

**Tim Ward**  
**Senior Executive, Network Regulation**  
Telephone 020 7282 2107  
Fax 020 7282 2042  
E-mail: tim.ward@orr.gsi.gov.uk

21 May 2012

Sarah Mountford  
Senior Regulatory Specialist  
Network Rail Infrastructure Limited  
Kings Place  
90 York Way  
London  
N1 9AG

Dear Sarah

**Network licence Condition 5: Class 57 vehicle hire to First Great Western Limited**

1. We have today granted consent under condition 5 of Network Rail's network licence to Network Rail for the hire of a Class 57 vehicle (number 57312) for a period (from 28 May 2012 until 14 June 2012) to First Great Western Limited (FGW) to meet its service requirements.
2. Condition 5 provisions do not permit Network Rail, without our consent, to be directly or indirectly interested in the ownership or operation of any railway vehicle unless it is used in the operation of the network.
3. In your letter of 18 May 2012, you explained that Network Rail proposes to hire a Class 57 locomotive (vehicle number 57312), one of six vehicles leased from Porterbrook but not currently needed for possession delivery and infrastructure monitoring services during the proposed hire period. You also explained that FGW's vehicle has specifically been requested by Railfest 2012 as it is an historic Thunderbird model with distinctive livery.
4. In this case, we note your statement that the proposal would mean that Network Rail would have an interest in the ownership of a railway vehicle not being used in the operation of the network. We therefore considered that condition 5 consent was required and have today issued consent for Network Rail to carry out this activity.
5. In respect of the position under licence condition 4 (Ring-fencing and Accounting Records) we note your intention that the de minimis facility will cover this activity.



6. The consent enclosed with this letter will be placed on ORR's public register and a copy will be placed on our website with this letter.

Yours sincerely

A handwritten signature in blue ink that reads "Tim Ward". The signature is written in a cursive style with a large initial "T" and "W".

**Tim Ward**

**Rob Plaskitt**  
**Head of Licensing and Network Regulation**  
Telephone 020 7282 2072  
Fax 020 7282 2042  
E-mail [rob.plaskitt@orr.gsi.gov.uk](mailto:rob.plaskitt@orr.gsi.gov.uk)



21 May 2012

Company Secretary  
Network Rail Infrastructure Limited  
Kings Place  
90 York Way  
London  
N1 9AG

### **ORR consent under network licence condition 5**

1. On 18 May 2012, Network Rail Infrastructure Limited (Network Rail) asked for our urgent consent under condition 5.1 of its network licence, to an arrangement for the hire of one of its Class 57 locomotives to First Great Western Limited to use as cover for the period from 28 May to 14 June 2012.
2. The arrangement would entail the licence holder having a temporary interest in the ownership of a railway vehicle that it is not operating for the purposes of network operation, in contravention of condition 5 of its network licence.
3. Having had regard to our duties under section 4 of the Railways Act 1993 and to the information supplied by Network Rail (and in particular your assurance that this loan will not compromise network operations) we consent for the purposes of paragraph 1 of condition 5 of the network licence to the licence holder entering into an arrangement for the hire of one Class 57 vehicle to First Great Western Limited. The consent applies from today until 14 June 2012 (or such other date as we may agree).
4. We also note that you have considered the implications of licence condition 4 to the extent that it is relevant in this case and that you intend to proceed under the de minimis facility set out in that condition.

**Rob Plaskitt**



Tim Ward  
Licensing and Network Regulation  
Office of Rail Regulation  
One Kemble Street  
London  
WC2B 4AN

Kings Place  
90 York Way  
London  
N1 9AG

T: 020 3356 9342

E: [sarah.mountford@networkrail.co.uk](mailto:sarah.mountford@networkrail.co.uk)

18 May 2012

Dear Tim

### **Class 57 hire to First Great Western - consent under licence condition 5**

I write further to our recent conversation. First Great Western (FGW) have agreed to exhibit one of their own Class 57s to the National Railway Museum in York for the Railfest 2012 exhibition and have asked Network Rail for the hire of one of its Class 57 locomotives (vehicle number 57312) to use as cover during the period 28 May – 14 June 2012. FGW's locomotive has been specifically requested by Railfest 2012 as this is an historic Thunderbird model with a distinctive livery, as opposed to the standard Network Rail yellow type.

Network Rail has on lease from Porterbrook six class 57s that are used as the haulage locomotive on a variety of possession delivery and infrastructure monitoring services through the National Delivery Service (NDS). During the period in question Network Rail does not have a requirement for all six locomotives. This means that a locomotive could be hired out to FGW during this period at no risk to Network Rail activity.

Network Rail intends to enter into a hire agreement with FGW. Network Rail will be charging FGW for the hire of the locomotive, which will cover the lease and maintenance payments as well as an NDS overhead charge.

### **Licence Condition 5 implications**

Licence condition 5 does not permit Network Rail, without ORR's consent, to be directly or indirectly interested in the ownership or operation of any railway vehicle unless it is used in the operation of the network. We recognise that the above proposal will mean Network Rail will have an interest in the ownership of a railway vehicle not being used in the operation of the network. We are therefore seeking a short term consent, for the period 28 May – 14 June 2012, which will enable us to hire out the locomotive to FGW in order for it to carry out its service requirements.

The timescales outlined above mean that we are asking ORR to consider this matter before 28 May 2012.



It should be noted that under the terms of the proposed loan agreement it is envisaged that FGW will be responsible for collecting and returning the locomotive to and from our depot. FGW must also, on or before the handover date and until the vehicle is returned to Network Rail, obtain and keep in full force insurance of not less than £2m covering against the physical loss or damage to the locomotive on an all risks basis, including during transit. FGW will also be required to keep in full force and effect for the duration of the hiring agreement, insurance of not less than:

- a) £10 million or any higher amount required to comply with applicable local regulatory insurance requirements against liabilities for death or personal injury to any persons arising out of the use or operation of the locomotive and against liabilities for loss of or damage to any property arising out of the use or operation of the locomotive ; and
- b) £5 million in respect of Employers' Liability insurance; and such other insurance cover as shall be necessary to cover any other risks FGW is accepting under the terms of the proposed agreement.

Accordingly, and on the basis as outlined above, Network Rail believes that it has taken all such steps as are appropriate to protect its legal interest in the vehicle.

#### **Licence Condition 4 implications**

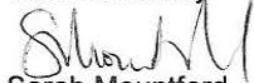
As you will be aware LC4 prohibits Network Rail (except with the written consent of ORR) from conducting any business other than the Permitted Business (effectively operating and maintaining the network).

ORR has previously determined in relation to the hiring of wagons for use by a third party when they are not required by Network Rail, that this activity is not included in the definition of Permitted Business although such an activity would be permissible if carried on with consent or within our *de minimis* facility under licence condition 4.

It is our intention that the proposed hire arrangement will be carried out under the *de minimis* facility, and tracked as a 'turnover' activity. For the avoidance of doubt, Network Rail's actual 'investment' costs under the *de minimis* facility will be negligible - the only costs to Network Rail being the staff costs of working up this transaction with FGW and obtaining the necessary regulatory consent. These costs will also be tracked.

The proposed loan agreement is currently scheduled to commence on 28<sup>th</sup> May 2012 and accordingly we would be grateful if you consider this matter before that date.

Yours sincerely



Sarah Mountford  
Senior Regulatory Specialist