

29 September 2011

Dear colleague

Industry Reform Project

Purpose

1. The purpose of this letter is to:
 - (a) explain to you a project I have been asked to lead to improve and speed up industry contractual processes in response to the findings and recommendations of the *"Report of the Rail Value for Money"* (the VFM Study); and
 - (b) seek from you on an 'informal' basis any ideas and suggestions for improving and changing the current processes, particularly in terms of removing anything that you think is unnecessary.

Background

2. As part of ORR's consideration of the recommendations made by the VFM Study, I have been asked to project manage a workstream looking at streamlining access contractual change processes and associated working practices¹. Of the main areas of activity identified in the VFM Study, the following are particularly relevant:

- (a) publishing defined timescales for reaching decisions following consultations and appeals, which cover the entire time period, including the time taken to obtain information;
- (b) reviewing industry change processes to examine whether informal early consultation can be required so that industry parties have early sight of potential changes when they might be better able to influence outcomes;

¹ See Chapter 6.36 (page 86) of the VFM Study (available at <http://www.rail-reg.gov.uk/upload/pdf/rail-vfm-detailed-report-may11.pdf>) which says that ORR should identify and develop options for streamlining industry contractual change and consultation processes.

- (c) where feasible, simplifying change processes so that they use common terminology and are more readily understood by industry parties;
- (d) reviewing whether some simple changes could go through a less complex process, and, where more complex, changes should proceed to a published timescale; and
- (e) building on the proposed improvements to the procedure for making changes at stations by considering whether to apply the same principles to other areas such as network and vehicle change. This could encompass separating the change and compensation processes so that negotiations over compensation do not hold back changes that are agreed to be necessary.

3. Part of my role will be to ensure that I co-ordinate with any workstreams the industry is involved in, including the work of the Rail Delivery Group, so that we do not duplicate effort and cause the industry extra work. We do not want to consult on the same thing twice or worse consult on a policy proposal that cuts across another one. It is particularly important that we do support what that the industry is doing through the auspices of the Rail Delivery Group (RDG). One of the RDG's stated priorities is to look at revised forms of industry commercial agreements that would remove barriers to efficiency. Essentially, RDG will be looking across the whole range of commercial arrangements (including the associated contractual ones) to see how they should be changed to support rather than prevent closer working between industry parties.

4. With this in mind I have discussed my project with Graham Smith, Secretary to RDG and will continue to liaise closely with him as RDG develops its proposals. In the meantime, I believe that there are a number of things ORR can and should do in the short term to help the industry become more efficient.

Aims of this workstream

5. As you know, our access policies have been key to ensuring an appropriate allocation of risk, preserving the commercial balance between the parties that underlie the current contractual arrangements, setting out incentives for efficiency and making clear provision for what happens when things go wrong. Whilst we certainly do not want to upset this commercial balance and increase the risk of things going wrong, given the changes that have taken place in the railway industry over recent years, culminating in the findings and recommendations of the VFM Study, we agree that there is a good case for revisiting the current arrangements to see what changes could be made to the contractual arrangements that ensure the continued fair allocation of capacity, but:

- (a) generally improve the efficiency and effectiveness of the processes by removing unnecessary requirements, reducing the regulatory burden/costs and focusing effort where it generates most value;
- (b) ensure that the terms of the relationship and the associated processes incentivise and facilitate both a public interest outcome to the benefit of all users of the railway as well as the taxpayer and a sound commercial balance between the parties (particularly the smaller players);
- (c) encourage the industry to take even greater responsibility for the terms of the contracts and of the associated industry contractual codes;
- (d) reduce timescales and provide clear deadlines and milestones; and
- (e) ensure ORR's own role remains focused and effective and adds value.

Proposed areas of activity and issues

6. The main areas of activity and issues identified so far for review are:
- (a) a review of our existing proportionate approach with a view to making significant reductions to the areas we look at in considering access applications;
 - (b) extending the scope of existing General Approvals, for example to cover all agreed applications, so we only get involved in disputed cases or where representations cannot be resolved and only then when the industry processes have been exhausted;
 - (c) whether any further improvements and simplification can be made to the Network Code, including:
 - (i) Part C (Modifications) – in respect of which we recently started a review to greatly simplify and speed up the process;
 - (ii) Part F (Vehicle Change); and
 - (iii) Part G (Network Change);
 - (d) the interaction between various industry (access related) processes to see what hoops and obstacles operators have to go through to achieve their objective and whether they can become more aligned and more efficient. This will include looking at the contractual arrangements and the alignment of the track access and timetabling processes;

- (e) the structure and specification of access rights, to see they are fair and proportionate, stop the use of 'blocking rights' and allow greater flexibility for Network Rail to develop timetables and operators to make changes to their services; and
- (f) ORR's own internal administrative arrangements, including introduction of clearer and firmer timescales/deadlines allied to sound project management, revised guidance on our policy on publication of information, more co-ordinated access consultations and a review/update of our C&Ps and other published policies and guidance.

Consideration

7. I should stress that these are only ideas at this stage and that many of them require more detailed thinking – I will be developing them and writing them up over the course of the next few weeks leading to an industry wide consultation document towards the end of the year. In the meantime, to inform this process and the content of the consultation document I am looking to have a number of **'informal'** consultations² with those in the industry who are closely involved with the contractual arrangements both to tap into their knowledge and experience and to understand their concerns. In particular, **I would welcome any ideas and suggestions you may have either:**

- (a) **on the areas already identified above:** or
- (b) **on any other aspect of the access contractual regime where you think change or improvement can be made.**

In thinking about these issues I want you be radical and start from the position of there being no contractual access regime in place and consider what arrangements the industry actually needs. What would be the most efficient and effective process to allocate capacity and train paths? Are track access contracts, particularly in relation to access rights, in their current highly detailed and specified form actually required? Are all the protections and processes necessary?

8. It would be helpful if I could have these by **Friday, 28 October** either in writing or orally. If you would prefer the latter please let my colleague Paul Stone

² Chatham House Rule will apply. At this stage, we want to encourage openness and the sharing of information, concerns and ideas. Any suggestions will not be accredited to either individuals or their affiliations/organisations. More formal representations can be made during the formal consultation process.

(paul.stone@orr.gsi.gov.uk on 0207 282 0112) know so that he can schedule a convenient time – we are happy to come to you.

9. In carrying out this exercise I will be working closely with our lawyers to ensure that we are not stepping away from our statutory requirements, both domestic and European and assessing the risks inherent in drawing back – as colleagues will appreciate, a less than efficient use of capacity could lead to users being disadvantaged and could leave us open to legal challenge. However, we do want to understand what isn't working and what can be improved.

Next steps

10. I am tasked with producing a draft consultation document in the early part of November 2011 for publication shortly thereafter. Following a 12 week consultation, we will produce a comprehensive action plan and programme of work to address effectively the issues identified in the VFM Study, setting out clearly the measures to be implemented with appropriate milestones and ownership, with the ultimate outcome being to ensure a legal and contractual framework that:

- (a) is comprehensive, but remains fair and transparent for all stakeholders;
- (b) provides for decisions to be made more quickly and makes change easier; and
- (c) engenders a more partnership and collaborative based approach to working relationships.

11. Throughout this process, we will maintain close contact with Graham Smith to whom I am copying this letter.

12. If anyone has any questions or issues arising from this letter, please contact Paul Stone in the first instance.

Yours sincerely



David Robertson