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10 July 2015

Dear Alan

Operational Performance Investigation

I am writing in response to your letter of 2 July in which you summarise ORR's preliminary findings following its investigation into operational performance in 2014/15. We recognise that any final conclusion as to whether Network Rail has breached its network licence is a matter for ORR's Board.

Representations on the points set out in your letter are detailed below. For clarity, comments are set out under the separate headings used in your letter.

Performance delivery to (i) Southern and (ii) GTR for the first year of CP5 (performance strategy targets)

Network Rail accepts that both Southern and GTR performance exited 2014/15 with PPM and CaSL outturns that fell considerably short of the performance strategy targets that were agreed with the train operators. We welcome ORR's recognition of the fact that part of this shortfall can be attributed to the significant increase in delays from traincrew issues in addition to the impact caused by fatalities and trespass events. Notwithstanding this, we accept ORR's preliminary view that Network Rail has not done everything reasonably practicable to meet its licence obligations in relation to Southern and GTR performance.

In 2014/15 performance delivery for Southern and GTR was unacceptably impacted by significant operational issues that were encountered at London Bridge. We have learnt a number of important lessons.

During the course of the year, we have made several changes, all of which are aimed at improving the customer experience. By way of example, we have increased the number of visible frontline employees that are present on the station concourse throughout the day, have increased the number of customer information screens and have invested in Wi-Fi around the station. As a result, in recent months we have seen a considerable improvement in the customer experience at London Bridge.

In addition we also now have a much sharper understanding of, and focus on, managing the

impact of major enhancement programmes on operational performance and are working very closely with our customers to ensure that information is shared as early as possible. In conjunction with NTF we are working closely with our customers to improve operational implementation of timetable changes and are examining how we can improve our performance modelling capability.

Jane Simpson and Network Rail's Internal Audit function have also undertaken separate reviews in recent months covering operational performance in the South East and our performance processes in Anglia. Network Rail is committed to the implementation of the observations and recommendations that these reviews have made. We therefore believe that any breach that may be identified by ORR's Board should be considered as a historic breach and that we are now doing everything reasonably practicable to deliver for our customers.

PPM targets in Scotland for the first year of CP5 (regulated performance target)

Network Rail accepts that at the end of 2014/15 the PPM target of 92 per cent was missed by 1.5 percentage points. However, we are disappointed by ORR's preliminary view that Network Rail may not have done, and / or is not doing, everything reasonably practicable to deliver performance in Scotland.

During 2014/15 operational performance in Scotland was generally good. We welcome ORR's recognition of the impact that fatalities, trespass events and the Commonwealth Games had on operational performance.

We acknowledge that there have been issues in the past in identifying and addressing problems associated with timetable change but Network Rail is generally confident in the quality of the timetable for Scotland. As such, we do not agree with all of the points raised in ORR's letter. We comment on these matters below.

- It should be noted that whilst a considerable amount of timetable change took place in December 2014 around Rutherglen (with establishment of far more network connectivity) it was recognised by all parties at the outset that this would have a performance impact as a result of the ability to export delay across the range of services. We accept that Hyndland East Junction requires review and a Timetable Planning Rules (TPR) review is planned to take place in time for the Glasgow Queen Street blockade commencing in March 2016.
- Network Rail believes that that the TPR values are appropriate for the network, but that the anticipated performance risk needs greater levels of mitigation through Route and train operator improvements in order to hold performance neutral. We do not agree that a 'comprehensive review' of the TPRs is required as this would imply that the existing TPRs are not fit for purpose. We do not believe that this is the case.
- The Scotland Capacity Planning team is planning to undertake a review of the north electrics route TPRs (as well as any other known issues) in time for May 2016. However, it should be noted that there is not a plan in place to undertake a full review of TPRs for March 2016 for the reasons outlined in the preceding bullet point.

- ORR's letter states that the point to point timings between Whifflet and Rutherglen East Junction were significantly reduced which reduced the resilience of the timetable. The reduction in point to point timings was driven by the change of rolling stock from DMUs to EMUs. DMUs are planned with a 45 second dwell time whereas the EMUs have a 30 second dwell time in recognition of the more effective door operation system on these trains. This is in line with all other EMU services in Scotland, and this has never proven to be insufficient.
- ORR's letter also states that the removal of two minutes' recovery time will have reduced the resilience of the timetable. It should be noted that engineering allowances in Scotland are not shown as a discreet value, rather the allowance is incorporated into the point to point timings. The reason that the two minutes recovery time was removed when the services moved to EMU was that the timings were brought into line with the rest of Scotland, with the allowance being incorporated into the Sectional Running Times.
- ORR's letter asserts that the latest timetable problems and subsequent impacts on performance demonstrate that Network Rail is not learning effectively from its previous timetable problems. We do not agree that this is the case. In the May 2015 timetable 54 known defects were resolved, and 96 defects have been resolved in the December 2015 timetable. The majority of this work was undertaken in 2014/15 and provides clear evidence of Network Rail identifying problems and taking appropriate corrective actions to drive continuous improvement in the quality of the timetable in Scotland.
- Finally, we now have a well-developed programme in place to continue to improve the quality of our timetable outputs. This programme is wide reaching and ranges from upskilling our planning teams, to transforming how we generate the base timetable planning rules upon which the timetable is built, to re-evaluating the framework in which the industry determines how best to use access for running train services and undertaking works. The detail of this programme has been shared with ORR at regular intervals throughout the last two years and we are making good progress. We suggest that this engagement continues.

More generally, the formation of the alliance between ScotRail and Network Rail offers major opportunities to achieve better alignment between Network Rail and its principal customer in Scotland. Consequently, we believe that when taken together with the improvements that we are making to our timetable change and associated assurance processes (as outlined above), these measures will alleviate the shortcomings identified in ORR's letter.

Taking into account the factors as outlined above, we believe that there is sufficient evidence to conclude that Network Rail has and is doing everything reasonably practicable to deliver performance in Scotland. Should ORR's Board conclude that a breach of our network licence has occurred with regard to the delivery of operational performance in Scotland, we believe that this should be considered to be a past breach rather than a current or prospective future breach.

Ensuring that end of CP5 regulatory targets are met – including whether there are any systemic weaknesses relating to Network Rail's operational planning, management and delivery, such as timetabling

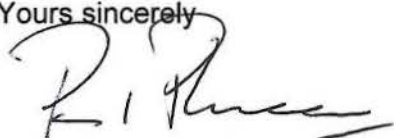
We note ORR's preliminary conclusion that there is not a case to answer in relation to performance planning and would like to discuss and agree with ORR a process for providing the assurance that has been sought as regards taking forward the recommendations from its recent review activities to address any weaknesses in our PPRP.

More generally, Network Rail is committed to structured continuous improvement and has specific initiatives in place to help us drive improved train performance over CP5. As we seek to address the issues and weaknesses we have identified ourselves and those set out in your letter, we ask for your continued support and the support of the Train Operating Companies (TOCs) in making the changes necessary in order to deliver the best possible performance for passengers and taxpayers. There is increasing evidence that the improvement journey we are on is starting to deliver, but it is undoubtedly the case that we need to continue to improve performance across the board.

Network Rail is highly incentivised and motivated to improve current levels of operational performance and with this in mind we do not currently believe that it would be appropriate to impose a financial penalty or make an offer of reparations, not least because, to the extent that a breach has occurred we consider that this is a past breach. Consequently, we believe that a financial penalty or offer of reparations would not serve any purpose in terms of securing compliance. Furthermore, given the current constraints on our financing and the stretch in our plans this would mean further cuts elsewhere in our business.

I am copying this letter to Patrick McLoughlin, Claire Perry and officials at the DfT, Derek McKay and officials at Transport Scotland and to Mark Carne and Phil Hufton at Network Rail.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P. Plummer', written over the typed name 'Paul Plummer'.

Paul Plummer
Group Strategy Director