

Bill Emery
Chief Executive
Telephone 020 7282 2006
Fax 020 7282 2043
E-mail bill.emery@orr.gsi.gov.uk



7 September 2010

Iain Coucher
Chief Executive
Network Rail Infrastructure Limited
Kings Place, 90 York Way
London, N1 9AG

Dear Iain

Breach of conditions 1 and 2 of Network Rail's network licence in respect of the introduction of the integrated train planning system

With assistance from the independent reporter Arup, ORR has investigated the events leading up to Network Rail's implementation of the integrated train planning system (ITPS), the problems that arose when short term planning was cut over to ITPS in March this year and the impact that these have had on your customers and rail users. On 12 July Michael Lee wrote to Robin Gisby and Paul Plummer informing you that ORR considered you may have breached conditions 1 and 2 of your network licence¹.

These are matters for the board, and we have now considered the findings of the investigation together with the representations you made to us (the letter of 26 July from Robin Gisby and at a subsequent meeting on 2 August).

We recognise that you accept there has been a breach of condition 2 of the licence, in that you have not been providing timetable information to train operators within the required 'informed traveller' timescales. However after careful consideration we have concluded that you also breached condition 1 in that you did not run an efficient and effective process, reflecting best practice, for establishing a timetable and any changes to it, to comply with the general duty to meet the reasonable requirements of your customers to the greatest extent reasonably practicable.

I enclose the investigation report which sets out the evidence behind our decision and I will explain here why we consider this to be a breach of your licence.

¹ The relevant obligations are set out in the annex to this letter.



Condition 1

Condition 1 requires you, to the greatest extent reasonably practicable, to run an efficient and effective process, reflecting best practice, for establishing a timetable and any changes to it. We fully recognise the ambition of the ITPS project and the scale of the challenge you faced in delivering it successfully. We believe you understood the critical importance of timetabling systems for operation of the network, and the scope for serious adverse impacts on your customers and on rail users should there be problems with these systems. In our view these considerations called for you to take the greatest care in identifying and mitigating all risks associated with the implementation of ITPS which could affect operators and rail users.

We support the aims behind development of ITPS. We agree that, as you say in the letter of 26 July, the licence imposes both short and long term obligations on the company and it is right to replace the old, inefficient timetabling systems and processes. We welcome your initiative and we recognise that it has the support of your customers. We also accept that your decisions to base ITPS around an off the shelf system, and to ring-fence the project via the industry Common Interface File so that the need for change was contained within Network Rail, were reasonable. We recognise that the latter decision was influenced both by a desire to minimise the burden on your customers and by the wish to avoid the additional complexity associated with any cross-industry change project. We accept that such a 'sealed system' approach may be regarded as good practice.

However, having decided that the project could be 'ring-fenced' from other industry parties, with occasional updates rather than formal involvement, you permitted this decision to colour your risk assessment and management and you gave inadequate weight to communications with your customers. Risk management concentrated on internal business risks and did not consider and mitigate properly the wider risks to the industry. Whilst we accept that it was probably impractical to attempt 100% comprehensive testing of the systems before implementation, we nonetheless consider that there was inadequate testing of the interfaces with other systems and users in the absence of the "pilot implementation in a live project environment" required by your IM best practice manual. At the time of the "go-live" decision on 22 January 2010 the number of software defects categorised 'critical impact' and 'high impact' was actually rising; we have seen no evidence that the clear risks present in such a situation, including those to your customers, were addressed adequately. We have concluded that this fell unacceptably short of best practice.

We accept the comment in your 26 July letter that “it is perhaps inevitable that many issues might be expected to arise in the transition from the old way to the new way of timetabling” but we consider that this only underlines the importance of communicating with your customers and working together to identify and mitigate such risks. As systems operator it is essential that you work effectively with customers across the sector in such circumstances.

As a result of the system problems which emerged on implementation there were prolonged problems with the timetabling process, about which the train operators had little prior warning. They suffered significant resource and operational impacts for many months as they worked to minimise the impact on their customers. In certain circumstances they were unable to publish information or take bookings and reservations in good time. Despite the efforts of the operators and of your own staff to minimise the impact of the system failings many rail passengers have been affected, and a small proportion suffered serious inconvenience. Freight and passenger charter operators have faced particularly significant problems. We consider that in these respects you fell short of your obligation to run an efficient and effective timetabling process.

Condition 2

We accept your acknowledgement (letter of 26 July) that you are in breach of condition 2 in that you are failing to provide access to appropriate, accurate and timely information about services to enable passengers to plan their journeys. In failing to maintain efficient and effective processes reflecting best practice, you have not been providing train operators with information about relevant changes to the timetable 12 weeks before those changes occur. You accept that “Network Rail will continue to be in breach of condition 2 until such a time as stability has been restored to the timetable bid and offer process and T-12 is consistently maintained for our customers.” In this context we welcome your email of 30 August to members of the National Task Force stating that you have recently achieved informed traveller timescales for all TOCs, and we trust that this indicates that it will not be too much longer before you can satisfy us that this breach has come to an end.

We believe that you are currently taking all appropriate steps to secure compliance with your obligations under condition 2 and we are satisfied that it would not be appropriate to make an enforcement order in respect of this breach. I therefore enclose a notice issued under section 55(6) of the Railways Act 1993 to that effect.

We now look to you to tell us when you consider that the timetabling process and timescales are stable and, if we agree, we will then consider you to be meeting your

obligations. However, ORR will continue to monitor the process, particularly looking at the large programme of engineering works planned for the Christmas period, and we will consider any significant recurrence of the recent problems as a recurrence of the original breach.

Wider considerations

Network Rail is responsible for numerous, diverse systems and processes on which the railway industry as a whole depends. This makes it vital that, as a matter of course, the company gives great weight to understanding the impact of its actions, and the risks associated with them, on its customers and on rail users. We therefore welcome the summary in your 26 July letter of the lessons you have learned for future projects. But we wish to emphasise that this attention to the interests of customers and rail users should be maintained across all relevant areas of the company's activity. We expect these lessons to be interpreted and shared widely; they are applicable widely outside the arena of the current operations/software problems and we will take particularly seriously any future failings of this nature.

Further action

As you know, we can impose a financial penalty in respect of a licence breach. We will need further information before considering this matter in this case, some of it not yet available. We therefore expect to consider the matter in detail at our meeting on 19 October. To inform that discussion we may need to ask you for further information that may be relevant under the terms of our penalties statement and we will write separately on this.

We are publishing this letter, the section 55(6) notice we are issuing, the investigation report and a summary of the independent reporter's own work on our website. We are also copying this letter to the stakeholders listed below.

Yours sincerely

A handwritten signature in blue ink that reads "Bill Emery". The signature is written in a cursive style with a small flourish at the end.

Bill Emery

Cc:

Train Operating Company MDs

Freight Operating Company MDs

Owner Group MDs

Department for Transport

Transport Scotland

Welsh Assembly

Transport for London

ATOC

RFG

Passenger Focus

London Travelwatch

Annex: the relevant licence obligations

1 Network management

Purpose

1.1 The purpose is 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.

General duty

1.2 The licence holder shall achieve the purpose in condition 1.1 to the greatest extent reasonably practicable having regard to all relevant circumstances including the ability of the licence holder to finance its licensed activities.

...

Timetable planning

1.23 In complying with the general duty in condition 1.2 the licence holder shall:

- (a) run an efficient and effective process, reflecting best practice, for establishing a timetable, and any changes to it; and
- (b) where necessary and appropriate, initiate changes to relevant industry processes,

so as to enable persons providing railway services and other relevant persons to plan their businesses with a reasonable degree of assurance and to meet their obligations to railway users.

2 Timetable information for passengers

General duty

- 2.1 The licence holder shall provide access to appropriate, accurate and timely information relating to planned movements of trains on the licence holder's network, to enable railway passengers to plan their journeys.

Publication of national timetable

- 2.2 In complying with condition 2.1, the licence holder shall, except in so far as ORR may otherwise consent, publish, or procure the publication of, a national timetable of railway passenger services.

Changes to the national timetable

- 2.3 In complying with condition 2.1, the licence holder shall:

- (a) establish and maintain efficient and effective processes, appropriately reflecting best practice; and
- (b) apply those processes to the greatest extent reasonably practicable having regard to all relevant circumstances,

so as to provide appropriate, accurate and timely information on relevant changes to holders of passenger licences so that the latter can in turn provide information to railway passengers on the planned movements of the trains concerned.

For the purposes of this condition 2, "relevant changes" are changes to the national timetable occasioned by:

- (i) any renewal, maintenance and enhancement of the network; or
- (ii) any restriction of use of which the licence holder is, or reasonably ought to be, aware.

- 2.4 The licence holder shall be in compliance with condition 2.3 where it has provided holders of passenger licences with access to information about relevant changes not less than 12 weeks before the date on which such changes are to have effect.

- 2.5 In circumstances where the licence holder is not in compliance with condition 2.3 by virtue of condition 2.4, the licence holder shall not be in breach of condition 2.3 to the extent that:

- (a) providing the information 12 weeks or more before the relevant changes are to have effect would conflict, to a significant degree, with its duty under condition 1.2; and
- (b) it provides access to information about relevant changes to holders of passenger licences as soon as is reasonably practicable having regard to all relevant circumstances.

Access to information for enquiry services

2.6 The licence holder shall grant access to information it holds on the planned movement of trains on its network to persons providing or seeking to provide credible enquiry services relating to the operation of railway passenger services on the licence holder's network. The licence holder shall grant access to such information as these persons may reasonably require for the proper carrying out of their operations. The licence holder shall grant access to the information on reasonable terms (including the prices charged, means of access and confidentiality).

Notice in relation to Network Rail's contravention of condition 2 of its network licence

7 September 2010

1. This notice is issued in accordance with section 55(6) of the Railways Act 1993 (the Act).
2. For some years Network Rail Infrastructure Limited (Network Rail) has been developing a new integrated timetable planning system. Key parts of this were implemented earlier in 2010 to handle work on the May 2010 timetable. Network Rail notified us of problems with the new system on 4 March and we received complaints from train operators and passenger representatives around the same time.
3. Having investigated the causes and impacts of the problems, ORR has concluded that Network Rail is currently contravening condition 2 of its network licence in that it is failing to meet its obligation to provide access to appropriate, accurate and timely information about the planned movement of trains to enable passengers to plan their journeys. In particular, it did not establish and maintain efficient and effective processes, appropriately reflecting best practice, and apply those processes to the greatest extent reasonably practicable having regard to all relevant circumstances, so as to provide appropriate, accurate and timely information on relevant changes to holders of passenger licences so that the latter can in turn provide information to railway passengers on the planned movements of the trains concerned.
4. Full details of our investigation and of the reasons for our decision are set out in our letter to Network Rail dated 7 September and the attached evidence report¹.
5. We are satisfied that Network Rail is taking all such steps as appear appropriate to us for the time being for the purpose of securing compliance with condition 2. The steps Network Rail is taking are set out in its letter dated 26 July 2010 and a detailed milestone plan already provided to train operators (both available on our website). We are satisfied that an order at this stage would not be appropriate because it would not assist delivery of the proposed steps nor would it provide greater impetus in Network Rail's delivery to secure more effective or timely compliance with condition 2.
6. For these reasons, ORR has decided not to make a final order in respect of this breach, in accordance with section 55(5B)(a) of the Act.



Bill Emery
Chief executive

¹ See related documents at <http://www.rail-reg.gov.uk/server/show/nav.1362>