

**John Larkinson**  
**Chief Executive**



Dyan Crowther  
Chief Executive  
HS1 Limited  
5th Floor, Kings Place  
90 York Way  
London, N1 9AG

8 April 2021

Dear Dyan,

## **Holding HS1 Ltd to account in CP3**

In our PR19 Final Determination<sup>1</sup>, we said that we would publish in early 2020 our proposals for monitoring and reporting during control period 3 (CP3). However, we quickly changed our plans in light of the impact the pandemic was having on your business and that of the train operators on the route. Instead, I wrote to you on 5 June 2020<sup>2</sup>, clarifying ORR's interim approach to holding High Speed 1 Ltd (HS1 Ltd) to account during the pandemic.

Since then we have worked closely with your teams on your plans to recover from the impact of a dramatic decline in passenger usage. As well as this critical work, we have been able to discuss with you and other stakeholders our approach to holding HS1 Ltd to account in CP3. I recognise that the primary focus for HS1 Ltd and its stakeholders is to recover from the impacts of the pandemic but it is necessary to have a transparent accountability framework. From December 2020 to February 2021, we undertook a proportionate consultation on a series of principles and I am writing to set out our conclusions.

We note stakeholders' support for our approach to monitoring and reporting on HS1 Ltd and Network Rail (High Speed) Ltd's (NR(HS)) performance, with increased focus on the six areas identified in our Final Determination and using the principles of regulatory best practice. We also welcome commitments made by HS1 Ltd and NR(HS) to providing the required information.

There are various ways for HS1 Ltd to demonstrate that it is meeting its General Duty, and wherever possible the information that it already produces to operate its business should be used to meet these requirements. However, there may be

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<sup>1</sup> 2019 periodic review of HS1 Ltd (PR19): Final determination – decision document, January 2020, available [here](#).

<sup>2</sup> Holding High Speed 1 Ltd to account during the coronavirus pandemic, June 2020, available [here](#).

instances where we would require further analysis, and would expect to be able to agree a method for demonstrating compliance between us, including the use of benchmarks and comparators as necessary. We are committed to continuing to work with stakeholders to ensure that these methods are appropriate and proportionate.

The principles of how we will hold HS1 Ltd to account in CP3 are set out in the annex to this letter. This includes how we monitor performance to identify if we need to take action, and sets out the actions we may take to secure improvement, in advance of using our formal enforcement powers.

We set out ORR's approach to the regulation of HS1 Ltd in a regulatory statement<sup>3</sup>, which we published in 2009. This letter and annex provides further details about how we will apply this framework in practice.

This letter and its annex will be published on our website, alongside all the consultation responses that we received from affected stakeholders.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Larkinson', with a long horizontal stroke extending to the right.

**John Larkinson**  
Chief Executive

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<sup>3</sup> ORR's Regulatory Statement 2009 is available [here](#).

## **Annex – Holding HS1 Ltd to account in CP3**

### **Aim and objective**

We regulate HS1 Ltd in accordance with the terms of the Concession Agreement dated 14 August 2009 between HS1 Ltd and the Secretary of State (the Concession Agreement). In addition to our role under the Concession Agreement, we have responsibilities under The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the Regulations).

Our approach to holding HS1 Ltd to account in CP3 aims to strengthen or create incentives to:

- identify opportunities for innovation or research and development which support HS1 Ltd's achievement of best practice asset stewardship, in line with its General Duty under the Concession Agreement;
- encourage effective, transparent, inclusive and well-governed stakeholder engagement by HS1 Ltd;
- take timely action to address poor train performance attributable to HS1 Ltd; and
- if necessary, take direct regulatory action to resolve concerns as early as possible to minimise the impact on operators, passengers and freight customers.

### **Approach**

Our approach to holding HS1 Ltd to account is informed by principles of regulatory best practice. In particular, our approach will be:

- Risk-based – this means that we will focus our resources where we consider the risks are greatest.
- Targeted – we will target our detailed monitoring and escalation activities at those areas where an issue, such as a potential non-compliance, has been identified and is material. This is with a view to reinforcing accountability and appropriate incentives on HS1 Ltd.
- Proportionate – so that any actions we take reflect the scale and nature of the problems we are seeking to address and the likely costs and benefits to different parties of taking action
- Transparent – so that we are clear with stakeholders about our view of HS1 Ltd's performance, we will state where we have any concerns and what action we are taking.
- Predictable – we will provide a stable and objective regulatory environment enabling affected stakeholders to understand our approach to making decisions.

We are taking a proportionate approach to monitoring the increased delivery challenge for HS1 Ltd from CP3 onwards, by making sure it is aligned with the incentives for HS1 Ltd that we set out in PR19. In our PR19 final determination, we stated that in response to this increased delivery challenge, we plan additional monitoring and reporting on:

- asset management capability;
- financial reporting, including the calculation of efficiency;
- measuring outperformance;

- use of risk and contingency provisions;
- investment decisions for renewals and R&D; and
- the delivery of efficiencies set out in its 5YAMS.

## **What we will publish**

The scope of our reporting will vary depending on the coverage, quality, accessibility and timeliness of HS1 Ltd's own reporting. Where it is strong, we have the scope to reduce our reporting and vice versa. As a minimum, we expect to always publish an annual report<sup>4</sup> of HS1 Ltd's performance.

## **Monitoring and assessment**

### ***Asset Stewardship***

We will assess HS1 Ltd's reporting using performance specification, maintenance undertaken and renewals as strong supporting data that it is meeting its duty. We will also need HS1 Ltd to demonstrate that it is taking a proactive approach in assuring operations, maintenance and renewals activities.

We also require HS1 Ltd to report on its R&D programme and against the recommendations we set out in our final determination, on how it can further improve its capability and effectiveness.

We expect HS1 Ltd to report information to us in line with the specification and frequency which has been agreed at a working level. These reporting requirements may be subject to change depending on current priorities and to ensure we are taking a proportionate approach.

### ***Financial performance and efficiency***

We will monitor HS1 Ltd's financial performance using a range of qualitative and quantitative information, from sources including the asset management annual statement (AMAS). We expect the AMAS to provide transparent narrative on:

- whether HS1 Ltd has achieved financial outperformance against forecasts for operating, maintenance and renewals spend, and the resultant payments due to suppliers and funders under its contractual obligations;
- cost efficiency: a comparison of expenditure on activities undertaken by HS1 Ltd (operations, maintenance, renewals and supporting functions) against the value of the outputs on a like-for-like basis over time;
- an assessment of how the cost efficiency compares to the targets set in the final determination, as well as contemporary indicators/benchmarks from within (and outside) the industry; and
- a quantitative and qualitative assessment of risks, both what they are and how funding has been used efficiently to meet the risks.

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<sup>4</sup> The 2019-20 Annual Report on HS1 Ltd's performance can be found [here](#).

We expect HS1 Ltd to provide the following information for our monitoring of the escrow account:

- timely and transparent information on its investment decisions during the control period for stakeholders; and
- analysis to show the investment decisions made over the year, that is, how it traded-off liquidity (access to funds) and returns.

### ***Train performance***

We will monitor HS1 Ltd against the minimum operational standards as set out in the Concession Agreement. In addition, we will continue to monitor HS1 Ltd's performance against its internal targets and publicly report on its performance. We will also identify indicators of improving or worsening trends in performance, and may request further information so we can understand the underlying causes of changes in performance.

### ***Risk-based approach***

The scope and extent of our routine monitoring may vary over time as different issues become more pressing for HS1 Ltd. We will make decisions on our approach to monitoring based on factors such as performance against commitments, ability of stakeholders to challenge and hold HS1 to account and the strength of HS1 Ltd's own governance and assurance arrangements.

### **Escalation**

If we identify areas for improvement or concern with HS1 Ltd's performance through our monitoring, we will use a staged escalation approach. The aim of this approach is resolve issues before they result in enforcement action under the Concession Agreement. However, if early resolution is not possible or if there is sufficient evidence that HS1 Ltd is not or is likely not to meet its obligations, we will consider taking enforcement action as set out in the Concession Agreement.

This section sets out the escalation stages we will consider if we identify an issue.

### ***Further information***

In order to investigate and resolve concerns as promptly as possible it is likely we will request further information from HS1 Ltd and stakeholders, where appropriate. Collecting this information is likely to be in addition to our regular monitoring requirements.

### ***HS1 Ltd-focussed action to resolve***

Upon identifying an issue and our expectations for resolution, we will set out and publish our concerns and the actions required to HS1 Ltd. This may provide HS1 Ltd the opportunity to de-escalate our concerns by achieving the desired outcomes quickly. However, we expect HS1 Ltd to act promptly to cascade the relevant actions to those responsible for delivery and ensure that relevant stakeholders are briefed and progress is reported back on.

### ***Public commentary and hearings***

The next stage of escalation is that we may decide that the results of our investigation can be published to provide public accountability of the issue. By

producing a commentary, and/or correspondence with HS1 Ltd, we plan to make any issues and necessary actions clear and transparent for those affected.

We may choose to hold a hearing between HS1 Ltd and stakeholder affected parties to gather evidence and explore the issues further to enable swift resolution where possible. Hearings will be 'on the record' and we expect to publish a written record of proceedings on our website (respecting commercial confidentiality).

### ***Requiring a formal improvement plan***

To resolve concerns in a reasonable timeframe, we may during or in conclusion to an investigation write to HS1 Ltd calling on it to establish a formal improvement plan. This is a further escalation, which recognises new processes are required to fill gaps. This approach may facilitate stronger stakeholder engagement and could help to address performance problems without the need for further escalation.

### ***Possible outcomes from progression through escalation stages***

1. Close down – deciding no further action is needed and reverting to routine monitoring.
2. Secure early action and monitor progress – HS1 Ltd provides evidence it is doing everything reasonably practicable to resolve and address the issue(s), but we require further work to be completed, for example through an improvement plan. This is then monitored based on our targeted and risk-based monitoring. The investigation could be restarted if additional and/or new concerns are raised.
3. Contravention or likely contravention of provisions within the Concession Agreement – we conclude there is a “case to answer” so issue a letter to HS1 Ltd to confirm this. This sets out the evidence and next steps in the escalation of the issue that is steps leading to enforcement. This provides HS1 Ltd an opportunity to formally respond to our findings, prior to ORR’s Board considering the matter.