

Responses to Holding HS1 Ltd to account in CP3 – Published May 2021

Department for Transport

Eurostar International Ltd

HS1 Limited

Kent County Council

London Sleeper Company

Network Rail (High Speed) Ltd

Southeastern



Department
for Transport

Dan Moore
DIRECTOR, RAIL STRATEGY AND ANALYSIS
DEPARTMENT FOR TRANSPORT
GREAT MINSTER HOUSE
33 HORSEFERRY ROAD
LONDON SW1P 4DR

By email

Web Site: www.dft.gov.uk

19 January 2021

Dear Debbie,

Holding HS1 Ltd to account in CP3

Thank you for your emails of 30 November and 4 December 2020 consulting DfT on ORR's draft approach to holding HS1 to account during CP3. We are grateful for the opportunity to contribute views to this important consultation.

DfT is committed to supporting the success of HS1, which is an important national asset, which delivers significant benefits to the United Kingdom and is currently facing significant challenges as a result of Covid 19. We consider that ensuring an effective approach to the regulation of HS1 Limited is a key part of supporting its success.

Delivering on CP3

We consider it important that the ORR ensures that HS1 does deliver effectively and efficiently on the plans for CP3, as reflected in the Final Determination.

We therefore expect the ORR to ensure an effective, proportionate approach to monitoring, including a strong and effective challenge, using the full range of regulatory tools, to secure efficient delivery – whilst respecting the concession agreement.

We note the step change in delivery required and support steps to ensure HS1 transforms its capabilities to meet these challenges (as recognised in paragraph 8.2 of the Final Determination). In this regard:

- We agree with the ORR on relying on information that HS1 itself prepares for the purposes of running its business (paragraph 8.4 of the Final Determination) – albeit ORR must be absolutely clear that it has the information it needs to ensure that the deliverables set out in the Final Determination are achieved.
- We strongly agree on ensuring effective, robust monitoring on the issues covered in 8.5 of the Final Determination (i.e. asset management capability; financial reporting improvements, including the calculation of efficiency; measuring outperformance; use of risk and contingency provisions; investment decisions for renewals and R&D; and the delivery of efficiencies set out in

HS1's 5YAMS), and commit to working with appropriate HS1 stakeholders in continuing to improve the Escrow accounts management that flows from these activities.

- We consider that it is important that HS1's progress against its commitments continues to be transparently reported by the ORR through the process of public annual reports, with positives clearly highlighted, as well as issues of concern clearly set out, alongside the specific action that the ORR proposes to take to support improvement.
- As with the CP6 settlement for NR infrastructure generally, and broader trends in economic regulation more generally which give greater weight to stakeholder engagement in monitoring regulatory settlements, we consider that an important aspect of how HS1 is held to account is how effectively it works with its key customers and broader stakeholders. ORR has worked with Network Rail on an approach to stakeholder engagement for CP6 (as reflected in the stakeholder engagement duty in the NR licence) and we would welcome an approach for HS1 which includes, as a key indicator, stakeholders – particularly HS1's customers - being closely engaged in how the company is held to account.

Stations Regulation and use of appropriate information

As stations regulator currently for HS1 (until such time as stations regulation is transferred to ORR as consistent with discussions on this issue), DfT wishes to achieve as much consistency as possible across the monitoring and improvement of track and stations.

Specifically, in respect of stations, DfT is developing a database to provide greater transparency about the cost and delivery of committed work. DfT has also been working with HS1 to improve the company's asset knowledge and this should assist with effective planning of work. These actions should facilitate monitoring and enforcement by enabling the provision of good quality data. With this in mind, DfT wishes to ensure that ORR's monitoring and enforcement process fully considers the range of available evidence when evaluating HS1's efficiency in delivering its commitments.

Broader issues

As set out in paragraph 30 of the 2009 Regulatory Statement, we consider it is of vital importance that HS1 has in place, and maintains, a robust and effective cost benchmarking system against other international high-speed rail providers, and other relevant infrastructure managers. This continues to be a critical basis for the next periodic review, and we ask the ORR to ensure that such a robust mechanism is fully in place and maintained.

More generally, it is important for ORR to take account of the Covid pressures, and the need for a clear framework to assess the impact of those and their impact on the CP3 settlement, so that we ensure that the settlement is stretching, yet realistic, and ensures all parties have the clarity required in preparation for the Periodic Review for CP4.

Concluding remarks

I hope that you find these comments to be helpful. We remain committed to closely working with ORR on supporting the delivery of an efficient, sustainable and effective monitoring framework for HS1 Limited and would be very happy to discuss any aspects of this response.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'D/Moore', written in a cursive style.

Dan Moore
Director, Rail Strategy and Analysis

Debbie Daniels
Office of Rail and Road
By email:

11 February 2021

Dear Debbie

Holding HS1 Ltd to account in CP3

Thank you for the opportunity to respond on the ORR's draft approach to holding HS1 to account, and for your flexibility in permitting us to provide these comments later than the originally envisaged deadline for response.

We strongly support the ORR progressing this essential element of its work during the control period. We are also conscious that, currently, it is no more business as usual for HS1 than it is for the operators on its network. We believe that ORR needs to be mindful of this and continue to show flexibility in the way it manages the compliance agenda through this period. We would like to go on record as praising the responsiveness of HS1 to the commercial pressures on operators at this time. This has been appreciated.

We welcome the paper and the opportunity to understand more on the ORR's intentions for the monitoring of HS1. We support the objective to strengthen and create incentives on HS1 Limited in respect of asset stewardship, stakeholder management, and train performance, as well as the ORR's intent to take action to minimise the impact on all users of the infrastructure, should this be required. Such an approach contributes to a sustainable, efficient network that will benefit both HS1 and its stakeholders.

We agree with an approach that is risk-based, targeted and proportionate, looking to address the likely costs and benefits to parties of taking action. In considering these elements in this context, it would be helpful to understand more around:

- How the ORR will identify and consider which risks are greatest;
- How the ORR will consider proportionality and assess the costs and benefits to parties; and
- The ORR's thinking on materiality that is contemplated in respect of its targeted approach.

In adopting its approach to monitoring and assessment, we support the ORR's proposed areas of focus. However, we do wish to see more on how the ORR will approach ensuring HS1 is held to account in respect of HS1's large and subcontractor for a number of HS1's critical functions, NR(HS). This is vital in holding HS1 to account.

Could the ORR please confirm that its proposed approach includes holding NR(HS) and its performance, including its financial performance, to account. It is key to us that evaluation and monitoring of HS1 does not begin from a place that accepts as a base the outputs of commercial contractual arrangements that it has with its key supplier.

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This is important because, as the ORR is aware, these contractual arrangements drive a key element of costs on HS1, but operators are not party to these. As part of the process of holding HS1 to account we would be interested to understand how the ORR will ensure that:

- NR(HS) delivers an efficient and effective service to HS1 and, therefore, to stakeholders including passengers on the network. For example, that HS1's largest contract costs are being spent prudently and accurately, that there is some form of tracking / independent assessment of work timelines, delivery, quality, overtime, return on investment and, where appropriate, effective challenge, measurement of how NR(HS) are performing against key metrics such as CP3 estimates etc., and importantly that the costs incurred by NR(HS) are necessary and legitimate before they flow into the HS1 OMRC; and
- HS1 possesses sufficient ability to ensure that HS1 is managing the relationship with NR(HS) in an efficient manner.

We would also like to see that effective and relevant benchmarks are used to measure delivery against HS1's performance, including international benchmarks, which may provide more suitable comparators. We would welcome further information on the list of organisations and metrics that will be used for benchmarking. Will the existing analysis be updated and published?

We welcome the transparency and the commitment to keeping stakeholders informed about the ORR's view, including where the ORR may have concerns.

Thank you also for confirmation of the intention to consult stakeholders as part of the escalation process. We think it is important that, as a key stakeholder, we also have the opportunity to input into the ORR's work at all stages prior to escalation. In seeking this, we would like the opportunity to highlight elements for the ORR that would not naturally fall within an escalation procedure, such as examples of best practice or good customer actions that we see, as well as providing feedback, if this should be necessary, on areas where we feel there could be further development of approaches by, or incentives on, HS1.

In terms of additional elements for inclusion, we consider the following important:

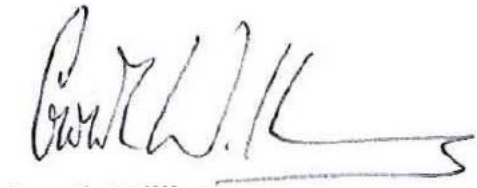
- Consideration of economies of scale and the incentives for these, including any that may be achieved by HS1 working with other organisations such as HS2; and
- Consideration of entire route affordability by HS1. HS1 links to other infrastructure managers as part of a system, and affordability of infrastructure charges is a key component in efficient and effective operation on this wider network.

We note that the ORR's reporting will vary depending on the circumstances, and that we should always expect an annual report. This is very helpful to understand. It would also be helpful to receive some examples of the circumstances where the ORR might expect to issue additional reporting.

Surrounding the holding HS1 to account piece is a broader regulatory agenda which arose from PR19 including consideration of escrow and the structure of charges, stations regulation etc.,. One of the difficulties of PR19 was that many of these issues emerged or performance was assessed in the context of the review itself. It would be helpful if, as part of its holding to account work, the ORR also provided stakeholders with a periodic update on the scope and progress of this wider agenda.

Once again, thank you for the opportunity to provide these comments.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Gareth Williams', with a long horizontal flourish extending to the right.

Gareth Williams



HS1 Limited
5th Floor
Kings Place
90 York Way
London
N1 9AG

12 January 2021

Debbie Daniels
HS1 Regulation Manager
Office of Rail and Road
25 Cabot Square, London
E14 4QZ

By email:

Dear Debbie,

Consultation – Holding HS1 Ltd to account in CP3

1. Thank you for the opportunity to respond to the Office of Rail and Road's (ORR) consultation – Holding HS1 to account in CP3. This consultation follows ORR's Final Determination for CP3 which came into force on 1 April 2020.
2. We welcome the ORR's recognition in the consultation document that the HS1 Concession Agreement (CA), as amended from time to time, provides a specific framework for regulating HS1; it is a bespoke regulatory framework which is materially different to that applying to Network Rail Infrastructure Limited. This regulatory framework was a key basis for the decision by HS1's past and current shareholders to invest in the asset.
3. Given this context, HS1's primary concern in response to the consultation is to ensure that the ORR's regulatory monitoring activities and reporting requirements adhere to the regulatory framework in the CA, and are proportionate to the scale and risk profile of HS1's operations.
4. The consultation is relatively high level and straight forward in terms of the ORR's overall approach and escalation, and HS1 recognises the six areas of focus – namely asset management capability, financial reporting, outperformance, use of risk and contingency, investment decisions for renewals and R&D and the delivery of efficiencies.

5. However, as with any monitoring and reporting framework, details are important – particularly if regulators are to demonstrate they are taking regulatory best practice seriously – providing clarity and stability so business can plan and respond effectively. This is particularly relevant to HS1 as a private sector Concession recovering from the impact of the COVID 19 pandemic and associated public health measures. We therefore welcome ORR’s commitment to an approach consistent with best practice and provide the following feedback on the document.

Current Reporting

6. HS1 has consistently provided the ORR with detailed reporting. Since the commencement of CP3, this requirement has increased further, and the ORR now receives detailed reporting through a range of different mechanisms including:
 - The Asset Management Annual Statement (AMAS), a requirement under the HS1 CA to provide assurance that HS1 is discharging its duties under the CA to an acceptable standard. The AMAS and particularly its annexes, provide comprehensive reporting to the ORR;
 - o The AMAS will consider the additional four areas set out by the ORR in the consultation document subject to the caveats set out below in relation to financial reporting;
 - Quarterly performance floor reporting, to ensure HS1 is continuing to operate the infrastructure to the high standard set in the CA;
 - Quarterly business-wide reporting, voluntarily provided by HS1 to the ORR to give progressive assurance on key operational, safety, financial and other measures;
 - Quarterly renewals reporting whereby we provide the ORR with a review of renewals projects highlighting the reasons for any significant deviations from the plan.
 - o We have agreed with the ORR an updated annual project review format for inclusion in the AMAS, this responds to many of the requirements of the ORR;
 - o this should mean the ORR is much better informed when preparing the the CP4 determination regarding issues such as risk allowance and accuracy of gate 1 estimates;
 - ORR pre-approval papers for all renewals project funding as the projects pass through the project process;
 - o All train operators are now included in the project gate 4 business case review that is undertaken with the ORR and DfT;

- Investment Recovery Charge (IRC) reporting, to demonstrate that HS1 is recovering the IRC appropriately;
 - Outperformance reporting, produced by Network Rail (High Speed) (NR(HS)) to set out its performance against the Annual Fixed Price cost level signed off by the ORR in its CP3 Final Determination, including management of operations and maintenance risks; and
 - The annual provision by HS1 and NR(HS) of benchmarking cost input data on network characteristics, asset condition, and operations, maintenance and renewal costs that will allow the ORR to analyse trends over time.
7. Although monitoring and reporting requirements evolve, it is important to recognise the significant detailed information the ORR already receives, and the need for the ORR to provide a clear holistic view of what is required. HS1 has worked closely with ORR to stocktake and improve reporting over several years. The clearer the requirements set by the ORR are and the more consistently they are applied, the more able HS1 will be to respond to meet requirements. We would expect the ORR to draw on data from the regular reports we already provide and not seek additional information that goes beyond that we do not use to run the business.

Financial Reporting

8. HS1 is significantly different to Network Rail and does not have detailed access to financial information with regards to operation and maintenance activities carried out by our supplier NR(HS). This is a result of the Annual Fixed Price-based contract with NR(HS) which HS1 inherited at the start of the Concession. HS1 is working closely with NR(HS) to evolve financial reporting but the ORR should recognise in its monitoring and reporting that HS1 does not have access to detailed information that sits behind the delivery of operations and maintenance efficiencies, or the outperformance reporting noted above. HS1 does not have a contractual right to require the provision of financial information from NR(HS). We note the ORR has greater access to this information, and we are happy to work with the ORR in these areas when required – however HS1 should not be held to account for information required for ORR monitoring and reporting that it does not have access to.
9. The ORR set NR(HS) an efficient cost base in its CP3 Final Determination and they continue to deliver within this financial envelope.

Assurance

10. In addition to the quarterly business wide reporting, HS1 holds a specific safety 1:1 meeting with the ORR Principal Inspector to discuss concerns and provide updates on the HS1 Safety Strategy. Safety within HS1 is overseen by a robust governance structure which includes a Board Safety Sub-Committee, periodic reporting, and a joint NR(HS)/HS1 Assurance Board.

11. To strengthen the processes around the assurance governance structure, HS1 has developed a Health, Safety and Assurance Strategy through the NR(HS) / HS1 Assurance Board which includes the use of bowties and RM3 for continual improvement and specific route and stations assurance plans. The NR(HS)/HS1 Assurance Board meets quarterly and HS1 is happy for the ORR to be more involved in these activities.

12. HS1 will continue to work with the ORR to ensure monitoring and reporting is of a high standard and proportionate, predictable, and targeted in accordance with regulatory requirements.

Yours faithfully

A handwritten signature in black ink, appearing to read 'James Mackay'. The signature is fluid and cursive, with a large initial 'J' and 'M'.

James Mackay
Head of Regulation and Customer Relationships

From:

Sent: 15 December 2020 18:25

To: Daniels, Debbie

Cc:

Subject: ORR holding HS1 Ltd to account: Kent County Council response

Dear Debbie,

Thank you for sending a copy of the draft approach to holding HS1 Ltd to account.

Kent County Council responded to the earlier consultation on the determination of HS1 route funding for Control Period 3 (2020-2025), in which the Council stated its concerns about the very high level of access charges applicable to each domestic train path on HS1. The Council reiterates its concern that very high access charges on HS1 have the potential to lead to higher premium fares for Kent's passengers using these domestic services, and urges the regulator to consider the possible negative impact of any increase in these charges.

The Council has no further comment to make on the draft approach document.

Yours sincerely

Stephen Gasche | Rail Project Manager

Debbie Daniels
 HS1 Regulation Manager
 Office of Rail and Road
 25 Cabot Square
 London
 E14 4QZ

Network Rail (High Speed) Ltd.
 Singlewell Infrastructure Maintenance
 Henhurst Road
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 Kent
 DA12 3AN

Delivered by email

12th January 2021

Dear Debbie,

Holding HS1 Ltd to Account in CP3

Thank you for your email dated 30th November 2020, containing a document setting out your draft approach of holding HS1 Ltd to account in CP3. We welcome the opportunity along with other stakeholders to provide our response.

As you are aware, NR (HS) together with HS1 Ltd have engaged with the ORR following the PR19 Final Determination to discuss monitoring and reporting during CP3. NR (HS) agrees with the principles of regulatory best practice you have set out including, but not limited to, a proportionate and risk-based approach. These are important principles that will inform the resource needed for NR (HS) to deliver the additional monitoring and reporting requirements to HS1 Ltd. Specific comments in relation to the Financial Performance and Efficiency section of your document are provided below.

1. NR (HS) would like to make the ORR aware of the obligations under the Operator Agreement with HS1 Ltd regarding the reporting of O&M outperformance. The NR (HS) deadline to notify HS1 Ltd of any outperformance share (only applicable in years 3, 4, and 5 of CP3) goes beyond the deadline set in the Operator Agreement for NR (HS) to submit its AMAS to HS1 Ltd, and the Concession Agreement deadline for HS1 Ltd to submit its AMAS to the ORR. Therefore NR (HS) will continue to provide any O&M outperformance information to HS1 Ltd and the ORR outside of the AMAS to support input to the ORR Annual Report, in a similar manner to previous years.
2. NR (HS) would like to confirm the level of detail it will provide cost expenditure to HS1 Ltd and the ORR. As presented in previous years, a breakdown of actual O&M spend against a number of key categories will be provided, comparing these lines to the CP3 5YAMS. This will be shared with HS1 Ltd and the ORR outside of the AMAS to support input to the ORR Annual Report.
3. NR (HS) would like clarity on what “contemporary indicators/benchmarks from within (and outside) the industry” the ORR is seeking for cost efficiency comparison. NR (HS) has agreed with HS1 Ltd and the ORR to provide cost efficiency analysis by way of a fishbone and

commentary, adopting the existing Network Rail Infrastructure Ltd template which it uses for reporting efficiencies to the ORR. It is also important to understand how the ORR intend to use the benchmarking analysis, so the information collected is truly comparable and suitably presented to stakeholders if required.

We look forward to seeing the final approach document. If you have any questions, please do not hesitate to contact me.

Yours sincerely,



Chirag Desai
Business Planning & Regulation Manager
Network Rail (High Speed) Ltd

Copied to:
Anthony Barnes NR (HS) Ltd
Chantelle Casula NR (HS) Ltd

From: Michael Guerra
Sent: 01 December 2020 15:06
To: Daniels, Debbie
Subject: Re: ORR holding HS1 Ltd to account

Dear Debbie,

I hope you and everyone at the ORR are keeping safe and well, though it is definitely a weird time to be conducting normal business, especially with the difficulties everyone in transport is having in waiting for normal traffic levels (and economics) to return.

Thank you for sight of the HS1 Holding to Account specification, though you may have to review this document in the light of the current pandemic and the way recovery is managed. I'm not sure where the changes should go, but my guess is that the overall remit may have to reflect the need to monitor any service recovery and ensure that there are no compromises in safety due to the 'furloughing' of certain regular tasks.

The only thing I would want to draw out is the detail in Asset Stewardship, especially with regards to how stewardship is monitored. Presumably, that requires an actively maintained asset database, something that NR is still way behind in populating for the national network. I will assume that because of the relatively young age of HS1, all the drawings and equipment specifications (and hopefully maintenance records) were already digitised and handed over in 2007, enabling the surveying and monitoring of the fabric and attendant equipment easier. At least HS1 does not have to face the mammoth task of establishing the scope of a Victorian infrastructure like NR has to for the national network.

Anyway, keep up the good work and stay well.

Kind regards,

Mike

From: Ellis, Susan
Sent: 04 January 2021 13:23
To: Daniels, Debbie
Subject: RE: ORR holding HS1 Ltd to account

Good Afternoon Debbie

Happy New Year.

Thank you for the opportunity to review the draft approach to holding HS1 to account. This has been shared with relevant internal parties and the following comments have been received.

Aims and objective, in reference to bullet 3 & 4

We welcome the ORR's ambition to take timely action and if necessary, take direct regulatory action to resolve concerns as we believe this may solve issues that become static. An example is a current dispute for delay minutes associated with TVM Equipment that has been outstanding for a prolonged period.

Please can you clarify what level of poor performance will prompt the ORR to take timely action and what this action will be?

Approach, in reference to Transparent

We welcome transparency because at present it is difficult to obtain visibility of HS1's performance schemes or detailed plans. We look forward to understanding how ORR will obtain this transparency and to what level it will be shared with customers (Operators). We propose that ORR and HS1 consider a Customer Scorecard approach to aid transparency for all.

Approach, in reference to 'we plan additional monitoring and reporting'

We are pleased about ORR's plan to introduce additional monitoring and reporting. Again, we believe a Customer Scorecard will be a useful additional report - for better transparency across items key to Operators such as measuring outperformance.

Monitoring and assessment, in reference to Train Performance

We ask the ORR if there are plans to share HS1's internal performance targets with Operators for a more cohesive approach to performance management? We feel that to truly improve train performance these targets need to be transparent with Operators in line with ORR's overall aim to hold HS1 to improved account in CP3.

Monitoring and assessment, in reference to Risk-based approach

We are pleased that ORR will welcome stakeholder challenge however, we note this references 'ability of stakeholders to challenge'; in what proposed forum will this challenge be captured? What is the forum for HS1 to explain their performance to customers and be held to account by ORR?

What we will publish

Can you confirm when the annual report will be published please?

Escalation, in reference to 'Further Information'

If a formal improvement plan is required, as an Operator we deem is crucial to train performance that the ORR does request further information from stakeholders. The use of the term possibly is not customer friendly when the impact could be severe for Southeastern's passengers.

Requiring a formal improvement plan

Can you confirm what timescales will be associated with resolving concerns 'speedily'?

We look forward to your response

Kind Regards

Sue

Susan Ellis

Track Access and HS1 Contracts Manager

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