

Potters Bar Prosecution – Overview of ORR’s decision not to proceed with the prosecution of Jarvis Rail

Following Network Rail’s guilty plea on 21 February, the Office of Rail Regulation (ORR) confirmed that it would consider whether it remained in the public interest to continue the prosecution of Jarvis Rail.

ORR has decided it is not in the public interest to continue the prosecution and that the proceedings against Jarvis should be discontinued for the reasons set out below. This decision has been reached in accordance with the two-stage test as set out in The Code for Crown Prosecutors¹.

ORR decided that there is still sufficient evidence to provide a realistic prospect of conviction of Jarvis Rail. The second stage of the test was to consider whether a prosecution was still required in the public interest; ORR has decided that it was not in the public interest to continue the prosecution.

Public Interest Factors In Favour

In deciding whether it remained in the public interest to continue the prosecution of Jarvis Rail ORR took into account a number of key considerations. This included the nature of the offence:

- Jarvis Rail was in a position of trust as Infrastructure Maintenance Contractor (IMC) for the East Coast Main Line;
- Jarvis’s performance fell far short of that to be expected of a competent IMC; and
- the consequences of its offending were exceptionally serious.

ORR felt the seriousness of the offence would be reflected in the approach taken to sentencing by a court, even if any fine imposed may be very small. Overall, ORR considered there were a number of public interest factors that were strongly in favour of continuing the prosecution.

¹ The Code for Crown Prosecutors can be found on the CPS website at http://www.cps.gov.uk/publications/code_for_crown_prosecutors/index.html.

Public Interest Factors Against

There were a number of factors weighing strongly against proceeding. First, the regulator took into account the views endorsed by a number of members of the victims' families. These indicated that they felt, in light of Jarvis's administration, that there was, at most, little value in continuing the prosecution of Jarvis. ORR considered these views on behalf of some of the families to be an important factor weighing against continuing the prosecution.

ORR also considered the nature of any further legal action against Jarvis, taking into account that Network Rail has pleaded guilty; Jarvis Rail is in administration; and ORR has been told by its administrators that Jarvis is insolvent and will play no part in any proceedings.

If proceedings had continued against Jarvis, in their absence the court would have entered a plea of not guilty and the case would have gone to trial. This means that a trial would have taken place of Jarvis alone, with them playing no part in the proceedings: there would be no defence representatives in court, no defence lawyers and no cross-examination of witnesses.

It is likely that any trial of Jarvis would last some time and would not take place until autumn of this year at the earliest. Network Rail cannot be sentenced until the trial of Jarvis has finished and, therefore, to continue the prosecution of Jarvis would delay the sentencing of Network Rail.

ORR also considered the cost of continuing the prosecution. There are costs in both time and money that would be borne by a number of parties. These costs could not be recovered.

Finally, ORR concluded that there was a real risk that a prosecution in these circumstances could undermine public confidence in the regulatory and criminal justice systems.

Overall, ORR considered that the changed nature of the proceedings since the prosecution was originally started, and the issues arising from this, weighed strongly against continuing the prosecution.

Conclusion

Taking into account all of the above factors and their relevant weight, ORR was sure that the public interest factors against prosecution outweighed those in favour and, therefore, concluded that the continued prosecution of Jarvis was not in the public interest.