

John Larkinson
Chief Executive



Andrew Haines
Chief Executive
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29 May 2024

Dear Andrew

Contravention of condition 1 of Network Rail's network licence – facilitation of railway service performance in Wales & Western

I am writing to advise Network Rail of the decisions the ORR Board made last week following our investigation into Network Rail's contribution to train service performance in the Wales & Western region.

Our investigation was initiated because the train service experienced by passengers and freight customers in Network Rail's Wales & Western region has not been good enough and performance has been worsening in the region since 2021. This decline has been steeper than for other Network Rail regions and Network Rail-attributed delay (as measured using CRM-P (Consistent Region Measure- Performance) and Network Rail Delay per 1,000 Miles) was significantly worse than the levels achieved before the pandemic. Despite Wales & Western having produced and iterated a performance recovery plan that included actions aimed at causes of delay from its analysis of attribution data, performance has remained at unacceptable levels (including being below regulatory targets), impacting passengers and freight customers.

We set out the scope of our investigation and initial findings in our letters of 29 November 2023 and 9 April 2024. Thank you for your responses of 24 and 29 April, 13 May and 20 May 2024, which we have considered alongside all other information from Network Rail, passenger and freight train operators, funders and passenger representatives. We have also considered the most up to date performance outcomes at the start of CP7.

Summary of decision

In summary, our decision is that **ORR is satisfied that Network Rail Infrastructure Limited (Network Rail) is contravening condition 1 of its network licence:**

- i) by failing to achieve to the greatest extent reasonably practicable having regard to all relevant circumstances its obligations to secure the operation and maintenance of the network in accordance with best practice to meet the reasonable requirements of persons providing services relating to railways in respect of the facilitation of railway service performance; and
- ii) for each Route (or Region) Business to comply with the obligations set out in i) above in the performance of their functions.

Reasons for this decision

The ORR Board's reasons for determining this continuing breach are:

Network Rail is failing to achieve the Network Management Purpose to the greatest extent reasonably practicable in that it is not securing the operation and maintenance of the network in accordance with best practice as it:

- i) failed to plan sufficiently for cumulative changes on the network, including as a result of Great Western Electrification Project and Crossrail, and its plans to address this must be developed further;
- ii) does not fully understand the extent to which different operational factors are driving increased delay, which hampers its ability to target improvements effectively;
- iii) has weaknesses in its processes for learning lessons from incidents, and
- iv) has weaknesses in its leadership structures and governance as it is not currently set up to drive optimised train performance outcomes.

Network Rail is failing to demonstrate that it is taking and will take all necessary steps across the region to improve performance to the greatest extent reasonably practicable taking account of all relevant circumstances, because its plan to address poor performance in the Thames Valley (known as 'Project Brunel') is not sufficiently developed to address longer-term asset sustainability, asset reliability and operational practices, and it is limited to the Thames Valley area of the Western route.

ORR's Board also confirmed that there was not sufficient evidence to show that Wales & Western was or is in breach of licence conditions 3 and 5 in addition to condition 1.

In reaching this decision, ORR's Board considered carefully the evidence compiled as part of the investigation. It recognised that Network Rail has taken some steps recently towards addressing areas of weaknesses, including its progress in developing Project Brunel during this investigation period. Network Rail has described other potential plans and approaches that it might implement, most recently in its letter of 29 April 2024.

Progress to date and the scope of current commitments do not provide a sufficiently developed strategic plan to satisfy us that it is doing everything reasonably practicable to secure the operation of the network, in line with the requirements of the Network Management Duty. Some of the plans in place are either too immature (for example potential future changes Network Rail has indicated for the region's governance of performance) or insufficient in scale (for example due to the scope limitations of Project Brunel).

The ORR Board considered the Wales & Western region in comparison to train service performance and best practice seen in other regions and noted substantial discrepancies. It also considered the need for a more mature operating culture where different stakeholder requirements can be better balanced and factors directly within the region's control are managed more precisely. It considered the need to improve governance arrangements to align the management of operations and assets for the benefit of freight users and passengers.

Consideration of enforcement action

Our Board has taken account of the evidence, our Holding to Account policies, and our section 4 duties and, accordingly, we propose to make a final order under section 55 of the Railways Act 1993, having considered that no exceptions apply in this case (see Notice).

This proposed final order would require Network Rail to produce by **31 August 2024** a robust and evidenced plan identifying those further activities that it will undertake to secure the operation and maintenance of the network in accordance with best practice to meet the reasonable requirements of persons providing services relating to railways in respect of the facilitation of railway service performance to the greatest extent reasonably practicable. Network Rail would be required to implement the plan in line with any timings set out in the plan, or in the absence of a timing as soon as reasonably practicable and deliver to ORR, within one month of our requesting it, a report demonstrating why it is satisfied that the plan has been implemented.

Details of what the plan must contain and address are set out in the attached notice and draft final order.

The ORR Board has further decided that if Network Rail does not produce a plan that meets the requirements set out in the order by the date indicated, the company should pay a reasonable sum in accordance with section 55(7A) of the Railways Act 1993.

The ORR Board has decided to scale the reasonable sum so that it is broadly payable from within the level of Network Rail executive bonuses (based on Network Rail regulatory statement figures for 2022-23), which our holding to account policies allow.

The ORR Board proposes to impose a reasonable sum of £3 million if Network Rail does not meet the requirements of the Final Order.

The proposed level of the reasonable sum is considered appropriate and proportionate in the context of a serious breach, whilst acknowledging relevant mitigating circumstances in which Network Rail is and has been operating. Network Rail is referred to the wording in the notice for ORR's detailed reasoning on the reasonable sum.

Section 56 Notice

In accordance with section 56 of the Railways Act 1993, enclosed with this letter is ORR's formal notice setting out its proposal to make an order to the effect described.

A consultation period of at least 21 days is required for this notice. A deadline of **20 June 2024** for providing representations is therefore set out in the notice.

We will take into consideration any representations or objections made and not withdrawn and will make a final decision on whether the requirements of the proposed order, including the inclusion and size of the reasonable sum, are appropriate as soon as practicable following the end of the consultation period.

Much of the evidence considered by the ORR Board in making these decisions is contained in our evidence report. The report includes a summary of industry stakeholder submissions and of the industry roundtable undertaken during the course of the investigation. While our investigation is of Network Rail's compliance with its network licence, our evidence report also identifies wider recommendations that require cross-industry collaboration to deliver improvements. We propose that these recommendations are considered through the cross-industry Network Performance Board.

Application of CP6 and CP7 policies

This investigation has spanned the last four months of CP6 and the start of CP7. As such, consideration has been given to Network Rail's performance for CP6 against the CP6 regulatory measures and for the start of CP7 against the new success measures.

The ORR Board has reached its decision on licence breach cognisant that punctuality in the first rail period (four weeks) of CP7 (April 2024), represented a relative improvement on recent performance levels but that this has had very limited impact on the moving annual average performance which remains at a low level. The decision was made with consideration of the improvements that are required to deliver the performance targets for the first year of CP7, and that ORR set these targets substantially lower than for other regions due to the current issues with performance delivery.

Network Rail's licence obligations have not changed between these two control periods. Given the nature of the potential breaches at issue (which are unrelated to the changed monitoring and reporting framework) and the absence of material differences between these two holding to account policies, the ORR Board considers it has been able to apply the CP6 and CP7 policies where appropriate in determining its decision.

Process

We have considered your submissions of 24 April, 13 May and 20 May 2024, regarding the investigation process. We consider we have conducted this investigation in accordance with our published Holding to Account policies and processes. We have accommodated Network Rail where possible, meeting regularly during the process and giving extensions to deadlines when requested.

I am copying this letter to Rob Cairns (Wales & Western Interim Managing Director – Network Rail); Rt Hon. Mark Harper MP (Secretary of State for Transport), Conrad Bailey and Alex Hynes (Department for Transport), Ken Skates MS (Cabinet Secretary for North Wales and Transport – Welsh Government), Fiona Hyslop MSP (Cabinet Secretary for Transport – Scottish Government) and Alison Irvine (interim CEO – Transport Scotland). A copy of this letter, notice and draft order will be published on our website.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'John Larkinson'.

John Larkinson
Chief Executive