



**John Larkinson**  
**Chief Executive**

30 May 2019

Dear Industry,

### **Problems with sale of access rights process**

I am writing to ask you all to take action to improve the sale of access rights process, which is currently not working in the best interests of passengers and freight users.

As you are aware, under the Railways Act 1993 ORR's approval of all track access contracts and any amendments to them is required before they are legally valid. This is to ensure that fair access is granted to the rail network and best use is made of capacity. In order to fulfil this purpose, we need to be able to review each access application, carry out our own assessment of the impact of that application and consider fully any representations made by third parties. We need to be able to reach a decision in sufficient time for that decision to be reflected in the timetable in the event that we decide that the requested access rights cannot be approved either in full or in part.

However, the process is not working. For the May 2019 timetable change, almost all the applications requiring our approval were received after T-12, and over 50% were received less than six weeks before the timetable change. Some of the rights requested had material objections by third parties raised during the industry consultation phase. The services reflecting the rights applied for had all already been included in the May 2019 timetable offered to operators on 15 November 2018. At such a late stage it is almost impossible to amend the timetable to reflect concerns of third parties without major implications. This means that the track access team in ORR are forced to turn applications around in very short timescales and have limited options but to approve an application for at least an initial period, even where concerns regarding performance and capacity are not fully resolved.

The whole industry has allowed this situation to develop; operators have engaged with Network Rail and third parties too late, Network Rail has been unwilling to commit to access rights before a full timetable has been developed, and where there are conflicts in train service specifications these have been slow to be identified/resolved. We in ORR have been too flexible in trying to accommodate this.

#### *Timescales for submitting track access applications*

Our published [track access guidance](#) clearly sets out our expectations on the timescales for the submission of applications<sup>1</sup>. Part D of the Network Code gives priority to proposals with approved firm rights at the Priority Date (D-40) in the creation of the timetable. As a result, there is an incentive on operators to obtain rights early, particularly in an environment where capacity is increasingly constrained and in many circumstances there may not be sufficient capacity to accommodate all requested rights. In order to have approved rights in place by D-40, we would expect operators to have submitted an application to us at least twelve weeks before this date where that application could be

---

<sup>1</sup> See paragraphs 98-101 of Track Access Guidance

contentious or involve significant or complex change<sup>2</sup>. Operators should start the formal sale of access rights process as early as possible. Due to the increasing complexity and interconnectedness of timetable changes, alongside increasing capacity constraints on the network, operators must aim to submit the majority of applications with the intention of having approved rights before D-40.

At the latest, operators should aim to have approved access rights by the time the timetable is finalised at D-26. As was demonstrated in May 2018, material changes to the timetable after this point can have serious consequences for the operational reliability of the timetable.

As we have already passed D-40 for December 2019, operators must submit their applications as soon as possible. We will shortly be contacting operators individually to discuss the status of their December 2019 applications. We note that D-40 for May 2020 is 9 August 2019. If operators want to have approved applications ahead of this date, they should prepare those applications and submit them to us for approval by the end of June at the latest.

If applications are not submitted in line with the timescales set out in our guidance, we will increasingly only be able to approve rights limited to one or two timetable changes and/or contingent rights, creating commercial risks for operators.

We also note that the PMO timetable risk assurance reporting now includes a column to indicate whether access rights have been approved. We understand that this will be red where a required application has yet to be submitted to ORR and this will be subject to scrutiny at the PMO Steering Group and in other industry forum such as RDG.

### *Early resolution of third party objections*

An important part of the sale of access rights process is to highlight third party objections to an application. Operators therefore need to engage early to understand the access rights sought by other operators and assess how these may impact on their own services. Identifying these issues early makes the formal sale of access rights process much smoother.

In some cases there are forums such as an industry readiness board or event steering groups set up in which operators can raise concerns and work together to resolve issues relating to a timetable change. However, these groups do not exist in many cases. We have therefore separately asked Network Rail to set out to us how they will establish clear processes to ensure operators are aware of how the plans of other operators may impact on their own plans early on in the development of the timetable (pre-D40). We have asked them to respond with their plans for this by 30 June.

### *Wider issues with the access process*

---

<sup>2</sup> See paragraph 101 of the Guidance, this sets out that we would expect our review to take between 6-12 weeks depending on the nature of the case.



There may be many factors causing delays or problems in the access process. We have asked Network Rail to work with the whole industry through the PMO Steering Group to identify reasons and whether changes are needed in the process to ensure the timescale in our published track access guidance can be adhered to.

### *Next steps*

In summary, the next steps we are asking industry to commit to are:

1. Operators to quickly progress submitting applications requiring our approval for December 2019 and May 2020.
2. Network Rail to set out to us how they will establish clear processes to ensure operators are aware of how the plans of other operators may impact on their own plans early in the development of the timetable (pre D-40) by 30 June.
3. Network Rail to table an item for discussion at the July 2019 PMO Steering Group (to be attended by ORR) to discuss the reasons for the delay to the submission of access rights and whether any changes are needed in the process.

If you would like to discuss the issues raised in this letter further, or would like to highlight any particularly challenges you see with the current industry process or practices which are acting as a barrier to early submission of track access applications, please contact Catherine Williams in the first instance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Larkinson', is written over a light blue horizontal line.

**John Larkinson**  
**Chief Executive**