

Michael Lee
Director, Railway Planning and Performance
Telephone 020 7282 2139
Fax 020 7282 2042
E-mail michael.lee@orr.gsi.gov.uk



23 June 2010

Dear stakeholder

Enforcing Network Rail's delivery of operational performance

We recently sought views on an update to our 2006 policy statement about how we will enforce Network Rail's delivery of operational performance. The update was to reflect statements we had made in the PR08 determination about how we would handle disaggregated performance requirements and the role of the National Task Force in monitoring performance. We have considered the points raised and made some changes to clarify the statement. Our updated policy is attached. It takes effect from today.

We presented the update at the industry National Task Force Operation Managers Group and sent a revised version to the TOCs' Performance Forum and to Network Rail. We received five responses, from Arriva Trains Wales, Virgin Trains, First Group, ATOC and Network Rail.

Arriva Trains Wales, First Group and ATOC were concerned that the policy did not adequately address outperformance where performance is already above that projected in Network Rail's delivery plan. They felt that there was little incentive for Network Rail to try to improve performance further and that there should be a mechanism for ensuring that performance improvement does not end once a regulatory target has been met; First Group noted that improvement on a continuous basis was itself a JPIP objective. We make it clear that the JPIP is intended to get both parties to agree challenging targets and we encourage you to do that. We will hold Network Rail to account on any firm commitments made in a JPIP, according to this policy.

We understand that Network Rail is now finalising the few outstanding JPIPs for 2010-11 which, on the whole, promise better performance than that set out in its delivery plan. It has told us that it expects us to hold it to account against these commitments, in the context of the regulatory requirements set in our PR08 determination. We welcome these improved commitments and expect Network Rail to update its delivery plan to reflect them.

Virgin Trains questioned our allowing a degree of tolerance around the disaggregated numbers in the delivery plan. In our PR08 determination (paragraph 30.23) we said we would take into account whether the process of disaggregation has made due allowance



INVESTOR IN PEOPLE

Page 1 of 4
Doc # 376156.02

for the greater degree of uncertainty associated with local output projections. This is a sensible approach and consistent with the agreement reached by the National Task Force.

Virgin also noted that it had objected to the targets set for it for 2009-10 in the delivery plan. In the PR08 determination, we said that the delivery plan targets would only become customer reasonable requirements once we had accepted the delivery plan. In our letter to Network Rail on 29 May 2009 we noted that this was an issue we were dealing with separately. Since then, with our encouragement, both parties have agreed trajectories and initiatives for a series of half-yearly JPIPs.

Virgin and ATOC questioned whether meeting the national and sector targets would protect Network Rail from action if it failed to meet a disaggregated target. It would not; each level of commitment is important in its own right and we will use the criteria set out in the policy to determine what action is appropriate for a failure to meet any particular requirement.

Virgin Trains suggested that we should include benchmarking against other TOCs in the criteria that we use to assess if further action is required. Whilst we have made use of benchmarking in some cases, ultimately we are judging performance against the JPIP targets each operator has agreed with Network Rail, not against another operator. We will use benchmarking where appropriate such as where similar factors clearly affect more than one operator.

Network Rail questioned the use of the word "Test" in paragraph 3 of the policy and we agree that it is not clear what we intended here. We have changed this to say "monitor and hold Network Rail to account".

It considered that ORR's policy around the disaggregated targets in paragraph 5 should include a reference to mitigating or aggravating factors, and that it would expect there to be a trend of poor performance before enforcement action is considered. Our policy on the disaggregated targets was clearly set out in chapter 30 of the PR08 determination and is replicated in the statement so that all our policies on performance can be seen in one place. We therefore do not intend to amend this policy here, though we have added reference to mitigating and aggravating factors in paragraph 11 as something we will consider when deciding whether to take further action.

Network Rail wanted clarity on the targets covered. These are

a) the requirements in chapter 4 of the PR08 Determination in tables:

4.1: PPM for 3 England and Wales sectors and for Scotland;

4.2: CASL for 3 England and Wales sectors; and

4.3: Network Rail delay minutes for passenger trains in England & Wales and Scotland and freight delay nationally.

b) the disaggregated commitments in Network Rail's delivery plan set out in:

Appendix 4 – TOC share of sector-level PPM targets

Appendix 8 – TOC share of Network Rail passenger delay minutes

Appendix 10 – FOC share of Network Rail freight delay minutes

c) firm commitments in a JPIP, which as a minimum should be no less than the annual disaggregated numbers in the delivery plan. If Network Rail and operators agree targets that differ from the disaggregated targets in the delivery plan, we expect Network Rail to use the change control process to update the delivery plan to reflect these. We have added a comment to paragraph 8 to make this clear.

We have included the freight operational targets in this list because they are covered by our statements in the PR08 determination and we would give the same consideration and apply the same principles to failures to meet these targets.

Network Rail noted that the policy includes a two part test for a possible breach that it is not engaging in the process *and* that performance is poor, and questioned whether this was intended. First Group also felt this test should be strengthened. We agree that this does not fully reflect the intention of the original policy and we have therefore reverted to the original text. This reads:

“... Network Rail is not engaging in the process fully *or* that its performance is (or is likely to be) materially worse than a performance commitment and that this reflected a material failure to take steps which Network Rail could reasonably take to address poor performance...”

Network Rail also noted that it would be surprising if ORR was to take action if it was clear that Network Rail was doing all it could to resolve problems and that its stakeholders were satisfied. In line with its general duty in condition 1, Network Rail is required to meet the targets “to the greatest extent reasonably practicable having regard to all the relevant circumstances”. Our economic enforcement policy is clear that we are committed to proportionate and targeted regulation, but we reserve the right to take action if necessary, even if other parties appear to be satisfied.

Network Rail was concerned that a franchise projection will usually extend beyond the control period in which it is made, and that funding may change in later reviews. We note that this part of the policy is unchanged. Government and bidders should be able to have confidence in projections provided by Network Rail to be able to plan their bids and

assessments. Where there are uncertainties, Network Rail needs to make them explicit in the projections and make clear what the limitations are when it offers its projection. It should also build these projections into its own submissions for funding at subsequent reviews to seek to ensure that adequate funding is made available. We consider that an efficient network manager should be able to make reasonable projections based on these principles. We have therefore made no further change to this section.

Yours sincerely

Michael Lee

A horizontal, slightly curved line with a small arrowhead at the right end, serving as a signature flourish.

Michael Lee