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Office of Rail and
Road London

AVANTI
WEST COAST

FAO: PR23 Team

**Holding Network Rail to Account Policy for CP7 - First Trenitalia West Coast Rail
Limited Response**

Thank you for the opportunity to respond to ORR's updating of the "Holding Network Rail to
Account Policy" for CP7 on behalf of First Trenitalia West Coast Rail Limited (FTWCRL).
Having assessed the document, we would like to make the following comments:

It is helpful understand how ORR is planning to introduce new tiered outcomes framework for
CP7, with a set of headline success measures to publicly report against Network Rail's (NR)
performance.

Clearly as this framework develops, we would like to understand in more detail how NR will
ensure NR Route Performance across different disciplines is assessed with granularity, and
in a simplified way making it more straightforward to report, share and act on the challenges
identified. We also need to ensure as much as possible, incentives and approaches are
consistent and shared between NR and TOCs to encourage joint target setting, closer working
and reduce interfaces and complexity.

Paragraph 2.6
2.6 notes ORR's regulatory activity is focused at the at the regional level ('reflecting changes
in Network Rail's organisational structure made in 2019'). We would question whether this is
still appropriate, given greater subsequent devolution to the Routes. With operational,
infrastructure and sponsorship functions devolved into the Routes to a greater extent, with
Regions providing strategic oversight, we would challenge whether the focus should be with
those who own activities that more directly impact customers. This would also support more
direct incentives and challenges where relevant to decision makers at NR and promote more
competition between Routes rather than Regions.

Paragraph 2.11
2.11 Refers to ORR's Managing Change policy, requiring NR to report and potentially consult
ORR 'in relation to changes which may reasonably be expected to impact what Network Rail
should deliver in respect of its role in operating, maintaining and renewing the network'. As
part of holding NR to account, it would be useful to see how ORR applies this; for example,
we have not seen NR reporting/consulting on this prior to agreement of the BTPF change to

First
TRENITALIA

the timetable framework, or changes that have already been made to timetable production dates (e.g. bidding at D-34 vice D-40) not reflected in the Network Code.

<u>Paragraph 3.8</u>

3.8 refers to Performance against CP7 success measure baseline trajectories. Please can we be provided with more information as to what these will be, and how they are being calculated/agreed with key stakeholders? We would also like to understand in more detail, the action ORR would take if NR do not perform, quantitatively or qualitatively against 'supporting measures' or 'additional assurance' as well as top-tier 'success measures' used as headline indicators for holding NR to account.

<u>Paragraph 3.15</u>

3.15 notes ORR expects NR to work closely with train operators during CP7 to agree and maintain joint performance strategies and to share these to support our monitoring. Clearly we would support this, and incorporating learnings from the Summer 2022 Nichols Review commissioned by ORR into joint performance strategies between Operators and NR.

<u>Paragraph 3.26</u>

3.26 notes there will be a qualitative element to reviewing NR's performance. In light of this, we request that judgements and decisions on performance assessments of NR need to be more transparent, and where possible quantified to ensure a balanced appraisal of criteria and performance across different areas and Regions/Routes.

<u>Paragraph 3.37</u>

3.37 - ORR references reputational incentives for NR's management to reinforce positive performance. How does ORR plan to approach and apply this? We have not seen significant evidence of this driving change previously. As above, if this is pursued, it would be most effective at the Route rather than Regional level.

<u>Paragraph 4.15</u>

4.15 notes 'A formal investigation may follow informal investigation and attempts at early resolution' Please could ORR expand on the detail of the criteria that will be applied to determine in what circumstances this occurs.

<u>Figure 5.2</u>

Figure 5.2 shows how ORR may use enforcement orders, financial penalties or sanctions to hold NR to account based on performance. We would question whether these are strong enough to truly hold NR to account to drive performance improvement and behavioural change. The power of financial incentives/penalties on NR was diluted when NR was re-classified as a public sector body in September 2014 – this is even more relevant post Covid with the development of ERMA/NRC style arrangements driving closer working between NR, Operators and DfT. Reputational incentives are referred to, but the approach to these must be properly targeted at Route level. Collectively we need shared incentives between NR and Operators that are direct and strong enough to drive change.

<u>Paragraph 5.15</u>
As 5.15 sets out, particularly in the context of current industry funding and macro-economic challenges, to ensure we maximise safety and operational performance, we agree a financial penalty which reduces funds available for maintaining and operating the railway, must be a last resort. If financial approaches are adopted, we believe sanctions should be considered first.

In summary, we believe that financial penalties are not as effective as they have been historically, accountability needs to be by Route rather than by Region, ORR's assessments need to be quantified and transparent, and incentives need to be shared as much as possible between Network Rail and Operators.

We would be more than happy to engage further with ORR alongside NR as this policy is developed. Please let me know if you require anything further regarding this consultation.

Regards

[redacted]
Track Access Manager
Avanti West Coast

From:	[redacted]
Sent:	05 June 2023 12:47
To:	PR23 Programme
Cc:	[redacted]
Subject:	[EXTERNAL] FW: Consultation on updating the holding Network Rail to account policy for CP7

Good morning,

On behalf of Crosscountry (XCTL), I am pleased to offer the following feedback with thanks to colleagues for input.

XCTL is generally supportive of the tiered approach, and we note there are a number of live examples where ORR have stepped in to hold Network Rail to account. In terms of specific feedback:

- On page 6 (figure 2.1 – The three tiers) - within the routine monitoring and assessment we would like to see something which outlines the Performance strategy adherence and delivery. We are surprised it isn't referenced given that the ORR are very keen to have visibility of all industry strategies.
- On page 6 (figure 2.1 – The three tiers) - within the routine monitoring and assessment – consideration to be given on ORR attending route/regional Performance boards for those routes deemed to be underachieving. The ORR currently attend the Delay Attribution Board as silent observers.
- On page 17 (figure 4.1 – the investigation and early resolution phase) – we -would like to see speaking with affected TOC's as part of the gathering information – On page 19, section 4.9 it is referenced partially as it 'could approach affected passenger/freight operators for views', however we would prefer 'would invite affected passenger/freight operators for views'.
- Investigations – we would like to see a more formal process of informing affected TOC's of investigation outcomes. We could only see that any formal correspondence would be on the 'holding to account' section of the ORR website.

Kind regards

[redacted]

[redacted]
25 Cabot Square
London
E14 4QZ

Dear [redacted],

Thank you for the opportunity to provide views on the ORR's draft Holding Network Rail to Account policy.

Overall, DfT considers the approach in the document provides a framework to effectively hold Network Rail to account for delivering on its commitments. In doing so, the proposed approach offers flexibility to respond to emerging situations and deal with problems that may either arise rapidly or that develop over a longer timeframe. We strongly welcome the emphasis on early resolution to address issues as soon as possible and welcome the CP7 outcomes framework, centred on success and supporting measures. We also strongly support the focus in the proposed policy that the ORR's approach should encourage competitive benchmarking between regions, and promote good stakeholder engagement by Network Rail and collaborative working with the wider industry more generally; in this context, we agree with ORR's expectation that Network Rail works closely with train operators during CP7 to agree and maintain joint performance strategies, with these being used as part of the ORR's approach to monitoring.

It is vital that reasonable flexibility within this framework doesn't remove certainty for Government – and Network Rail's customers and stakeholder's more generally - on demonstrating whether Network Rail is delivering (or has delivered) on its commitments, thereby supporting strong accountability. In particular, we consider that it is important that there are effective change control arrangements in place and that we do not lose track of NR's progress on delivery of the objectives set out in the December 2022 High Level Output Specification. We would welcome clear reporting by Network Rail on this issue throughout the Control Period in so far as it relates to England and Wales, provided on a periodic basis to the UK Government.

It is clearly important that this framework is backed-up by clear, transparent, impactful and consistent reporting that meets the requirements of stakeholders. This includes effective public reporting of comparisons between regions, as well as clear, transparent performance information in relation to the System Operator and National Functions. This should clearly identify examples of good and poor performance, to support sharing of best practice and enable effective resolution – providing effective reputational incentives. We

also strong support the continued annual assessment on the quality of stakeholder engagement, supporting transparent, effective and collaborative working with stakeholders.

DfT welcomes further engagement on the holding to account policy as this work progresses through the Periodic Review process.

Yours sincerely,

[redacted]

mtr Elizabeth line | 🐦

[redacted]
Director Economics, Finance & Markets
Office of Rail and Road

8 June 2023

Dear [redacted]

<div align="center">

PR23 – Holding Network Rail to Account - consultation response

</div>

Thank you for inviting us to comment on this consultation. Our comments are below:-

- On page 8 of the presentation that you provided, it states that for each success measure in our outcomes framework we will set baseline trajectories in our determination (typically by *region* for each year of CP7). MTREL operates over two distinct Network Rail Routes (Anglia and Western) rather than across the whole Eastern Region and Western Region. We suggest that this level of scrutiny would not work for us and we should be looking at a route level performance trajectories, that reflect the high-frequency metro service that we operate.
- We are concerned that the removal of the scorecards as a way of measuring Network Rail performance is a retrograde step. Having scorecards that we agree with Network Rail enables us to include measures that are important to our business (for example a PPM target that is aligned with our Concession Agreement with Rail for London).
- There are also other measures that are important to us, for example lift reliability. A majority of our lifts and Anglia Route and Western Route are maintained by Network Rail. We would like to see measures included that will incentivise Network Rail to maintain lift reliability.
- We suggest that Improvement Notices and Remedial Plans, that hold Network Rail to account and take into consideration specific Train Operator Requirements, should form part of the ORR toolkit.

Yours sincerely

[redacted]
Head of Contract Management

MTR Corporation (Crossrail) Limited, trading as MTR Elizabeth line
63 St Mary Axe, London EC3A 8NH
mtrel.co.uk | Registered in England No. 08754715 | Subsidiary of MTR Corporation

Network Rail's response to ORR's consultation on ORR's draft policy for holding Network Rail to account for CP7

8th June 2023

Executive summary

Network Rail welcomes the opportunity to respond to Office of Rail and Road's (ORR) consultation on updating the 'Holding Network Rail to Account Policy' for CP7, published on 13 April 2023. Our views on the consultation are included in this response and we provide a summary of our key points here:

- The existing Holding to Account Policy has generally worked well in CP6. We are broadly supportive of the draft policy for CP7 and look forward to working with ORR to make arrangements to apply the policy in practice.
- It would be helpful to draw out how ORR's Holding to Account Policy relates to industry reform and for ORR to provide recognition that the policy may need to be adapted as more information becomes available.
- The relationship between economic and safety regulation is not sufficiently clear in ORR's draft policy. We recommend that the policy reflects the links and dependencies between the two.
- The policy should note the wider context for CP7, such as the financial pressures we expect to operate under and uncertainty around industry train performance forecasting. We will need to be flexible to effectively manage financial risk in CP7 and reprioritise our plans in response to changing circumstances. Flexibility in the regulatory framework and a proportionate approach to holding Network Rail to account against baseline trajectories is key to enabling this.
- ORR's approach to monitoring and reporting on whole industry measures must recognise the complexity of delivering these outcomes and that Network Rail is not accountable for a significant portion of performance factors. Where relevant, which notably includes train performance, ORR needs to set out the assumptions it makes in its baselines for train operators and other factors outside of Network Rail's direct control.
- For whole industry train performance outcomes ORR has set as success measures, we recommend the use of regulatory baseline ranges to work alongside the indicative criteria for escalation, as well as retaining flexibility to adjust the baselines. This would reflect realistic expectations of performance and decades of industry experience of the uncertainty of train performance forecasting.
- An emphasis on early resolution and a staged approach to monitoring has been positive in CP6 and we support the continuation of this approach into CP7. It is important that this remains proportionate, risk-based and evidence-based to avoid undue regulatory burden and enable us to focus on delivery of core plans and responsibilities.
- We support the tiered structure of success and supporting measures suggested by ORR. In line with the wider context and uncertainty, it's important for ORR, Network Rail and wider industry to continue to work together to consider the most appropriate measures to drive the priority outcomes for the industry. While we recognise the value of consistency, monitoring against success measures that no longer reflect industry ambitions will be less effective over time. The Holding to Account Policy and ORR's Managing Change Policy (consultation expected in June 2023) should recognise that success and supporting measures may need to change over time.
- A joint understanding of clear information sharing expectations has been effective in CP6, and we would like to work with ORR to refine information data sharing arrangements prior to CP7 commencement to make sure they are fit for purpose and that both parties have clarity on expectations and arrangements.
- For intervention to be effective and support ongoing management of risk, ORR's criteria for escalation will require transparency on the reasons for enhanced monitoring and consistency in approach.
- We request that there is recognition of regional differences, and that caution should be applied when comparing performance (in all measures) between regions which each develop their plans to

reflect their local stakeholders needs and priorities. We specifically ask that the different context and challenges for Scotland's Railway are explicitly referenced and taken into account.

Introduction

ORR's consultation on the Holding Network Rail to Account Policy for CP7 comes at a time of significant change and uncertainty for the industry, as is the case for the wider 2023 periodic review.

Holding to account activity is closely linked to how change is managed and reflected through the regulatory framework. We are expecting ORR to publish its draft Managing Change Policy for consultation in June alongside the Draft Determination. Should the draft Managing Change Policy highlight any additional considerations that relate to the draft Holding Network Rail to Account Policy, and would have meant we would have responded to the associated consultation slightly differently, we will capture these in our consultation response on managing change.

We have structured our response to reflect the chapters in ORR's draft policy. ORR has asked us to provide views on how well the updated policy reflects the areas that were already consulted on as part of ORR's new policy approach for CP7. Our views on this are noted throughout the sections. We have also made comments on the general structure and wording of the document in relevant places. There are a number of areas within the draft policy where the wording could be clearer to be most effective and we would like to work with ORR to support drafting clarifications.

Approach to Holding Network Rail to Account

The existing Holding to Account Policy has generally worked well in CP6, with early engagement and resolution allowing ORR to see the steps Network Rail is already taking to address performance challenges and removing the need for ORR to take further action in a number of cases. It is important that an early intervention approach remains proportionate and risk-based, and that ORR is transparent about its specific concerns so we can engage with them effectively and efficiently on targeted areas.

We recognise the importance of delivering CP7 HLOS expectations (within the SoFA funding envelope) and that ORR will monitor our progress against these. The HLOS sets expectations rather than specific requirements and we request that this is accurately reflected in the policy. We recommend that ORR works with us and funders to agree the most appropriate way to monitor delivery against these expectations. In CP6, the use of the HLOS Tracker for Scotland's Railway has served its purpose. However, for CP7 there are 87 HLOS requirements to deliver for Scottish Ministers, approximately half of which must be delivered with industry partners. We recommend that ORR works with Transport Scotland and Scotland's Railway to adapt its approach for each expectation to determine the most effective and efficient way to monitor delivery and avoid potential duplication. Many of the expectations will be monitored through our own controls and governance which we can provide transparency on as a more effective approach to provide assurance on our delivery of the expectations and we are keen to avoid duplication in reporting requirements.

Regional comparison is a valuable tool, but there are inherent differences in regions' plans and objectives, operating contexts and needs of local customers and funders, and therefore there are difficulties in making clear comparisons. Any comparison across region and SO settlements should reflect the different context and stakeholders for each. Scotland specifically has a different strategic and funding context; and beyond a basic acknowledgement in the draft policy, it is not clear how ORR will recognise this in practice. There have been instances throughout PR23 where we do not feel this has been appropriately recognised, particularly relating to Scottish Ministers' HLOS requirements for the ScotRail performance measure and the industry freight growth target, so we recommend ORR considers how to engage with Scotland's Railway effectively to understand their particular circumstances, challenges and relationships. We are

enhancing our own comparative reporting and benchmarking internally and have been discussing its development with ORR to avoid duplication of effort.

We support the continued focus on stakeholder engagement as an important input to how we develop and deliver our plans. ORR has recognised the good progress we have made on this in CP6. It is important to continue to recognise that good stakeholder engagement may not always mean all stakeholders are satisfied with the outcome of our decisions as we must consider competing interests and demands of stakeholders. In CP7 we will continue to respond to our stakeholders' preferences for engagement which will mean that we do not engage with all of our stakeholders in the same way. This should be reflected in ORR's monitoring.

We recognise that there may be instances where ORR does not move through each stage of monitoring in turn (for example, major challenges that emerge quickly) but it is important that our teams can understand what will be reasonably expected of them in different scenarios. On occasion in CP6 there has been inconsistency in ORR's approach across teams and issues. For CP7 we recommend ORR provides more transparency around the approach to determining the appropriate level of monitoring and that this is applied consistently across Network Rail and the issues under consideration.

Monitoring and Assessment

We welcome the clear structure set out in the tiered outcomes framework being established by ORR. We welcome certainty on the framework so that we can engage with ORR effectively, but the policy should note that certainty in the framework does not provide certainty in delivery of outcomes, particularly in the uncertain context for CP7 and where there are dependent on factors outside of Network Rail's control.

Whilst we have existing data sharing agreements for ORR to conduct their routine monitoring and assessment for CP6, we recommend this is reviewed for CP7. We are keen that any future monitoring aligns with the new outcomes framework rather than being a legacy from previous control periods. We believe that the review should define the information required by ORR for the third 'additional assurance' tier of the outcomes framework as well as developing the data provision arrangements. Relevant to this, we do not believe that the policy should reference specific reports (for example para 3.26) and instead any references should be contained within reporting protocols developed between Network Rail and ORR.

Throughout CP7 we expect ORR to initially make use of information already available as part of agreed routine reporting, and only make additional requests where this is targeted and proportionate, to avoid undue distraction from delivery of core plans and responsibilities. We expect routine monitoring, including the metrics used by ORR, to evolve to react to emerging challenges and priorities. This should be managed through an agreed process so that any changes are relevant and can be practically fulfilled. When the Managing Change Policy is consulted on we intend to consider how it will work in conjunction with proposed changes to the outcomes framework.

We expect ORR to be transparent about the reasons for enhancing monitoring, and to scale back monitoring when issues are no longer a cause for concern. In addition, we would also like more transparency and consistency on how ORR determines the appropriate level of monitoring.

There is inadequate recognition in ORR's draft policy of the challenging CP7 context, inherent uncertainty in certain areas of planning and the associated flexibility that will be required in assessing performance in CP7. We recommend that more weight is placed on the uncertainty which surrounds forecasting outputs, in particular train performance. ORR's proposal to report against fixed, point value trajectories does not recognise the uncertainty in developing forecasts for certain outcomes, or the high likelihood of changes to the underlying assumptions. Reporting against baselines that are no longer relevant to the operating context will not help our stakeholders to understand performance or provide effective incentives to

industry. Additionally, publicly reporting against baselines that are no longer current (and are not based on our most recent plans which are assessed annually by ORR) will cause confusion and contradicts ORR's own objective of providing clarity to business units, stakeholders, and funders through its reporting. We have raised this with ORR and will also highlight as relevant in our response to ORR's managing change consultation.

Whilst we acknowledge that this is a consultation on how ORR holds Network Rail to account, our performance is in key respects very reliant on the wider industry. We request that the policy is clear that ORR will recognise and take account of operator performance where it affects Network Rail's performance in making decisions on holding Network Rail to account. In any event, ORR should set out transparently the assumptions it makes on train operator contribution to the CP7 train performance baselines. This will underpin meaningful engagement between Network Rail and train operators on joint planning, and also support discussions around revisions to baselines where required. Additionally, joint performance strategies referenced in ORR's draft policy may not always be the preferred approach of operators. We request that the policy reflects that there may be other appropriate mechanisms through which Network Rail and operators agree objectives and priorities.

The non-exhaustive criteria listed in ORR's draft policy are vague and high level which could make escalation unpredictable and subjective. Whilst we recognise it isn't possible to describe every scenario that may occur during the control period, we would welcome more certainty and effective engagement (for example through joint protocols and capturing learnings early in the control period) to enable our teams to work with ORR more effectively. Specifically, we do not believe it should just be the performance output that is considered when deciding whether investigation is appropriate, but material changes to the assumptions on which trajectories were based.

ORR's decisions around monitoring and interventions should be evidenced based. We understand that qualitative information provides valuable insight alongside quantitative information, but it is important that the qualitative information is substantiated evidence rather than anecdotal. We would welcome clarity in the policy on how ORR will use qualitative information.

Network Rail intends to continue using scorecards to provide focus and understand our progress against annual priorities. Our scorecards will remain an important management tool for us and our stakeholders and will continue to provide valuable insight on delivery against regulatory baselines. While we recognise that the measures and targets in scorecards will no longer determine the measures ORR will prioritise in its monitoring, we would like ORR to consider scorecards alongside other information in their monitoring.

When considering a 'reasonable timescale' for responding to information requests (paragraph 3.36) we would expect ORR to work with Network Rail to understand achievable timescales on a case by case basis, as has been effective in CP6. We recommend that this is reflected in ORR's policy to support interpretation in CP7. Additionally, (also in paragraph 3.36) ORR's policy suggests that 'failure to provide' ORR with requested information 'would constitute a licence breach'. Rather than pre-emptively determining a licence breach through policy wording, the policy should reflect our licence obligations (providing information that ORR reasonably requires) and the conditions for determining a licence breach (through investigation and a decision by ORR's Board). We suggest that this is re-worded to 'could constitute a licence breach'.

The terminology used when referring to functions which are not the five regions or System Operator needs to be more consistent so our teams understand what is expected of them. There are references to 'other business units', 'national functions' and 'key national functions', while ORR's overall PR23 policy framework describes 'core national functions'.

Investigation and Early Resolution

We think it would be helpful for ORR to provide a more clear and concise explanation of the stages of investigations and what constitutes an 'investigation' compared to a 'formal investigation'. In addition, it would be helpful to update the pyramid to reflect this in a visual to support a consistent understanding.

Throughout CP7, ORR's investigation and early resolution tools should be reviewed to assess whether they remain relevant, are being used, are working effectively to incentivise improvement and are not purely inherited from previous control periods.

Enforcement

Enforcement can be an effective tool to incentivise the right outcomes for the industry, having first considered whether Network Rail and industry are already taking the right steps to rectify issues. It is important that in the constrained CP7 funding environment consideration is given to the most appropriate enforcement type to avoid taking funding out of the business that would otherwise be used to deliver outcomes that matter to customers. We recommend that ORR considers this in the drafting and emphasis of the policy.

Our view is that it would be appropriate for ORR to be open to reviewing actions and tools throughout the control period based on how effective they are. For example, financial sanctions are untested in CP6 to date and therefore we don't have a good understanding of their effectiveness.

Conclusions and Next Steps

We have referenced in a few items in our response our desire to work with ORR to enable more clarity in the policy, both in the wording and in relation to working arrangements. We look forward to progressing this in the coming months. Additionally, we are expecting to see a consultation on ORR's draft Managing Change Policy for CP7 in the coming weeks. When responding to that consultation we will consider whether we would like to expand on any comments made in this response and, where relevant, raise any further items relevant to both policies. This will be particularly relevant to changes for metrics and baselines.

[redacted]
Director, Economics, Finance and Markets
Office of Rail and Road   9th June 2023

Dear [redacted],

Thank you for the opportunity to provide input to this policy and ORR's approach to holding Network Rail to account.

1. INTRODUCTION

1.1 With three quarters of all Network Rail's expenditure going through its supply chain, the effectiveness of this spend has a huge impact on both efficiency and the outcomes Network Rail can achieve. Effective engagement between Network Rail and suppliers is therefore essential to unlocking improvements to the railway. Network Rail's effectiveness at managing and engaging with its supply chain should be prominent in ORR's Holding to Account Policy, and in how ORR holds to account in practice.

1.2 This letter provides some context about the current issues facing the supply chain and then draws out implications for Network Rail accountability, with a focus on constructive, continuous improvement. We would be happy to work with ORR to provide further suggestions.

2. BACKGROUND TO RIA

2.2 RIA is the trade association for UK-based suppliers to the UK and world-wide railways. It has over 350 companies in membership covering all aspects of rolling stock and infrastructure supply and a diverse range of products and services. As well as most of the Tier 1 contractors and large, multi-national companies, over 60% of RIA's membership base is comprised of Small and Medium-Sized Enterprises (SMEs).

2.3 RIA's supplier members represent the full range of UK rail disciplines, including working on renewals, enhancements, rolling stock, signalling, electrification, and retail.

2.4 RIA provides its members with extensive services, including:
- Representation of the supply industry's interests to Government, regional and national transport bodies, rail clients – eg. Network Rail (NR), HS2, TfL – and other key stakeholders;
- Providing opportunities for dialogue and networking between members;
- Supply chain improvement initiatives;
- Supporting innovation through the Unlocking Innovation programme and UKRRIN (UK Rail Research and Innovation Network);
- Provision of technical, commercial and rail policy information every week; and
- Export promotion, including organising and creating Great branded UK Pavilions at key rail exhibitions overseas.

2.5 RIA recognises that equality, diversity and inclusion drive innovation, financial performance and success. Together with Women in Rail, RIA is promoting an 'Equality, Diversity & Inclusion Charter'

for rail, which has the potential to support social mobility, grow UK STEM skills, create local opportunities, and increase the talent pool from which the future leadership of the rail sector will be drawn. The Charter reached 200 signatory organisations last November.

2.6 The rail network remains one of the UK's most valuable assets, with extraordinary potential to support green growth and wider social benefits for communities right across the UK. A 2021 report produced by Oxford Economics[1] shows that the rail industry supports:

- £43 billion GVA in economic growth;
- 710,000 jobs;
- £14 billion in tax revenue each year; and
- For every £1 spent in rail, £2.50 of income is generated in the wider economy.

3. SUPPLY CHAIN CONTEXT

3.1 During CP6 we have seen evolution and diversification of Network Rail's approaches to engage with different parts of the supply chain across its regions and at a national level too. In many cases, this has been to reflect lessons from previous procurement experiences. Many of the approaches rightly emphasise earlier supplier engagement and more collaborative working. However, as we head towards CP7 we have seen significant differences in the pace and clarity of procurement processes to put in place major contracts for renewals work. Progress is uneven.

3.2 Whilst the drivers for the changes made across Network Rail are similar, there are now many bespoke devolved approaches to procurement and supply chain management across the business with differing requirements and rules for bidders. For many suppliers, on the one hand this variation introduces greater complexity and cost into bidding processes, compared with a simple unified system, but on the other hand we recognise there can be important gains from supporting innovation and meeting specific local needs.

3.3 To make sure the benefits of diversification and devolution outweigh the costs it is vital there is active learning about what works best and why, sharing lessons right across the business, such as the recent positive work we have seen led by Network Rail's Investment Centre of Excellence. Identifying the impact of different approaches on *whole industry* outcomes (not just Network Rail costs and performance) is particularly relevant given rail reform.

3.4 There will always be long lead times from early market engagement, letting contracts, to delivery and results on the ground: decisions on supplier engagement therefore have a lasting impact on industry performance for a number of years. Effectiveness of supply chain management is a leading indicator of future performance: if contracts are delayed or poorly let or managed, there will be consequences for the timeliness, cost and quality of work.

3.5 A vibrant supply chain with enough active suppliers (from large companies, through to SMEs) is vital for future competition but also ensuring that suppliers have sufficient capacity to support investment

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[1] https://www.riagb.org.uk/RIA/Newsroom/Publications%20Folder/OE_2021.aspx

needs. Poor engagement and contracting can deter, competent but unsuccessful suppliers from engaging in the market in future (for example, since bidding costs are not directly reimbursed).

4.   IMPLICATIONS FOR HOLDING NETWORK RAIL TO ACCOUNT

4.1 At a strategic level, the above context has a number of implications for how Network Rail (and in future GBR) should be held to account, to help the whole industry keep improving. A shared focus across Network Rail, industry and ORR on continuous improvement is particularly important.

- The quality of market engagement must be a top priority, given so much funding flows through suppliers. It can be objectively assessed with reference to best practice such as Construction Playbook, Sourcing Playbook and Project 13 principles which are all well recognised approaches across the supply chain companies and in other sectors.

- Network Rail must demonstrate how it is assessing and learning from the different approaches across its business, and this must not be an internal process, but an open dialogue with the supply chain which feeds back into processes.

- There need to be mechanisms for effective national level coordination of lesson learning (for example, some procurements may be more efficient at national level). National teams and functions need an appropriate remit to support this.

- Given long lead times, we cannot wait until problems with results or industry performance become manifest, but need to continuously assess the capabilities and effectiveness of supply chain engagement. Progress in letting contracts for renewals can be objectively measured. Wider indicators, such as the number of companies bidding for work, and diversity of companies (including SMEs) through the supply chain.

- Whilst pursuing different approaches, Network Rail (or in future GBR) must demonstrate how it is making it <u>as easy as possible</u> for suppliers to engage across its entire business.

- Contracts, bidding criteria and evaluations must value whole industry, long-term outcomes, not just Network Rail financial performance and delivery.

- Finally, we must recognise there are some important factors outside of Network Rail control, such as central government policy or governance decisions, which may limit Network Rail's ability to engage with suppliers. An obvious example is that without visibility of draft Strategic Business Plans for CP7, or an enhancements pipeline, which have not yet been approved for publication, it is hard for suppliers to plan ahead or give Network Rail specific feedback to help improve proposals. Whilst there may be legitimate reasons for these external constraints, the cost and performance implications should be recognised.

4.2 Specifically in terms of the ORR Holding Network Rail to Account policy, we therefore suggest:

- The **Stakeholder Engagement Duty** in the Licence becomes a priority for *routine* monitoring, with a strong emphasis on lesson learning across the whole business. The England and Wales HLOS states specific requirements "*The Secretary of State therefore expects clear evidence of Network Rail working collaboratively with its supply chain and to exercise its role as an effective and engaged client, demonstrating a commitment to being 'open for business'.*" The onus should be on Network Rail to provide proactive assurance, at both national and regional levels, rather than ORR-initiated investigations.

ORR consultation on Holding Network Rail to Account Policy: Submission from the Railway Industry Association

- The **Network Management Duty** in the Licence must be interpreted to apply to the whole system outcomes sought by Network Rail customers and funders. In our view, the sustainability of the supply chain is an essential enabler to these outcomes, and needs to be monitored.
- A key part of ORR's **Routine monitoring and assessment** must be looking at the health of supply chain management, relationships and progress in procurements. This can provide early warning of future problems. It must also challenge Network Rail to demonstrate that, together with suppliers, it is learning about – and acting on - the relative effectiveness of the different approaches, and delivering on its HLOS commitments.
- **'Investigation and Early resolution':** when problems (e.g. efficiency) are identified it may be too late – if contracts have been let or procurements are underway, it can be difficult to change approaches for a number of years. What is needed is continuous assessment that the fundamentals of best practice are in place from the very outset of market engagements.
- **Both regional <u>and</u> national level accountability are needed.** Network Rail is accountable as a single entity under its licence. The national functions have a key role to play in supporting lesson learning across the business and potentially taking difficult decisions to reconcile inconsistent or inefficient approaches to market engagement between regions.

In ORR's role to challenge and support improvement in Network Rail's performance, we believe these points deserve stronger emphasis in the policy, and – perhaps more importantly – in the practical steps ORR will takes to implement the policy in CP7 through its monitoring and assessments.

Beyond this, RIA would be very pleased to work with ORR to support the next iteration of the stakeholder engagement assessment, to further increase the focus on Network Rail suppliers.

Yours sincerely,

[redacted]

Policy Director, Railway Industry Association

Rail ____ Partners

PR23 team
Office of Rail and Road

By email

09 June 2023

To whom it may concern,

Rail Partners' response to PR23 consultation on ORR's Holding Network Rail to Account policy

Rail Partners welcomes the opportunity to respond to this consultation on ORR's Holding Network Rail to Account policy on behalf of the private sector owning groups of passenger operators and our freight operator members.

In our response to the consultation on ORR's Policy Framework earlier in the Periodic Review, we recommended some changes to the freight elements of the tiered framework ORR will use to assess Network Rail's performance in CP7. We are supportive of the updated framework that ORR is now proposing which is referenced in this consultation – including freight growth as a Tier One success measure. Although Tier One measures will rightly take precedence in ORR's assessment of Network Rail, continued monitoring of wider metrics will continue to be important.

The Holding to Account policy is an essential part of the regulatory framework that ensures Network Rail is delivering a safe, high-performing railway which represents value for money to the taxpayer. A failure to deliver a railway that passengers and freight customers) can depend on during CP7 could have significant consequences for the recovery of passenger demand following the pandemic and the realisation of freight growth that government committed to in the *Plan for Rail* white paper.

The consultation document outlines a three-tier approach that ORR will use as it holds Network Rail to account. This includes details on when the ORR may decide to escalate concerns or take enforcement action. While we understand that ORR will gather and publish information on the performance of Network Rail through its routine monitoring, Rail Partners would welcome a more agile response from the regulator when there are signs of underperformance, particularly when these are raised by train operators or rail users. By taking a more proactive approach, it will ensure that issues are dealt with promptly before they become widespread and will drive a greater focus on day-to-day delivery within Network Rail.

We note that despite having a range of regulatory levers at your disposal including requiring Network Rail to develop improvement plans when things go wrong, hosting hearings, and issuing financial penalties, the ORR has rarely used these mechanisms in recent Control Periods despite periods of poor performance. As outlined in the consultation, these levers will continue to be available to the regulator in CP7 and it is important that ORR uses them where necessary to drive improvements and hold Network Rail to account when it fails to take satisfactory action. If these levers are not having the desired effect, then a wider review of the regulatory mechanisms used by the ORR to hold Network Rail to account should be considered.

A strong focus on network performance through ORR's Holding Network Rail to Account policy for CP7 is vital. Current levels of performance affecting both passenger and freight services are not acceptable with both the Public Performance Measure and Freight Delivery Metric at some of their

lowest points since records began. While we recognise that some of the explanatory factors underpinning current levels of performance are outside of Network Rail's control, such as the backlog of engineering work caused by Covid and the impacts of industrial action, Network Rail must be challenged to put things right. We have previously expressed concerns with ORR that PR23 risks 'baking in' current levels of performance into the future regime which would send entirely the wrong message to Network Rail as it effectively accepts poor performance. It is imperative that ORR closely monitors infrastructure performance to ensure that it recovers both through the remainder of CP6 and into CP7 – this includes catching up with maintenance work and a renewed focus on improving network resilience against the impacts of climate change. There have been several cases in this control period where key lines have been closed, often for prolonged periods, as a result of asset degradation which has caused significant disruption to passenger and freight services. Unless network resilience is improved, there is a risk that customers' perception of rail's reliability will be reduced permanently, driving modal shift to more carbon intensive modes such as road.

We would also encourage ORR to pay attention to route capability in CP7. In the current control period, there have been instances where Network Rail has failed to provide infrastructure at the published capability that it has been funded to maintain. This has prevented the introduction of new services and there are concerns that this could become a wider issue without close monitoring. This is a key issue for train operators who must have confidence that the published capability is available in order to plan and deliver their services.

Rail Partners and our members look forward to continued dialogue with the ORR as the periodic review progresses.

Yours sincerely,

[redacted]
Director of Policy

ScotRail Trains and Scottish Rail Holdings joint response to ORR consultation on the updated policy document on "Holding Network Rail to account"

SRH and SRT have prepared a joint response to this consultation and overall have no real concerns. In terms of the new non-exhaustive indicative criteria, this seems a sensible system and similar to statistical process control in approach. Likewise with the new outcomes framework which again seems a logical approach to monitoring, allowing consideration of many other measures which may be more significant than those in Tier 1 to overall delivery.

In general, it would be useful to have more visibility of where the costs in the Scottish network arise. It is likely that the peripheral parts of the network cost a lot to run for the activity they support; but giving the Scottish Ministers better visibility of where the costs do fall, would provide more confidence in decision-making.

Below are some more specific comments on the document itself:

Section 2.6 - Monitoring activity by region is a helpful approach for improving understanding of key issues, for example the disproportionate impact of severe weather in Scotland and allows for a measure of benchmarking.

Figure 2.1 and Section 3.6, Section 5.15

Financial penalties are less of an incentive due to the fact the UK rail network is not a truly commercial environment, the financial sanctions may have some impact on key individuals but again, this is perhaps not a strong incentive. Also as stated in the document "Network Rail is a public sector body funded by taxpayers and railway users. As such a financial penalty which reduced funds available for maintaining and operating the railway would always be a last resort" which is an entirely supported view by SRH and SRT given the fiscally constrained environment within which we currently operate.

 Comparing regions with one another does have a reputational impact but again, this is less of an issue than it would have been in the TOC franchising environment for example.

However, as mentioned above, given the environment, it is difficult to see what could be used as an alternative.

Section 3.15

Joint Performance Strategies are an area that needs attention as these are delivered late each year in Scotland, which is a frustration that Transport Scotland share.

Consultation on updating the holding Network Rail to account policy for CP7

Thank you for the opportunity to participate in this consultation referencing the holding of Network Rail (NR) to account policy for Control Period 7.

Strathclyde Partnership for Transport (SPT) is the Regional Transport Partnership (RTP) for the west of Scotland serving almost 50% of Scotland's population and includes the most concentrated rail network in the UK outside London.

Reliance on effective delivery of public transport services is paramount within the area and SPT engages with service providers, local authorities and statutory partners to seek to deliver the best possible public transport for all communities.

This consultation on holding Network Rail to account for CP7 makes specific reference to the different structure in Scotland as regards the relationship between NR and Transport Scotland, SPT welcomes this and would hope that the working relationship between both bodies, and any future bodies, will remain productive going forward.

SPT agrees that the level of scrutiny as regards updating the policy has been updated to a satisfactory level. Our experiences of working with rail industry partners has generally been positive and we have always noted the emphasis placed on the overriding importance of safety aspects when dealing with the rail network. As of necessity this stringent application of safety practises can, sometimes, result in some delays and some additional costs when delivering projects and this has always been understood when working in partnership working with NR.

SPT has no other specific comments, other than those above, regarding this consultation.

By email

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PR23@orr.gov.uk

8 June 2023

Consultation on updating the holding Network Rail to account policy for CP7.

I am responding on behalf of Transport Focus to the above consultation.

Transport Focus is an independent, statutory consumer watchdog promoting the interests of transport users. Our remit covers rail across Great Britain, bus, coach and tram in England (excluding London) and users of the Strategic Road Network in England. Working with transport providers and Governments across England, Scotland and Wales we ensure that the users' voice is heard.

Transport Focus welcomes the emphasis within the document on Network Rail engaging with stakeholders. Our research continually emphasizes the value of involving users and stakeholders. We have recently worked with Network Rail as part of CP7 regional business plan submissions. This included conducting research on passenger priorities (Britain's railway: what matters to passengers) and via regional stakeholder engagement groups. We believe that this engagement has helped all parties focus on the needs of users.

We also support ORRs commitment to transparency within the policy.

Our discussions on regional CP7 business plans, and the final published documents, make it clear that difficult decisions on resourcing will have to be made. The overall England and Wales plan refers to an increase in the average age of assets and forecasts that this will have a small impact on train performance, particularly in the later years of CP7. Regional business plans also refer to a 'value of service approach' that prioritises renewals and maintenance expenditure on the key revenue generative flows. This could result in performance on some routes declining by more than others – and also in different possession regimes for routes.

If parts of the network are being prioritised over others, then it will be important that performance monitoring regimes are sensitive enough to pick up on these differences – both between regions and on routes within a region. Without this disaggregated data we may not be able to identify the impact of the value of service approach on passengers. In the spirit of transparency and accountability we think there is also a strong case for this disaggregated data to be in the public domain.

Yours sincerely

[redacted]
Head of Policy

Transport for London

9th June 2023

Dear [redacted],

PR23 Policy Framework: Consultation on updating the Holding Network Rail to Account Policy for CP7

Thanks for offering us the opportunity to comment on this matter. I can confirm that TfL is content for any part of its response to be made public. The processes outlined in the consultation documentation appear broadly sensible. We do, however, have some comments as detailed below:

- The documentation discusses the monitoring of performance at a Regional level. This will not be sufficient for operators whose services cross Regional boundaries, including the Elizabeth line and London Overground. It is important that monitoring and enforcement is applied at a more disaggregate level to meet the requirements of such operators;
- The removal of Scorecards as a tool for measuring performance by the regulator is a retrograde step. These needed to be agreed with Operators and gave them a way of including measures and targets that were important to them, giving them a higher degree of influence within the process. The processes used during Control Period Seven should retain this opportunity;
- It is important that the process adopted supports the measurement of Network Rail's performance across all areas of interest to operators, including the maintenance of station assets (for example) as well as train service performance to provide a fully rounded assessment;
- Any improvements notices or other such mechanisms should consider the views and requirements of the operators affected. Financial penalties levied should be used to fund the requirements set by such notices or other enforcement recommendations to ensure these are addressed promptly.

Yours sincerely,

**[redacted]
Principal Planner,
Transport for London.**

MAYOR OF LONDON

VAT number 756 2769 90

[redacted]
Office of Rail and Road
London, E14 4QZ

[redacted]
Transport for the North
Manchester, M1 3BN

Holding Network Rail to Account policy (PR23 consultation version)

Dear [redacted],

As statutory Sub-national Transport Body for the North of England, TfN welcomes the opportunity to respond to your consultation on the 2023 update of the Holding Network Rail to Account policy, as explained in your letter of 13th April 2023. We note that you have not made any significant changes to the underlying principles of your policy, nor the tools which you can use, and we understand that you regard the future transition to Great British Railways as an opportunity to make any major changes. Whilst not the subject of this consultation we are of the view that the ability to hold the infrastructure provider to account does need strengthening considerably. We also note that the ultimate beneficiaries of ORR regulation are intended to be passengers, freight end-users and taxpayers. With that in mind, our comments on this consultation are as follows.

Obligations in Network Rail's Network Licence

We support ORR's methodology for encouraging Network Rail to fulfil its licence obligations in an effective, efficient and economical manner. In particular, we note the usefulness of encouraging both co-operation and competition between Network Rail's regions, in order to incentivise improvements and the sharing of best practice. This also recognises the changes to Network Rail's structure during Control Period 6. Transport for the North supports the creation of a single route for the North of England and whilst this is not the current government position, the direction of travel was recognised in the government's Rail Reform White Paper. Any move to strengthen co-operation between Network Rail's regions is therefore welcome.

Another area in which the policy is notably strong is in the comprehensiveness of the criteria which will be used for deciding on appropriate levels of monitoring and enforcement (as outlined on page 8). The use of relative performance and leading indicators should enable a thorough approach.

We note (as described in Section 3.26) that you will be assessing "certain aspects of the System Operator's performance not captured through its settlement or supporting measures, such as quality of advice to funders, franchising authorities and operators". We would welcome further details on this point, as the quality of Network Rail's Strategic Advice is important to us, our members and our partners. The desired comparison of the quality of asset management between Network Rail's Regions (which is mentioned in the same

section) is also crucial, especially with regards to its potential impact on performance.

Commitments for Control Period 7 (from Final Determination)

We note that as part of your CP7 determination, you will review Network Rail's Strategic Business Plans. One issue about which we have been particularly concerned is the cost of enhancement projects, which appears to have grown faster than inflation over the last decade. The projected cost of certain enhancement proposals (notably the extension of platforms at Manchester Airport and reinstatement of the Leamside Line) is far greater than our experience would suggest is reasonable. We would therefore appreciate more detail on the monitoring of the efficiency of investment capital expenditure within Network Rail.

New outcomes framework

In Section 3.14 (page 11) you note that you will no longer be using Network Rail's own scorecard measures as part of your monitoring regime. We would welcome further understanding on why these were appropriate metrics in the past, and why they have now been discarded.

Non-exhaustive indicative criteria

We support the four indicative criteria mentioned on page 12 (sustained decline in performance over time; an outlier in performance; exceptionally poor performance; and, performance consistently below expectations) as good signals that there may be issues in need of intervention. We note that these criteria are non-exhaustive, and would therefore like to suggest that in certain circumstances bespoke benchmarking should be undertaken in order to assess performance in a particular field against relevant comparators. This could be particularly useful with regards to the issue of capital investments, as mentioned above; some projects (e.g. Borders rail reinstatement to Tweedbank) have been widely recognised as efficient and effective, and could serve as models for other capital expenditure.

Overall

We support the general approach adopted by ORR, which is intended to tailor action depending upon the nature, severity and urgency of any issues uncovered by your monitoring activity. In particular, we note that ORR recognises a particular obligation to intervene regarding issues which you have identified but which cannot be addressed by Network Rail's customers or other stakeholders, or do not enjoy clear managerial attention (as encapsulated in Figure 4.2). The requirement that Network Rail instigates a performance improvement plan in collaboration with their own customers in the first instance (Section 3.16) is welcome.

The principle of investigation and early resolution (laid out in Chapter 4) is desirable as the means for ensuring compliance, as the purpose of regulation should be to resolve issues before enforcement action becomes necessary. There is good detail in Chapter 5 on the scope and process for such enforcement

action, but it would be helpful to have more information about when other stakeholders (e.g. Sub-national Transport Bodies) might be informed about proceedings such as "case to answer" letters, so that we can contribute any useful information. We also recognise your commitment to transparency, and that you require and are able to enforce transparency from Network Rail (as described in Section 3.36).

However, we note that you recognise the significance of Network Rail's bonus structure in generating a direct incentive on managers to resolve issues (through the Financial Performance Measure), but then state that "If Network Rail subsequently removes the link between FPM and management bonuses, we will review our usage of these sanctions accordingly." It would seem sensible to mandate that Network Rail retain such a link in order to encourage accountability.

We look forward to seeing the final version of your revised policy.

Yours sincerely,

[redacted]
Rail Strategy Manager
Transport for the North

[redacted]
Head of Rail Policy
Rail Directorate
Mobile: [redacted]
Email: [redacted]

TRANSPORT
SCOTLAND
CÒMHDHAIL **ALBA**

Office of Rail and Road (ORR)
25 Cabot Square
London
E14 4QZ
By e-mail only, pr23@ORR.gov.uk

Date: 26 June
2023

Dear Sirs,

ORR Consultation: "Holding Network Rail to Account Policy"

Thank you for providing Transport Scotland (TS) with the opportunity to provide a response to the above consultation.

As the ORR will be aware the Scottish Ministers have recently published their High Level Output Specification (HLOS) for Control Period 7 (CP7). Likewise, the process is now underway for developing the Scottish Ministers' updated guidance to the ORR for Control Period 7 (CP7). The HLOS alongside this new guidance should be considered when the ORR is applying its holding Network Rail to account policy.

TS is content with the ORR's proposed revisions to the holding to account policy, though suggested points to be addressed by the ORR can be found at Annex A.

More broadly, Transport Scotland would ask that the ORR reflects on the overall delivery of Network Rail in Scotland during the current control period, CP6. In CP6 there has been significant areas where TS and the ORR have disagreed on the effectiveness of Network Rail's delivery, and in these instances TS does not consider that Network Rail has been effectively held to account.

A clear example of this would be that Network Rail has regularly failed to deliver to date its contribution to the PPM target in Scotland of 92.5% for CP6 as required by Scottish Ministers' HLOS (extract below) nor is it expected to in the remainder of CP6:

> *"The Scottish Ministers therefore require that the outputs of the network will be maintained in such a manner as to enable the operators of the ScotRail Franchise to deliver a PPM target of 92.5% for every year of CP6 and the*

operators of the Caledonian Sleeper Franchise to meet their Right Time targets." [1]

This is despite one of the ORR's key duties being to promote improvements in railway service performance, and the following expectation contained within the ORR's final determination for PR18:

> *"It now considers it is unlikely to achieve PPM of 92.5% until year 3 of CP6. For years 1 and 2 it is forecasting PPM of 90.5% and 91.5%."* [2] (Page 10.)

The consultation states " ***the…Scottish Government's High Level Output Specifications…. set out what the governments expect to be delivered for the funding Provided.*** It continues ***"Network Rail must do everything reasonably practicable to deliver the outcomes within the funding available and its plans and our determination for CP7". (Section 3.2)*** TS would ask that the ORR challenge the definition of "***reasonably practicable***" in that often, as a funder, we feel Network Rail can do more.

A strong holding to account policy can only be deemed effective if it leads to improvements in Network Rail's delivery. Again, TS would ask that the ORR take cognisance of this fact when taking decisions on each of the three tiers it describes in its holding to account policy especially in relation to enforcement.

If you or your team wish to discuss any of the feedback provided in this response, in the first instance please contact Raymond Convill or Kieran McLachlan.

Yours sincerely,

[redacted]

Head of Rail Policy

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[1] Para 6.2, Scottish Ministers HLOS for CP6, July 2017.
[2] Page 10 2018 periodic review final determination - Summary of conclusions and route settlement - Scotland (orr.gov.uk)

ORR's Holding Network Rail to Account Policy Consultation – Transport Scotland specific feedback

- **General point –** Transport Scotland found the diagrams in Figure 2.1 and Figure 3.1 helpful in visualising the process of monitoring through to enforcement. Similarly, could a hypothetical scenario be presented which goes from routine monitoring through to the enforcement stage? This would be helpful in demonstrating to the public, wider industry and Network Rail itself, expected outputs of the policy and, at the same time, illustrate whether they are sufficiently S.M.A.R.T.[3] in nature.

- Section 2.7 *"In many cases Network Rail's customers and stakeholders are best placed to influence its priorities and challenge performance across its organisation."* There should be specific reference to funders requirements in shaping decisions. The HLOS being the obvious example.

- Section 3.11 - Transport Scotland agrees with the option to amend and update Network Rail's Outcomes Framework during the control period, as appropriate to emerging issues, given some of the ongoing uncertainty we face in CP7.

- Section 3.15 *"We expect Network Rail to work closely with train operators during CP7 to agree and maintain joint performance strategies and to share these to support our monitoring."* Whilst Transport Scotland recognise in theory the benefits of performance strategies, past experience has called in to question their actual use. Network Rail was many months late on providing its most recent joint performance strategy. Whilst Transport Scotland understands some of the actions included in the strategy were implemented prior to completion of the strategy itself, it does raise concerns around the benefit of these strategies. If they are to be retained, the ORR must ensure Network Rail is held accountable for providing these on time to maximise their potential impact.

- Section 3.16 *"In the event of poor performance we will expect to see evidence of an improvement plan agreed with Network Rail's customers."* How does the ORR determine timescales for both an improvement plan to be in place and for it to take effect? For example, is it linked to the severity of the poor performance, significance of the breach, etc? The "non exhaustive indicative criteria" explain how it would consider taking such action but what evidence does the ORR have of these measures having a positive impact on delivery, and if so should that not be presented?

- Section 3.32 - "*How we collect information from Network Rail".* When it comes to OM&R - particularly the renewals element - Transport Scotland would ask for more transparency regarding the level and granularity of data

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[3] S.M.A.R.T. – Specific, Measurable, Achievable, Relevant, Time bound

being collected (i.e. asset type, full/partial renewal or refurbishment), the quantum, the unit rates and benchmarking to understand how ORR track, monitor and provide ongoing analysis that Value for Money is being achieved. This would include when Network Rail original planned works are changed from, for example, full renewal to partial renewal, what information is provided and how is this assessed to ensure it is an efficient and correct use of funds taking into consideration any potential impact to the asset lifecycle including future cost to repair/replace. The ORR should also take due consideration of the data that funders consider to be instructive, and whether this is information it should be gathering from Network Rail or other (international sources) on behalf of funders.

- Section 4.9 "*We may gather evidence from affected parties. For example, if the issue involves failure to meet success measures and targets agreed by customers, then we could approach the affected passenger or freight operators for their views.*" Transport Scotland notes this point and would agree that whilst Transport Scotland recognise it will often be first point of contact, ScotRail Trains or Scottish Rail Holdings have an important role in these conversations. Whilst there is a clear link between all three organisations, efforts should be made to seek feedback from operators directly given their expert knowledge in their respective areas. This will also apply to the Caledonian Sleeper in CP7. Transport Scotland would of course fully expect to be involved in conversations and kept informed by the regulator on progress but seeking views of all parties is in the spirit of the whole systems approach Scottish Ministers expect as per the CP7 HLOS.

- Section 5.2 "*Reflecting Network Rail's ownership and funding, ORR may decide to scale any financial penalty to make it capable of being funded from Network Rail's management bonuses*" and 5.19 "*We may choose to scale any financial penalty so that it is capable of being funded by management bonuses (of the responsible business units). While it is for Network Rail to decide how to fund any penalty, this would have the effect of enabling Network Rail to protect the funding available for the operation, maintenance and renewal of the network*". TS notes this point; we have an interest in learning more about how this would apply if required to be utilised in future; and would also like to understand more about what, if any, penalties have been applied during CP6 and if so what impact have they had. Therefore, is the ORR's current approach working in this regard when accounting for Network Rail's overall delivery of its CP6 objectives? Finally, what learning can / does the ORR take from other regulated industries? Specifically, are there good examples of regulation of *public sector organisations* through use of financial penalties and not only "reputation", which ORR could apply to the benefit of the rail sector in Scotland?

<u>Whizz-Kidz Response: Consultation on updating the holding Network Rail to account policy for CP7</u>

1. Whizz-Kidz

1.1 Whizz-Kidz is the UK's leading charity for young wheelchair users. There are an estimated 75,000 young wheelchair users in the UK. We support children and young people across the UK by providing wheelchairs and mobility equipment to develop independence and confidence at no cost to the beneficiary. We also provide confidence-building activities, wheelchair skills training and employability programmes to empower young wheelchair users with the skills, tools, and opportunities for inclusion in all aspects of life and society.

1.2 This inquiry is informed by the children, young people, and families we work with. It is also informed by our Kidz Board, a group of young wheelchair users from around the UK who are at the heart of every decision Whizz-Kidz makes.

1.3 We are submitting evidence to this inquiry as we want to ensure that consideration is given to including indicators in the new Outcomes Framework that will improve train travel for young wheelchair users.

2. Summary

2.1 This response is formatted in line with the consultation request,

- The New Outcomes Framework (Planning, At the Station, Booked Assistance, On board, General),
- The New Non-Exhaustive Indicative Criteria
- General Structure and Wording
- General Comments
- Recommendations

2.2 One in five people in the UK are disabled, around 14.6 million people[1], and there were 235,095 Disabled Persons Railcards (DPRC) in circulation in October 2022 to January 2023[2]. This is a significant under representation of the disabled community with only about 1.6% of disabled people in the UK having a disabled person's railcard.

2.3 The number of people reporting a disability has increased over the last decade from 19% in 2010/11 to 22% in 2020/21[3] and 'the number of people reporting a long-term health condition or classed as disabled continues to rise'[4]. Continuing to exclude accessibility in regulatory compliance will only alienate more people, becoming accessible is the future and should not be seen as an add on or a privilege. Including accessibility related indicators in the new Outcomes Framework will,

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[1] UK disability statistics: Prevalence and life experiences - House of Commons Library (parliament.uk)
[2] Disabled Persons Railcards | ORR Data Portal
[3] UK disability statistics: Prevalence and life experiences - House of Commons Library (parliament.uk)
[4] Employment of disabled people 2022 - GOV.UK (www.gov.uk)

- Demonstrate commitment to creating an equal society through accessible transport systems.
- Recognise and promote the rights of disabled passengers as a matter of priority.
- Ensure the services offered are of the highest quality, not just meeting minimum regulatory compliance.
- Offer transparency on successes and shortcomings of the rail industry with respect to accessibility.
- Improve the accountability of rail industry.

2.4 Progress towards making the railways more inclusive is non-existent in the new Outcomes Framework. Accessibility is being missed, or worse, ignored. Accessibility should be seen as normal working practices in the same way as health and safety.

3. Consultation Response

3.1 The New Outcomes Framework

3.1.1 As a general approach, Whizz-Kidz supports the new Outcomes Framework and tiered approach. We were however extremely disappointed to see that indicators relating to accessibility had not been included. Not only had they not been included but they had been dismissed from previous consultations. Deferring to compliance to create Accessible Travel Policies does not assure accessibility and sets standards at a basic minimum. This approach fails to prioritise the rights of disabled passengers.

3.1.2 At the moment train travel is a lottery for young wheelchair users in terms of stations, trains, reliability, and availability of booked assistance. This disjointed lottery needs to be replaced with central regulatory guidance that is monitored and enforced. It should not be reliant on operators being 'pragmatic in deciding what information, to what level of detail, should be included'[5] in monitoring their own inclusive travel policies. Indicators should be set at a national level and regulated.

3.1.3 We believe there are key areas that could be included as indicators, these include the whole journey from planning, being at the station, booked assistance and being on board. There are also general suggestions relating to staff training, out of use & disruptions, and including disabled people.

3.2 Planning

3.2.1 Travelling as a young wheelchair user is not as easy as it is for non-disabled young people who can jump on any train at any time. Young wheelchair users plan out every detail of their train journeys. When planning a train journey, problems can include not being able to find enough, or accessible, information and uncertainty of which stations and trains are or are not accessible. Young wheelchair users need to feel confident that the information they are using is up to date so they are assured they will be able to complete their journey.

3.2.2. In planning journeys the following accessibility features should be included as indicators,

[5] Accessible Travel Policy - Guidance for Train and Station Operators - July 2019 (orr.gov.uk)

- Level of information provided by operators that is compliant with the Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018
- Alternate formats offered by operators (for planning journeys but also governance documents such as Inclusive Transport Policies) to include hard print, large print, easy read, youth version and braille.
- Accessible Network Maps available online and in print at stations: operators should have to, rather than choose, to provide a 'Step-free' network map to help passengers understand which journeys are more accessible'[6].

3.2.3 Young wheelchair users need to feel confident that they will be able to leave and arrive at their station, that they will receive any assistance booked at each stop, that they are able to find their way around stations they arrive at and be able to make their onward journey.

3.3 At the Station

3.3.1 Multiple challenges are anticipated by young wheelchair users at the station and knowing what to expect can help with planning and make journeys more straightforward. Ideally all stations would have the same accessible features to make travelling easier, but we are aware that upgrades and availability of certain features are currently underway, or not available. We suggest key indicators below that can be used to monitor accessibility features at all stations.

3.3.2 Where stations do not have these features we suggest monitoring on upgrade plans to add the required features.

3.3.3 The following accessibility features should be included as indicators,

- The availability of mobility set down and/or disabled parking and route from set down to platform i.e. can a wheelchair user travel from the set down area to the platform independently.
- Step-free category of stations
- Train Ramp access
- National Key Toilets
- Changing Places Accessible Toilet Facilities
- Accessible Booking Counter
- Accessible Ticket Machines
- Accessible Phone
- Staff availability: the full or part time staffing levels at stations should also be included. An unmanned station can mean the inability to travel, disruption and fear for young wheelchair users.

3.4 Booked Assistance

3.4.1 Reporting on the number of assistances, and the level to which the assistance was received, is not enough to regulate and improve this service. Reporting is not the same as accountability and does not improve outcomes for disabled passengers.

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[6] Accessible Travel Policy - Guidance for Train and Station Operators - July 2019 (orr.gov.uk)

In 2020-2021 train passenger complaints that were accessibility-related increased from 0.8% to 1.2%[7]. In October 2022 - December 2022 the Rail Ombudsman received 25 complaints categorised as accessibility issues[8].

3.4.2 Since the Covid-19 pandemic the number of booked assistances is increasing, in October 2022 to January 2023 299,576 passenger assists were requested, up 39% on the same rail periods in the previous year. There were 96,845 passenger bookings, up 39%[9]. This combined with the reduction to assistance being booked to two hours in advance demonstrates the importance of regulatory monitoring.

3.4.3 The reporting measure for booked assistance should be added as indicators in the new Outcomes Framework to ensure improvements are made. Assistance needs to be subject to regulation and not just reported on including,

- 'Number of Passenger Assistance requests - fulfilled, not fulfilled, plus how many requests are received and approved, then cancelled via telephone afterward (which will potentially show as fulfilled on the digital system).' (included by our Kidz Board).
- 'Monitor how often a passenger is not assisted onto the chosen train due to ''not arriving with enough time''. i.e.. 30 minutes in advance of train departure. Perhaps the passenger is going to the toilet before boarding to avoid the chance of overcrowding.' (included by our Kidz Board).
- The time between assistance booked and provided (to monitor the successful implementation of turn up and go and/or the 2-hour notice period[10]).
- 'The time taken to confirm and update the passenger assistance request and journey. i.e. If system is not updated in a timely manner you can arrive at the station where they will let you board having seen your confirmed request on the app however the onward station is not aware of the request to assist you off the train.' (included by our Kidz Board).
- 'Monitor number of assistance dogs. Assistance dogs can be monitored using Passenger Assistance system as it has a tick box for that request.' (included by our Kidz Board).

3.4.4 Around 7000 people have an assistance dog in the UK[11]. Assistance dogs are legally protected by the Equality Act and including indicators will ensure operators are meeting the standards of the Assistance Dogs Travel Scheme.

3.4.5 The Outcomes Framework also needs to include indicators relating to claims for redress for assistance that was not received including,

- The number of claims and outcomes.
- The availability of the claim form in various formats including hard print, large print, easy read, youth version and braille.

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[7] Inclusive Transport Strategy scorecard: background information (with infographics) - GOV.UK (www.gov.uk)
[8] Rail-Ombudsman-Quarterly-Statistical-Report-Q3-2023.pdf (railombudsman.org)
[9] Passenger assists factsheet, rail periods 8 to 10, April 2022 to March 2023 (orr.gov.uk)
[10] Passengers with disabilities | Office of Rail and Road (orr.gov.uk)
[11] Assistance Dogs UK - ADUK

3.5 On board

3.5.1 Research on experiences of disabled rail passengers by the Department for Transport found that the journey stage with the highest level of reported problems was on-board trains (23% of passengers). Almost three in ten passengers who experienced a problem onboard each cited a lack of toilets or the attitudes of other people or passengers as a barrier to rail travel. Anxiety, and a perceived "hierarchy" around priority seating were also challenges[12].

3.5.2 The Outcomes Framework also needs to include indicators relating to,

- The number and availability of accessible toilets including mechanisms to inform passengers if they are unavailable or out of use.
- A timeline of when accessible toilets should be repaired.
- Engaging disabled passengers should include requirements to include experiences with non-disabled passengers to identify actions to improve attitudes locally.

3.5.3 In addition, overcrowding should be monitored. Our Kidz Board advised, 'monitor overcrowding on trains. This has an impact on accessing the accessible toilet. For long journeys passengers are having to wait hours, this may impact a medical condition, menstruation, and basic human rights.'

3.6 General

3.6.1 Staff trained in disability awareness and accessibility

3.6.2 Research by the Department of Transport found that some passengers reported 'getting lost, confused, tired and panicked by not being able to get around the station; this in turn can lead some to not complete their journey'[13]. Accessible Network Maps would help with this, but so too would trained staff that are able and willing to provide support when it is needed.

3.6.3 Staff can make a huge impact and difference on travelling experiences and staff training should be regulated and monitored. The Office for Rail and Road's guidance for operators to produce their Inclusive Travel policies in relation to staff training should be included as indicators,

- The percentage of staff, including senior and key managers, that received relevant disability awareness training or disability equality training in a predominantly classroom-based setting as part of their induction.
- The percentage of frontline staff that interact directly with passengers at any time as part of their duties, that received extended disability equality training as part of their induction.
- The percentage of staff that received refresher training within two years of receipt of disability awareness or disability equality training, and every two years thereafter.

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[12] Experiences of disabled rail passengers (publishing.service.gov.uk)
[13] Experiences of disabled rail passengers (publishing.service.gov.uk)

3.6.4 Staffing levels also need to be monitored as part of improving an inclusive rail network. Staff availability at stations can make the difference of whether someone is able to travel or not and directly opposes the Equality Act's aim of eliminating discrimination.

3.7 Disruptions & Out of Use

3.7.1 Disruption to train services is inconvenient for everyone but for young wheelchair users they carry additional concerns. This could be concerns about assistance booked at connecting stations, loss of priority seating, lack of medication, concerns about onward travel arrangements such as accessible taxis etc…

3.7.2 Our Kidz Board advised, 'monitor onward travel journey for disabled passengers when rail replacement buses are provided. i.e. not all wheelchairs can go on a bus or coach, therefore a taxi or alternative should be offered.'

3.7.3 The new Outcomes Framework should include indicators relating to ensuring any alternative transport is wheelchair accessible including,

- An assessment by operators to evaluate the wheelchair accessibility of their current alternative transport options and,
- Local mapping procedures to identify wheelchair accessible taxis they could use to support young wheelchair users during unplanned disruptions.

3.7.4 Facilities that are out of use is also inconvenient for everyone but for young wheelchair users is extremely challenging. A broken lift, a closed accessible toilet, road works in the mobility set down area are just a few examples that make the difference for a young wheelchair user being able to travel or not. Indicators in the new Outcomes Framework should include,

- The number of accessible facilities that are out of use
- The frequency of accessible facilities being out of use.
- The length of time a facility is out use.

3.7.5 There should also be regulatory timelines of when accessible facilities should be fixed. The unavailability of accessible facilities should be seen as disruption to normal service and subject to investigation and actions taken.

3.8 Including Disabled People

3.8.1 The Office for Rail and Road's guidance on producing Inclusive Travel Policies indicates that operators must show how they have sought and considered feedback from local groups such as their passenger panel, accessibility forum and local user groups, as appropriate. The Office for Road and Rail should also consider disabled passenger engagement through a forum, co-reviewing reports based on the new Outcomes Framework, supporting investigations and/or bespoke projects such as secret shopper activities. This will support further understanding of the needs of disabled passengers and provide an inclusive and authentic way to monitor progress and impact.

4. The New Non-Exhaustive Indicative Criteria

4.1 Accessibility should be embedded in the non-exhaustive criteria. e.g. monitoring 'decline,' 'outlier,' 'poor' or 'consistently low' performance should include accessibility as standard performance. Accessible facilities should be seen as normal practice and any change should be viewed as a disruption to normal service.

5. General Structure and Wording

5.1 Accessible versions of the policy should be produced so young wheelchair users are informed and empowered to understand the service they should receive and what and how these services will be subject to investigations and actions. This should include hard print, large print, easy read, youth version and braille.

6. General Comments

6.1 The difference accessible rail travel makes for disabled people is well documented. Whether for education, commuting, social engagements or accessing services, rail transport is key for young wheelchair users, many of whom are, and will always be, reliant on public transport.

6.2 Accessibility indicators included in the new Outcomes Framework will set industry standards above the minimum, improve monitoring, recognise progress, and make operators accountable for improving inclusive practices. This would have a significant impact for young wheelchair users in the future.

6.3 It will also align to other government policies and initiatives, not just in areas such as the Inclusive Transport Strategy and the Equality Act. Train travel has wide reaching impacts for disabled people and so it is not surprising improving train travel is an element in other policies that support disabled people.

6.3.1 National Disability Strategy[14]

6.3.1.1 Aimed at transforming the everyday lives of disabled people, steps they are looking to take includes,

- Tackling persistent accessibility issues across the transport network, including rail, buses, taxis, and roads

- Enabling disabled people to travel with confidence by addressing staff training, information and the attitudes and behaviours of others.

6.3.2 Transforming Support: The Health and Disability White Paper[15]

6.3.2.1 Aimed at helping unemployed disabled people to move back into and remain in work. Actions include,

- Work with partners to address local barriers that limit progression, such as transport.

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[14] National Disability Strategy: Forewords, about this strategy, action across the UK, executive summary, acknowledgements - GOV.UK (www.gov.uk)
[15] Transforming Support: The Health and Disability White Paper - GOV.UK (www.gov.uk)

- Work with partners to ensure disabled people can access transport and to ensure that when they do, the experience is a safe and supportive one which supports independent living.

6.3.3 A connected society: A strategy for tackling loneliness[16]

6.3.3.1 The world's first government strategy for tackling loneliness which includes,

- Creating a transport network that supports people's social connections and helps people be connected to their community, by working with the sector to highlight the importance of accessible and inclusive transport.

6.4 Regulatory indicators relating to accessibility should be included in the new Outcomes Framework. This will meet legal duties outlined in the Equality Act as well as other government policies and initiatives to build a more inclusive society, it will improve customer satisfaction and bring new and recurring users to the train service. 'Accessibility needs to be seen as a fundamental requirement of a successful railway, embedded into the core of what the railway does in the same way that safety already is'[17].

7. Recommendations

- 7.1 Include accessibility indicators in the new Outcomes Framework. This response has highlighted key areas that should be included.
- 7.2 Set national indicators that sets standards above the minimum and promotes an inclusive service both now and for the future.
- 7.3 Consult with and include disabled passengers in an accessible way to ensure their voices are heard and included.

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[16] DDCMS Loneliness Strategy (publishing.service.gov.uk)
[17] DPTAC reference frame: working towards a fully accessible railway - GOV.UK (www.gov.uk)