network Rail's performance'. However, this is an area TfGM have particular concerns about and when concerns are raised directly with Network Rail, they can be met with unsatisfactory responses. In Greater Manchester, we feel that Network Rail are underinvesting in their assets and problems are being stored up for the future. As an example, stations have suffered from decades of underinvestment and wholesale line renewals are often pushed back.

Route and System Operator

We welcome the concept of ORR reviewing the strength of route and SO level accountability. Specifically on the box referring to 'checking for agreed targets and commitment to resolving issues' we need to get to a place where NR are acting as one body, especially when resolving issues.

Blake-Johnson (Jones) Review

The findings of the Blake-Johnson (Jones) Review are due to publication in February 2019. We ask that ORR considers its recommendations, and incorporates these, where possible, in its route based monitoring approach.

The themes emerging from this review are of a need for transparency, clear governance and decision making, and a better link between Network Rail's, responsibilities, accountabilities and

delivery and those of the Northern and TransPennine Express franchises. We would also like to see ORR's governance arrangements accommodating/integrated with key boards in the North such as The North of England Programme Board and the Route Supervisory Boards. We feel ORR has an active part to play in these boards and the workstreams they discuss and oversee to ensure improved integration between Network Rail, its customers and its stakeholders.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 4: Investigation and early resolution)

Q4. What are your views on our proposed approach, specifically:

- **the factors we will consider when assessing concerns;**

- **the actions we may take (such as using ORR hearings and requiring improvement plans); and**

- **communicating our investigations publicly?**

We welcome the move towards a more proactive approach where ORR plan to intervene before an obligation has been missed, rather than reacting where issues emerge.

It would be optimal if this went further, with ORR in dialogue with Network Rail about risks as well as issues and auditing, especially for those risks which result in poor customer or stakeholder outcomes. A move to a stakeholder relationship where Network Rail is encouraged to discuss potential issues early, instead of a punitive regime that examines what they have done wrong and awarding the appropriate punishment, would significantly aid the culture shift required for Network Rail to become more proactive and customer focused.

To further look at this process ORR should look at outcomes and methods to encourage the behaviour and outcomes needed from Network Rail more proactivity, where possible. Network Rail needs to reward the behaviours from its own employees which enable this, such as proactivity, collaborative customer service culture, open attitude, and new ideas.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 5: Enforcement)

Q5. What are your views on our proposed approach to enforcement, specifically:

- **the use of enforcement orders;**

- **the use of financial penalties; and**

- **the introduction of regulatory enforcement penalties?**

TfGM are generally supportive of these measures as a backstop for unacceptable performance. We welcome the introduction of the concept of ORR hearings to assist in the transparent management of Network Rail enforcement issues. As mentioned previously, we would, in addition, encourage less formal methods of intervening earlier, before issues emerge. A potential forum could be Route Supervisory Boards (with routine ORR attendance) where relevant route based issues are discussed.

ORR's new policy – 'Holding Network Rail to Account' (Penalties statement - Annex B)

Q6. What are your views on the penalties statement, in particular, the factors we should consider in deciding whether to impose a (financial) penalty, and the decision on the size of any (financial) penalty?

TfGM support the enforcement at a route level in line with the devolution of the NR monitoring structure. We also welcome the enforcement and individual accountability by lowering in line with management bonuses, but note that ORR cannot mandate how this is used.

TfGM would be very keen to find a mechanism where penalties could be used to compensate the very passengers who were inconvenienced by the failure. This is at the heart of the rail industry understanding who their customers are and being accountable to them, and needs to be seriously explored as part of ORR's considerations when considering penalties for Network Rail.

ORR's new policy – 'Holding Network Rail to Account'

Q7. Do you have any other comments or views on ORR's new policy?

Currently there is a significant gap between what train operators and Network Rail are obligated to deliver. It is notable that TOC Franchise Commitments are not backed up by like for like contracts from Network Rail. This would not be acceptable in any other industry/ supplier situation. For example, the PPM requirements in the Northern and TPE contracts are not met by the commitments in the NR business plan. On a more detailed level there are other examples of TOC commitments where they need to work with NR to achieve them, but neither the TOCs nor the Franchise Managers can directly intervene, with significant and adverse passenger outcomes. Whilst NR are happy to engage with stakeholders they are always clear that they are accountable to no one but ORR. Issues need to be significant before a stakeholder would ask ORR to intervene, so there are many more minor items going undetected which are delaying real benefits to passengers. TfGM are keen to identify a functional mechanism to identify these gaps and develop a cross-industry resolution which holds Network Rail accountable to their deliverables in appropriate timescales.

ORR's 'Holding Network Rail to Account' policy for CP6

A consultation on a new policy for holding Network Rail to Account: pro forma

This pro forma is available to those that wish to use it to respond to our ORR's 'Holding Network Rail to Account' policy for CP6' consultation. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Please send your response to pr18@orr.gsi.gov.uk by **25 January 2019**.

Full name*	
Job title*	
Organisation	Transport for London
Email*	

*This information will not be published on our website.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 1: Introduction)

Q1. Do you agree with our proposal to create a new, standalone policy for holding Network Rail to account, replacing the existing monitoring and economic enforcement policy for Network Rail?

TfL agrees that a new policy that takes into account the changes to Network Rail's business in recent years, as well as the need for Network Rail to learn lessons from the previous Control Period, is required for CP6.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 2: Our aim and approach)

Q2. Do you agree with the policy aims and approach, and is there anything else we should set out in the policy to help meet these objectives?

TfL agrees with ORR's policy aims and approach, and welcomes the emphasis on reinforcing the relationships between Network Rail and its customers such as TfL. Our services fall within the scope of many Network Rail routes and therefore we are keen on seeing an improvement in how Network Rail engages with us in order to align their priorities with ours as set out in our response to the consultation on quality of Network Rail's stakeholder engagement.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 3: Routine monitoring and assessment)

Q3. What are your views on our proposals for routine monitoring and assessment, specifically:

- **Monitoring and assessing Network Rail's performance;**
- **Monitoring and assessing the strength of route and System Operator-level accountability;**
- **our approach to risk-based and targeted monitoring; and**
- **the aims of our public reporting?**

In addition to ORR's proposal, TfL believes the new policy should ensure that Network Rail is placing the passenger at the centre of its decision making process as it often seems to be more focused on the mechanics of operations, forgetting the requirements of the end user. It should also take into account the needs of all specifiers and funders including devolved authorities like TfL.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 4: Investigation and early resolution)

Q4. What are your views on our proposed approach, specifically:

- **the factors we will consider when assessing concerns;**

- **the actions we may take (such as using ORR hearings and requiring improvement**

plans); and

- **communicating our investigations publicly?**

We agree with ORR's proposals and have no further views to offer.

ORR's new policy – 'Holding Network Rail to Account' (Chapter 5: Enforcement)

Q5. What are your views on our proposed approach to enforcement, specifically:

- **the use of enforcement orders;**

- **the use of financial penalties; and**

- **the introduction of regulatory enforcement penalties?**

We agree with ORR's proposals and have no further views to offer.

ORR's new policy – 'Holding Network Rail to Account' (Penalties statement - Annex B)

Q6. What are your views on the penalties statement, in particular, the factors we should consider in deciding whether to impose a (financial) penalty, and the decision on the size of any (financial) penalty?

TfL understands the logic of determining the size of the penalty based on the bonuses paid to the senior management team, although this does limit their size and potential effectiveness. This will depend on how the bonuses compare to the base salaries of the senior management teams. The effectiveness of the approach proposed should be kept under review and changed if necessary. Penalties should not just be viewed as coming straight out of the OMR budget; rather Network Rail should be expected to absorb them and continue to deliver against their agreed targets to ensure their approach to managing the network is conducted in a disciplined manner.

ORR's new policy – 'Holding Network Rail to Account'

Q7. Do you have any other comments or views on ORR's new policy?
We have no further comments to offer.

Thank you for taking the time to respond.

Graham Richards
Director
Railway Planning & Performance
Office of Rail & Road

By e-mail:
Pr18@orr.gov.uk

Our ref:

A23303479

Date:
31 January 2019

Dear Graham

Consultation on holding Network Rail to account in Rail Control Period 6 (CP6)

Thank you for the opportunity to respond to the ORR's consultation on a new regulatory policy for holding Network Rail (NR) to account for the delivery of NR's commitments in the Final Determination and in NR's network licence. During this Periodic Review we have reflected significantly on this particular issue and provided comments as part of earlier PR18 consultation responses. This letter should be read in conjunction with these previous responses and specifically Transport Scotland's response of September 2017 to your consultation on the Overall Regulatory Framework for Regulating Network Rail.

The key themes we have already articulated remain relevant as we approach CP6 and we share your policy aims on effective incentives, clear lines of accountability and transparency, although we are concerned that these principles are not fully embedded in the ORR's Final Determination. We agree that regulation should be risk-based, targeted, proportionate and transparent and we look to the ORR to use its experience to highlight where improvements can be made to help regulation become a more effective tool. The key challenge that the ORR must address is how things will be better in CP6.

We are broadly supportive of most of the regulatory policy aims for holding NR to account set out in the consultation and consultation letter. We agree that the most effective regulatory approach is to work in close partnership with NR when developing plans, to resolve any emerging difficulties at the very earliest stages to minimise the need to escalate to investigation and where necessary take enforcement action. In doing so, the ORR must have full regard to the requirements of the Scottish Ministers as expressed in the HLOS and in the Statutory Guidance to the ORR.

We appreciate the level of work undertaken to encourage stronger and more effective engagement between NR and its customers and stakeholders and look to the ORR to ensure that this is followed through to the delivery of outcomes. We continue to have concerns regarding the role of NR's Systems Operator function which have been well documented to the ORR without resolution, and I shall not repeat these here.

Whilst we support proposals to enhance the responsiveness of the NR route to its customers and to facilitate and encourage improved collaboration we are concerned about placing an over-reliance on scorecards especially the proposed use of benchmarking comparative measures on route scorecards, their purpose and actual value and the potential for any perverse incentives or unintended consequences. We are also concerned with repeated references and an over-reliance in the consultation and new policy to 'customers and other stakeholders holding NR routes and the system operator to account to address concerns'. Whilst improved collaboration is important, holding NR to account is for the ORR to lead on, and not other customers and stakeholders.

In Scotland we welcome the innovative approach of the HLOS Tracker as a be-spoke tool for monitoring the delivery of key outcomes and are pleased with the evident strong partnership working both in developing the tool and the elements it is tracking.

We strongly support the proposed potential direct linkages between performance and the NR incentives scheme. Incentivising NR staff, in particular management, through financial provisions will undoubtedly have a bearing on performance. Any such regulatory provisions should operate at a Scotland Route level, including those central functions which support the route. It is our view that the entire principle of the current performance related pay within NR as a public sector body is an area requiring re-consideration, but appreciate that this is not within the current remit of the ORR.

In conclusion we support strengthening the regulatory tools/measures available to the ORR to hold NR to account. We would highlight that these tools/measures need to be applied by the ORR at the correct stage with swift and decisive action without an over-reliance on benchmarking between routes or expecting others to properly hold NR to account. I am content for this response to be published.

Kind regards,

Fiona Hesling

Fiona Hesling
Head of Rail Planning

www.transport.gov.scot

Scottish Government
Riaghaltas na h-Alba
gov.scot

West Midlands Railway: The Grand Rail Collaboration
Creating an Exemplar Partnership between Track, Train and Local Government

January 2019

Context

With a population greater than that of Scotland, the West Midlands is the largest city region economy outside of the capital. In railway terms, the West Midlands is a complex multi-operator environment located at the crossroads of the national network, whilst in the Cross City Line it boasts the busiest rail route outside of the South East. Historically, however, the West Midlands has suffered from being situated on a loop off the (inevitably) higher profile WCML. It has always been thus. As such, it has seldom benefited from the clear focus that it arguably deserves, and there is a perception that when it does it distracts from the WCML.

The context is now different, however. Rail is now, for the first time in history, the dominant mode for Birmingham city centre commuting, and critical to the region's economy. The region also has an ambitious Mayor, and will host the Commonwealth Games in 2022. All this means that there is now a unique opportunity to try something radical and different for the region that brings both track and train together with local government in a *Grand Rail Collaboration* to deliver for passengers in a way that has not been possible before.

The Grand Rail Collaboration Approach

The Rail Review that is currently underway combined with the arrival of a new Chief Executive at Network Rail provides an ideal opportunity to attempt something bold like a Grand Rail Collaboration (GRC). At its very core this involves creating a governance structure that aligns rail industry geographies and incentives into a cohesive form in order to engender a greater sense of collegiate responsibility. Those rail industry geographies would match the local authority structures for the West Midlands "travel to work" area, already established over recent years through the development of the West Midlands Rail Executive.

As an accident of franchising five franchises coalesce on the region, and it is inevitable that in such a complex multi-operator environment there can be a lack of a single guiding mind. This issue rarely manifests itself when the industry is working well, but as soon as the network is placed under strain this vacuum of accountability becomes ever more conspicuous. The GRC has the potential to fill this void, and become a virtual body with collegiate responsibility for delivering the railway for customers.

Attempts to align track and train have made previously, with varying degrees of success. In some cases it has not been possible to achieve a unifying sense of identity and purpose between the teams running track and train because the incentives that influence how each party behaves have not been aligned. In some cases adding a layer of commercial complexity to an already complicated industry commercial structure has defeated the clarity of purpose originally intended.

That previous deep alliances have failed is not wholly surprising given that the industry has been designed around the principle of competition. Addressing and overcoming the challenges facing the West Midlands will require a change of culture to one based on shared rather than mutually exclusive behaviours.

Consequently, the GRC does not seek to align the commercial considerations of each partner, but instead strives to harmonise the outcomes that each are seeking. These shared

outcomes would include amongst others creating a more accessible and intuitive network for customers, increased punctuality and reliability, safer trains and stations, greater community participation, more effective and efficient operations and maintenance, and a smarter approach to scheme delivery. Value will also be added through the local authority involvement, ensuring that value for money public transport solutions can be considered in the round, and not just through heavy rail.

The GRC will also take collective responsibility for strategic planning for the region, speaking as one voice to plan and develop the rail network in the region to meet future economic and societal needs.

Putting the Grand Rail Collaboration into Action

The concept outlined in this document will require a concerted and determined effort on the part of each partner to the GRC. Making any change in an industry as complex as rail will require careful planning and execution. As such, an Implementation Working Group (IWG) is to be established consisting initially of representatives from Network Rail, WMT and WMRE, but to be added to quickly as work streams and thinking develops.

Inaugural members of the IWG are:

- Tina Purkis, Network Rail
- Sarah Higgins, WMT
- Tom Painter, WMRE

Future representation on the group is likely to be drawn from Transport Focus, other TOCs/FOCs, DfT, ORR etc.

The role of the IWG is to take the outline concept and to turn it into a deliverable reality that leads to the creation of a virtual vertically integrated rail delivery and planning body for the region, ready to deliver tangible and demonstrable benefits for passengers and citizens of the West Midlands.

A steering group of LNW RMD, WMT MD and WMRE Executive Director will guide and oversee the work of the IWG. The steering group will meet with the IWG each period during development, mobilisation and transition.

Programme

The creation of the GRC is expected to be announced early in the New Year as part of Andrew Haines' 100 Day Plan. The GRC is to be launched at the commencement of CP6 in April 2019.

IWG should develop a clear programme of activities to deliver the required tasks and organisational changes required to deliver the GRC.

Structure and Governance

The GRC will be led by a Strategic Board with an independent chair (Andy Street for the first 12 months). Beyond that, all governance arrangements are still to be determined.

Wherever possible existing meetings/structures should be adapted to accommodate the GRC rather than inventing new. This will not always be feasible.

The Grand Rail Collaboration has three key areas of focus:

Focus Area	Key Components
Customer Delivery	**Single Network Vision** Customer Experience Brand and identity Cornershop Culture **Operations and maintenance** Delivering a dependable railway Cornershop Culture
Strategic Planning	**Meeting future needs** Network capacity Timetable planning Future network development Making the case for investment
People and Change	**Culture and Behaviours** Mechanism to secure bottom up involvement Organisational change Governance Staff engagement, rewards and incentives Brand and identity Approach to strategic communications – Establish how we get the message about the GRC out to staff, industry, passengers, public

The Key Requirements for the Grand Rail Collaboration are:

- The creation of a Strategic Board, with clear ToR

- A West Midlands O&M business unit within LNW led by an Area Director. To include:
  - Boundaries nominally at Leamington, Rugby, Worcester and Stafford (whilst being pragmatic to ensure unnecessary inefficiencies are avoided)
  - The separation of Banbury DU from Saltley to allow the later to focus solely on the West Midlands
  - The transfer of New Street station to the Area Director, West Midlands

- The development of governance structures for each of the key focus areas outlined in the table above that:
  - Encourage buy-in and ownership at all levels – focussed on delivering shared outcomes
  - Take full advantage of the collaborative intent of the GRC
  - Where possible adapt existing arrangements
  - Are explicit that they are part of the GRC and are branded as such
  - Include clear ToR

- The development of a formal alliance agreement or similar

- The development and alignment of key incentives (existing such as performance, asset maintenance, customer delivery, value for money delivery of committed enhancements, and new, such as customer advocacy)

- The development of an approach to staff engagement that seeks to allow all GRC members of staff to share in the success of the collaborative partnership

- Consider how the existing WMT/Network Rail alliance arrangement will need to adapt to take account of the GRC (focus solely on West Coast?)

There is a need to find balance in activities such as possession planning that is suitable to the requirements of long distance, local and freight users of the GRC network, and to balance needs of local people making local journeys against local people making long distance journeys that take them out of the GRC geography. Whilst this might seem obvious, with protection already provided by existing industry structures, such concerns are likely to be voiced by longer-distance operators.

The list above is far from exhaustive. The IWG will inevitably identify a myriad of other matters that will require attention if that ambition of the GRC is to be fully realised.

Scope of the Grand Rail Collaboration

Areas of activity for the GRC to include (but not limited to):

- The development of a clear sense of identity for the GRC and the rail network in the region that all members can feel part of (recognising that for some TOCs this will be more difficult to achieve) based on the West Midlands Railway identity

- Operations and maintenance delivery

- The development of a shared outcomes scorecard

- New fleet introduction

- West Midlands Stations Alliance

- Timetable change readiness

- The management of New Street station

- Introduction of new services and new stations

- Development of new rolling stock concepts

- Strategic planning for the region e.g. own the long term rail investment strategy

- Act as a test bed for new approaches to project delivery/governance

- Rail programme delivery

- Access and inclusion strategy

- Opportunities for employees to share in the success of the GRC

- 'Cornershop culture' of performance improvement and customer delivery – recreating local rail industry communities of train service delivery across track and train

- Implementation of the West Midlands Single Network Vision

- Encourage maintenance of all railway assets - as graffiti and uncontrolled vegetation creates the impression that the railway is poorly maintained, even if it is not

- Land use planning – being radical with space - e.g. redeveloping car parks as residential accommodation with hypothecation of gains to reinvest in the network, reduce congestion, bring people to rail etc.

- Create shared mechanisms for customer feedback

- Transport integration

The Grand Rail Collaboration Membership

The following organisations are anticipated to become members of GRC to varying degrees:

- Network Rail LNW
- West Midlands Trains
- Virgin Trains
- Chiltern Railways
- Cross Country Trains
- FOC representative
- Transport Focus
- West Midlands Rail Executive
- DfT
- ORR

A stakeholder mapping exercise will be required to ensure that all organisations who will be impacted by the creation of the GRC are engaged with.

Risks Management

The IWG should develop a master risk register. Some risks that will need to be considered and mitigated where appropriate include:

- Unable to gain DfT support to amend TOC Franchise Agreements
- Unable to gain ORR support to amend regulatory outputs for LNW
- Technical challenges to aligning Network Rail's operations and maintenance geographies lead to a dilution of GRC potential benefits
- Costs associated with setting up and running the GRC; neither TOCs nor NR will necessarily have budgeted for this
- Lack of appetite amongst TOCs to participate, especially those more peripheral to the geography
- Has never been done before, which means there are a number of unknowns
- Pace and willingness to change at senior level not being replicated as you get deeper into each of the partner organisations
- Trade Union policy/activity

This list is not intended to be in any way exhaustive.

Martin Frobisher, Managing Director, Network Rail LNW

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