

Anna Walker
Chair



Rt Hon Patrick McLoughlin MP
Secretary of State for Transport
Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR

3 August 2015

Dear Secretary of State

Thank you for your letter of 16 July 2015 restating current Government policy on open access. You also highlighted important issues of cross-subsidy on the railway and the structure of access charges and your particular concerns about current applications for access to the East Coast and West Coast Main Lines. I would like to respond to each of your points.

We recognise the Government's policy position on open access as set out in the 2012 Command paper "Reforming our railways" and the very challenging financial circumstances the railway industry faces. Like you, we value the benefits that open access competition can bring for some passengers whilst also recognising the potential negative consequences for passengers (for example, through increased performance risks), for taxpayers and for the funds available to Government.

ORR is statutorily required to approve arrangements for access to, or use of, the track. We have to do this in accordance with our statutory duties that require us to take account of the potential benefits and dis-benefits you refer to. We must balance a range of statutory duties in the overall public interest. As you rightly say, these include having regard to your own financial position, any guidance you give us and the interests of those providing railway services, the funders and the general public. Others relate to the promotion of competition and the interests of users and passengers on the railway. We recognise the tension between some of these duties, particularly those relating to your finances and competition and, potentially, the users of the railway. Another of our statutory duties is to 'enable operators to plan their business with a reasonable degree of assurance'. In that context, to provide guidance to those applying for open access rights and because of the tension between our duties, we have a long standing, published policy on our approach to open access applications (published in detail in 2010) *not* to approve open access applications that do not generate at least a threshold level of new revenue for rail and provide tangible benefits to passengers.

You pointed out some of the cross-subsidies inherent in the current structure of charges paid by operators and that open access operators currently only pay marginal track access

costs. You suggested no further open access should be permitted until and unless there is fundamental change in the approach to charges. Some of the principles underpinning the current structure of charges were tested in the High Court in 2006. There it was noted that it could be discriminatory simply to impose fixed track access charges on open access operators given the significant protections franchisees have from changes to those charges. This highlights how cross-subsidy is a particularly complex area. Indeed, it is not just passenger open access operators who face different charges. Freight operators do as well.

Going forward, we are strongly supportive of the need for charging structures which are more closely aligned to costs. We consulted on possible reforms to achieve this as part of PR13, but could not find a satisfactory way forward. We are already working with the industry and your officials on the structure of charges that will apply following the 2018 Periodic Review, and will consult widely on this beginning in 2016. We will welcome your and your Department's support for more cost based charges including exposing franchise operators to reasonable changes in track access charges at the time of a periodic review. In that context we also welcomed the Government's recent commitment to channelling at least some of the network grant through the train operating companies as we believe this will improve transparency and encourage the train operators and Network Rail to work together to find and deliver cost efficiencies on the network.

You raise the issue of performance modelling ahead of new entry and your particular concern to understand if GNWR's latest proposal for the West Coast is operable given HS2 works affecting Euston (and whether any additional risks to reliability can be mitigated). We agree these are important questions and uncertainty around these potential impacts were one reason we rejected GNWR's open access application last year. However, we agree with Network Rail this risk is now much reduced by GNWR's latest application – this is for significantly fewer services, limited to off-peak times with firm rights only to Queen's Park and with rights into Euston that are contingent on there being capacity for them.

Finally, your letter also reflected concerns that open access on the East Coast would undermine the IEP and infrastructure enhancements business case, or journey time and connectivity benefits you wish to secure through your franchisee. The ORR Board has yet to consider the ECML applications and we will carefully consider these points in our decision-making process as we balance our duties and the costs and benefits of the competing applications. We are grateful to your officials for setting them out for us in our recent Hearing and elsewhere.

I can assure you we recognise the importance of the issues you have raised about the funding issues faced by your department and Government generally and the potential impacts of open access. These have been and will be carefully considered and weighed in our access decision-making processes and longer-term as we work together with the industry to improve industry arrangements for PR18. We have written confidentially to GNWR and Network Rail to explain the outcome of our deliberations on their WCML application and I attach a copy of that letter which sets out our conclusions and the reasons for them. The letter will be published once we have considered any comments they may have on factual accuracy. I also offered, through your office, to talk you or Ministerial colleagues through our decision. At Claire Perry's request, I spoke to Cav Elithorn last week and am happy to have any further discussions which are useful.

I am copying this letter to Claire Perry, Philp Ruttnam, Brian Etheridge and Cav Elithorn at the DfT.

Yours sincerely,

Anna Walker

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Chair of Office of Rail and Road