



Holding London St. Pancras Highspeed to Account

Executive summary

1. London St. Pancras Highspeed (the trading name of HS1 Ltd) is contracted to operate the HS1 network under a Concession Agreement and leases for four stations with the Secretary of State (DfT) until 31st December 2040. Under this framework, we are responsible for carrying out periodic reviews of the company's plans for managing those assets. We also have duties under those documents for holding the company to account against requirements contained therein, and our determined outputs at periodic review.
2. The Concession Agreement sets out a General Duty on London St. Pancras Highspeed to "to secure in respect of the HS1 Railway Infrastructure: its operation and maintenance; its renewal and replacement; and the planning and carrying out of any Specified Upgrades and other upgrades, in each case:
 - (a) in accordance with Best Practice;
 - (b) in a timely, efficient and economical manner; and
 - (c) save in the case of the EdF Assets, as if [London St. Pancras Highspeed] were responsible for the stewardship of the HS1 Railway Infrastructure for the period of 40 years following the date that any such activities are planned or carried out, subject to:
 - (i) the Safety Authorisation for HS1; and
 - (ii) the Capability Requirements."
3. In addition, the station leases require the company to maintain the stations in good and substantial repair and condition during the whole of the Life Cycle Period ending on 1 April 2061 ("the Life Cycle Purpose").

4. This policy sets out how we will continue to monitor London St. Pancras Highspeed regularly throughout the control period, and publicly report on its performance at least annually.

1. Aim and objective

- 1.1 We regulate London St. Pancras Highspeed in accordance with the terms of contracts between the company and the Secretary of State dated 14 August 2009 for the route (the Concession Agreement), and the 2010 HS1 Stations Leases (the Stations Leases), as amended. In addition, we have responsibilities under The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the Regulations).
- 1.2 Our approach to holding London St. Pancras Highspeed to account aims to strengthen or create incentives to:
 - (a) identify opportunities for innovation or research and development which support London St. Pancras Highspeed in its achievement of its Asset Stewardship Purpose, and the Life Cycle Purpose for each of its four stations;
 - (b) take timely action to address poor train performance attributable to the infrastructure;
 - (c) encourage effective, transparent, inclusive and well-governed stakeholder engagement; and
 - (d) if necessary, take direct regulatory action to resolve concerns as early as possible to minimise the impact on operators, passengers and freight customers.

2. Approach

- 2.1 Our approach to holding London St. Pancras Highspeed to account is informed by principles of regulatory best practice, as follows:
 - (a) risk-based – this means that we will focus our resources where we consider the risks are greatest;
 - (b) targeted – we will target our detailed monitoring and escalation activities at those areas where an issue, such as a potential non-compliance, has been

identified and is material. This is with a view to reinforcing accountability and appropriate incentives on London St. Pancras Highspeed;

- (c) proportionate – so that any actions we take reflect the scale and nature of the problems we are seeking to address and the likely costs and benefits to different parties of taking action;
- (d) transparent – so that we are clear with stakeholders about our view of London St. Pancras Highspeed’s performance, we will state where we have any concerns and what action we are taking; and
- (e) predictable – we will provide a stable and objective regulatory environment enabling affected stakeholders to understand our approach to making decisions.

2.2 We are taking a proportionate approach to monitoring the increased asset management and efficiency challenges set for London St. Pancras Highspeed through our periodic review. In line with London St. Pancras Highspeed’s duties under the Concession Agreement and Station Leases, and in order to meet the expectations set out in our Final Determination, we expect to focus our monitoring and reporting on:

- (a) asset management capability, including the increased requirement for renewals as the asset ages;
- (b) financial reporting, including the calculation of efficiency;
- (c) the measurement of outperformance on route funding;
- (d) use of risk and contingency provisions;
- (e) investment decisions for renewals and R&D; and
- (f) the delivery of efficiencies set out in the final 5YAMS and LCRs.

What we will publish

2.3 The scope of our reporting will vary depending on the coverage, quality, accessibility and timeliness of London St. Pancras Highspeed’s own reporting through its quarterly updates to stakeholders and annual Asset Management Annual Statement (AMAS) process. Where this reporting is strong, we have the scope to reduce our reporting and vice versa. As a minimum, we expect to always publish an annual report of London St. Pancras Highspeed’s performance.

Monitoring and assessment

Asset Stewardship

- 2.4 We will assess London St. Pancras Highspeed's reporting using performance specification and asset activities planned and undertaken as strong supporting data that it is meeting its duty. We will also need London St. Pancras Highspeed to demonstrate that it is taking a proactive approach in assuring operations, maintenance and renewals activities.
- 2.5 We require London St. Pancras Highspeed to report on its R&D programme and against the recommendations we set out in our Final Determination, on how it can further improve its capability and effectiveness.
- 2.6 We expect London St. Pancras Highspeed to report information to us in line with the specification and frequency which has been agreed at a working level. These reporting requirements may be subject to change depending on current priorities and to ensure we are taking a proportionate approach.

Financial performance and efficiency

- 2.7 We will monitor London St. Pancras Highspeed's financial performance using a range of qualitative and quantitative information, from sources including a combined AMAS for route and stations. We expect the AMAS to provide transparent narrative on:
- (a) whether London St. Pancras Highspeed has achieved financial outperformance against forecasts of operations, maintenance and renewals spend, and therefore if any resultant payments are due to funders under its contractual obligations:
 - (b) efficiency: a comparison of expenditure on activities undertaken by London St. Pancras Highspeed (operations, maintenance, renewals and supporting functions) against the value of the outputs on a like-for-like basis over time; and how this compares to the targets set at periodic review, as well as contemporary indicators/benchmarks from within (and outside) the industry; and
 - (c) a quantitative and qualitative assessment of risks, both what they are and how funding has been used efficiently to meet the risks.
- 2.8 We expect London St. Pancras Highspeed to provide the following information for our monitoring of the escrow accounts:

- (a) timely and transparent information on its investment decisions during the control period for stakeholders; and
- (b) analysis to illustrate its approach to investment decisions made over the year.

Risk-based approach

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

Escalation

- 2.10 If we identify areas for improvement or concern with London St. Pancras Highspeed's performance through our monitoring, we will use a staged escalation approach. The aim of this approach is to resolve issues before they result in enforcement action under the Stations Leases and the Concession Agreement. However, if early resolution is not possible or if there is sufficient evidence that London St. Pancras Highspeed is not or is likely not to meet its obligations, we will consider taking enforcement action as set out in the Stations Leases and the Concession Agreement.
- 2.11 If we identify an issue, we may:
- (a) request further information - in order to investigate and resolve concerns as promptly as possible it is likely we will request further information from London St. Pancras Highspeed and stakeholders, where appropriate. Collecting this information is likely to be in addition to our regular monitoring requirements;
 - (b) set London St. Pancras Highspeed -focussed action to resolve - upon identifying an issue and our expectations for resolution, we will set out and publish our concerns and the actions required to London St. Pancras Highspeed. This may provide London St. Pancras Highspeed the opportunity to de-escalate our concerns by achieving the desired outcomes quickly. However, we expect London St. Pancras Highspeed to act promptly to cascade the relevant actions to those responsible for delivery and ensure that relevant stakeholders are briefed and progress is reported back on;

- (c) provide public commentary and hearings - the next stage of escalation is that we may decide that the results of our investigation can be published to provide public accountability of the issue. By producing a commentary, and/or correspondence with London St. Pancras Highspeed, we plan to make any issues and necessary actions clear and transparent for those affected.

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

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

2.12 Possible outcomes from progression through escalation stages are:

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



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