

Richard Price
Chief Executive



Mr Archie McIver,
Chairperson
Noise and Vibration Action
Group

Dear Mr McIver,

6 February 2015

SUSTAINABILITY, NOISE AND VIBRATION

Thank you for your open letter of 21 January regarding noise and vibration from railway operations.

As well as having led work on the economics of sustainable development, I live next to the railway myself, so I fully understand your concerns and the importance of this issue. It really matters, and affects the quality of people's lives. I also recognise that the legal framework for the oversight and enforcement of noise and vibration levels on the railways is not straightforward – so let me try to set out the different responsibilities clearly.

In general, obligations and rights in relation to environmental pollution and nuisance are determined by specific acts of Parliament, notably the Environmental Protection Act 1990. The Act also places responsibility for investigation and enforcement with local authorities. It is for these enforcement bodies under environmental law to establish whether or not a particular business is compliant or not, and to determine the appropriate sanctions.

Our role at ORR in regulating infrastructure companies such as Network Rail is to hold them to account through their licences for delivering high levels of performance, safety and service as well as good value for money. In relation to railway companies, our regulatory remit includes making punctuality and providing reliable passenger information conditions of their licences.

You will understand that in general, it makes sense to avoid 'double regulation' – that is, different bodies setting different standards or imposing different sanctions for the same legal obligations. In relation to Network Rail and other rail businesses, we expect them to comply with their obligations under environmental and other law, in the same way as any other business.

There are however some specific environmental and sustainable development requirements on railway businesses, and on us as the regulator for the industry, which I will describe.

As you know, one of our primary legal responsibilities is ensuring that health and safety risks posed by the railways are properly controlled. Our role in dealing with environmental pollution or nuisance noise caused by railway services, is limited to ensuring that operators, under their licences, have both an environmental policy statement on which we can comment and management arrangements to give effect to the policy.

The Railways Act 1993 also places two statutory duties upon the ORR which relate specifically to sustainable development and the environment. These are:

- to contribute to the achievement of sustainable development; and
- to have regard to the effect on the environment of activities connected with the provision of railway services

We regulate Network Rail under a licence which contains a number of conditions they must follow. Condition 23 requires Network Rail to have an up to date written policy to protect the environment from the effect of its licenced activities taking into account any guidance by ORR. Further details of Network Rail's sustainability development plans and strategy can be found on their website (I'm including links to the documents at the end of this letter).

In the first instance, the issue of train noise or vibration is an operational matter for the train operating company concerned and/or Network Rail, as the infrastructure controller, to deal with, and in legal terms, noise and vibration are regarded as a statutory nuisance rather than a specific threat to health or safety. The Environmental Protection Act 1990, which is enforced by the local authorities, is the appropriate legislation for dealing with nuisance noise and environmental pollution. If a member of the public is concerned about noise and vibration disturbance from the railway, they should therefore raise it with their local authority environmental health officer, who is responsible for enforcement of such an issue under section 79 of that Act.

Even this enforcement route may not be open to the complainant, however, since in relation to the railways, section 122 of the Railways Act 1993 provides Network Rail and train operators with a statutory defence against a nuisance claim brought by the local authority. If the local authority is able to demonstrate that the noise or vibration is being caused by a party acting negligently or without reasonable diligence, then it is my understanding that the statutory defence might be beaten.

Another approach may be for the complainant to seek civil remedies and compensation against the party causing vibration (perhaps under Part 1 of the Land Compensation Act 1973, if there is a depreciation in the value of the complainant's land caused by new, additional or altered works to the relevant part of the railway). However, the complainant would need to seek their own legal advice on this point. Network Rail's website provides guidance on how it will investigate a claim that vibration is causing damage, but it stipulates that the complainant needs to provide a surveyor's report as to the damage before it will investigate.

Finally, we are involved with the industry's Noise Policy Working Group (NPWG) which is currently reviewing research in relation to acoustic track quality, to supplement mapping work and recorded data on areas affected by railway noise developed by the Department for Environment, Food, and Rural Affairs (DEFRA). Network Rail has planned activities between 2014-19, including rail profile grinding and electrification projects, which will support mitigation of the noise impacts identified in DEFRA's latest noise mapping round. We will continue to monitor Network Rail's work and engage with the NPWG on these important issues. We will seek assurance that Network Rail has reflected this new evidence in its environmental policy statement and supporting management documents.

I hope this helps to answer your questions, and to explain the roles of ORR and other regulatory bodies in relation to environmental law and sustainable development. Please feel free to put this letter on your website, and I will place it on ours.

Yours sincerely



RICHARD PRICE
Chief Executive

Link to Network Rail's sustainability development plan and strategy:

<http://www.networkrail.co.uk/publications/sustainability-update/?cd=2>

<http://www.networkrail.co.uk/browse%20documents/strategicbusinessplan/cp5/supporting%20documents/transforming%20network%20rail/sustainable%20development%20strategy.pdf?cd=1>