

**Gareth Clancy**  
**Head of Access and Licensing**



By email

22 July 2024

Dear Chris and Rupert,

**ORR Response to Network Rail 5 June 2024 plan for competing and/or complex track access applications**

1. Thank you for submitting your plan for producing evidence on the applications received by ORR by 20 May, as well as your proposed approach and reasoning on declaring sections of the East Coast Mainline congested. We also recognise the volume of work undertaken to provide initial representations on the associated 82 Statutory Consultations. It continues to be important that Network Rail is transparent in the development of its work and in the communication of progress with all parties.
2. This letter identifies areas where we consider that Network Rail should set out more clearly how its plan complies with its regulatory requirements to avoid undue discrimination. Network Rail should also indicate what outputs it intends to produce and by when to support decisions about sale of access that achieve the best possible outcomes for passengers and freight customers. This letter also emphasises that it is Network Rail's responsibility to produce timely evidence-based decisions for its positions on the submitted access rights applications. It is ORR's responsibility to regulate those decisions in line with our statutory duties.
3. We expect Network Rail to provide documentation (e.g. project plan and explanation of access approach) to address the issues in this letter for us to publish on our website, rather than to produce a reply to this letter. We also recognise that Network Rail will make further representations on the submitted applications.

**East Coast Mainline (ECML) Taskforce**

4. We recognise the interdependency between the work Network Rail is conducting on the ECML Timetable and many of the 82 access applications submitted by 20 May. Our understanding is that progress is being made at the Taskforce in line with your plans to recommend a "go/no go" decision by the end of July 2024 on implementing a new ECML Timetable during 2025.
5. Taking this decision as planned in July is important because of the potential impact on industry resources. It will provide clarity on the extent to which the "base" timetable is that proposed for the ECML by the associated industry Event Steering Group or not. This in turn will unlock Network Rail's own assessment of



capacity in time for decisions on the applications to be implemented in May and December 2025.

## **Network Rail's plan for access applications for December 2024, May 2025 and December 2025**

### *Ensuring non-discrimination*

6. We expect Network Rail to show how all applications will be considered in line with the protections against discrimination contained within the Railways Act 1993 and the Network Code. The current plan does not explain with sufficient clarity how each stage does not unduly prioritise applications for earlier timetable changes over applications relating to later timetables. Network Rail has provided assurances to ORR that analysis of applications for May 25 will include how they interact with applications for December 25. This important point should be publicly recorded by Network Rail.

### *Ensuring timely delivery of capacity and performance analysis*

7. Network Rail's plan and initial representations provided on 28 June explain the timetable production process and are helpful in setting out Network Rail's view of the interactions and policy considerations. However, the documents do not clearly set out the programme of work Network Rail will need to undertake to decide which access rights applications it will support or not.
8. Network Rail's plan needs to define the likely critical path on which access decisions can be taken. It is important that Network Rail communicates and publicly documents its approach on what access it expects to support while conducting its analysis. Network Rail also needs to explain how it will ensure all the necessary clear and detailed evidence (e.g. options for capacity use, power supply constraints and platforming capacity) supporting its decisions in its final representations to ORR will be produced in sufficient time for ORR to conclude its assessment well before the timetable starts. Where access rights are required to support continuity of service pending Network Rail's final decisions, ORR expects Network Rail to set out how it will expedite the parts of the 20 May applications it supports for ORR to consider.
9. Network Rail should provide its indicative programme of work setting out all the above **by 12 August 2024**. If Network Rail considers it will be unable to provide all the outputs by this deadline **it must respond without delay providing its reasons**. However, it is important industry and ORR are clear on Network Rail's approach to reaching access decisions by 12 August 2024. Where it is subsequently necessary to make changes to the programme, Network Rail should inform ORR and affected operators promptly. This should avoid the need for individual updates to the 82 Network Rail representations before substantive analysis in each workstream has been produced.

### *Identifying conflicts*

10. ORR requires reassurance that your plan's approach will allow Network Rail to identify whether different access applications seek to use the same capacity or not. Where there is a conflict, ORR expects Network Rail to confirm it will produce outputs which have considered more than one option for the use of capacity (to demonstrate non-discrimination).



11. To expedite decisions where possible we expect Network Rail to consider access applications according to the following categories:

- a. Full or partial rights within applications which Network Rail considers can be accommodated on the network without conflicting with existing rights or alternative applications submitted by 20 May. Network Rail should aim to agree these applications and expedite them for decision by ORR (not withstanding any additional considerations on an individual basis, such as economic analysis for open access applications);
- b. Full or partial rights within applications which Network Rail considers cannot be accommodated on the network alongside existing access rights. ORR will review and assess the evidence provided in these cases by Network Rail; and if we agree with Network Rail's assessment they will be expedited for a decision; and
- c. Full or partial rights within applications which can be accommodated on the network alongside existing access rights, but conflict with other applications submitted by 20 May. Network Rail should provide a quantum view of the capacity available in each relevant geographic area and present the options for accommodating proposed combinations of applications. This will enable ORR to assess the options in line with our statutory duties.

12. Where ORR has the necessary information to expedite decisions for each timetable it will do so. This includes undertaking any required economic analysis in a timely manner so that decisions can be incorporated into Network Rail's timetable production.

#### *Project management, governance and stakeholder engagement*

13. The plan should set out Network Rail's project management and governance to allow all stakeholders to understand and contribute to the process. This should include clear indications of when Network Rail will provide updates to industry.

#### **Congested infrastructure requirements**

14. We note that Network Rail published "early warning" notices of congested infrastructure for four key sections of the ECML on 5 July. Network Rail is undertaking further analysis and will issue formal Declarations of Congested Infrastructure (where relevant) in August. We will monitor Network Rail's progress on this. We continue to expect Network Rail to provide transparency to funders and industry through declarations of congested infrastructure, where relevant, and expect this to be done in a timely manner.

#### **ORR actions**

15. Having received Network Rail's representations on 28 June, we have asked operators for their views on those representations by 22 July. This will help us ensure that any queries industry has can be reflected in the analysis Network Rail is conducting. For all open access applications, we will write to applicants soon setting out the timescales and information required for ORR to undertake its economic assessment (where applicants have not already provided this information).



16. We will publish this letter on our competing applications webpage [Competing track access applications for 2024 and 2025 timetable changes | Office of Rail and Road \(orr.gov.uk\)](#).

Yours sincerely,

**Gareth Clancy**



Copied to:

Passenger and Freight Operators

Declared aspirant operators

Chris Rowley, Capacity Planning Director,  
Network Rail System Operator

Chris Curtis, Industry PMO, Network  
Rail

Anit Chandarana, Group Director,  
Network Rail System Operator

Sam Caughey, Markets Strategy and  
Planning, Department for Transport

Rupert Walker, Programme and Business  
Management Director, Network Rail  
System Operator

Kate Laramee, Interim Director,  
Markets North, Department for  
Transport

Access Disputes Committee

Elisabeth Cuthbertson and Lucy Ryan,  
Public Transport and Local Group