

Terms of reference for ORR's investigation into Network Rail's performance delivery in 2014-15

Background

Enforcing Train Operating Companies (TOC) operational performance

Network Rail (NR) and train operating companies (TOCs) have the flexibility to work together to set the 'trajectory' to reach the 2019 outputs, using the industry led Performance Strategies (previously known as joint performance improvement plans (JPIPs)) process. We will intervene in certain circumstances, for example if an operator's PPM (MAA) appears likely to fall more than two percentage points below its agreed PPM output or CaSL MAA appears likely to increase more than 0.2 percentage points above target.

NR will need to explain each year how delivery of the individual Performance Strategies relates to delivery of the required national performance. We expect robust governance arrangements to be in place so that whenever the Performance Strategies taken together do not give us confidence the national requirements will be met, NR develops clear and convincing plans to bridge any gap, which it must then deliver.

There are established industry processes through which NR, TOCs and FOCs work together to deliver good train performance. While we can hold NR to account, funders can hold their operators to account. We work with the funders to ensure these performance management processes work well and we have a shared understanding of industry performance risks. We may intervene if called on by third parties such as an operator, a funder, Transport Focus or London TravelWatch. However we will not wait for a complaint if our own monitoring suggests action is needed to address performance issues.

In summary, we will intervene when:

- (a) NR and a TOC cannot agree a Performance Strategy target; or
- (b) NR's plans or actions to deliver at least 88% PPM for Virgin East Coast Trains and Virgin Trains West Coast (and First Great Western's high speed services), 92.5% PPM for Scotland and at least 90% PPM for every other franchised TOC in the last year of CP5 are inadequate; or
- (c) NR's plans or actions to deliver the national performance outputs are inadequate (including where NR needs to bridge a gap between the sum of the Performance Strategy targets and the national outputs); or
- (d) Performance for an individual TOC is, or is likely to fall more than 2 percentage points below its agreed end of year PPM (MAA) output or 0.2 percentage points above its agreed end of year CaSL (MAA) output.

- (e) A concerned TOC requests that we do so where NR is unable to realise the deliverables that underpin the performance trajectory, or the outputs committed to in the Performance Strategy.

Where we intervene, we will follow a staged approach of review, investigation and escalation which may ultimately lead to formal enforcement action. We may require new or updated recovery plans, the formation of a recovery board, or some other form of assurance from NR.

In deciding whether and how to intervene we will focus on systemic and/or serious issues. We will work with the established industry processes, (for example National Task Force (NTF)), where possible, taking account of how the commitments made dealt with the greater uncertainty associated with forecasts at the TOC level.

Approach to performance targets in first 2 years of CP5 (England and Wales)

NR has stated that its exit position for its regulated performance outputs in CP4 means that it is unlikely to achieve its performance outputs in England and Wales in the first 2 years of CP5.

NR remains committed to achieving its performance outputs from the commencements of year 3 of CP5 and has produced a Performance Plan in order to ensure that it returns to the necessary trajectory to achieve its CP5 performance outputs from 2016-17. We monitor NR against the delivery of the inputs specified in this plan and therefore consider delivery of this plan, together with NR demonstrating flexibility to effectively adjust the plan through a robust Change Control process to meet changing circumstances, as evidence in assessing whether it is doing everything reasonably practicable to achieve its regulated performance outputs in the first 2 years of CP5.

We will intervene when;

- (a) NR's plans or actions to deliver the national performance trajectory are inadequate and the inputs specified in the CP5 performance plan (which needs to bridge a gap between the sum of the Performance Strategies and the national outputs) show milestone slippage that has a material impact on the ability to commence the third year of CP5 on the profiled targets for PPM (MAA) and CaSL (MAA).

Scotland regulatory performance target PPM (MAA)) continues to be enforceable in 2014-15 and 2015-16.

End of 2014-15

ORR's Initial review of NR's 2014-15 performance

In March we assessed that a number of operators in England and Wales¹ could no longer achieve the threshold established in our Final Determination for either their PPM (MAA) and / or CaSL (MAA) Performance Strategy targets² and that a number of other operators were likely to miss this threshold.

We also assessed that Scotland was unable to meet its 2014-15 PPM regulatory target.³

Alan Price, Director Railway Planning and performance, wrote in February to the Managing Directors of all franchised passenger operators asking for their opinion on Network Rail (NR) performance delivery in 2014-15. Responses were requested by 17 April.

We have now received the final Period 13 figures from NR and they state that:

- a. Scotland out turned at 90.5%, 1.5 percentage points (pp) below the 2014-15 regulatory target
- b. The following operators missed their PPM (MAA) targets by greater than the 2pp threshold and / or their CaSL (MAA) targets by greater than the 0.2pp threshold:

| | PPM MAA | Variance to target | | CaSL MAA | Variance to target |
|----------|------------|-----------------------|-----------------------------|-------------|--------------------------|
| Southern | 83.1% | 4.7pp | Southern | 4.8% | 1.9pp |
| GTR | 85.2% | 2.8pp | GTR | 4.3% | 1.3pp |
| FTPE | 88.6% | 2.4pp | Virgin Trains West Coast | 5.0% | 1.0pp |
| | | | AGA | 2.5% | 0.9pp |
| | | | FTPE | 4.3% | 0.8pp |
| | | | SWT | 2.7% | 0.6pp |
| | | | FGW | 3.0% | 0.4pp |
| | | | Southeastern | 2.8% | 0.3pp |

Purpose of the investigation

To establish whether NR did or is doing everything reasonably practicable to meet its licence obligations in relation to achieving its regulated performance outputs.

This includes:

- a. PPM targets in Scotland for the first year of CP5⁴ (regulated performance target);

¹ England and Wales regulatory performance targets (PPM and CaSL) are not enforceable in 2014-15 and 2015-16, being instead monitored through NR's delivery of its CP5 Performance Plan.

² Threshold is defined as 2.0 pp below (PPM MAA) and 0.2 pp above (CaSL MAA) Performance Strategy target. Details are set out in ORR's final determination document - chapter 23

³ Scotland regulatory performance target (PPM MAA) continues to be enforceable in throughout years 1-5 CP5.

- b. performance delivery to Southern for the first year of CP5 (Performance Strategy targets);
- c. performance delivery to GTR for the first year of CP5 (Performance Strategy targets);
- d. ensuring that end of CP5 regulatory targets are met – including assessing whether there any systemic weaknesses relating to NR’s operational planning, management and delivery of performance, such as timetabling.

Scope

The investigation will focus on NR’s performance obligations in the four main areas addressed above.

Our initial review and analysis of performance in 2014-15 has raised concerns with performance in Scotland and a range of operators.

We will use NR performance in Scotland, and with operators Southern and GTR as the basis of this investigation because:

- i) Scotland failed to meet its 2014-15 regulatory performance target and;
- ii) Southern and GTR represent the worst performers in 2014-15. Southern and GTR performance in 2014-15 represents roughly a third of the England and Wales PPM (MAA) shortfall and roughly half of the CaSL (MAA) shortfall in England and Wales.

Our initial review has also highlighted a number of potential operational performance issues:

a. Scotland (PPM 2014-15 miss)

The December 2014 timetable contained planning errors which we need to investigate further in order to assess whether they could have been avoided.

Whilst we accept that there was a performance impact caused by the Commonwealth Games, we estimate this to account for 0.6pp of the shortfall in the PPM MAA in Scotland. Even allowing for this effect therefore, NR would have failed to meet its PPM (MAA) target.

We will carry out further assessment to confirm our initial view that the weather in 2014-15 was not beyond the level that Scotland Route is funded to deal with.

We will also carry out a further assessment of the delivery of ScotRail’s Performance Strategy, noting that there was a relatively high degree of milestone slippage.

b. Southern (PPM and CaSL miss)

The disruption caused by the impact of the Thameslink programme, principally at London Bridge, and timetabling issues (leading to a reduction in peak services) has contributed to Southern’s level of performance.

This has been further exacerbated by the performance of non-track assets and network management, CaSL impact of fatalities and trespass incidents and Southern traincrew issues.

We need to investigate further whether a number of the issues associated with the Thameslink Programme could have been avoided.

c. **GTR (PPM and CaSL miss)**

Disruption caused by the impact of the Thameslink programme and performance of non-track assets, network management and an increase in delay minutes related to fatalities and trespass have contributed to worsening performance.

Both PPM and CaSL have displayed consistently negative trends during the year – we have yet to have sight of any substantial plans to tackle this.

We need to investigate further whether a number of the issues associated with the Thameslink Programme could have been avoided.

Potential systemic performance failures - NR Performance delivery to other operators

We have concluded at this stage that we should not specifically investigate NR's performance delivery to other operators because:

- i. In some cases operator issues have contributed to performance shortfalls
- ii. our ongoing dialogue with operators has indicated that they are broadly satisfied with NR's performance delivery to them
- iii. we are satisfied NR is making reasonable efforts to address performance-impacting issues

However we still have some concerns regarding NR's delivery to other operators (*First Great Western, Virgin TrainsWest Coast, Southeastern, South West Trains, Abellio Greater Anglia and First TransPennine Express*) and we will continue to monitor delivery of operational performance to these operators through our regulatory processes. We may also consider any relevant evidence provided by other operators which could highlight potential systemic operational performance issues.

NR Performance Plan (England and Wales)

At the end of quarter 3 (Q3) NR reported against delivery of the milestones in its Performance Plan. At the time we concluded that, although there had been some slippage, this was within the margins we would expect to see. NR is due to report progress on the Q4 milestones to us on 5 May 2015.

We will assess the Q4 report as a source of evidence in our investigation to help us determine whether there are any systemic performance issues which NR is not reasonably addressing.

We recognise there may be links between enhancements and performance, and will ensure in the conduct of this performance investigation to avoid duplication with our

on-going enhancement investigation, which is subject to its own separate terms of reference.

Methodology

We will use the evidence gathered from our own monitoring, NR and industry to assess:

- Whether there are any mitigating factors which affected or are affecting performance in these specific Route (Scotland) / operators, for example factors such as weather and passenger growth.
- The steps, if any NR has taken or is taking to address performance issues and make improvements

In order to conduct our investigation we will consider the following sources:

- The CP5 Performance Plan
- The quarterly progress reports we received throughout the year
- The full end of year review we are due to receive on 5 May
- Any further evidence that NR ask us to consider
- Views and further information from relevant operators
- Evidence provided by NR's Internal Audit Team looking at the effectiveness of Performance Strategies,
- End of year performance data

Investigation team

This investigation is led by Alan Price as senior director Railway Planning and Performance, supported by ORR experts. The project team will include cross office representatives including Railway Planning and Performance, Legal and External Affairs. Governance arrangements are detailed in the project initiation document.

How the investigation will be conducted

In carrying out its investigation ORR expects to draw upon information and reviews already carried out internally as part of its usual regulatory roles. The review will engage primarily with NR, as well as affected operators [and funders].

Timescales

ORR aims to complete the investigation by the end of May 2015. It will then consider the investigation findings and decide the next steps in line with its economic enforcement process and policy. As part of these considerations, ORR will decide whether there are grounds to issue a case to answer letter to NR and then will make recommendations to ORR's Board on any licence breach, and if appropriate, enforcement action.