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13 June 2011

Mr David Higgins  
Chief Executive  
Network Rail Infrastructure Limited  
Kings Place  
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Dear David

### **Operational performance targets 2010 – 11**

Network Rail failed to meet eight of the ten regulatory train performance requirements for 2010-11 – all except those for regional punctuality and cancellations. We wrote to you in January saying that if these targets were missed it would indicate a potential breach of the network licence. We have therefore asked whether you can provide robust evidence that, notwithstanding failure to meet the targets, you had been operating the network in accordance with your licence obligations.

We have subsequently held several discussions with you and received several written explanations of why you believe these failures were due to circumstances beyond your reasonable control<sup>1</sup>. We have considered the matter carefully in light of your explanations and we have undertaken our own analysis.

We conclude that the extreme, prolonged cold and extensive snow in periods 9 and 10 last winter was well outside the range of normal winter operating conditions and therefore that we should make allowance for this in assessing whether you have met your licence obligations. We also accept that the snow and ice had an on-going impact on the infrastructure and your maintenance regime into February. Our analysis shows that, had conditions during periods 9-11 (mid November to early February) been those of an average winter, it is likely that you would have met all your passenger targets with the possible exception of that for delay minutes in England and Wales.

We also consider that the efforts you made to deliver the best possible service to passengers under the conditions, including drawing on lessons from previous severe weather periods, were consistent with your obligations.



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<sup>1</sup> All relevant letters can be found on our website at <http://www.rail-reg.gov.uk/server/show/nav.1901>



We have therefore concluded that the failure to meet these defined targets does not amount to a breach of your licence. Our analysis and reasons for our decision are set out in more detail in the report attached to this letter.

However, we are concerned at the underlying trend in Network Rail passenger delay minutes and we have already required you to provide us with a plan showing how you intend to reverse this trend to ensure you meet the more demanding target this year, including further steps to improve service resilience to adverse weather<sup>2</sup>. We would like you to submit this plan by 20 June.

We expect full commitment to delivery of the targets and implementation of lessons learned from the cold weather periods over the last two years. We will monitor this plan on a monthly basis.

The position with your freight target is different and most unsatisfactory. It is clear that you have missed the target and would have done so in even the most benign winter conditions. We understand the freight operators do not wish for regulatory action on the matter, but the target is an important part of your CP4 settlement. We are therefore discussing this issue further with you and the freight operators, and we will make a decision as soon as possible on how to proceed.

I am placing a copy of this letter on our website and sending copies to Nick Bisson at DfT, Chris Burchell at NTF and David Middleton at Transport Scotland.

Yours sincerely,

A handwritten signature in black ink, which appears to read 'Bill Emery'. The signature is written in a cursive, flowing style.

**Bill Emery**

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<sup>2</sup> Our letter of 3 May 2011 can be found at [http://www.rail-reg.gov.uk/upload/pdf/passenger\\_delays\\_030511.pdf](http://www.rail-reg.gov.uk/upload/pdf/passenger_delays_030511.pdf)

## **Report into consideration of Network Rail's failure to meet its operational performance targets 2010-11.**

### **Network Rail's obligations**

1. Network Rail is required under condition 1 of its network licence to operate the network in accordance with best practice to meet the reasonable requirements of its customers and funders in respect of the quality and capability of the network and the facilitation of railway service performance. It must do this to the greatest extent reasonably practicable having regard to all relevant circumstances.
2. The reasonable requirements of customers and funders are defined in our enforcement policy and include outputs set in a periodic review and firm commitments made in Network Rail's delivery plan.
3. We set ten national and sector requirements for the public performance measure (PPM), cancellations and significant lateness (CaSL) and Network Rail delay minutes in our PR08 determination<sup>3</sup>. It is now clear that, in 2010-11, of these ten requirements Network Rail only met those for Regional PPM and Regional CaSL. The detailed figures are set out in the annex to this report.
4. Failure to deliver the specific targets is not in itself an automatic breach of the licence. We must consider whether Network Rail has met these requirements "...to the greatest extent reasonably practicable having regard to all relevant circumstances...."
5. The key "relevant circumstances" in making this judgment are the two spells of severe winter weather experienced from late November 2010 into January 2011. We have considered whether these conditions, which seriously disrupted all forms of travel both in the UK and across Europe, were sufficiently worse than normal that Network Rail could not reasonably have been expected to meet its targets under the circumstances. We assessed whether, facing more typical winter conditions, Network Rail would have been likely to achieve the required performance. We have also considered whether the steps Network Rail took to operate during this period delivered the best performance "reasonably practicable".

### **Severity of the winter**

6. There is evidence from the Met Office that the 2010/11 winter was exceptionally severe with extreme cold (beyond the design parameters for some equipment), widespread and deep snow coverage and prolonged period of sub-freezing conditions. Deep snow and significant amounts of ice hampered operations and caused damage to both the infrastructure and the fleet.

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<sup>3</sup> Network Rail then agreed disaggregated targets with individual operators through the Joint Performance Agreement Plan (JPIP) process and included these as commitments in its CP4 Delivery Plan.

7. There were two main periods of disruption. There was heavy snow at the end of November, much earlier in the season than would normally be expected, followed by a more widespread, heavier fall just before Christmas. These both affected most of the country, with many areas experiencing 20 to 30cm of snow. In north east England and eastern Scotland, snow accumulated to depths of 50cm, drifting to 80cm in some places. The Met Office has judged the early first spell as the most significant and widespread for this time of year since November 1965. Whilst the Met Office forecast the snow in good time on both occasions, evidence from conversations with train operators makes it clear that they did not anticipate the depth of the snow and the areas it would fall.
8. There were prolonged periods of freezing temperatures with record extreme low temperatures in many parts of the country. December 2010 was the coldest December since records began in 1890 and experienced the lowest temperatures of any month since January 1964. Average minimum temperatures were 5.7°C below average and average maximum temperatures were 4.6°C below average. The number of days with air frost was the highest for December for 50 years and there were very severe frosts at night, with temperatures widely falling below -10°C in several nights, to as low as -20°C in parts of Scotland.
9. The deep snow hampered normal operations, particularly as it was difficult to get people to some locations each day to keep the infrastructure open. There was a considerable problem with ice forming on the infrastructure and falling from trains causing damage and blockages. As this melted, there were further problems caused by melt water causing flooding and slippages.
10. Network Rail claimed that the impact of these conditions lasted into p11 (January). There had been ice damage to the infrastructure and flooding from melt water, on top of a backlog of planned maintenance that had been impossible to do in the snow. Network Rail estimates that these factors caused almost as many delay minutes as the immediate impact of the weather. We believe there is reasonable evidence for this.
11. We expect Network Rail to seek continuous improvement in performance, not least in managing adverse weather, reviewing experience and acting on the lessons learned. But we do not consider it reasonable to expect Network Rail to have invested in measures necessary to combat fully such hitherto exceptional conditions. The experience of two successive 'abnormal' UK winters has raised questions about the level of resilience we should require of the network in future and whether current investment in resilience is adequate; David Quarmby's December report<sup>4</sup> recommends governments to consider this issue in respect of all transport modes and we have specified that the Initial Industry Plan should include an assessment of options for this on the railway.
12. We therefore think it right to make allowance for the exceptional circumstances when assessing the full year results.

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<sup>4</sup> Quarmby's Winter Resilience reports (Interim) July and (Final) October 2010, and the follow up report December 2010: <http://transportwinterresilience.independent.gov.uk/>

### **Analysis of the effects of winter on performance targets.**

13. We consider on balance that actual performance during periods 9-11, affected by the heavy snow and extreme cold, should be discounted for the purpose of assessing the full year figures. In making our assessment we have therefore substituted, for these periods, estimates of what would have been expected in a more 'normal' winter.

14. To estimate the performance given a typical winter, we replaced the 2010/11 periods 9 - 11 data with the corresponding period averages from 2004/05 to 2009/10. These averages are adjusted to allow for the improving trend, using a model fit to the moving annual average of the data up until 2009/10 P8, just before last year's severe weather. (Data from period 8 2009/10 onwards have not been included as the two periods of exceptional weather distort the last two years.)

15. Using this methodology, we consider that Network Rail would have achieved most of the passenger performance targets. The model suggests that it would have missed the England & Wales delay minutes target by 3%, but this result is within the margins of error of our estimation process and is not conclusive.

### **Consideration of Network Rail's handling of the winter conditions.**

16. We consider that, overall, Network Rail managed the network reasonably well during the severe weather keeping many trains running despite the conditions, and it clearly did better than the previous winter. We also note that there were similarly serious problems with performance delivery across Europe. This view has generally been echoed in conversations with a number of operators. However, there is still room for improvement and we expect lessons to be learnt and put into effect for future years.

17. Network Rail learned a number of key lessons from 2009-10 which enabled a better response in 2010-11. It had implemented key recommendations from the initial Quarmby report on transport winter resilience, as he recognised in his December follow up report. It had reviewed winter resilience measures in other European countries. Working with the TOCs, it had more robust plans in place for switching to contingency timetables. Points heaters worked better and Network Rail ran ghost trains in some areas to keep the infrastructure free of ice. Key access routes to depots and fuel points were better protected.

18. It was trialling further initiatives on the particularly vulnerable 3<sup>rd</sup>-rail network, such as application of de-icing fluid by in-service trains and heating the conductor rail to prevent ice forming; it had commissioned new heating equipment in 45 out of 50 sites in Kent before the cold weather started. However, these initiatives were still at an early stage in Sussex and the South West Trains area and the 3<sup>rd</sup> rail system was again seriously disrupted.

19. Network Rail recognises that it handled the second period of snow better than the first, even though it was more severe and prolonged. In part this was because of the very early onset of the first snow. Some 'multi-purpose' vehicles had not yet been converted from leaf-fall duties to carry out de-icing (in some previous years autumn conditions have lasted into December), although this was remedied quickly in most cases. However, Network Rail immediately conducted a lessons learned review and implemented changes before the second spell.

20. The company appears to have worked well with its customers to run trains, with planning conferences held and key route strategies prepared before the winter period started and twice daily weather forecast conference calls during the periods of disruption. In some cases operations were limited by the condition of the fleet rather than the network. Some operators chose to run a reduced timetable but Network Rail also accommodated those who wanted to run a full timetable, despite the impact that would have on performance figures. As a result of these efforts the railway was able to run, on average, 90% of the normal service across the country when many roads and airports were closed.

21. We also assessed the actions Network Rail took to recover from the effects of the snow and ice. This included repairing the immediate damage, reprioritising the cancelled possessions and other planned maintenance and increasing resources available through increasing overtime. As a result, performance had recovered to Network Rail's internal targets for the period by the end of January and we consider this is a reasonable time for recovery from the amount of disruption the business experienced.

22. Most train operators, even those critical of Network Rail for overall performance last year, praised it for its efforts during the snow and agreed that it had managed reasonably well to recover performance in January.

### **Consideration of licence breach**

23. Taking into account the exceptionally severe conditions faced in the winter, and our analysis of the performance results which Network Rail might have achieved under more typical conditions, we consider that failure to deliver the defined requirements for passenger services was not in this case evidence of a breach of the network licence. We consider that there is no persuasive evidence that Network Rail failed to comply with its licence obligation to manage "in accordance with best practice" and to deliver the requirements "to the greatest extent reasonably practicable".

### **Passenger information**

24. Over recent years the industry as a whole has been criticised, justifiably, for the quality of the information it provides passengers about train movements, particularly in times of disruption. This criticism was levied again during the winter period, although we acknowledge that the industry did do more this year to try to keep customers informed. The industry is developing a number of initiatives to improve information in both the short and long term. We are also consulting on new licence conditions for operators and Network Rail to ensure that the responsibilities and accountabilities are clearly set out and enforced fairly. We have not considered this issue in our decision on Network Rail's compliance with its licence conditions.

### **Individual operator performance**

25. At the same time as this investigation we have been involved in a series of meetings with operators (East Coast, Southern, South Eastern, Great Western, FCC and NX East Anglia) who have raised concerns about performance on their routes. Most of these have experienced poor performance through the year and Network Rail has missed agreed JPIP targets. Most of these operators have now signed JPIPs for 2011-12 and while no further action by ORR is required at this stage we are monitoring progress of these closely. We are treating these as separate issues and have not considered them in our decision on the national targets.

### **Passenger service performance in 2011-12**

26. Although on balance we do not think there is persuasive evidence that Network Rail breached its licence in respect of performance in 2010-11, it is clear that it is going to have to work hard to meet its targets this year, which are still more demanding.

27. In particular, we have become concerned, looking ahead, about the underlying trend in the Network Rail attributable delays to passenger services in England and Wales. While many of the 2011-12 performance requirements established by PR08 present a significant challenge, this trend indicates a particular risk that the required reductions in delay to passenger services in England & Wales might not be achieved (the figures do not suggest the same degree of risk in Scotland).

28. We have therefore written publicly to Network Rail<sup>5</sup> requiring it to submit what is effectively a 'recovery plan' showing the actions it is taking across the network to reduce delays. This plan must show how this year's trajectory has been derived from last year's baseline, including any reversal of one-off issues and the projected impact of all major initiatives. It must also give a description, at an England and Wales level, of those key initiatives that substantiates the projected benefits and provides clear milestones against which progress can be monitored. In particular we would like to see how Network Rail intends to reduce the number of incidents, the delay per incident and how it will improve the resilience of the network. It should include lessons learned from the last two years and details of longer term plans that need to be discussed in the Industry Investment Plans for funding in the next control period.

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<sup>5</sup> Our letter of 3 May can be found at [http://www.rail-reg.gov.uk/upload/pdf/passenger\\_delays\\_030511.pdf](http://www.rail-reg.gov.uk/upload/pdf/passenger_delays_030511.pdf)

29. We will carefully assess whether the 'recovery plan' appears adequate. We will then monitor delivery closely throughout the year and will not hesitate to take further action if the plan does not appear to be delivering the intended improvements.

### **Freight**

30. The position with the freight target is different, and most unsatisfactory. Even using adjusted winter figures it is clear that Network Rail would not have delivered its freight performance target in 2010-11. However, when we identified a serious risk of this in mid-year we consulted the freight operators and none wished us to take action on the matter (a view again confirmed by the Rail Freight Operator's Association when we met them in April). This presented a dilemma. The freight delay specification is a PR08 requirement (though not part of the HLOS). However we considered that to enforce this target against the wishes of the customers it was intended to protect, which may even risk harming their interests (as a result of measures Network Rail could legitimately take if it had to prioritise reducing this particular statistic), would be unreasonable. We therefore agreed with the operators that we would take no action in respect of 2010-11 but that the matter must be followed up. We are not prepared simply to overlook failure to meet the explicit requirements of a regulatory determination, but we will consider any proposals the operators and Network Rail wish to make for changes to those requirements for future years.

End