

Rail Delivery Group

Response to

ORR's consultation on the overall framework for regulating Network Rail

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Organisation: Rail Delivery Group

Address: 200 Aldersgate Street, London EC1A 4HD

Business representative organisation

Introduction: The Rail Delivery Group (RDG) was established in May 2011. It brings together Network Rail and passenger and freight train operating companies to lead and enable improvements in the railway. The purpose of the RDG is to enable Network Rail and passenger and freight train operating companies to succeed by delivering better services for their customers. Ultimately this benefits taxpayers and the economy. We aim to meet the needs of:

- Our Members, by enabling them to deliver better outcomes for customers and the country;
- Government and regulators, by developing strategy, informing policy and confronting difficult decisions on choices, and
- Rail and non-rail users, by improving customer experience and building public trust

For enquiries regarding this consultation response, please contact:

Bill Davidson and Tom Wood

bill.davidson@raildeliverygroup.com

thomas.wood@raildeliverygroup.com

Rail Delivery Group

2nd Floor, 200 Aldersgate Street

London EC1A 4HD

Introduction

1. This document outlines the key points from our members in response to the ORR's consultation on the overall framework for regulating Network Rail. RDG welcomes the opportunity to respond to this consultation and is pleased to support many of the proposals set out by the ORR.
2. Many of the matters covered in the consultation have been discussed at the regular working group meetings facilitated by RDG. The ORR has attended many of these meetings and received input from RDG members directly. We hope that the ORR has found this input useful and that we will be able to continue this constructive dialogue as the PR18 programme moves forwards.
3. We are content for this response to be published on the ORR website.

Scorecards

4. We support the use of scorecards in CP6 and consider these to be an important part of setting expectations for what is to be delivered by the Routes and System Operator (SO). Route-based scorecards can also form the basis for the development of business plans as part of the PR18 process and throughout CP6 and for the ongoing monitoring of Network Rail's performance.
5. We agree that ORR should monitor performance across Routes using effective comparative measures. These should be aimed at driving positive behaviours including sharing best practice and collaboration, rather than a sense of rivalry which may be counter-productive. We agree that there is a need for some common measures to be included on the scorecards for each of the Routes in order to allow this comparison to take place. As all of Network Rail's Routes count multiple train operators as their customers, it will be necessary to ensure that each route's performance can be monitored and assessed using a consistent measure of the performance for all operators on a route not solely relying on individual operator-centred targets. Equally, we would generally expect that targets for each of the operators on a route would appear on the route scorecards.
6. Network Rail is required to provide a wide and varied range of activities across its business. Though it is clearly correct to seek to include a balanced suite of measures in the scorecards used in CP6, we must acknowledge that it may not be possible to capture the full spectrum of these activities in the kind of quantitative measures appropriate for inclusion on the scorecard.
7. An example of this is in relation to the SO, where the ORR has acknowledged the challenges in developing a balanced scorecard. The SO is responsible for a broad range of short, medium and long term activities, many of which involve interface with other parts of Network Rail (for example, in relation to the SO's role in relation to sale of access rights). In our view, the nature of the role of the SO means that it will be very difficult to represent the full range of its activity in a scorecard that would meet the ORR's requirements as set out in the consultation.
8. It is important for the ORR and the industry to acknowledge this and to agree on how the ORR's approach to monitoring performance will need to differ in such areas. In addition, we must be careful to avoid too much emphasis being placed on areas that are more easily measurable at the expense of areas that are harder to measure but no less important to stakeholders.
9. The ORR proposes to set minimum floor levels of performance in relation to metrics for performance and network sustainability, with failure to achieve these backstop

performance levels flagging the likely need to consider a formal investigation. Given the potentially serious implications of a breach of a regulatory floor, we believe that any floor should be set at a level that indicates systemic failure. Some RDG members believe that the ORR should be going further than this and set the expected level of outputs that must be achieved by Network Rail, commensurate with the funding that Network Rail will be allowed in CP6. This would be particularly relevant in a situation where Network Rail and its customers were unable to reach agreement.

10. In some circumstances it will be challenging for Network Rail and operators to find agreement on targets to be included for CP6 scorecard measures (for example, due to misaligned incentives). We understand that, in these circumstances, it is the ORR's intention that it would determine what the relevant targets should be. However, this is not entirely clear from the consultation document and further clarity on this would be welcomed.
11. As the ORR comes to review Network Rail's strategic business plans (and the proposed performance targets that they will contain) later in the year, it will be important to acknowledge that the performance levels that appear in operators' franchise agreements represent outputs that funders have determined should be delivered. If Network Rail is not properly funded and appropriately incentivised to fulfil its role in delivery, the achievement of those outputs will be jeopardised.
12. In relation to freight measures for inclusion on scorecards, RDG's freight operator members support the inclusion on all route scorecards of regulatory measures for freight and suggest that FDM-R and route gross tonne miles would be suitable basic measures reflecting performance and support for growth. Network Rail would favour a more flexible approach so that the way in which delivery of freight performance is monitored (and Network Rail is held to account) continues to reflect the governance structure and accountabilities of its organisation. Were any change to be proposed to monitoring FDM-R, this would be on the basis that the FNPO route can demonstrate that it is working effectively with the geographic Routes in securing the delivery of targeted freight performance.

Stakeholder engagement and the role of customers in CP6

13. We continue to support the aim of giving additional emphasis to the role of train operators and other stakeholders in agreeing the outputs to be delivered in CP6 and in challenging Network Rail. Furthermore, we agree that we should seek to move towards an environment where it is the train operators, and not the regulator, which are treated as the primary customer of Network Rail.
14. In order to deliver a high-performing railway in CP6, it is essential that effective relationships are established and maintained between train operators, the route businesses, the System Operator and Network Rail's other central functions.
15. The ORR's consultation document focuses on the stakeholder engagement to be carried out by the route businesses and the System Operator. However, the importance of Network Rail's Technical Authority and Infrastructure Projects divisions in delivering a successful railway must not be overlooked. In particular, Network Rail have highlighted the need for the industry to "challenge" standards in order to ensure that they do not drive disproportionate costs or unnecessary complexity. It will therefore be necessary to ensure that stakeholders are able to engage effectively with these central functions and that their performance can be monitored in a transparent way in CP6. There is a role for the ORR in ensuring that this happens and we look forward to working with our members, the ORR and other key stakeholders in the coming months in taking this work forward successfully.

16. While it has been correct for the industry to focus on the development of the Route Strategic Plans, thoughts should now increasingly turn to the ongoing nature of engagement between Network Rail, train operators and the wider stakeholder group. The enhanced stakeholder engagement that we have seen in the PR18 process to date must not stop and must instead continue to improve with the conclusion of PR18. Enhanced stakeholder engagement practices must become embedded in the day-to-day operation of Network Rail's Route and SO businesses.
17. We agree that it should be for each Route business and the SO to determine, how they should engage with stakeholders and, in general, we agree that it is correct for the ORR to restrict itself to setting some minimum expectations in this area.
18. Regarding the specific minimum requirements set out in the consultation document, we think that it is unnecessary for the ORR to specify that Routes and SO must have face-to-face discussions with stakeholders on a bilateral and multi-lateral level. While a regular multi-lateral stakeholder meeting may be appropriate in certain circumstances, it should be left to individual Routes and their stakeholders to decide on the most effective means of engagement.

Monitoring and enforcement

19. We support the ORR's aim to create a balanced set of incentives for Network Rail and agree that these should be designed to incentivise good performance at a route level and for the SO.
20. We agree that operators and other stakeholders should have a role in seeking to resolve issues that arise in CP6 without the need for intervention by the ORR in the first instance. However, ultimately, it is clearly the role of the ORR to hold Network Rail to account for delivery and no party can supplant the ORR in this role. As such, we welcome the ORR's statement that its aim is not, through the proposals set out in this consultation, to 'reduce' its regulation of Network Rail.
21. We also support the proposal to use reputational, procedural and management incentives in a proportionate way where performance reaches unacceptable levels. Given the reclassification of Network Rail to a public sector body, it is clearly necessary for the ORR to consider how it must adapt its approach to monitoring and enforcement to ensure that it remains fit for purpose. In our view, the imposition of financial penalties or reparations on Network Rail for poor performance would be inappropriate in the current environment as this would involve diverting scarce funding away from investment in the railway network.
22. We suggest that the focus of ORR monitoring publications covering Network Rail's performance should be based around scorecards and hence show comparisons across the Routes and for the SO consistent with the way the company is now structured. We support the use of scorecards as the primary means of monitoring that ORR will use to assess the performance of Network Rail's Routes and the SO. The ORR reports, and data from scorecards should be easily available to all operators and wider stakeholders.
23. We agree with the general approach that ORR has proposed on the monitoring of Network Rail performance, particularly that it is flexible so that resources are prioritised to reflect the greatest need and that a transparent escalation process is followed in all cases. We agree that it would be appropriate for the ORR to focus more attention on those parts of Network Rail that have been assessed to be weaker in the area of stakeholder engagement.
24. The proposals in Table 5.1 are appropriate in our view as they will cater for different

situations, whether in terms of effective or poor engagement with stakeholders, or whether outcomes are good, poor or unacceptable. We also support the general approach to escalation when performance is below expectations.

Change control

25. We agree that there should be a process for managing material changes that occur in CP6. Where appropriate, such changes should be supported by a Network Rail business case and should involve stakeholders in the process of deciding whether and how a change should be implemented.