

Carl Hetherington
Deputy Director, RME

Becky Lumlock
Group Director Transformation, Network Rail
cc DfT, Transport Scotland and Welsh Government
Sent by email

19 June 2019

Dear Becky

Following on from ORR's Opinion on Network Rail's "Putting Passengers First" programme, which we issued on 24 May 2019 (our Opinion)¹, this letter provides further information on our arrangements for regulating Network Rail at a regional level in control period 6 (CP6) and in particular during 2019-20, including specifying what baselines we will be using to hold Network Rail to account.

As Network Rail confirms further details of its new operating model, we will consider whether it is appropriate to further adapt our approach to regulation. We expect Network Rail to proactively notify us of all planned changes at the earliest opportunity, and to take full responsibility for ensuring compliance with its licence, discussing with ORR well in advance if it considers any changes to the licence may be needed. As we stated in our Opinion, if any new information materially affects the programme or its expected impact, we may update our Opinion.

Since we issued our Opinion in May 2019, we have been notified of some changes to the programme in relation to the System Operator (SO)². We expect Network Rail to continue to engage with us on these changes, and are not yet in a position to address the SO proposals in this letter.

1. Stakeholder engagement

When we published our Opinion, we asked stakeholders for feedback on how well Network Rail engaged with them on this programme.

The level and quality of engagement reported by stakeholders appears to be mixed, with some reporting a lack of engagement or that the consultation appeared to be a 'tick box exercise'. Other stakeholders provided positive feedback on the level of engagement, adding that they were clear on Network Rail's aims and understood the forthcoming changes.

It is important that Network Rail engages well with its stakeholders, e.g. in relation to the changes to Network Rail's scorecards, where we need to know how Network Rail will assure itself that the interests of its customers are being met across the organisation. We will continue to monitor Network Rail's engagement with its

¹ https://orr.gov.uk/_data/assets/pdf_file/0016/41146/managing-change-policy-letter-2019-05-24.pdf

² As highlighted in our Opinion, Network Rail has not yet provided us with a full description of its programme and the programme has continued to evolve. Also, its initial information on the SO changes was not clear.

stakeholders throughout CP6, including in its implementation of the “Putting Passengers First” programme.

2. Ongoing issues

We highlighted a number of issues in our Opinion that need further consideration as discussed below.

Delivery of the 2018 periodic review (PR18) requirements while implementing the change

It is essential that Network Rail ensures the changes being implemented do not have an adverse effect on its ability to deliver, particularly during the implementation period between June 2019 and April 2020, when programme risk is higher.

Network Rail has submitted further high-level information on its governance process. But it has not yet fully addressed our concerns about the change potentially being a distraction from delivery – a concern shared by some stakeholders.

Network Rail has agreed to send us by 12 July 2019, more detailed information on the measures it is putting in place (in addition to the normal monitoring measures) to enable it to monitor its progress delivering the PR18 requirements during this period and ensure clear lines of accountability.

Safety

It is essential that Network Rail fully assesses the health and safety impact of the proposed changes and puts in place effective measures to ensure that risks continue to be managed. Network Rail should also ensure it manages the changes in accordance with good change management principles.

We acknowledge Network Rail’s response to our Opinion and will continue to engage with Network Rail on these matters to obtain assurance that risks are controlled and change is managed safely. This will include our role in the safety validation process.

Network Licence

Network Rail’s licence was revised earlier this year, reflecting its business structure at that time, and includes many requirements (for example around business structure, governance and stakeholder engagement) that we consider are essential to ensuring effective accountability.

At present, the network licence has not been modified as a result of the “Putting Passengers First” programme. We will consider whether this is needed, once we have greater clarity on certain issues and Network Rail’s position on how these changes align with the current licence conditions.

Scorecards

In the PR18 final determination, our policy on scorecards was centred around alignment between Network Rail's objectives and targets, to those of its customers. This remains unchanged and we will place reliance on how comfortable Network Rail's customers are with its new approach to scorecards and Network Rail's wider governance.

We decided to use Network Rail's scorecards in our regulatory approach for CP6 in order to support two high-level aims of PR18. These were to:

- support route comparison and competition; and
- focus Network Rail's geographic areas on customer requirements, benefitting end-users in turn.

Network Rail's letter of 31 May 2019 (in response to our Opinion) informed us of some additional changes in the content and structure of Network Rail's regional scorecards.

During PR18, we said that we would make greater use of scorecards in our monitoring and reporting, if they met our requirements – and if they did not we would adjust our approach accordingly. Network Rail's letter informed us that regions are taking different approaches to the train performance and local customer measure sections of their scorecards. Some regions have included a summary scorecard line per customer, and other regions have included summary lines per route. While all regions have included a regional CSI (Composite Sustainability Index) score, two regions have not included regional CRM-P (Consistent Route Measure – Passenger performance) or regional FDM-R (Freight Delivery Metric – Route level) on their scorecards.

In the last quarter of 2019-20, we will review the effectiveness of these changes and adjust the way we hold Network Rail to account if necessary. In terms of using Network Rail's scorecards during CP6, we intend to place reliance in our monitoring and public reporting³ on:

- the new region-level CP6 baseline trajectories and regulatory minimum floors identified in the annex to this letter;
- the regional comparison scorecard, with individual region scorecards considered alongside these; and
- supporting management information provided to us through the data protocol.

We are reviewing how we use the scorecard information to help hold Network Rail to account. In some cases, we will need to consider information at a route level.

We note that Network Rail is considering reviewing a number of related areas in the context of its transformation programme, such as the role of Railway Boards in relation to scorecards and the nature of the relationship with performance related pay. We intend to keep the effect of these proposals on Network Rail's scorecards in CP6 under review.

³ This will include publishing the CRM-P and regional FDM-R measures for the two regions that have not included them on their scorecards.

Regarding presentation of scorecards more generally, we made a number of points regarding transparency and ease of use of scorecards in our PR18 final determination and subsequently in response to Network Rail's December 2018 interim business performance report. We continue to expect Network Rail to make significant improvements in this area.

Freight and national passenger operators (FNPO)

A key feature of Network Rail's licence is the principle that Network Rail must ensure its structure and governance arrangements duly take into account the interests of both freight operators and passenger services crossing geographic boundaries (there are also a number of other important protections for freight).

We expressed some concerns in our Opinion about whether Network Rail's passenger and freight operator customers and other stakeholders would have sufficient transparency and influence under the new approach. These concerns were echoed in some of the responses from stakeholders.

Network Rail's letter of 31 May 2019 responded to these concerns and set out the oversight and governance arrangements for the FNPO, recognising the need for Network Rail to provide clear and strong representation for its customers and funders. We welcome this approach, which is important as Network Rail's proposals to place FNPO within a new Network Services Directorate, should neither diminish the role of the FNPO nor make it more difficult for Network Rail's stakeholders to engage with Network Rail. We will be monitoring Network Rail's delivery of these commitments closely to ensure that it is meeting the needs of its FNPO customers and is addressing the concerns they recently raised with us.

We note that there is currently no timeline set out for embedding in place the FNPO structural changes as described in your letter, post the initial change on 24 June 2019. It is important that Network Rail's commitments to improve the accountability and transparency of the FNPO, and its visibility within Network Rail's structure, are set up as soon as possible and communicated to Network Rail's stakeholders. As we said in our Opinion, and Network Rail accepts, we also expect Network Rail to meet the commitments set out in the FNPO route settlement.

Please could you therefore provide us with an update on progress by 30 September 2019. We will work closely with the FNPO and Nick King, Network Rail's Group Director, Network Services, to monitor and report on the effectiveness of the FNPO's engagement with geographic regions/routes and delivery of the route settlement. We will report publically, for example in our Monitor, on areas for improvement and areas that are working well. We will continue to discuss this further with Network Rail in our regular meetings regarding the FNPO.

3. Regional regulation and our approach for 2019-20

As set out in our Opinion, we will be regulating Network Rail at a regional level (supported by information at the new route level where appropriate) from 24 June 2019. To enable this, we asked Network Rail to 're-cut' its baselines and scorecards

on a regional basis. Subject to the clarifications below we intend to use that information to hold Network Rail to account during CP6.

Baselines

Financial baselines

Network Rail will update its financial baselines as each stage of the programme goes live. Network Rail has today published its regional financial baselines on its website for each year of CP6⁴, reflecting the changes from the first tranche of the programme.

The programme does not change Network Rail's overall financial and operational commitments and is effectively, from a financial point of view, a 're-cut' of the existing plans. We have agreed the methodology Network Rail has used to 're-cut' the route baselines from its latest delivery plan for the tranche 1 changes and are content that the baselines are consistent with the PR18 final determination. We will use these baselines for 2019-20 as the basis for our reporting and comparisons in 2019-20.

Baseline trajectories for regional consistent measures

In addition, as part of PR18, to enable us to compare between routes we set eight route level CP6 baseline trajectories (and eight regulatory minimum floors) for three consistent route level measures. These were for route level passenger train performance (CRM-P), freight performance (FDM-R) and network sustainability (CSI). Network Rail updated these trajectories in its March 2019 delivery plan, in a manner which reflected the PR18 final determination.

We have worked with Network Rail to create regional trajectories from these delivery plan route trajectories. These are set out in Annex A to this letter, together with some detailed points regarding our approach.

Regulatory Minimum Floors

We have produced regional regulatory minimum floors from the floors set in the PR18 final determination (see Annex A). As per our PR18 final determination, a regulatory minimum floor is the point below which we will be highly likely to consider a formal investigation into whether or not Network Rail has breached its licence, i.e. whether Network Rail is doing everything reasonably practicable to deliver the reasonable requirements of its customers and funders, having regard to all relevant circumstances, including the ability of Network Rail to fund its licensed activities. The floor is set at a level below which we consider performance to be unacceptable.

We have based the regional floors on the figures included in our PR18 final determination (and not those updated in Network Rail's delivery plan⁵), using the same methodology in each case.

⁴ They are available at: <https://www.networkrail.co.uk/who-we-are/publications-resources/cp6deliveryplans/>

⁵ We were clear in our PR18 final determination that the floors would remain consistent and would not change simply because targets were updated.

We have reviewed whether the level of the floors remains appropriate now that the data is at a regional level. At this stage we have not revised the overall level of the floors, so the challenge on Network Rail remains unchanged. But we will keep this under review during the early years of CP6, particularly in relation to the Southern region.

4. Next Steps

We will continue to work closely with Network Rail regarding the points above. We will address the SO issue referred to earlier in this letter separately in the coming weeks.

Yours sincerely

A handwritten signature in black ink that reads "Carl Hetherington". The signature is written in a cursive style with a prominent initial 'C'.

Carl Hetherington

Annex A

Agreed operator baselines

In our PR18 final determination, we highlighted that five operators had agreed trajectories with their respective routes for the control period (c2c, Arriva Rail London, Great Western Railway, Merseyrail and Caledonian Sleeper). Where trajectories were agreed we said we would place weight on this agreement in our monitoring, noting that these may be updated or revised through annual scorecards during CP6. These trajectories are set out in our PR18 final determination.

Where annual targets are agreed between a route and an operator, we will place weight on this in our monitoring and reporting. We note nearly all operators agreed targets for year 1 of CP6, including updated targets for those five operators who agreed CP6 trajectories.

Consistent Route Measure for Passenger Performance (CRM-P)

In reviewing Network Rail's Delivery Plan (which forms the basis of the new regional trajectories) we have identified that Network Rail's routes have taken an inconsistent approach to creating trajectories for CRM-P, in particular for the Anglia route. Anglia's approach was also different from the approach Network Rail took for PR18.

Given the low materiality of this issue, we have decided to accept the trajectories that Network Rail has put forward. CRM-P is a consistent measure designed to enable comparison between different geographical areas managed by Network Rail. As such, a consistent approach is important. In future in CP6, we expect Network Rail to either:

- create CRM-P trajectories in a manner consistent with the approach Network Rail took in PR18 (i.e. using its central model); or
- set out for us an alternative consistent approach in good time for us to ask our independent reporters to assess this in advance of making any changes.

In the event that we consider any regulatory action in relation to the CRM-P, we will take account of this inconsistency in reaching any decisions.

The regional CRM-P baseline trajectories, which we will compare Network Rail's performance and targets to during CP6 are:

Region	2019-20	2020-21	2021-22	2022-23	2023-24
Eastern	1.50	1.36	1.31	1.28	1.27
North West & Central	1.71	1.62	1.58	1.55	1.52
Southern	2.90	2.88	2.82	2.74	2.70
Western & Wales	1.88	1.84	1.68	1.64	1.64
Scotland	1.06	0.96	0.89	0.89	0.88

The regional CRM-P floors are as follows:

Region	2019-20	2020-21	2021-22	2022-23	2023-24
Eastern	1.70	1.63	1.57	1.55	1.54
North West & Central	2.02	1.94	1.90	1.88	1.85
Southern	3.49	3.44	3.38	3.30	3.26
Western & Wales	2.23	2.19	2.10	2.02	1.99
Scotland	1.25	1.15	1.08	1.08	1.07

Freight Delivery Metric

In our PR18 final determination, we accepted the FNPO's proposed trajectory for the Freight Delivery Metric (FDM), which was 94% for each year of CP6. This is unchanged as a result of the structural changes at Network Rail.

In creating the regional FDM-R baseline trajectories we identified a small number of detailed methodological issues regarding how Network Rail is producing targets and trajectories for FDM-R. We are continuing to close out these issues with Network Rail and if there are any material points to be resolved we expect Network Rail to agree the approach to resolve them with us, and include the revised trajectories in its business plan for year 2 and the remainder of CP6.

Subject to this, the regional FDM-R baseline trajectories, which we will compare Network Rail's performance and targets to during CP6 are:

Region	2019-20	2020-21	2021-22	2022-23	2023-24
Eastern	94.0%	94.0%	94.0%	94.0%	94.0%
North West & Central	94.6%	94.6%	94.6%	94.6%	94.6%
Southern	92.8%	92.8%	92.8%	92.8%	92.8%
Western & Wales	93.4%	93.4%	93.4%	93.4%	93.4%
Scotland ⁶	93.0%	Staged improvements ⁷			94.5%

The regional FDM-R floors are:

Region	2019-20	2020-21	2021-22	2022-23	2023-24
Eastern	92.5%	92.5%	92.5%	92.5%	92.5%
North West & Central	93.5%	93.5%	93.5%	93.5%	93.5%
Southern	90.0%	90.0%	90.0%	90.0%	90.0%
Western & Wales	91.9%	91.9%	91.9%	91.9%	91.9%
Scotland ⁸	92.5%	92.5%	92.5%	92.5%	92.5%

⁶ This is consistent with our PR18 final determination for Scotland [here](#).

⁷ As set out in our PR18 determination.

⁸ As above.

Composite Sustainability Index (CSI)

We have worked with Network Rail to create regional CP6 baselines. Network Rail has provided us with updated figures as envisaged in our PR18 final determination, to reflect the CP5 exit position. We are aware that they need to be assured internally within Network Rail. In the event that Network Rail's assurance process results in any material changes, we will decide whether to make any changes. More generally in this area we note that there were more variations in route level outturns than Network Rail anticipated (with a minimum impact at the national level) and we will work with Network Rail to understand why this occurred and how it can be improved in future.

Subject to the outcome of the assurance of the CP5 exit position, the regional CSI trajectories, which we will compare Network Rail's performance and targets to during CP6 are set out below. Note that this is a single end-CP6 figure in each case.

Region	2019-20	2020-21	2021-22	2022-23	2023-24
Eastern	-	-	-	-	-1.7%
North West & Central	-	-	-	-	-3.3%
Southern	-	-	-	-	-4.1%
Western & Wales	-	-	-	-	0.2%
Scotland	-	-	-	-	2.9%

The regional CSI floors are:

Region	2019-20	2020-21	2021-22	2022-23	2023-24
Eastern	-	-	-	-	-2.2%
North West & Central	-	-	-	-	-3.5%
Southern	-	-	-	-	-4.9%
Western & Wales	-	-	-	-	-0.4%
Scotland	-	-	-	-	2.4%