

28 June 2025

Declan Collier
Office of Rail and Road
25 Cabot Square
London
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Dear Declan,

Open Access. DfT correspondence regarding current applications

I am writing to raise certain points with you which relate to the Department for Transport (DfT)'s position set out in its letter to you of 20 June 2025 (the 'DfT letter') – sent shortly before the ORR's June board meeting at which, we understand, decisions were being considered in relation to open access applications.

DfT's Letter

The Secretary of State wrote to ORR on 6 January, outlining her expectations for how Open Access should operate alongside a publicly owned railway. The DfT further wrote to the ORR on 4 February expressing their objection to most of the current applications. This is their entitlement, but we have previously corresponded with you highlighting some flaws in their methodology as outlined in the DfT's 4 February letter. Neither the Secretary of State's expectations nor DfT's objections are, however, in themselves, determinative in a process run by an independent regulator.

In its most recent letter, the DfT further set out its position with regard to Open Access applications. In particular it has again raised concerns about the treatment of applications for Open Access we and other operators have made to you and are currently pending consideration.

The fact that the DfT has now written again at this extremely late stage in the application process, suggesting the ORR should now consider further methodology changes to be applied to current submissions when looking at the way in which these Open Access decisions are made is of concern to FirstGroup. It is very unusual for a stakeholder to seek to influence the process at such a late stage in the consideration. It is also surprising that the DfT has chosen to make a number of points about future plans (such as GBR's potential interests) which are not yet legislated for or relevant to the existing legal framework in which the decision is made. We consider it is uncontentious that any applications to the ORR must only be evaluated against the current methodology operators are asked to follow when making a submission to run new services.

DfT's position on Open Access

The position on Open Access set out in the DfT letter does not appear to be consistent with the added value and contribution to the economy and local businesses (such as rolling stock manufacturing at

Newton Aycliffe) which the DfT has previously publicly recognised and welcomed. It also seems to be at odds with the DfT's expressed support for Open Access services more generally, which was reiterated by the Secretary of State as recently as 26 June, when answering questions in Parliament. The contradictions between the stance taken by DfT in its letter to you and that stated more widely raises questions about the accuracy of some of the assertions made in the DfT Letter.

In reality, the successful applications granted by the ORR have universally resulted in service and performance enhancement, higher standards and greater ridership without significant capacity or revenue abstractive outcomes.

Nonetheless, the DfT's public stance and wider future plans are not in themselves directly relevant to the correct determination of open access applications. ORR is very familiar with determining open access applications in accordance with the law and its guidance. Consequently, when deciding the current Open Access applications, we expect ORR will properly consider submissions from stakeholders (including DfT) but will reach its determinations in accordance with its legal and regulatory duties and without regard to undue pressure from any source.

While there is a degree of rhetoric and assertion in the DfT letter we do not consider that the points made are largely relevant to the proper and established process for considering and granting access applications. We also consider that there are a number of potential inaccuracies within the DfT's letter which we would like to draw to your attention. We set these out further below.

DfT Financial Pressure and Open Access

While we appreciate the pressure on the DfT's budget, and that of the future GBR (once it is constituted), a proper financial analysis of the taxpayer benefits of Open Access go wider than a narrow view of the rail sector budget alone. Taxpayer value from these services cannot just be measured in terms of the DfT budget.

Excessive abstraction is obviously (and rightly) a barrier to ORR approval and always has been. Historically, however (and still in these current applications), there has always been an over-estimation by the DfT of the effect a proposal might have on their budget line, partially due to their methodology, and a persistent under-estimation of how the private sector generates revenue. Track access charges are also an important part of the equation, with Lumo expected to pay more than any other operator per train mile from October 2025.

In terms of the wider economy, Hull Trains and Lumo have demonstrated they have made real economic benefits, and are expected to deliver growth of up to £1.4bn over the life of their current track access agreements. Our £500m new trains order, celebrated by the Prime Minister and Secretary of State in December 2024 that helped to keep the Hitachi factory in Newton Aycliffe with an ongoing pipeline of work that, would not have been possible without open access, delivering immediate investment. These are real financial benefits to the national and regional economies which demonstrate the value of Open Access operations.

At no point do the DfT seem to take into account these wider social and economic benefits of what open access brings to the wider rail industry and UK economy.

Consider 'as one' and Current Process

The DfT suggestion that the ORR should consider 'as one' all the applications in relation to the DfT budget is incorrect both legally and operationally. The correct legal test is based around the services proposed in each case, not around some general global assessment of DfT finances – which would in any event not be possible for ORR to assess. To do otherwise than consider individual applications would wrongly discriminate against viable operations bringing better and more frequent services to

underserved communities. It is wrong to consider an application with a minimal effect on the DfT together with other applications that have a greater effect. In line with current law, each application should proceed on its own merits.

It is also incorrect to allow potential (and to some degree speculative) assertions of plans or intentions for what might be considered in the future to dictate the present. The applications have been validly made under the law as it stands and the rights currently granted to existing operations and they must be considered on that basis. The legislation to introduce GBR has yet to be put to Parliament. As such, consideration of *ongoing work to ensure that GBR is able to deliver the best possible service* at some point in the future are not relevant.

Our applications must be dealt with in accordance with the current railway structures and legislation, not with regard to something that may or may not happen in future legislation.

Overall Experience for Passengers

The DfT asserts that the Open Access applications “risk a poorer overall experience for passengers”. This is not correct. As the operator of Open Access services for 25 years, we consider that the demonstrable overall effect on passengers has been overwhelmingly positive, and there has been no performance issue that we are aware of due to these extra trains on the network. Customer satisfaction scores on the East Coast Mainline are strong throughout. Recent surveys conducted by the Institute of Customer Service found that Lumo and Hull Trains had a Net Promoter Score of 60, one of the highest in the transport sector, not merely rail. Any score above 50 is considered excellent. These strong levels of customer satisfaction have helped grow the demand for all East Coast operators by at least 15% in 2024 versus 2019, as shown in the ORR statistics. The popularity of local operators such as Hull Trains providing services to communities which otherwise would not have adequate rail coverage has stood the test of time.

Conflict of Interest

We are extremely disappointed that the DfT has raised concerns in respect of potential conflicts between Owning Groups who operate or have applied to operate open access where they have contracted DfT operations. FirstGroup takes conflict of interest, competition matters and data handling all very seriously, and we have actively put appropriate measures in place. We have also informed the DfT of these measures regularly.

We wrote to the DfT on 28 March 2024 to explain our approach to making applications over routes where we currently operate DfT services. We set out how we had put in place voluntary measures that would ensure that any information between our DfT contracted businesses and our Open Access business would remain separated. FirstGroup’s open access business cases are developed independently of the team at our two national rail contracts – there is no crossover and the Open Access team are unable to receive or see any information from either business. We also made changes at board level within these businesses to ensure no conflicts of interest can arise.

Almost a year later, on 10 February 2025, the DfT asked us to provide further understanding of the mitigations in place to ensure there were no conflicts of interest. We further responded to the DfT on 14 March 2025, and we have received no further correspondence on this matter. We consider conflicts of interest to be carefully and robustly managed.

Benefits of Open Access

The East Coast Mainline usage has demonstrated how popular Open Access is. People like the additional services, timings and alternative offering. Despite statements to the contrary, the Secretary of State has been clear in wanting a mixed-use railway.

It is therefore disappointing that the DfT letter is so openly hostile to Open Access and appears to be seeking to put improper pressure on valid competition to future publicly owned services. A reading of the DfT letter is that benefits to rail passengers should be provided through GBR only. The DfT's approach as set out in this letter would restrict the choice customers are given a choice of an alternative service on shared routes and would not allow the opening up of the railway to those customers who are currently under-served in areas of the UK.

DfT appear to present Open Access as primarily an unwelcome drain on the DfT budget through abstraction of current and future revenues that could be gained by DfT (GBR) operators. All of this is demonstrably untrue.

As Open Access operators have demonstrated over an extended period it is not sufficient to merely provide trains and expect revenue will come. By contrast, Open Access operators go out and work to earn their income, ensuring real growth to maintain and improve both their businesses and offer to passengers. By doing so they introduce further passengers to the network who in turn (to complete their journeys) add ridership to other providers. The abstraction argument has already been tested in court in the 2006 High Court case involving Hull Trains and rebuffed. The facts of Open Access demand generation speak for themselves.

Open Access pays its own way and does not receive subsidy. There is scope to use the network assets (Which are ultimately public assets) more effectively, given that passenger behaviour has evolved and we need to ensure the railway keeps pace. Running the same level of commuting services on a Friday to the rest of the week is a prime example from other areas of the industry. Open Access is an effective means of realising the benefits available for passengers.

Summary

In summary the current applications must be assessed against the current law. We believe that our applications provide exciting opportunities for communities to be better connected, enable much needed growth, boost housing developments, bring material investment, and improve the passenger experience.

Should you require further information we would be happy to provide it or if you require a meeting to discuss we would be happy to arrange this.

Yours sincerely

Steve Montgomery
Managing Director, First Rail

cc: John Larkinson, ORR
Richard Goodman, DfT