

## **Rail Delivery Group**

Response to

**ORR consultations on:**

- **Holding Network Rail to account**
- **ORR's approach to assessing the quality of Network Rail's stakeholder engagement in CP6**

**Date: 25 January 2019**

# Rail Delivery Group response to ORR consultations on:

- Holding Network Rail to account; and
- ORR's approach to assessing the quality of Network Rail's stakeholder engagement in CP6

**Organisation:** Rail Delivery Group

**Address:** 200 Aldersgate Street, London EC1A 4HD

Business representative organisation

**Introduction:** The Rail Delivery Group (RDG) brings together passenger train operators, freight train operators, as well as Network Rail; and together with the rail supply industry, the rail industry – a partnership of the public and private sectors - is working with a plan *In Partnership for Britain's Prosperity*<sup>1</sup> to change, improve and secure prosperity in Britain now and in the future. The RDG provides services to enable its members to succeed in transforming and delivering a successful railway to the benefit of customers, the taxpayer and the UK's economy. In addition, the RDG provides support and gives a voice to passenger and freight operators, as well as delivering important national ticketing, information and reservation services for passengers and staff. 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

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<sup>1</sup> *In Partnership for Britain's Prosperity*, RDG (October 2017):  
<http://www.britainrunsonrail.co.uk/files/docs/one-plan.pdf>

## Introduction

1. This document outlines the key points from our members in response to ORR's consultations on holding Network Rail to account and ORR's approach to assessing the quality of Network Rail's stakeholder engagement in CP6. The Rail Delivery Group (RDG) welcomes the opportunity to contribute to these consultations. We are content for this response to be published on the ORR website.
2. Network Rail plays a key role in the rail industry. Train operators are its main customers and are dependent upon Network Rail as the monopoly supplier of railway infrastructure for a key element of their ability to deliver a safe and reliable service to the ultimate customers of rail services - passengers and freight users. The relationship between Network Rail and train operators is therefore crucial - both in terms of collaboration, but also in terms of operators having sufficient tools to be able to put effective pressure on Network Rail to deliver.
3. However, none of this diminishes the vital role ORR has as the ultimate body that holds Network Rail to account. As conditions have developed over time, including the nature of Network Rail and its change of status, it is increasingly important that ORR is proactive in how it monitors and assesses Network Rail and in using its investigative and enforcement powers to greatest effect.
4. As train operators are Network Rail's primary customers, Network Rail's engagement and agreement of the outputs for CP6 with them is an essential part of delivering a high performing railway to passengers and freight users. ORR has a key role in relation to assessing the quality of this engagement both in terms of supporting operators and holding Network Rail to account. It also has an important role in determining the information and assessments that get published as this can play an important role in facilitating reputational incentives where appropriate.
5. Whilst there may be an initial focus on stakeholder engagement around agreeing the outputs for CP6, the industry should continue to build on the enhanced stakeholder engagement in the PR18 process in other areas. ORR has a role to play in assessing the extent to which this approach is successfully embedded in all aspects of the day-to-day planning and operation of the railway in the years to come.

# Holding Network Rail to account

## Policy aims and approach

6. We are supportive of the elements of the proposed policy approach set out in the consultation document, including the importance of sharing best practice and stakeholder engagement. However, we are concerned that, as currently stated, the approach does not sufficiently emphasise the use of leading indicators and other information so that ORR can monitor and take action to avoid poor performance. We recognise that leading indicators are discussed in the consultation document, but we consider that this forward looking, proactive approach should be a more explicit part of the stated policy aims.
7. We welcome the fact that the proposed policy approach is informed by principles of regulatory best practice. We think ORR should target its resources on areas with greatest impact on customers and funders and that this should be clear in the stated approach.

## Routine monitoring and enforcement

8. We agree that ORR should monitor individual routes and SO and focus on scorecards where measures have been agreed, particularly with an emphasis on sharing best practice and collaboration. We consider that it must also be proactive in the development of more leading indicators across the full range of issues. As far as possible, this would be across all aspects of performance including efficiency, where the approach currently set out in the document does not appear to have a leading element. ORR should then be proactive in monitoring these indicators with an emphasis on early intervention to avoid major problems occurring. A part of this proactive approach for ORR may include examining, and possibly verifying to the extent practicable, the delivery plans Network Rail develops which are necessary to deliver the required outputs detailed in the scorecards.
9. It is vital that ORR's monitoring is both balanced and comprehensive. It should be balanced in terms of acknowledging where things are going well and if leading indicators and other information start to raise issues of concern there should be an early focus on how things can be improved. This would be most successful in a culture of getting problems solved and lesson learning rather than blame apportionment and reaching for enforcement tools in all but the most serious of cases. It should be suitably comprehensive given the importance of reputational incentives and the key role ORR's monitoring can play in respect of these. We consider ORR should utilise information already used in the industry wherever possible, which should also reduce the resource implications on ORR.

## Investigation and early resolution

10. We support the targeting of any investigations at relevant business units within Network Rail. Given the potential reduced effectiveness of financial incentives and the aim to avoid major failures from occurring, we consider the use of reputational incentives and improvement notices are key intervention tools for ORR.
11. We support the use of improvement plans and hearings where leading indicators and other information suggest that the situation is going seriously off course and these can

be used early enough that they can have a significant positive impact on the issue concerned. However, we think ORR should always consider the balance between letting the parties get on with resolving problems without undue distraction and the need for intervention if there is evidence that not enough is being done or there is insufficient senior management focus on taking appropriate action to resolve a problem.

### **Enforcement**

12. Where an issue doesn't get resolved and leads to serious, detrimental outcomes, we support ORR's recognition in the proposed enforcement approach of the limitations of financial penalties and the risks of money being diverted away from future investment in the railway.
13. However, we have some concerns that if enforcement is too focused on attempting to target management incentives, this may make hearings more difficult for all the parties concerned, damage longer term collaboration and make it more difficult to recruit the most appropriate people in the future. We therefore consider that this should only be considered in the most extreme cases where other tools, including reputational incentives, are not judged as sufficient.

## **ORR's approach to assessing the quality of Network Rail's stakeholder engagement in CP6**

### **Scope and focus of ORR's assessment**

14. We recognise the need for ORR to focus its resources on activities which will add the most value to customers and funders. We agree that in the first year this is likely to revolve around business planning and the agreement of scorecards. However, we consider that this is subject to three things.
15. Firstly, ORR's assessment should be undertaken in the context of clear governance arrangements between routes, SO and operators on industry engagement, backed up by broad, transparent stakeholder engagement plans from each route and the SO. These should include how there would be meaningful and consistent engagement on performance, delivery issues and long term planning, how problems can be escalated, and how there would be engagement with subnational/regional transport authorities where appropriate.
16. Secondly, ORR should not rule out looking into other areas on a case by case basis if specific issues are brought to its attention. In such cases ORR should make it clear that the responsibility in the first instance should be on Network Rail and operators to have sufficient engagement to try to resolve any issues arising.
17. Thirdly, ORR's document focuses mainly on stakeholder engagement by routes and SO - we continue to believe that the importance of Network Rail's Technical Authority (particularly in terms of the ability to challenge standards where appropriate) and Infrastructure Projects divisions (particularly in terms of enhancing the customer focus) in delivering a successful railway must not be overlooked.

### **ORR's assessment approach**

18. We agree that the purpose of the assessment should be on supporting both the

reputational incentives for routes and SO to maintain and improve the quality of their engagement, and the adoption of best practice across the routes and SO. We further agree that it should be informed by stakeholder views and Network Rail's self-assessments, and that once there is reassurance around the quality of these self-assessments and their ability to drive improvements to future engagement there may be a less intensive need for independent assessments. However, we consider that ORR's assessment will continue to play an important role in supporting reputational incentives and would therefore not support any implication that it might not be needed at some point in the future.

19. We consider it vital that any assessment by ORR is evidence based. It is also important that all parties recognise that whilst in many cases Network Rail would be expected to lead on engagement issues, good quality engagement is a two way process that relies on sufficient commitment from all parties, whether Network Rail, train operators or other parties. We think that this would need to be a consideration in any assessment by ORR.