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12 May 2008

Iain Coucher Esq  
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Network Rail Infrastructure Limited  
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Dear Iain

### **WEST COAST ROUTE MODERNISATION**

1. Thank you for your letters of 31 March and 25 April, setting out the action you are taking following our decision to make a provisional order on 28 February.
2. We have reviewed the documents you sent to us. We asked the independent reporter, Halcrow, to examine your plan to deliver the infrastructure by December 2008 and held a number of meetings with you and with train operators who expressed concern about your plan. In summary, after reviewing all the evidence available to us, and after balancing our statutory duties under section 4 of the Railways Act, we have decided that you have complied with the provisional order and are no longer unlikely to comply with the obligations in condition 7 of your licence in relation to provision of the infrastructure capability required to deliver the December 2008 timetable improvements.
3. I set out below how we reached this decision. This includes our consideration of:
  - (a) the consultation process you undertook;
  - (b) whether you complied with the requirement to send the plan to us by 31 March 2008;
  - (c) the adequacy of the plan;
  - (d) whether the plan meets the reasonable requirements of persons providing railway services to the greatest extent reasonably practicable having regard to all relevant circumstances including:
    - (i) the representations from persons providing railway services on your plan;





(ii) the balancing of our duties under section 4 of the Railways Act; and

I then set out the action we expect you to take between now and the end of the year.

**(a) The consultation process**

4. We had representations from two freight train operators, EWS and GB Railfreight, with concerns about the consultation process you undertook. We discussed the process at a meeting with you and DRS, EWS, Freightliner, and GB Rail Freight on 15 April.

5. The operators' concerns arose from the short time (about a week) they had to comment on the plan and a related consultation on possessions. They were also concerned that the timescale left you just three days to consider objections to your proposed possessions before submitting the plan to us. These timescales were clearly shorter than would normally be considered reasonable. However, the circumstances were abnormal. We would not have issued a provisional order unless we considered the urgency of the matter required us to do so. Our decision to give you just one month to produce a revised plan reflected your need to proceed with planning the works and booking possessions, and the need of the industry and its customers to know as early as possible whether the planned December 2008 timetable would be put in place, and how engineering work would affect services during the remainder of 2008.

6. In these circumstances, we accepted that consultation processes would inevitably have to be accelerated, but it was important that operators had the opportunity to express any concerns and that you considered how you could address them. In this case, the freight operators clearly expressed their concerns, and we understand that you worked through the final weekend to give yourself maximum time to consider them before submitting your plan to us. In the circumstances, we consider that the time allowed for consultation and for consideration of responses was sufficient for the purposes of the order.

7. The compressed timescales did not permit full consideration of scope to mitigate the effect of the proposed possessions on freight or development of timetables for diversionary routes which would provide the operators with greater certainty about the impact. We consider it important that you continue to address the concerns of freight operators in these respects.

**(b) Whether you complied with the requirement to send the plan to us by 31 March 2008**

8. You submitted a plan to us on 31 March 2008 setting out how you proposed to deliver the infrastructure capability for the December 2008 timetable improvements. You



made some revisions to this plan on 25 April 2008 to reflect ongoing discussions which you have had with various passenger and freight train operators and subsequent revisions to the firewalls. We consider that it is inherent in the requirements<sup>1</sup> in the provisional order that the plan should be capable of being adjusted as discussions and the requirements of your stakeholders evolve, following the consultation you undertook and as the programme proceeds. We therefore consider that the plan you submitted complied with the stipulated date in the provisional order.

**(c) The adequacy of your plan**

9. We asked the independent reporter, Halcrow, to review your plan to advise us on its adequacy. I attach the report. Halcrow considers the plan contains all the necessary elements consistent with good practice in project management, including risk assessments and resource plans. Overall, the reporter considers that the plan should be sufficiently robust to deliver the infrastructure capability required for the December 2008 timetable, although the programme remains a challenge for Network Rail.

10. As you know, the reporter scrutinised a number of different aspects of the plan. We also had a meeting on 1 May with you to discuss our concern about the removal of the firewalls, and in particular about the effect on work at Milton Keynes if the firewall for the November possession at Rugby is needed. In response to this, you provided us with an assurance that the west coast programme and, in particular, the key possessions to which you had attached firewalls would be adequately resourced. You undertook to commence a timely review of other scheduled work programmes to ensure that this would be the case and to consider in advance the effect of this on other scheduled work. The reporter was also concerned that you should not withdraw a firewall possession unless you were confident that you could deliver the engineering work in the main possession and about potential restrictions on the use of firewalls following agreement with Virgin Trains. Following the meeting, however, we were reassured about your approach to the use of firewalls on the basis of your current confidence in the Rugby scheme and in being able to address any adverse effects should the firewall be needed.

11. Following the discussion on 1 May, and based on the assessment of the reporter, we consider that you have complied with the provisional order in respect of the adequacy of your plan.

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<sup>1</sup> To deliver the Output, in accordance with the reasonable requirements of persons providing services relating to railways to the greatest extent reasonably practicable having regard to all relevant circumstances, and taking full account of the risks associated with achieving delivery.



**(d) Does the plan meet the reasonable requirements of customers and funders?**

**(i) Representations on your plan**

12. From our review of the information you submitted to us and from discussions with individual parties, we understood that the main passenger representative group, Passenger Focus, the majority of passenger train operators, and the Department for Transport favoured your plan. In summary, this was largely because these groups would rather that the infrastructure improvements were delivered this year with a more disruptive possession plan, than at a later date in 2009 with a less disruptive possession plan.

13. There were three categories of objections to your plan. These were from Virgin Trains, who considered that more time would help you deliver the infrastructure and, initially, that it could not train its drivers in time for December 2008, from various chambers of commerce and travel organisations concerned about the level of disruption this year, and from freight train operators who expressed strong concern that the use of rail for the carrying of freight would be damaged by the extent of the engineering possessions you have planned. I will consider each of these categories of objection in turn.

*The representations from Virgin Trains*

14. Virgin Trains initially maintained that the plan submitted by Network Rail made it impossible to schedule the necessary training sessions without severely curtailing scheduled service levels to release drivers to be trained.

15. There were several discussions on this subject, which led to an agreed solution between you and Virgin Trains. One feature of this is that you will continue to deliver the infrastructure capability for the December 2008 timetable but will defer use of some facilities until mid-2009, allowing longer for the associated driver training but with some risk to performance in the short term. Another is that Network Rail has agreed not to use "firewall" possessions for signalling commissioning except with Virgin Trains agreement. On this basis, we understand that Virgin Trains has now withdrawn this objection to your plan and therefore we do not consider it further in this analysis.

16. Virgin also expressed concerns about the absence of plans to ensure the necessary improvement to reliability of the new infrastructure before the timetable takes effect. This issue was identified by the reporter last year. This is an important issue and one which we will continue to pursue, but although it is related to delivery of the infrastructure capability, we do not consider that it has to be resolved in order to determine compliance with the order we have issued.



*Concerns expressed by chambers of commerce and travel organisations*

17. Several chambers of commerce and travel organisations expressed concern to us directly about the effect of Network Rail's plan. The concern was about the effect on business of the level of disruption caused by engineering work between now and December so that the infrastructure capability can be delivered in December 2008. Liverpool chamber of commerce also highlighted the potential impact on travel during Liverpool's period as European capital of culture.

18. We considered these representations along with the others made to you and to us. In doing so, we had to balance the views expressed by these groups about the level of disruption this year with the views of Passenger Focus and the majority of passenger train operators who supported Network Rail's plan. On balance, we consider that the earlier delivery of the improvements in services for passengers outweighs the additional disruption to passengers this year.

*Representations from freight operators*

19. We received strong representations directly and indirectly about the effect of your plan on rail freight. We had a meeting with you and the freight train operators and considered information provided by these operators, some of which is confidential. We believe there is a real possibility of an adverse effect on the use of rail for freight. We note that the position will be eased to some extent by the removal of some of the "firewalls" and by the action you are taking with the freight operators to develop alternative routes. But we expect Network Rail to develop, consult on, and implement robust plans for dealing with freight services during the course of the physical works, and it is essential that you continue to explore as far as possible within the criteria in the network code the scope for mitigating the effect of engineering work on freight operators.

**(ii) Balancing our section 4 duties**

20. We have weighed a number of different factors in arriving at a decision about whether you have demonstrated how you:

"will deliver the Output in accordance with the reasonable requirements of persons providing services relating to railways and relevant funders to the greatest extent reasonably practicable having regard to all relevant circumstances".

21. It is clear that there are conflicting interests regarding the plan. In such circumstances, the plan will not, and would not, be able to meet all the requirements of those consulted. We have to come to a view as to whether the plan meets the reasonable requirements of persons providing services relating to railways and relevant funders to the



greatest extent reasonably practicable having regard to all the circumstances. The key issue is whether the potential for damage to freight operators and their customers outweighs the passenger benefits.

22. Our decision on this issue will be governed by our section 4 duties. Section 4 contains a number of duties, without any order of priority. We, therefore, have to strike the appropriate balance in any individual case. The duties which appear particularly relevant to this case are:

- To promote improvements in railway service performance;
- To promote the use of the railway network in Great Britain for the carriage of passengers and goods, and the development of that network to the greatest extent that we consider economically practicable;
- To protect the interests of users of railway services;
- To have regard to the financial position of the Secretary of State;
- To enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance; and
- To promote efficiency and economy on the part of persons providing railway services.

23. Some of these duties would suggest the passenger benefits outweigh the detriments to freight, others that freight interests should prevail. We believe the balance of our section 4 duties is as set out below.

- Our duties to promote the use and development of the network for passengers, to promote improvements in railway service performance, to promote efficiency and economy on the part of persons providing railway services and to have regard to the financial position of the Secretary of State would support giving priority to the reasonable requirements of passenger train operators and relevant funders.
- This is further strengthened by the representations of Passenger Focus which also suggest that the plan is consistent with our duty to protect the interests of passenger users of railway services.
- However, our duties to promote use of the network for the carriage of goods and to protect the interests of freight users would suggest giving greater weight to the requirements of freight operators and customers.

- Despite this, our duty to enable persons providing railway services to be able to plan their businesses with a reasonable degree of assurance would point to closing down the current uncertainty around this programme as quickly as we reasonably can which, all things being equal, weigh in favour of accepting the plan.

24. It is very difficult to weigh the respective passenger and freight interests in this case. Delivery of the outputs for December 2008 was always going to be disruptive for both passenger and freight train operators and their customers. We have therefore focussed on the additional possessions in your plan. Potentially, these could have a serious adverse impact on rail freight markets if action is not taken to mitigate the risk that freight will switch from rail to other modes.

25. We understand that there are wider benefits to passengers, passenger train operators, and relevant funders of delivering the benefits of the outputs this year, containing the disruption to this year, and minimising the effect of work on West Coast on the existing programme of work on the network for next year. We have reviewed the information available to us, most of which is confidential, on the financial benefits and impact of your plan and have assessed the extent to which freight might be lost to rail against the background of the aftermath of Hatfield. Financially, the benefits to passengers, passenger train operators, and relevant funders appear to outweigh the potential costs to freight, based on our assessment of the information available. On the basis that you continue to identify diversionary routes wherever possible for freight services, and based on the level of disruption which would result from you removing some of the firewall possessions as you currently plan to do, we consider that accepting that your plan will promote the use of the railway network in Britain for the carriage of passengers and goods.

26. Balancing the interests of passengers and freight in the light of our section 4 duties led us to conclude that the plan meets the reasonable requirements of persons providing services relating to railways and relevant funders to the greatest extent reasonably practicable having regard to all relevant circumstances. But we emphasise the importance, within the framework of the timetabling decision criteria in the network code, having full regard to the potential damage to freight businesses when prioritising the use of capacity on diversionary routes.

## **Conclusion**

27. For the reasons set out above, we have decided that you have complied with the provisional order and are now no longer unlikely to comply with the obligations in condition 7 of your licence in relation to provision of the infrastructure capability required to deliver the December 2008 timetable improvements on the west coast main line.



### **The action we expect you to take between now and the end of the year**

28. You must now ensure that you deliver the plan. In doing so, we would expect you to apply good practice and to have learnt lessons from the events of the past few months. We will monitor delivery closely, including through the independent reporter. We also expect to report regularly on progress in our Network Rail monitor. We also expect you to identify and address in a timely and efficient manner any issues which affect other work on the network.

29. We expect you to explore ways throughout the year of mitigating the effect of your plan on those who use the railway, and in particular on rail freight.

30. I also want to emphasise the need for you to address two further issues –

- The need to ensure the reliability of the route as work is completed. We would expect the main focus of this to be in this year's joint performance improvement plan with Virgin Trains. We have advised Virgin to continue to press the matter as they resolve the outstanding element of their 2008-09 JPIP (which we understand has only agreed up to December 2008). But, as you know, the reporter has asked for more details of your plans, and we expect him to provide regular progress reports to us your approach to ensure that new infrastructure components operate reliably.
- Plans for maintaining for the infrastructure after the introduction of the new timetable. You are aware that we are reviewing the following aspects of your approach in particular - your process and decision-making criteria; recruitment and training of additional staff; track inspection; and enabling works, with possession and isolation time improvements. I will discuss our emerging views with you throughout the year.

31. Finally, we are now consulting on Virgin Trains' proposed track access rights and the consequential effect on the rights of other train operators. These are separate matters from compliance with the provisional order, which related to infrastructure capability. But your action, and our consideration of it, clearly affects the operation of the December 2008 timetable. The submission of the suite of agreements and notices was not made in good time, and you need to do all you can to resolve issues so that train operators, passengers and freight customers know which services will be able to operate under the new timetable.





32. I am publishing this letter on our website.

Yours sincerely

A handwritten signature in black ink that reads "Bill Emery". The signature is written in a cursive style with a large initial "B" and a long, sweeping underline.

**Bill Emery**