

Stephanie Tobyn
Director Strategy, Policy and Reform



Jake Kelly, Group Director, System Operator,
Network Rail
Dave Penney, Interim Managing Director, North
West and Central Region, Network Rail
Ian McConnell, Managing Director, West Midlands
Trains
Richard Allan, Managing Director, Chiltern
Railways
Dan Moore, Director Rail Strategy and Analysis,
DfT

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Dear Jake, Dave, Ian, Richard and Dan

Timeliness and quality of track access applications for May 2023 timetable change in North West and Central Region

I am writing to you following my letter of 5 June 2023. We have completed our review into the late submission of West Midlands Trains (WMT) and Chiltern Railways (CR) access applications for the 21 May 2023 timetable change.

This letter sets out our key findings, which have wider industry relevance.

The purpose of our review was to assess whether Network Rail, Chiltern and West Midlands Trains are addressing the issues which led to the late applications, which put implementation of the timetable change and associated customer benefits at risk. Most urgently, this review sought to ensure these parties are taking necessary steps to provide timely and robust performance assurance for the December 2023 and future timetables.

Our review has identified learning for the parties involved and the wider industry; where funders, operators and infrastructure managers could improve and need to engage earlier with ORR. Equally, ORR will engage earlier and more closely with industry wide planning for timetable preparation.

We are grateful to colleagues at Network Rail, Chiltern Railways and West Midlands Trains for your co-operation with this process, and in helping us to understand the issues surrounding these cases.

Summary of findings

Our review highlighted that funder specification, timetable production and the contractual framework which are necessary for services to operate in a timetable, are currently misaligned – creating risk for the industry and its customers. With the timetable production and contractual processes “squeezed”, it is much harder for ORR to ensure sufficient checks are in place to ensure a high performing timetable for passengers. It is also very challenging for train operators to proceed with securing access in the absence of confirmation that its planned train services will be funded by Government.

There should not be a culture of expectation that the majority of train services can be routinely introduced at a late stage due to the heightened risk of detrimental consequences for customers of the railway and the wider revenue and reputational impacts that emanate from this.

Preparation for May 2023 – industry timetabling and access rights processes

WMT, CR and NR all provided evidence that performance improvement for passengers was a core principle in the May 2023 timetable changes in the North West and Central region and the implementation of the new timetable has broadly achieved this objective.

WMT and CR followed the process set out by Network Rail to build the timetable for May 2023. In common with major timetable changes since 2020 this was not the contractual process, as set out in the Network Code.

Both operators bid into the timetable before securing Department for Transport (DfT) approval of the train service specification. In doing so, they knew it was possible they would have to rework the timetable plan to implement changes arising from their negotiation of their annual business plans with DfT. WMT did not have to make a revised submission on this occasion whereas CR submitted timetable bids in September 2022 and again in February 2023. They both recognised that these services, required ORR approval of the associated contracts to run.

We recognise that the Industry Timetable Project Management Office, the central function at Network Rail that oversees the management of timetable change risk, has challenged funders and industry effectively on the forward planning timescales for the purpose of better understanding and managing performance risk.

However, there were points in the access process where all parties could have been more efficient in bringing forward their submission to ORR. NR’s internal consultation on the WMT access application began on 3 February, with the Sale of Access Rights Panel (SoAR) granting approval on 15 March 2023. The NR internal consultation on the CR application began on 24 March 2023 and SoAR granting approval on 17 April 2023. NR should consider the time needed to grant approval for different applications. Similarly, operators could start the access process earlier, working on

this alongside the timetable production process, to reduce the risks to themselves and their customers associated with potential refusal of access rights. Managing the timetable and access rights processes together may have brought forward the conclusion of the May 2023 applications.

However, our review identified that NR finds it difficult to consistently require publicly funded operators to submit applications earlier within the access rights process. NR has then accepted late (or very late) applications even if it knows the time available is insufficient to secure those rights. This imports the risk that rights cannot be agreed or approved, with the consequence of the associated timetabled services needing to be amended or withdrawn at short notice.

Our analysis of information on access rights, across the industry, supports these conclusions. For May 2023, nineteen of the twenty-eight planned applications for were received after T-12. In effect, this means industry is routinely offering “confirmed” timetables to customers before it has started the process of obtaining approval to operate the services.

Interaction of access contracts and timetabling with DfT annual business planning process

In 2021, DfT introduced the annual business planning (ABP) process, for the operators it funds, to respond to changes in passenger demand while protecting taxpayer value for money and industry financial sustainability. Our review considered that this process was influential in delaying the necessary preparation for the May 2023 timetable change. This is because some operators look to complete funder sign-off of their train service plans and confirm their “bids” into the timetable production process before securing contractual access rights.

Our review found, from NR, WMT and CR submissions, that the DfT ABP process began on 30 September 2022 for the May 2023 timetable change. This was already one week after the date specified by NR and agreed by operators for submission of proposed timetables. DfT approved WMT services for May in time for the bid date on 23 September 2022 and the full business plan in February 2023. DfT approved Chiltern’s services for May in February 2023, twenty-three weeks after they were required to bid and the full business plan for 2023/24 was finally approved in April 2023.

Our understanding is that the timeline described is typical of the ABP process for most public service contract operators at present. However, both operators only submitted the access rights applications after the timetable and ABP process had concluded. It is not clear to us from our review why operators feel able to initiate the timetable production process ahead of DfT sign-off of their plans, but do not do the same for the sale of access process.



The WMT and CR late request for approval of their access contracts by ORR meant passengers were put at risk of experiencing amended, withdrawn or disrupted services at very short notice. A combination of DfT providing clarity earlier to operators so that they feel empowered to participate in the process earlier and operators acting on this to secure the access rights approval from ORR would significantly reduce risk and support compliance with relevant licence conditions on the provision of information to passengers.

We have had an initial discussion with DfT regarding considering how the contract and timetabling processes fit with annual business planning and have agreed to progress those conversations this summer.

Quality of information provided for May 2023 access applications

For both WMT and CR, the late submission of access applications meant we had to intervene at a very late stage to secure sufficient information on the performance mitigations and assurance process. We received enough information a matter of days out from the timetable being due to commence and for this reason we were able to approve the rights for a limited time. Our decision to approve was also informed by an awareness that the purpose of the timetable change was to improve performance and that the industry had collaborated extensively in its preparation.

However, if this situation were repeated for a future timetable change with more challenging performance risks, we consider it highly unlikely that operators would be able to provide the necessary assurance in time for us to approve the access rights. For this reason, we will now intervene earlier in the access process if we become concerned about timescales and information expectations being met in future timetable changes.

Preparation for December 2023 and 2024 timetabling

NR, CR and WMT have provided evidence that they are currently taking the necessary steps to submit timely contracts with sufficient performance assurance for the December 2023 timetable. We are aware that these applications were authorised at Network Rail's July 2023 Sale of Access Rights Panel, and we look forward to a timely submission following industry consultation.

To ensure there is continued timely progress and material challenges to timetables are being addressed effectively across the whole network, we will continue to keep the access process under close scrutiny. We will place a particular emphasis on decisions which may still be under consideration for 2024.

Next Steps

Actioning Independent Reporter (IR) recommendations

We are keen for industry to improve its planning of access applications. In addition to the areas of learning highlighted above, we expect improvements to the process to be introduced to address the recommendations from the recently completed Independent Reporter review of Network Rail's capacity allocation process (requested by ORR) in the coming year.

In the wider industry context, these applications have highlighted several areas where the recommendations and supporting actions contained in that report will, in future, help improve the quality of access applications, with particular focus on:

- Clarifying the Capacity Allocation Process (CAP) and the steps involved within it;
- Improving the information available on the process to funders and access beneficiaries; and
- Providing clarity on how access applications will be assessed as part of the application review process and the quality of assurance required.

We expect operators to familiarise themselves with the outputs of the independent reporter's work and to participate in implementing the recommendations. To support this, we will publish the independent reporter's findings in August.

We will continue to monitor the access and timetabling processes for December 2023 and 2024 timetables as part of our existing access and holding to account processes. This will include further engagement, and where necessary, escalating any concerns earlier with DfT, Network Rail and train operating companies. We also plan to work with industry and Network Rail, using data, to improve the transparency of timetabling and access process compliance.

This letter will be published on our website.

Yours sincerely

Stephanie Tobyn