

NOTICE IN ACCORDANCE WITH SECTION 55(6) OF THE RAILWAYS ACT 1993, AS AMENDED, OF THE OFFICE OF RAIL REGULATION'S DECISION NOT TO MAKE A FINAL ORDER, OR MAKE OR CONFIRM A PROVISIONAL ORDER, IN RELATION TO NETWORK RAIL INFRASTRUCTURE LIMITED'S CONTRAVENTION OF CONDITION 1 AND CONDITION 2 OF ITS NETWORK LICENCE

11th FEBRUARY 2015

1. This document constitutes a notice issued by the Office of Rail Regulation ("ORR"), published in accordance with section 55(6) of the Railways Act 1993, as amended ("the Act"), stating that:
 - a. Having considered the duties under section 4 of the Act, ORR is satisfied that Network Rail Infrastructure Limited ("Network Rail") is contravening condition 1 and condition 2 of its network licence by not achieving the purposes as set out in those conditions to the greatest extent reasonably practicable having regard to all relevant circumstances including the ability of the licence holder to fund its licensed activities, in that:
 - i. in connection with the engineering overrun at King's Cross on 27th December 2014, Network Rail did not secure best practice in the operation and maintenance of the network. This was manifested by a failure, when planning the engineering work, to consider the high impact on passengers of an overrun. The result was that contingency planning was not fit for purpose, there was ineffective oversight of the engineering work and when an overrun occurred, internal communication was inadequate to ensure that the agreed contingency plan was implemented, and
 - ii. in connection with the engineering overrun at Paddington on 27th and 28th December, Network Rail did not secure the provision of appropriate, accurate and timely information during disruption. This was manifested by a failure to cascade appropriate, accurate and timely information to train operators about the existence and duration of the overrun, to enable them to minimise the impact on passengers and
 - iii. ORR is satisfied that unless the weaknesses identified are remedied, passengers are likely to be exposed to further incidents and disruption in the future.
 - b. Nevertheless, ORR will not at present make an order under section 55 of the Act because:
 - i. Network Rail has agreed to take, and is taking, all such steps as appear appropriate to ORR for the purpose of securing or facilitating compliance

with condition 1 and condition 2 of its network licence. In particular, Network Rail has agreed to implement the recommendations set out in the annex; and

- ii. ORR does not consider it appropriate to make an order, because it is satisfied that an enforcement order would not, at this stage, deliver a better result than would be achieved by delivery of the recommendations and would not provide greater impetus on Network Rail's delivery to secure more effective or timely compliance with condition 1 and condition 2 of its licence.

Background

2. This Notice follows ORR's investigation into engineering overruns that occurred on the 27th and 28th of December 2014, which led to passengers travelling into or out of King's Cross and Paddington stations to be severely disrupted. Over the two days ORR estimates that approximately 115,000 people were affected.
3. In carrying out its investigation, ORR established underlying causes of the disruption which resulted in a poor passenger experience. These are set out in detail in [our report](#). ORR has also made recommendations addressing the breaches of Network Rail's licence. Network Rail accepts these recommendations, which form part of the reasonable requirements it is required to secure under condition 1 of its Network Licence.
4. Network Rail is currently reviewing its contingency plans to ensure that they are fit for purpose for all possessions to be undertaken during Easter 2015. It has committed to implementing the rest of the recommendations in advance of the Christmas 2015 engineering work. ORR will monitor implementation and take licence enforcement action if appropriate.

Conditions 1 and 2

5. Condition 1 of its network licence requires Network Rail, by virtue of paragraph 2, to:
"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 licenced activities."
6. The purpose" referred to in paragraph 2 of condition 1 is defined in paragraph 1, and 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.”

7. Condition 2 of its network licence requires Network Rail, by virtue of paragraph 2, to:
“achieve the purpose to the greatest extent reasonably practicable having regard to all relevant circumstances, including the funding available.”
8. “the purpose referred to in paragraph 2 of condition 2 is defined in paragraph 1, and is:
“to secure the provision of appropriate, accurate and timely information relating to planned and actual movements of trains on the licence holder’s network to enable train operators to meet their information obligations to passengers and prospective passengers, including when there is disruption.”

Section 4 of the Act

9. ORR must exercise its functions (including its enforcement function) in the manner which it considers best calculated to achieve a series of duties set out at section 4 of the Act.

Section 55 of the Act

10. Section 55(1) of the Act obliges ORR to make a final order if it is satisfied that a licence holder is contravening, or is likely to contravene, any condition of its licence. Section 55(2) of the Act provides that ORR must instead make a provisional order where it is requisite to do so. In determining if it is requisite, ORR must have regard in particular the extent to which any person is likely to sustain loss of damage in consequence of anything which is likely to be done, or omitted to be done before a final order can be made.
11. Any enforcement order must contain such provisions as is requisite for the purpose of securing compliance with the relevant licence condition.
12. The obligations to make a enforcement order contained in sections 55(1) and 55(2) are subject to a number of exceptions, as follows:

- (a) Section 55(5) provides that ORR must not make an enforcement order if it is satisfied that the duties imposed on it by section 4 of the Act preclude making an order;
- (b) Section 55(5A) provides that ORR must not make an enforcement order if it is satisfied that the most appropriate way of proceeding is under the Competition Act 1998;
- (c) Section 55(5B) provides that if ORR is satisfied that:
 - (i) The licence holder has agreed to take, and is taking, all such steps as it appears to ORR to be appropriate for the time being for them to take for the purpose of securing or facilitating compliance with the condition or requirement in question; or
 - (ii) The contravention or apprehended contravention will not adversely affect the interests of users of the railway services or lead to any increase in public expenditure.

it shall only make an order if it considers it is appropriate to do so.

- 13. ORR does not consider that the exception in section 55(5) applies and is satisfied that its section 4 duties do not preclude it from making an order.
- 14. ORR is further satisfied that the exception in section 55(5A) does not apply. In this case, ORR was investigating two instances of overrunning engineering works which caused significant delays to a large number of passengers. ORR is therefore not satisfied that it is most appropriate to proceed under the Competition Act 1998.
- 15. ORR does, however, consider that the exception in section 55(5B) applies:
 - a. Network Rail has considered and agrees with ORR's recommendations, and is taking active steps to implement the recommendations. In particular Network Rail has committed to having contingency plans that are fit for purpose for the engineering work planned for Easter 2015 in accordance with recommendation 1. ORR is satisfied that implementation of the recommendations is appropriate for the purpose of securing and facilitating compliance with condition 1 and condition 2 of its network licence.
 - b. ORR does not consider it appropriate to make an enforcement order, because it is satisfied that an enforcement order would not, at this stage, deliver a better result than would be achieved by delivery of the recommendations and would not provide greater impetus on Network Rail's delivery to secure more effective or timely compliance with condition 1 and condition 2 of its licence.

ANNEX

Improved planning

1. Planning of possessions needs to be undertaken by Network Rail (“NR”) with a complete understanding of the impact this could have on train passengers and (although not affected by the overruns at Paddington and King’s Cross this Christmas) freight customers and the scale of work being undertaken across the railway network as a whole.

Specifically:

- (a) NR should ensure that for each possession there is an operational contingency plan which is fit for purpose and developed in conjunction with train operators and others (for example, Transport for London). The detail of the plan should be based on an explicit understanding of the impact on passengers (or freight customers if relevant) of any overrun, including within a possession. Even where there is a very low probability of an overrun if the impact on passengers is high, contingency arrangements will have been developed and tested where possible. The plan should consider provision for passenger welfare and management.
- (b) Within the planning process which NR follows, it should ensure that it identifies risks to delaying train services as well as handing the possession back on time. This is particularly relevant where it is intended that train services are planned to operate during staged works as at Paddington and before the possession is handed back in its entirety as was intended at King’s Cross.
- (c) In planning a possession NR should ensure that the risk assessment process reflects the work being carried out elsewhere on the network. It should also ensure that the implications this has for it being able to respond to developments during the possession are taken account in determining the probability of a successful completion.

Oversight of possessions and communications

2. The risk of a possession being completed successfully changes throughout the course of the possession. In minimising the impact on passengers NR needs to understand in real time how the risk of a possession overrun has changed and effectively communicate this upwardly within NR and externally to train operators.

Specifically:

- (a) NR should review the processes it has in place for site reporting including consideration of the arrangements in place for management of contractors.
- (b) As part of its planning NR should make sure that there are clear go/no go decision points for the works and go/no go decision points for implementation of the operational contingency plan and the interaction between the two is understood by all parties.
- (c) NR should ensure that the processes it puts in place for communicating up the chain of command and to affected parties will cover the go/no go decision points including with respect to the implementation of an operational contingency plan.

Incident response

3. Once it becomes clear that nothing further can be done to prevent the overrunning of engineering works and this will impact on the services available to passengers and freight customers, it is important that NR and operating companies work effectively together to mitigate the impact. During the overruns at King's Cross and Paddington, there have been a number of impressive examples of individual members of staff going above and beyond what was expected of them. Nonetheless there were weaknesses in the arrangements which better preparation could address. A fit for purpose overrun contingency plan as described above (recommendation 1) is an important first step. In the light of the experience this Christmas, NR should lead further work with the industry to improve their response to an overrun incident.

Specifically:

- a) NR and train operators should review arrangements for cascading information during an overrun incident to take account of the likely working arrangements of staff at the time, including for example, that they are on call and that the prolonged nature of some possessions which require a number of handovers between staff;
- b) NR and train operators should consider testing elements, if not all, of an operational contingency plan at critical locations across the network to ensure a robust response in the event that it is required.

- c) NR and train operators should review arrangements for managing the control of the overrun incident with a command structure covering all elements of the incident including communication, train planning and station management.

ORR regards these recommendations as reasonable requirements under condition 1 of the network licence and will monitor and enforce them accordingly.