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Mr Robin Gisby  
Managing Director, Network Operations and Customer Services  
Network Rail Infrastructure Limited  
Kings Place  
90 York Way  
London, N1 9AG

28 June 2013

Dear Robin,

**Possible breach of condition 1 of Network Rail's network licence with regard to Network Rail's operational performance**

I wrote to you on 29 April to advise Network Rail that ORR was investigating Network Rail's performance in 2012-13 and for 2013-14. Thank you for your co-operation and the information you provided to us.

Our investigation has focused on Network Rail's Long Distance and London and the South East sector performance in 2012-13 and an assessment of whether it did everything reasonably practicable to achieve its regulated outputs. We have also considered the prospects for Network Rail delivering its regulated outputs in 2013-14. We have taken account of a range of issues affecting performance and we have noted the recent good progress you have made in reducing external delays from suicides and cable thefts. We also commissioned an independent reporter to provide us with an assessment of the delivery and impact of some of the actions in the Long Distance recovery plan (LDRP) and the London and South East plan (LSEP). We have also spoken to relevant train operating company (TOC) managing directors to hear their views on Network Rail's performance.

Having carried out this work, we remain unconvinced that Network Rail did everything reasonably practicable to comply with condition 1 of its network licence in the Long Distance and London and South East sectors in 2012-13. **Condition 1** requires you to secure:

- (a) the operation and maintenance of the network;*
- (b) the renewal and replacement of the network; and*
- (c) the improvement, enhancement and development of the network,*

*in each case in accordance with best practice and in a timely, efficient and economical manner so as to satisfy the reasonable requirements of persons providing services relating to railways and funders, including potential providers or potential funders, in respect of:*

- (i) the quality and capability of the network; and*
- (ii) the facilitation of railway service performance in respect of services for the carriage of passengers and goods by railway operating on the network.*

You must do this to the greatest extent reasonably practicable having regard to all relevant circumstances including your ability to finance your licensed activities.

In particular our evidence identified that:

- Even with adjustments to accommodate extreme weather days, neither the Long Distance nor London and South East sectors would have achieved their targets for 2012-13. Whilst we accept that weather had an impact on performance, evidence suggested that preparation and recovery was not as good as it should have been and did not meet the standards we would expect of a best practice network operator. Analysis of the daily logs showed a number of issues that were exacerbated by failures to maintain the infrastructure appropriately (e.g. blocked culverts). ORR also heard from many TOCs that they lacked confidence that Network Rail had adequately managed drainage assets. They told us that a lack of knowledge on the condition of drainage capability over the routes had directly contributed to flooding delays being worse than they would have normally expected.
- The volumes of renewals delivered by Network Rail in 2012-13 were below plan in most areas, (overall by about 20%) although expenditure was close to budget. The main aim of a renewals programme is to replace worn-out, degraded or life-expired assets, in order to bring asset performance back to as-new. As a result of slippage in the 2012-13 renewals programme, assets in poor condition will have been retained in operation for longer than planned, which is likely to have had a direct adverse effect on performance.
- Network Rail's day to day maintenance of the network in 2012-13 fell below what we would expect of a best practice operator. This included instances where delays arising from infrastructure problems could have been avoided had preventative measures been taken. The Infrastructure Condition Report for period 13 identified several reporting measures within the sectors which were behind target, which suggested inadequate maintenance and/or renewals activities. The sheer number of Overhead

Line Equipment (OLE) defects identified ahead of the Olympics on the Great Eastern and subsequently by a more thorough inspection of West Coast South was not acceptable and raises serious concerns around what a similar inspection of the older East Coast assets will reveal. Evidence suggested that a percentage of the high impact OLE delays that occurred in 2012-13 could have been prevented by the appropriate application of inspection and maintenance.

- Network Rail did not complete all the deliverables or deliver the delay minute savings and PPM benefits committed to for 2012-13 in the LDRP and the LSEP. The LDRP saved 40,000 fewer minutes than expected, and PPM was also 0.12pp behind plan. The LSEP saved 105,000 fewer minutes than expected and PPM was also 0.15pp behind plan. This was partly due to initiatives not being delivered and initiatives that were delivered having less effect than was forecast. There was also evidence that some benefits were overestimated. Previous decisions of our Board in relation to performance emphasised the importance of delivering these plans effectively.
- Some instances of disruption over Christmas and the New Year period could have been avoided if Network Rail had applied more thorough planning and validation of its plans. Examples of failures we identified included:
  - **Balham (LSE)** – Schedule errors relating to a speed restriction that accompanied engineering work caused significant delays;
  - **LNW(S) (LD)** – An electrical isolation at Cheddington when electric trains were timetabled to run requiring that section of track;
  - **LNW (LD) – Birmingham** – A reduction in station capacity for engineering access for the gateway project was combined with some issues regarding knowledge of platform length to cause major delays; and.
  - **First TransPennine Express (LD)** – A contingency timetable was not fit for purpose following a landslip.

### Next steps

ORR's primary objective is to ensure that NR remains incentivised to exit CP4 as close to its regulatory targets as possible. I propose to recommend to our Board in July 2013 that Network Rail breached its licence in 2012-13 in both the Long Distance and London and South East sectors. As this is a past breach, the Board will then go on to consider whether to impose a penalty. I further propose to recommend that, on this occasion, the Board finds that the

imposition of a penalty would not be appropriate in respect of either breach because:

- a) In the case of the Long Distance sector, the order that the Board made on 23 July 2012 contains provision for a reasonable sum payable if Network Rail fails to meet the end of CP4 PPM target. This reasonable sum may be discounted to the extent that ORR is satisfied Network Rail did everything reasonably practicable to achieve the targets. My recommendation to the Board will be that this provides sufficient incentive to Network Rail to improve performance before the end of the control period and a penalty at this stage would not therefore be appropriate.
- b) In the case of the London and South East sector, the recent management changes appear to be producing improvements in performance so that to impose a penalty at this stage would not incentivise further improvements and may, in fact, prove counter-productive. We will continue to monitor performance in the London and South East sector during 2013-14 and we may take further enforcement action either during or at the end of the control period if we are satisfied NR is not doing everything reasonably practicable to achieve the regulatory targets.

If you would like to make any representations on these points before I make these recommendations to our Board, please do so by Friday 5 July 2013.

I am copying this letter to Norman Baker and officials at the DfT, Keith Brown and officials at Transport Scotland, David Higgins and Paul Plummer at Network Rail and to the other parties listed below. A copy will also be placed on our website.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Price', with a horizontal line underneath.

**Alan Price**

**cc:**

Train Operating Company MDs  
Owner Group MDs  
Transport for London  
Welsh Government  
ATOC  
Passenger Focus  
London TravelWatch  
Rail Delivery Group